

## **TITLE III: ADMINISTRATION**

### Chapter

#### **30. GENERAL PROVISIONS**

#### **31. TOWN COUNCIL**

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***Statutory reference:***

*Counties, cities, and towns, see VA Code Title 15.2*

*State and Local Government Conflict of Interests Act, see VA Code §§ 2.1-639.1 et seq.*

*State Public Procurement Act, see VA Code §§ 11-35 et seq.*

*State Public Records Act, see VA Code §§ 42.1-76 et seq.*

*The State Freedom of Information Act, see VA Code §§ 2.2-3100 through 2.2-3131*



## **CHAPTER 30: GENERAL PROVISIONS**

### Section

- 30.01 Fiscal year
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### **§ 30.01 FISCAL YEAR.**

The fiscal year of the town shall begin on July 1 and end on June 30 of the following year.  
(1998 Code, § 2-1)

### **§ 30.02 FORM OF BUDGET.**

The form of the budget for the town shall be the standard municipal budget form recommended by the Auditor of Public Accounts of the state and the State Municipal League.  
(1998 Code, § 2-2)

## CHAPTER 31: TOWN COUNCIL

### Section

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***Charter reference:***

*Town Council, see §§ 3 et seq. and 15 et seq.*

***GENERAL PROVISIONS***

**§ 31.001 POWERS, DUTIES, AND FUNCTIONS.**

The powers, duties, and functions of the Town Council shall be as set out in the Charter, town ordinances, and state law.  
(1998 Code, § 2-36)

**§ 31.002 USE OF ROBERT'S RULES OF ORDER.**

The meetings of the Town Council, except as its own rules of procedure may otherwise provide, shall be conducted according to *Robert's Rules of Order, Newly Revised*.  
(1998 Code, § 2-37)

**§ 31.003 RECORDS OF PROCEEDINGS.**

The Town Council shall keep an accurate record of its proceedings, which record shall be open to inspection by members of the public during the regular office hours of the Town Clerk.  
(1998 Code, § 2-38)

***MEETINGS GENERALLY***

**§ 31.015 DATE AND TIME OF REGULAR MEETINGS.**

The Town Council shall meet in regular session on the first Tuesday of each month at 7:00 p.m., or

at such other times as may be fixed by resolution; provided that at least one regular meeting per month shall be held as required by § 16 of the Charter. When the first Tuesday of a month falls on a legal holiday, or the town election day, the Town Council shall advance the regular meeting to the next day following, and notice of such advancement shall be published at the Town Hall in an area accessible to the public and by such means as the Town Council may select. When a regular or special meeting cannot be held at the scheduled time due to inclement weather, the Mayor shall fix a date and time for the meeting to occur. Matters advertised for a meeting rescheduled due to inclement weather need not be re-advertised if the advertisement stated that the meeting may be rescheduled in the event of inclement weather.

(1998 Code, § 2-61) (Ord. O-2004-12, passed 4-13-2004; Ord. O-2007-07, passed - -; Ord. O-2011-04, passed 6-14-2011)

### **§ 31.016 SPECIAL MEETINGS.**

Special meetings of the Town Council may be called, in accordance with § 16 of the Charter, at any time provided that all members are duly notified in writing a reasonable time prior to such meeting as to the time and place for the meeting and the business to be considered during such meeting.

(1998 Code, § 2-62)

### **§ 31.017 QUORUM.**

In accordance with § 16 of the Charter, a quorum for the transaction of business shall consist of three members of the Town Council and the Mayor, or in the absence of the Mayor, three members of the Town Council. If a quorum cannot be obtained, there shall be no meeting.

(1998 Code, § 2-63)

### **§ 31.018 MAYOR TO PRESIDE; VOTING AND VETO POWERS OF MAYOR.**

In accordance with § 6 of the Charter, the Mayor shall preside at all meetings and sessions of the Town Council. The Mayor shall have no right to vote; except in every case of a tie vote, the Mayor shall be entitled to vote and speak as other members of the Town Council, but shall not have power of veto.

(1998 Code, § 2-64)

### **§ 31.019 PRESIDENT PRO TEMPORE.**

(A) If the Mayor is absent, or if his or her office is vacant, during any meeting of the Town Council, the Vice-Mayor shall serve as presiding officer.

(B) In the absence of the Vice-Mayor, the Town Council shall elect one of its members to serve as President Pro Tempore to preside at such meeting.

(C) Such member shall continue to have the right to vote in the Council.  
(1998 Code, § 2-65)

### **§ 31.020 INTRODUCTION OF ORDINANCES AND RESOLUTIONS.**

Ordinances and resolutions and their amendments shall be introduced in writing.  
(1998 Code, § 2-66)

### **§ 31.021 RECOGNITION OF MEMBERS.**

Recognition of members of the Town Council shall be requested by addressing the Chair. When recognized by the Chair, a member shall confine remarks to the question under debate, avoid personalities, and refrain from impugning the motives of any other member's argument or vote. No member shall address the Chair or demand the floor while any vote is being taken.  
(1998 Code, § 2-67)

### **§ 31.022 QUESTION OF ORDER.**

Any member may interrupt Town Council proceedings to raise a point of order. The pending business shall be suspended thereupon, and the Chair shall rule on the point of order after affording both sides an opportunity to be heard. Such ruling shall be subject to being overruled by majority vote upon a duly made and seconded motion. A tie vote sustains the ruling of the Chair.  
(1998 Code, § 2-68)

### **§ 31.023 LIMITATION ON DEBATE.**

No member shall be allowed to speak more than once upon any one subject until every other member choosing to speak on the subject shall have spoken. The total time during which any business shall be considered may be limited by a majority vote of members present and voting. A motion to so limit debate is in order at any time.  
(1998 Code, § 2-69)

### **§ 31.024 CITIZEN TIME.**

Members of the public may present in writing or appear and be heard briefly, not to exceed five minutes, under the agenda item entitled "Citizen Time", for the purpose of directing attention to or requesting action on matters not included on the prepared agenda. Such appearances shall be limited to a short resume of the situation or problem involved and the action desired. At the conclusion of such appearances, all matters discussed shall be duly recorded and made a part of the official record by the Town Clerk and referred to appropriate town officials for investigation and report. Citizens may

address issues when they come up on the agenda if advance notice is given during “Citizen Time”.  
(1998 Code, § 2-70)

**§ 31.025 EXCUSING MEMBERS FROM MEETINGS.**

No member shall be excused from attendance at a Town Council meeting after the meeting has been called to order unless he or she has been excused by the presiding officer.  
(1998 Code, § 2-71)

**§ 31.026 ADJOURNED SESSIONS.**

Any meeting of the Town Council may, by majority vote, be continued or adjourned to any future time certain which occurs prior to the beginning of the next succeeding regular meeting.  
(1998 Code, § 2-72)

**§ 31.027 EXECUTIVE OR CLOSED MEETINGS.**

An executive or closed meeting of the Town Council may be held in accordance with the State Freedom of Information Act, VA Code §§ 2.2-3700 through 2.2-3714.  
(1998 Code, § 2-73)

***PRIVILEGES OF THE FLOOR***

**§ 31.040 MEMBERS OF COUNCIL.**

During Town Council meetings, Council members shall observe order and shall not delay or interrupt the proceedings nor refuse to obey the orders of the presiding officer or the rules of the Council. Every Council member desiring to speak shall address the Chair and, upon recognition by the presiding officer, shall limit remarks to the question under debate and shall avoid indecorous language. Every Council member desiring to direct questions to the administrative staff shall first seek recognition from the Mayor.  
(1998 Code, § 2-96)

**§ 31.041 MEMBERS OF TOWN STAFF.**

Members of the town staff shall observe the same rules of procedure and decorum applicable to members of the Town Council. The presiding officer shall have the authority to preserve decorum in meetings as far as staff members and town employees are concerned. Any staff member desiring to

address the Town Council may be recognized by the presiding officer. When recognized, remarks shall be limited to the matter under discussion. No staff member, other than the staff member having the floor, shall enter into any discussion without permission of the presiding officer.

(1998 Code, § 2-97)

**§ 31.042 MEMBERS OF THE PUBLIC.**

(A) Any member of the public desiring to address the Town Council may be recognized by the presiding officer. Name and address shall be stated in an audible tone for the record, and remarks shall be limited to the question under discussion. Once a motion is made, the floor shall be closed to further citizen discussion.

(B) Citizens attending Town Council meetings shall observe the same rules of propriety, decorum, and good conduct applicable to members of the Town Council. Any person making personal, impertinent, and slanderous remarks or who becomes boisterous while addressing the Town Council or while attending the Council meeting may be removed from the room by the Police Department upon request of the presiding officer. Aggravated cases may be prosecuted on appropriate complaint signed by the presiding officer. If the presiding officer shall fail to act, any member of the Council may move to require the presiding officer to act to enforce the rules.

(1998 Code, § 2-98)

***ATTENDANCE OF OFFICERS AND EMPLOYEES***

**§ 31.055 TOWN MANAGER.**

(A) The Town Manager shall attend all meetings, hearings, and sessions of the Town Council.

(B) The Town Manager shall advise and make recommendations to the Council on all agenda items as requested by the presiding officer and shall be afforded floor privileges in the same manner as Council members.

(1998 Code, § 2-121)

**§ 31.056 TOWN CLERK.**

The Town Clerk shall be the Clerk of the Council and shall perform the duties in connection with such office. The Town Clerk or his or her designee shall attend all meetings, hearings, and sessions of the Council as requested.

(1998 Code, § 2-122)

**§ 31.057 TOWN ATTORNEY.**

(A) The Town Attorney shall attend meetings, hearings, and sessions of the Council as requested, either in person or by a deputy.

(B) Any member of the Council may call upon the Town Attorney, through the Mayor, for an oral or written opinion on any question of law, but not on any question of parliamentary procedure.

(C) The Town Attorney shall be afforded the privilege of the floor to explain any matter of legal significance to the pending business.  
(1998 Code, § 2-123)

**§ 31.058 TOWN TREASURER.**

The Town Treasurer shall attend meetings of the Council when requested by the Mayor or the Council and provide monthly reports of the receipts and disbursements in the town's accounts.  
(1998 Code, § 2-124) (Ord. O-2014-02, passed 8-5-2014)

**§ 31.059 TOWN SERGEANT.**

The Town Sergeant or his or her designee shall attend regular meetings of the Council and other meetings as requested.  
(1998 Code, § 2-125)

***ORDER OF BUSINESS AND AGENDA ITEMS***

**§ 31.070 ORDER OF BUSINESS.**

The business of all regular meetings of the Town Council shall be transacted in the following order, except that the Town Council by a majority vote of members present and voting may change the order:

- (A) Citizen time;
- (B) Approval of minutes;
- (C) Staff, Mayor, and Council reports;
- (D) Reports of boards, commissions, and committees;
- (E) Agenda items; and

(F) Adjournment.  
(1998 Code, § 2-146) (Ord. O-2011-04, passed 6-14-2011)

**§ 31.071 PROCEDURE FOR ADDING ITEMS.**

No item that does not appear on the agenda for a regular Council meeting may be proposed for consideration unless a member of the Town Council determines that it is a matter of such nature that its consideration cannot be postponed to the next regular Town Council meeting.  
(1998 Code, § 2-147)

**§ 31.072 PREPARATION; DELIVERY TO MEMBERS.**

The Town Clerk and the Mayor shall prepare a written agenda for each meeting of the Town Council. All items to be considered shall appear on the written agenda, which shall be available to each member of the Council not later than Friday prior to the regular meeting.  
(1998 Code, § 2-148)

**§ 31.073 ITEMS TO BE INCLUDED.**

(A) The Town Clerk shall place on the agenda for each Town Council meeting all items which, after consultation with the Mayor, are determined to be required or are appropriate for Council consideration.

(B) The Mayor and each member of the Council shall have the right to have included on any prepared agenda such items as they deem appropriate for Council consideration. The Mayor and members of the Town Council desiring to submit items for inclusion on the prepared agenda shall notify the Town Clerk of the nature of the matter they wish considered in sufficient detail as to enable the item to be properly researched. Such notification shall be written and shall be delivered to the Town Clerk's office by Wednesday prior to the regular Town Council meeting. All materials pertinent to items in the agenda shall be distributed to members with the prepared agenda.

(C) The Mayor has the right to defer agenda items with the concurrence of the Council member presenting the item.  
(1998 Code, § 2-149)

## CHAPTER 32: TOWN OFFICERS

### Section

- 32.01 Duties, powers, and functions of Mayor
- 32.02 Duties, powers, and functions of Vice-Mayor
- 32.03 Duties, powers, and functions of Town Manager
- 32.04 Duties of Town Clerk
- 32.05 Duties of Town Treasurer
- 32.06 Duties of Town Sergeant/Deputy Town Sergeant/police officers
- 32.07 Duties, powers, and functions of Town Engineer
- 32.08 Duties, powers, and functions of Zoning Administrator
- 32.09 Duties, powers, and functions of Building/Code Official

### ***Charter reference:***

*Town officers, see §§ 5 and 16*

### **§ 32.01 DUTIES, POWERS, AND FUNCTIONS OF MAYOR.**

(A) The Mayor shall have such duties, powers, and functions as set out in the Charter, the town ordinances, and in state law.

(B) In cases of litigation in which the town is interested, the Mayor, with the concurrence of the Council, shall execute, in association with such other persons as may be procured, appeal bonds, injunction bonds, suretyship for costs, and all other legal obligations that may be necessary for the due protection of the interests of the town in such cases before the courts; and the faith of the town is pledged for the due indemnification of the parties who make such engagements or obligations on its behalf.

(C) All deeds, leases, contracts, conveyances, and agreements of any description, in order to be true and binding instruments of the town, must be authorized by the Council, approved and signed by the Mayor and attested by the Clerk of the Council.

(D) Whenever the seal of the town is required for any writing, the Clerk of the Council shall have authority to affix the seal to such writing.

(E) Any duly authorized writing executed as provided by this section shall be the true and binding

act and instrument of the town.

(1998 Code, § 2-181)

**Charter reference:**

*Mayor, see §§ 3, 4, 6, and 8 through 10*

**§ 32.02 DUTIES, POWERS, AND FUNCTIONS OF VICE-MAYOR.**

At its first meeting following the regular municipal election for Council members, the Council shall elect one of its members as Vice-Mayor, who shall preside at meetings in the absence of the Mayor and may discharge any other duty of the Mayor during the Mayor's absence or disability.

(1998 Code, § 2-182)

**Charter reference:**

*Vice-Mayor, see §§ 7 and 9*

**§ 32.03 DUTIES, POWERS, AND FUNCTIONS OF TOWN MANAGER.**

(A) The Town Council may appoint a Town Manager, fix a salary, and delegate such administrative duties, powers, and responsibilities as it believes to be in the best interest of the town.

(B) The Town Manager shall serve an indefinite term and shall be removable from office by the Town Council. The Town Manager shall be chosen by the Council without regard to political beliefs and solely on the basis of executive and administrative qualifications.

(C) No member of the Council shall, during the term for which elected, be chosen as Town Manager.

(D) In meetings of the Town Council, the Town Manager shall:

(1) Have the responsibility to counsel and advise but with no voting rights;

(2) Have the right to attend and participate in the proceedings of but not to vote in the meetings of all boards, commissions, and committees;

(3) Recommend to the Council such measures as deemed necessary or desirable; and

(4) Keep the Council advised as to present and future needs and policies of the town and as to operation of its government.

(1998 Code, § 2-183)

**§ 32.04 DUTIES OF TOWN CLERK.**

The Town Clerk, who shall be appointed by the Council and hold office at and during the pleasure of the Council, or in the absence of the Town Clerk a designee of the Mayor, shall attend the meetings of the Town Council and shall keep a correct and complete record of the proceedings of the Town Council. The Clerk shall have charge of the records of the town, faithfully preserve such records, and perform such other services and functions as may be directed by the Town Council. The Town Clerk shall be required to give bond in the amount of \$5,000, with surety approved by the Mayor, payable to the town, for the faithful performance of duties.

(1998 Code, § 2-184)

***Charter reference:***

*Clerk, see §§ 5, 12, and 15*

**§ 32.05 DUTIES OF TOWN TREASURER.**

(A) The Town Treasurer, who shall be appointed by the Council and hold office at the pleasure of the Council, shall receive all taxes and other money and revenues belonging to the town, and deposit them in such bank as the Town Council may direct. The Treasurer shall keep the bank books and checkbooks so that they will accurately reflect the state of accounts. Each check shall be drawn payable to the order of the person for whose benefit it is drawn and shall contain a notation on its face that will indicate the purpose for which it is drawn. All checks and vouchers shall be carefully preserved.

(B) The Treasurer shall also so keep the books that all receipts and disbursements and their source and character may appear, and so that a true and accurate understanding of the financial affairs and conditions of the town may be readily ascertained. All of the Treasurer's books and records shall be open to the inspection of the Mayor and any member of the Town Council, or such persons as the Town Council may direct.

(C) No funds shall be disbursed by the Town Treasurer except by order of the Council and upon a warrant of the Town Clerk, countersigned by the Mayor. No funds in excess of \$500 shall be disbursed without order of the Council, taken in open session, duly and fully recorded. Each disbursement shall be itemized by date, amount, and payee and appear in the Treasurer's monthly financial report to the Council. For purposes of this division (C), the term "order" shall include the award of a contract by the Council for services performed on a one-time or reoccurring basis (during the life of the contract).

(D) An audit of the books of the Town Treasurer shall be made annually, as soon as practical after the close of the fiscal year, but not later than six months after, by such persons as the Town Council may designate for the purpose, assisted by the Treasurer, and a report of such audit made to the Town Council. This report shall also indicate the amount of uncollected assets of the town in the hands of the Treasurer for collection.

(E) Before entering upon the duties of this office, the Town Treasurer shall execute a bond with surety approved by the Mayor in the penalty of not less than \$50,000 conditioned upon the faithful performance of the duties of the office, for the proper collection of and accounting for all money that shall come into the Town Treasurer's hands or that it shall be his or her duty to collect and for the payment of all money, on proper order of the Town Council, to those entitled to receive the money.

(1998 Code, § 2-185)

**Charter reference:**

*Town Treasurer, see §§ 5, 13, and 15*

**§ 32.06 DUTIES OF TOWN SERGEANT/DEPUTY TOWN SERGEANT/POLICE OFFICERS.**

(A) The Town Sergeant, Deputy Town Sergeant, and police officers of the town shall have the powers and duties of enforcing this code and other town ordinances, and all other powers and duties vested in them by the laws of the state.

(B) The Town Sergeant shall serve as the senior officer with such duties, powers, and responsibilities as the Town Council believes to be in the best interest of the town.

(C) The Town Sergeant, Deputy Town Sergeant, and police officers shall have the power to arrest without warrant and carry before the proper authority to be dealt with as the law provides, any and all persons who shall violate any provision of this code or other ordinances of the town in their presence.

(D) The Town Sergeant, Deputy Town Sergeant, and police officers shall be required to give bond in the amount of \$5,000 with surety approved by the Mayor, payable to the town, for the faithful performance of their duties.

(E) All officers of police force shall read, sign, and agree to abide by Police Department general orders.

(1998 Code, § 2-186)

**Charter reference:**

*Additional police during emergency, see § 10*

*Town Sergeant, Deputy Town Sergeant, see §§ 5, 14, and 15*

**§ 32.07 DUTIES, POWERS, AND FUNCTIONS OF TOWN ENGINEER.**

(A) The Town Engineer shall be appointed by and serve at the pleasure of the Council.

(B) The Town Engineer shall be registered as a professional engineer by the state and shall have five years experience in development engineering.

(C) The Town Engineer shall:

(1) Review final site plans for compliance with requirements for grading, paving, stormwater drainage and retention, traffic circulation, utilities, and floodproofing and coordinate reviews of other agencies and recommend final approval or disapproval to the Town Council;

(2) Inspect ongoing construction work for compliance with the approved site plan permits and applicable town regulations;

(3) Provide oversight of contractors engaged in construction projects for the town, including review of payment requests;

(4) Serve as subdivision agent for the review of subdivision plats;

(5) Administer Chapter 152 of this code;

(6) Provide information, reports, approvals, or other information to the Town Clerk as necessary for issuance of various construction-related permits;

(7) Provide the Zoning Administrator with technical support on the Chesapeake Bay Preservation Act (VA Code §§ 10.1-2100 et seq.);

(8) Investigate such matters of an engineering nature as may be assigned by the Mayor and/or Council and report findings and recommendations;

(9) Assist the Mayor and/or Town Council in obtaining required professional services or bids from contractors;

(10) Coordinate with other town officials and outside agencies as appropriate to ensure that town regulations are not circumvented or overlooked; and

(11) Perform such other engineering tasks as may be assigned by the Mayor and/or Council. (1998 Code, § 2-187)

### **§ 32.08 DUTIES, POWERS, AND FUNCTIONS OF ZONING ADMINISTRATOR.**

(A) The Zoning Administrator shall be appointed by and serve at the pleasure of the Council.

(B) The Zoning Administrator shall have five years experience in writing, enforcing, and/or interpreting zoning regulations, either as an employee of a local government or as a consultant to a local government.

(C) The Zoning Administrator shall:

(1) Enforce the provisions of Chapter 157 of this code;

(2) Interpret Chapter 157 of this code and the Zoning Map;

(3) Review site plans and subdivision plans for compliance with Chapter 157 of this code and the Chesapeake Bay Preservation Act (VA Code §§ 10.1-2100 et seq.);

(4) Serve as administrator for the local program under the Chesapeake Bay Preservation Act;

(5) Consult with the Town Engineer concerning any technical matters subject to the Zoning Administrator's evaluation under the Chesapeake Bay Preservation Act;

(6) Maintain the Zoning Map in the Town Clerk's office, including recording such changes in zoning districts as may be approved by the Town Council within 30 days of Council action and notifying the county;

(7) Provide advice and assistance to the Town Council regarding applications for zoning changes or special use permits;

(8) Provide records and staff reports to the Board of Zoning Appeals as requested or required;

(9) Coordinate with other town officials or outside agencies as appropriate to ensure that town regulations are not circumvented or overlooked; and

(10) Investigate alleged violations of Chapter 157 of this code and take such steps as are authorized under the state code to prevent or abate violations that are found to exist.

(D) The Council may appoint a Deputy Zoning Administrator whose qualifications and duties shall be set by the Council.

(1998 Code, § 2-188) (Ord. O-2004-11, passed 4-13-2004)

### **§ 32.09 DUTIES, POWERS, AND FUNCTIONS OF BUILDING/CODE OFFICIAL.**

(A) The Town Building Official shall be appointed by and serve at the pleasure of the Council. The Town Building Official shall be a certified building official in accordance with the State Department of Housing and Community Development (DHCD).

(B) The Town Building Official shall:

(1) Review building plans for compliance with appropriate building codes;

(2) Perform inspections of building construction within town;

(3) Issue appropriate occupancy permits for both commercial and residential structures;

(4) Consult with Town Engineer, Town Zoning Administrator, Town Attorney, and Town Manager on Building Code matters;

(5) Coordinate with other town officials and outside agencies as appropriate to ensure that town regulations are not circumvented or overlooked; and

(6) Perform such other building official tasks as may be assigned by the Mayor and/or Council.

(C) The Council may appoint a deputy building official whose qualifications and duties shall be set by the Council.

(1998 Code, § 2-189) (Ord. passed 5-13-1997; Ord O-2015-03, passed 6-2-2015)

## CHAPTER 33: TOWN BOARDS AND COMMISSIONS

### Section

#### *Planning Commission*

- 33.01 Establishment
- 33.02 Purpose
- 33.03 Qualifications, appointment, removal, terms, training, compensation of members
- 33.04 Meetings
- 33.05 Facilities for holding of meetings and preservation of documents
- 33.06 Roles and responsibilities
- 33.07 Duties
- 33.08 Expenditures; gifts and donations
- 33.09 Amendments
- 33.10 New member onboarding

#### *Board of Zoning Appeals*

- 33.20 Establishment
- 33.21 Membership
- 33.22 Conditions of tenure, conflict of interest, removal from office
- 33.23 Vacancies
- 33.24 Organization
- 33.25 Quorum
- 33.26 Rules and regulations
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- 33.29 Powers and duties
- 33.30 Appeals to Board
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#### *Architectural Review Board*

- 33.45 Establishment
- 33.46 Membership
- 33.47 Term of office; removal; vacancies
- 33.48 Officers

- 33.49 Procedure for meetings
- 33.50 Duties

## ***PLANNING COMMISSION***

### **§ 33.01 ESTABLISHMENT.**

The Planning Commission for the Town of Occoquan (the "Commission") is created pursuant to authority contained in the Code of Virginia, and is governed by the Code of Virginia and Occoquan Town Code.

(1998 Code, § 2-242) (Ord. O-2018-01, passed 5-2-2018)

### **§ 33.02 PURPOSE.**

The general purpose of the Commission shall be to guide and promote the efficient, coordinated development of the town in a manner which will best promote the health, safety, and general welfare of its people; preserve and protect the town and its natural resources; to address the goals and recommendations of the Comprehensive Plan; and to serve in an advisory capacity to the Town Council.

(Ord. O-2018-01, passed 5-2-2018)

### **§ 33.03 QUALIFICATIONS, APPOINTMENT, REMOVAL, TERMS, TRAINING, COMPENSATION OF MEMBERS.**

(A) *Membership requirements.* Qualifications for membership shall be set by state law, membership of the Commission shall consist of not less than five nor more than 15 members appointed by Town Council. Members of the Commission shall be residents of the town, qualified by knowledge and experience to make decisions on questions of community growth and development; provided, that at least half the members so appointed shall be owners of real property. One member of the Commission may be a member of the Town Council and one member may be a member of the administrative branch of government of the town, the term of each of these two members shall be coextensive with the term of office to which they have been elected or appointed unless the Council, at the first regular meeting each year, appoints others to serve as their representatives.

(B) *Terms.* Terms for members are set by state law. Each member shall be appointed to hold office for four year term. Vacancies shall be filled by the Town Council for the unexpired term within 60 days.

(C) *Certified Planning Commissioners' training.* The Planning Commission recognizes that all members should understand their roles and responsibilities as defined by the Code of Virginia. All newly appointed members to the Planning Commission are expected to complete a Certified Planning Commissioners Program and become certified within 24 months of appointment. The Town Council may waive this training requirement.

(D) *Absences.* In accordance with the Code of Virginia, more than four consecutive or absences at 25% of all meetings in any one fiscal year shall be considered nonperformance of duty and cause of removal from the Commission.

(E) *Removal.* Members of the Commission may be removed by the Town Council for nonperformance of duty, misconduct in office, or upon failure to declare a conflict of interest upon vote by the majority, after written charges have been prepared and a hearing conducted.

(F) *Resignation.* A member may resign from the Commission by sending a written notice of resignation to the Town Council or Commission chairperson.

(G) *Compensation.* The Council may provide compensation to Commission members for:

- (1) Reimbursement of actual expenses incurred by members of the Commission;
- (2) Compensation to such members, or any of them, for their services; or
- (3) Both.

(1998 Code, § 2-243) (Ord. passed 5-13-1997; Ord. O-2002-2, passed 2-12-2002; Ord. O-2018-01, passed 5-2-2018)

#### **§ 33.04 MEETINGS.**

(A) *Regular meetings.* Regular meetings of the Commission shall be held monthly in the Town Hall on the fourth Tuesday of each month. The dates and times shall be posted at the Town Hall and a notice should be published in accordance with the Code of Virginia. Any changes in the date or time of the regular meetings shall be posted and noticed in the same manner as originally established. When a regular meeting date falls on or near a legal holiday, the Commission shall select suitable alternate dates in the same month, in accordance with the Code of Virginia.

(B) *Meeting notices.* All meetings shall be posted at the Town Hall according to the Code of Virginia. The notice shall include the date, time and place of the meeting.

(C) *Special meetings.* Special meetings of the Commission may be called by the chairperson or by two members upon written request to the chairperson. The business which the Commission may perform shall be conducted at a public meeting of the Commission held in compliance with the Code of Virginia. Public notice of the time, date, and place of the special meeting shall be given in a manner as required by the Code of Virginia. In accordance with the VA Code § 15.2-2214, the staff liaison shall notify all Commissioners, in writing, at least five days in advance of a special meeting, of the time and place of the meeting and the purpose thereof. Written notice of a special meeting is not required if the time of the special meeting has been fixed at a regular meeting, or if all members are present at the special meeting or file a written waiver of notice.

(D) *Open meetings.* In accordance with the Virginia Freedom of Information Act, all meetings of the Commission shall be open to the public and held in a place accessible to the general public. All deliberations and decisions of the Commission shall be made at a meeting open to the public. A person shall be permitted to address a hearing of the Commission in accordance with the meeting's written agenda. A person shall not be excluded from a meeting of the Commission except in accordance with the law.

(E) *Public record.* All meetings, minutes, records, documents, correspondence, and other materials of the Commission shall be open to public inspection in accordance with the Freedom of Information Act, except as may otherwise be provided by law.

(F) *Quorum.* In order for the Commission to conduct business or take any official action, a quorum consisting of the majority of the voting members of the Commission shall be present. When a quorum is not present, members of the Commission may discuss matters of interest, but can take no action until a quorum of the Commission is established. All public hearings without a quorum shall be rescheduled for the next regular or special meeting, and notice thereof shall be provided in accordance with the Code of Virginia. The Commission, by resolution adopted at a regular meeting, may also fix the day or days to which any meeting shall be continued if the Chairperson, or Vice Chairperson if the Chairperson is unable to act, finds and declares that weather or other conditions are such that it is hazardous for member to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting shall be conducted at the continued meeting and no further advertisement is required. The Commission shall cause a copy of such resolution to be inserted in a newspaper having general circulation in the locality at least seven days prior to the first meeting held pursuant to the adopted schedule.

(G) *Voting.* By law, no action of the local Planning Commission shall be valid unless authorized by a majority vote of those present and voting in the presence of a quorum. Voting shall ordinarily be voice vote; provided, however, that a roll call vote shall be required if requested by any Commission member or directed by the chairperson. Any member abstaining from a vote shall not participate in the discussion of that item.

(H) *Agenda.*

- (1) A written agenda for all regular meetings shall be prepared as follows:
  - (a) Call to order.
  - (b) Roll call.
  - (c) Approval of agenda.
  - (d) Approval of minutes.

agenda. (e) Public comments and communications concerning items not on the

(f) Scheduled public hearings.

(g) Unfinished business.

(h) New business.

(i) Administrative items.

(j) Adjournment.

(2) Any Commissioner may request that an item be placed on the regular meeting agenda for discussion provided such request is made not less than one week prior to the next regular meeting and provided that such request is approved by the chairperson. The Commission may, by majority vote or unanimous consent, amend or adjust the order of any agenda at any point during the meeting.

(I) *Rules of order.* Except as otherwise provided by law or these bylaws, meetings of the Commission will be governed by the current edition of "Robert's Rules of Order, Newly Revised."

(J) *Public hearings.* Hearings shall be scheduled and due notice given in accordance with the Code of Virginia. Public hearings conducted by the commission shall be run in an orderly and timely fashion. This shall be accomplished by the establishing hearing procedures.

(1) Open public hearing.

(2) Read chairman's statement.

(3) Applicant presentation and staff presentation (order shall be determined by the Commission at the meeting).

(4) Public testimony/comments.

(5) Applicant rebuttal.

(6) Planning Commission questions.

(7) Close public hearing.

(8) Planning Commission discussion.

(9) Planning Commission action.

(10) Advise public of next step in the process.

(K) *Notice of decision.* A written notice containing the decision of the Commission will be sent. (1998 Code, § 2-244) (Ord. O-2004-12, passed 4-13-2004; Ord. O-2018-01, passed 5-2-2018)

### **§ 33.05 FACILITIES FOR HOLDING OF MEETINGS AND PRESERVATION OF DOCUMENTS.**

The Town Council shall provide the Commission with facilities for the holding of meetings and the preservation of plans, maps, documents and accounts. (1998 Code, § 2-246) (Ord. O-2018-01, passed 5-2-2018)

### **§ 33.06 ROLES AND RESPONSIBILITIES.**

(A) *Members.* All members of the Commission shall:

- (1) Regularly attend all scheduled meetings as well as special or called meetings.
- (2) Prepare for each meeting by familiarizing themselves with the meeting agenda beforehand.
- (3) Follow the rules of procedures and contribute to meetings in a constructive manner.
- (4) Uphold the prestige of the office by conducting themselves in a respectful and ethical manner.
- (5) Always seek to ascertain the public interest and how to further the interests of the community as a whole.

(B) *Officers.* The officers of the Commission are appointed members of the Commission and shall consist of a chairperson, vice-chairperson, and secretary.

(C) *Duties of the chairperson.* The chairperson shall preside at all meetings, appoint committees, and perform such duties as may be delegated by the Commission or Town Council. The Commission chairperson shall have the right to appoint new committee members at any time to fill a vacancy.

(D) *Duties of the vice-chairperson.* The vice-chairperson shall act in the capacity of the chairperson in his or her absence. In the absence of both the chairperson and the vice-chairperson, the Commission shall elect one of its members as president pro tem to preside at the meeting.

(E) *Duties of the secretary.* The secretary shall serve as the liaison between the Commission and

the Town Clerk who is responsible for the execution of documents in the name of the Commission, performing the duties hereinafter listed below, and performing such other duties as the Commission may determine.

(1) *Minutes.* Commission minutes shall be prepared by the secretary of the Commission. The minutes shall contain a brief synopsis of the meeting, complete statement of the conditions or recommendations made on any action; and recording of attendance. All communications, actions, and resolutions shall be attached to the minutes. The official records shall be deposited with the Town Clerk. The Town Clerk shall be responsible for a permanent record of the minutes of each meeting and shall have them preserved in suitable permanent records.

(2) *Correspondence.* The Town Clerk shall be responsible for the issuance of formal written correspondence with other groups or persons, as directed by the Commission. All communications, petitions, reports, or other written materials received by the Town Clerk shall be brought to the attention of the Commission.

(3) *Attendance.* The Secretary shall be responsible for maintaining an attendance record for each Commission member and report those records annually to the Commission for inclusion in the Annual Report to the Town Council.

(4) *Notices/agendas.* The Town Clerk shall issue such notices and prepare the agendas for all meetings, as may be required by the Commission.

(F) *Duties of the Town Council representative.* The Town Council representative to the Commission shall report the actions of the Town Council to the Commission and update the Commission on actions by the Town Council that relate to the functions and duties of the Commission

(G) *Duties of the Architectural Review Board representative.* The Architectural Review Board (ARB) representative to the Commission shall report the actions of the ARB to the Commission and update the Commission on actions by the ARB that relate to the functions and duties of the Commission.

(H) *Elections.*

(1) At the January meeting, the Commission shall select from its membership a chairperson, vice-chairperson, and secretary who shall serve for a 12-month period and who shall be eligible for re-election.

(2) A candidate receiving a majority vote shall be declared elected.

(3) Newly elected officers will assume their office immediately after the election.

(I) *Terms.* All officers shall serve a term of one year, or until their successors are selected and assume office. Officers may be re-elected

(J) *Vacancies.* Vacancies in offices shall be filled immediately by regular election procedure with the term expiring in accordance with division (H)(1) above.  
(Ord. O-2018-01, passed 5-2-2018)

### **§ 33.07 DUTIES.**

The Commission shall perform the following duties:

(A) Draft, conduct hearings, and recommend a Zoning Ordinance, and subsequent amendments thereto, to the Town Council.

(B) Assist the Town Council in the adoption of a Comprehensive Plan as provided in VA Code Title 15.2, which, with accompanying maps, plats, charts and descriptive matter, shall show the Commission's recommendations for the development of the territory covered by the Plan. In the preparation of such Plan, the Commission shall make careful and comprehensive surveys and studies of existing conditions and trends of growth, and of the probable future requirements of its territory and inhabitants. The Plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the town and its environs that will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, comfort, prosperity and general welfare of the inhabitants, as well as efficiency and economy in the process of development. The Plan shall be reviewed regularly, and necessary updates made as required.

(C) Promote public interest in and an understanding of the Comprehensive Plan, and to that end may publish and distribute copies of the plan or of any report and may employ such other means of publicity as it may determine, within its budget.

(D) Make recommendations and prepare an Annual Report to the Town Council in November concerning the operation of the Commission and the status of planning within its jurisdiction. A draft version of the document will be prepared for the October meeting, with a possible work session following that same month to finalize the document in time for a joint meeting with the Town Council in November to discuss and inform the Council's November work session meeting later that month.

(E) Review and take action or recommend appropriate actions to the Town Council on site plans, and special land use permits.

(F) Review and take action on subdivisions proposals.

(G) Review and comment to the Town Council on all proposed zoning changes.

(H) Prepare, publish, and distribute special studies and plans, as deemed necessary by the Commission or Town Council and for which appropriations of funds have been approved by the Town Council, as needed.

(I) Attend training sessions, conferences, or meetings as needed to properly fulfill the duties of a

member of the Commission (hereinafter "commissioner"), and for which appropriations of funds have been approved by the Town Council, as needed.

(J) Perform other duties and responsibilities as may be requested by the Town Council.

(K) Conduct such site visits as deemed necessary to evaluate the application and supporting material. Site visits shall be conducted individually unless otherwise scheduled by the Commission, obeying all requirements of the Code of Virginia.

(L) Keep a complete record of the Commission's proceedings;

(M) Supervise the Commission's fiscal affairs and responsibilities, under rules and regulations as prescribed by the Town Council;

(N) Prepare and submit an annual budget in the manner prescribed by the Town Council; and

(O) Perform the duties provided in VA Code § 15.2-2221.  
(1998 Code, § 2-248) (Ord. O-2018-01, passed 5-2-2018)

### **§ 33.08 EXPENDITURES; GIFTS AND DONATIONS.**

The Commission may expend, under regular town procedure as provided by law, sums appropriated to it for its purposes and activities. The town may accept gifts and donations for Commission purposes. Any moneys so accepted shall be deposited with the Town Treasurer in a special non-reverting local commission fund to be available for expenditure by the Commission for the purpose designated by the donor. The Town Treasurer may issue warrants against such special fund only upon vouchers signed by the Mayor, Town Clerk, and the chairman of the Commission. The expenditures of the Commission, exclusive of gifts or grants, shall be within the amounts appropriated for such purpose by the Town Council.

(1998 Code, § 2-249) (Ord. O-2018-01, passed 5-2-2018)

### **§ 33.09 AMENDMENTS.**

The Planning Commission may consider bylaw amendments at any regular meeting, after at least 15 days' notice. The Planning Commission may then recommend such amendments. Once approved by the Commission, all amendments shall be forwarded to the Town Council for its approval. The amendments to the bylaws shall be effective upon approval by the Town Council.

(Ord. O-2018-01, passed 5-2-2018)

### **§ 33.10 NEW MEMBER ONBOARDING.**

New members of the Commission will be provided a copy of the Commission By-Laws, Town Comprehensive Plan, and the latest edition of the book Zoning 101: A Practical Introduction: by Carl

Stephani and Marilyn Stephani, or such other book as the Zoning Administrator may determine to be the best introduction, to become familiarized with the role of the Commission, zoning terminology, and town priorities.

(Ord. O-2018-01, passed 5-2-2018)

### ***BOARD OF ZONING APPEALS***

#### **§ 33.20 ESTABLISHMENT.**

The Board of Zoning Appeals created pursuant to authority contained in the VA Code shall continue in force under the provisions of this subchapter.

(1998 Code, § 2-271)

#### **§ 33.21 MEMBERSHIP.**

The Board of Zoning Appeals shall consist of five residents of the town, who shall be appointed by the Circuit Court of the county for a five-year term. Appointments shall be made for such terms that the term of one member shall expire each year. An appointment to fill a vacancy shall be only for the unexpired portion of that term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until his or her successor is appointed and qualifies.

(1998 Code, § 2-272)

#### **§ 33.22 CONDITIONS OF TENURE, CONFLICT OF INTEREST, REMOVAL FROM OFFICE.**

Members of the Board of Zoning Appeals shall hold no other public office in the town, except that one member may be a member of the Planning Commission. They must have certification within one year. Any member of the Board having an interest in property related to an appeal to the Board shall be disqualified to vote on that matter. Any Board member may be removed for just cause by the court that appointed him or her, upon written charges and after a public hearing.

(1998 Code, § 2-273) (Ord. passed 5-13-1997)

#### **§ 33.23 VACANCIES.**

The Secretary of the Board of Zoning Appeals shall notify the Circuit Court whenever a vacancy occurs and shall also provide the court notice at least 30 days in advance of the expiration of any term of office. Concurrently with any notice to the court, the Secretary shall transmit to the Mayor and Council any recommendation the Board may have with respect to a replacement. The Council shall forward its recommendation to the Circuit Court.

(1998 Code, § 2-274)

### **§ 33.24 ORGANIZATION.**

The Board of Zoning Appeals shall conduct an annual organizational meeting in the month of January, if possible, to elect a Chairperson, Vice-Chairperson, Secretary, and such other officers as it deems necessary for the remainder of that calendar year. Officers may be reelected to succeed themselves. An officer vacancy may be filled by special election. Meetings of the Board shall be held at the call of its Chairperson or Acting Chairperson and at such times as the majority of the Board may determine. When a regular or special meeting cannot be held at the scheduled time due to inclement weather, the Chairperson shall fix a date and time for the meeting to occur. Matters advertised for a meeting rescheduled due to inclement weather need not be re-advertised if the advertisement stated that the meeting may be rescheduled in the event of inclement weather.  
(1998 Code, § 2-275) (Ord. O-2004-12, passed 4-13-2004)

### **§ 33.25 QUORUM.**

A quorum shall be at least three members unless as otherwise provided for by the State and Local Government Conflict of Interests Act (VA Code §§ 2.1-639.1 et seq.).  
(1998 Code, § 2-276)

### **§ 33.26 RULES AND REGULATIONS.**

(A) The Board of Zoning Appeals may make, alter, or rescind such rules, regulations, and forms as it may consider necessary, consistent with the ordinances of the town and general laws of the state.

(B) Except for deliberating an appeal, all meetings of the Board and voting shall be open to the public and shall otherwise conform to The State Freedom of Information Act (VA Code §§ 2.2-3700 through 2.2-3714).

(C) The Board shall keep minutes of its proceedings, which shall reflect the vote of each member upon each question, or if absent or failing to vote, indicating such fact.

(D) The Board shall keep records of its examinations, minutes of its proceedings, public hearings, public advertising, and other official actions, all of which will be immediately filed with the Town Clerk and shall constitute a public record.

(E) All advertisements for public hearings and other notices shall conform to the requirements of the VA Code.

(F) Except as otherwise provided in the State and Local Government Conflict of Interests Act (VA Code §§ 2.1-639.1 et seq.), a favorable vote of three members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official or to decide in favor of the applicant on any matter upon which the Board is required to act.

(1998 Code, § 2-277)

### **§ 33.27 RECORDS AND REPORTS.**

In addition to records required by § 33.26, the Board of Zoning Appeals shall submit, each January, an annual report of its activities to the Mayor and Town Council.

(1998 Code, § 2-278)

### **§ 33.28 COMPENSATION AND SUPPORT SERVICES.**

Board of Zoning Appeals members may be compensated for their services at the discretion of and in such amounts as the Town Council may determine. Within the limits of funds appropriated by the Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services when such services are not provided by or available from the town.

(1998 Code, § 2-279)

### **§ 33.29 POWERS AND DUTIES.**

The Board of Zoning Appeals shall have the following powers and duties:

(A) To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this subchapter or of Chapter 157 of this code;

(B) To authorize upon appeal or original application in specific cases such variance as defined in VA Code § 15.2-2201, from the terms of Chapter 157 of this code as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of Chapter 157 of this code shall be observed and substantial justice done, as follows:

(1) When a property owner can show that his or her property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of Chapter 157 of this code, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of Chapter 157 of this code would effectively prohibit or unreasonably restrict the utilization of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of Chapter 157 of this code;

(2) No such variance shall be authorized by the Board unless it finds that:

(a) The strict application of Chapter 157 of this code would produce undue hardship;

(b) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and

(c) The authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

(3) No such variance shall be authorized except after notice and hearing as required by VA Code § 15.2-2204. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail;

(4) No variance shall be authorized unless the Board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to Chapter 157 of this code; and

(5) In authorizing a variance, the Board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

(C) To hear and decide appeals from the decision of the Zoning Administrator after notice and hearing as provided by VA Code § 15.2-2204. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail. No such appeal shall be heard except after notice and hearing as provided by VA Code § 15.2-2204;

(D) To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, and after public hearing with notice as required by VA Code § 15.2-2204, the Board may interpret the map in such way as to carry out the intent and purpose of Chapter 157 of this code for the particular section or district in question. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail. The Board shall not have the power to change substantially the locations of district boundaries as established by ordinance. No provision of this section shall be construed as granting to the Board the power to rezone property;

(E) To hear and decide applications for such special exceptions as may be authorized in Chapter 157 of this code. The Board may impose such conditions relating to the use provided for in the

authorized special exceptions for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. No such special exception may be granted except after notice and hearing as provided by VA Code § 15.2-2204. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail; and

(F) To revoke a special exception if the Board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by VA Code § 15.2-2204. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail.  
(1998 Code, § 2-280)

### **§ 33.30 APPEALS TO BOARD.**

(A) *Generally.* An appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the town affected by any decision of the Zoning Administrator or from any order, requirement, decision, or determination made by any other administrative officer in the administration or enforcement of VA Code §§ 15.2-2280 et seq., or Chapter 157 of this code. Notwithstanding any Charter provision to the contrary, any written notice of a zoning violation or a written order of the Zoning Administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he or she may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and unappealable if not appealed within 30 days. The appeal period shall not commence until the statement is given.

(B) *Application and fees.* An appeal must be taken within 30 days after the decision appealed from by filing, on the form provided, a notice of appeal with the Zoning Administrator and the Board of Zoning Appeals, which appeal shall specify the grounds of the appeal, together with the fees as established in the current fee schedule. The application and accompanying maps, plans, and other documentation constituting the record upon which the action appealed from was taken shall be transmitted promptly to the Secretary of the Board, who shall place the matter on the docket. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board that by reason of facts stated in the certificate a stay would in his or her opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the Board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

(C) *Notice and hearing required; Planning Commission recommendation.* After entering the appeal on the docket, the Secretary of the Board shall advertise a public hearing, give written notice to the parties in interest, and request the Zoning Administrator to transmit a copy of the application and

his or her staff report to the Planning Commission; the Planning Commission may send a written recommendation to the Board to appear as a party at the public hearing.

(D) *Burden of proof.* The applicant for a variance has the burden of proving that denial of a variance will result in unnecessary hardship, of proving that his or her hardship is due to Chapter 157 of this code itself, and of proving, to the satisfaction of the Board, requirements for a variance stipulated in the VA Code.

(E) *Findings required.* The Board shall fix a reasonable time for the hearing of an application or appeal, give public notice as well as due notice to the parties in interest, and make its decision within 90 days of the filing of the application or appeal. In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify an order, requirement, decision, or determination appealed from. The concurring vote of a majority of the membership of the Board shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under Chapter 157 of this code or to effect any variance from Chapter 157 of this code. The decision of the Board must be based on the evidence adduced at a public hearing and must include findings of fact disclosing the evidence relied upon by the Board and otherwise state the business and grounds for its decision to assure that the provisions of the VA Code and this subchapter have been met.

(F) *Board to issue order.* Whenever the Board shall grant a variance, the Secretary of the Board shall cause an order to be issued evidencing the grant and furnish copies of the order to the applicant, to the Zoning Administrator, to the Town Clerk, and to such other parties as deemed necessary.

(G) *Limitation on change.* In no event shall a written order, requirement, decision, or determination made by the Zoning Administrator or other administrative officer be subject to change, modification, or reversal by any Zoning Administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision, or determination where the person aggrieved has materially changed his or her position in good faith reliance on the action of the Zoning Administrator or other administrative officer unless it is proven that such written order, requirement, decision, or determination was obtained through malfeasance of the Zoning Administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the Town Attorney, modification is required to correct clerical or other nondiscretionary errors.

(1998 Code, § 2-281)

### **§ 33.31 JUDICIAL REVIEW AND RELIEF.**

(A) *Certiorari to review decision of Board.* Any person aggrieved by any decision of the Board of Zoning Appeals, or any aggrieved taxpayer or any officer, department, board, or bureau of the town may present to the Circuit Court of the county a petition specifying the grounds on which aggrieved within 30 days after the filing of a decision in the office of the Board.

(B) *Parties aggrieved entitled to writ.* Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the Board and shall prescribe the time within which a return must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from; but the court may, on application, on notice to the Board, and on due cause shown, grant a restraining order.

(C) *Other parties to suit.* If the petition is presented by the Town Council, the Council shall be party to the suit. The court may, likewise, admit as a party to the suit any person who, if the decision had been adverse, would have been authorized under this division (C) to present a petition in the first instance.

(D) *Board to make return.* The Board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies of the papers or of such portions of the papers as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(E) *Costs not allowed.* Costs shall not be allowed against the Board unless it shall appear to the court that the Board acted in bad faith or with malice in making the decision appealed from.  
(1998 Code, § 2-282)

## ***ARCHITECTURAL REVIEW BOARD***

### **§ 33.45 ESTABLISHMENT.**

The Architectural Review Board heretofore created shall continue in force under the provisions of this subchapter.  
(1998 Code, § 2-401)

### **§ 33.46 MEMBERSHIP.**

The Architectural Review Board (ARB) shall consist of nine members, appointed by the Town Council, of whom seven shall be appointed as regular members and two as alternate members to vote in the absence of any regular member. A quorum shall be four members. One regular member shall be a member of the Town Council, one regular member shall be a member of the Planning Commission, and one regular member may be a business owner in the town who shall be designated as the business representative. The business representative shall act as a liaison between town businesses and the ARB. Other members shall be appointed primarily on the basis of a knowledge and demonstrated interest in the historical heritage and architecture of the town. All members shall be residents of the town, except the business representative, who need not be a resident but shall be: a business owner in the town; and licensed and operating his or her business in accordance with all applicable laws and ordinances. All candidates for ARB membership (other than the Council member and Planning Commission member) shall submit a written application to the Town Council.  
(1998 Code, § 2-402) (Ord. passed 5-13-1997; Ord. O-2003-03, passed 12-2-2014)

#### **§ 33.47 TERM OF OFFICE; REMOVAL; VACANCIES.**

The term of office of the members of the Architectural Review Board shall be for three years, except that the terms of the Council member and Planning Commission member shall correspond to their official tenure of office. Appointed members of the Board serve at the pleasure of the Council. Upon notice that the business representative no longer owns a business in the town, the Council may remove that person from the Board. Appointments to fill vacancies shall be only for the unexpired portion of the term and shall be done within 60 days. Members may be reappointed to succeed themselves. Recommendations to fill vacancies may be made by the Board to the Mayor and approved by the Council.  
(1998 Code, § 2-403)

#### **§ 33.48 OFFICERS.**

The Architectural Review Board shall elect its Chairperson, Vice-Chairperson, and Secretary from its membership.  
(1998 Code, § 2-404)

#### **§ 33.49 PROCEDURE FOR MEETINGS.**

(A) The Chairperson shall conduct the meetings of the Architectural Review Board and report action taken at the regular monthly meeting of the Town Council. In the absence of the Chairperson, the Vice-Chairperson shall preside.

(B) The Secretary shall keep the minutes of the meetings and a permanent record of all resolutions, motions, transactions, and determinations.

(C) All members of the Board, with the exception of nonvoting consultants, shall be entitled to

vote; and the decision of the Board shall be determined by a majority vote.

(D) A quorum of four members present is required before the Board can take any official action. When serving in the absence of a regular member, an alternate counts toward the quorum.

(E) Meetings shall be conducted according to *Robert's Rules of Order, Newly Revised*.

(F) The Board shall meet in regular session on the second Tuesday of each month at 7:30 p.m., if an application has been filed for its consideration, and may meet in special session as called by the Chairperson and deemed necessary for the conduct of business. When a regular or special meeting cannot be held at the scheduled time due to inclement weather, the Chairperson shall fix a date and time for the meeting to occur. Matters advertised for a meeting rescheduled due to inclement weather need not be re-advertised if the advertisement stated that the meeting may be rescheduled in the event of inclement weather.

(G) The meetings of the Board shall be open to the public, and a full and impartial hearing shall be granted.

(H) When voting on any question, no proxy shall be allowed.

(I) The Board shall vote and announce its decision on any matter properly before it not later than 14 days after the conclusion of the hearing on the matter unless the time is extended by mutual agreement between the Board and the applicant.

(J) The Board shall not reconsider any decision made by it except in cases where an applicant appears within 90 days with an amended application as hereinafter provided.

(K) In case of disapproval of the erection, reconstruction, alteration, restoration, or razing of a building or structure, the Board shall briefly state its reasons in writing and may make recommendations to the applicant with respect to the appropriateness of design, arrangement, texture, material, color, location, and the like of the building or structure involved. In case of disapproval accompanied by recommendations, the applicant may be heard before the Board if, within 90 days, the applicant comes before the Board with an amended application so as to comply with the recommendations of the Board.

(L) In matters regarding the procedure for meetings not covered by this section, the Board may establish its own rules, provided they are not contrary to the spirit of this chapter and are consistent with the ordinances of the town and the VA Code.

(1998 Code, § 2-405) (Ord. O-2003-03, passed 5-13-2003; Ord. O-2004-12, passed 4-13-2004; Ord. O-2011-06, passed 10-4-2011; Ord. O-2018-01, passed 5-2-2018)

### **§ 33.50 DUTIES.**

The duties of the Architectural Review Board shall be to:

(A) Administer §§ 157.175 through 157.182, and §§ 157.300 through 157.309, 157.320 through 157.322, and 157.335 through 157.339;

(B) Prescribe rules pertaining to the administration of its affairs;

(C) Keep a complete record of its proceedings and make provisions for the custody and preservation of its papers and documents in the Town Hall;

(D) Assist and advise the Town Council, Planning Commission, and other town departments, agencies, and property owners in matters involving historically significant sites and buildings, such as appropriate land usage, parking facilities, and signs;

(E) Formulate recommendations to the Town Council regarding the Old and Historic District and signage;

(F) Prepare and recommend for adoption a design manual based upon the criteria set forth in §§ 157.175 through 157.182, and §§ 157.300 through 157.309, 157.320 through 157.322, and 157.335 through 157.339; and

(G) Promote public interest in and an understanding of the history of the town.  
(1998 Code, § 2-406) (Ord. O-2004-05, passed 2-10-2004; Ord. O-2012-01, passed 2-7-2012)

## CHAPTER 34: TOWN FIRE DEPARTMENT

### Section

#### *Fire Marshal*

- 34.01 Office created; deputies; appointments
- 34.02 Oaths of office
- 34.03 General powers and duties
- 34.04 Fire Marshal to be summoned to scene of fire, explosion, and the like
- 34.05 Right of entry to investigate releases of hazardous material, hazardous waste, or regulated substances
- 34.06 Power to arrest, to procure and serve warrants, and to issue summons
- 34.07 Police powers of Fire Marshals
  
- 34.99 Penalty

#### *FIRE MARSHAL*

### **§ 34.01 OFFICE CREATED; DEPUTIES; APPOINTMENTS.**

(A) The Town Council shall appoint the Chief Fire Marshal (the Fire Marshal).

(B) The Deputy Fire Marshal(s) and assistant fire marshals shall be appointed by the Chief Fire Marshal, whose powers and duties shall be as set forth in this subchapter and as authorized by the VA Code.

(1998 Code, § 22-1) (Ord. O-2013-04, passed 4-2-2013)

### **§ 34.02 OATHS OF OFFICE.**

The Fire Marshal, Deputy Fire Marshal, assistant fire marshals, and members of the Fire Marshal's staff, before entering upon their duties, shall, respectively, take an oath, before any officer authorized to administer oaths, faithfully to discharge the duties of their offices.

(1998 Code, § 22-1.1) (Ord. O-2013-04, passed 4-2-2013)

**§ 34.03 GENERAL POWERS AND DUTIES.**

The Fire Marshal and deputies or assistants shall have such powers and duties as are prescribed by state law and by this subchapter and other ordinances of the county.

(1998 Code, § 22-1.2) (Ord. O-2013-04, passed 4-2-2013)

**§ 34.04 FIRE MARSHAL TO BE SUMMONED TO SCENE OF FIRE, EXPLOSION, AND THE LIKE.**

The Fire Department officer-in-charge of any fire, explosion, or incident to which fire apparatus or equipment responds shall immediately summon the Fire Marshal to the scene to investigate the circumstances involved. Such Fire Marshal shall make an investigation, or cause to be investigated, the origin and cause of every fire and explosion occurring with the town.

(1998 Code, § 22-2) (Ord. O-2013-04, passed 4-2-2013)

**§ 34.05 RIGHT OF ENTRY TO INVESTIGATE RELEASES OF HAZARDOUS MATERIAL, HAZARDOUS WASTE, OR REGULATED SUBSTANCES.**

The Fire Marshal shall have the right to enter upon any property from which a release of any hazardous material, hazardous waste, or regulated substance, as defined in VA Code §§ 10.1-1400 or 62.1-44.34:8, has occurred or is reasonably suspected to have occurred and which has entered into the ground water, surface water, or soils of the county, city, or town in order to investigate the extent and cause of any such release. If, in undertaking such an investigation, the Fire Marshal makes an affidavit under oath that the origin or cause of any such release is undetermined and that he or she has been refused admittance to the property, or is unable to gain permission to enter the property, any magistrate of the city or county where the property is located may issue an investigation warrant to the Fire Marshal authorizing him or her to enter such property for the purpose of determining the origin and source of the release. If the Fire Marshal, after gaining access to any property pursuant to such investigation warrant, has probable cause to believe that the release was caused by any act constituting a criminal offense, he or she shall discontinue the investigation until a search warrant has been obtained or consent to conduct the search has otherwise been given.

(1998 Code, § 22-4) (Ord. O-2013-04, passed 4-2-2013)

**§ 34.06 POWER TO ARREST, TO PROCURE AND SERVE WARRANTS, AND TO ISSUE SUMMONS.**

The Fire Marshal and his or her assistants appointed pursuant to VA Code § 27-36 shall have the authority to arrest, to procure and serve warrants of arrest, and to issue summons in the manner authorized by general law for violation of the fire prevention and fire safety laws and related

ordinances.

(1998 Code, § 22-5) (Ord. O-2013-04, passed 4-2-2013)

### **§ 34.07 POLICE POWERS OF FIRE MARSHALS.**

In addition to such other duties as may be prescribed by law, the Fire Marshal and his or her assistants appointed pursuant to VA Code § 27-36 shall have the same police powers as a sheriff, police officer, or law enforcement officer. The investigation and prosecution of all offenses involving hazardous materials, fires, fire bombings, bombings, attempts, or threats to commit such offenses, false alarms relating to such offenses, possession and manufacture of explosive devices, substances, and fire bombs shall be the responsibility of the Fire Marshal or his or her designee.

(1998 Code, § 22-5.1) (Ord. O-2013-04, passed 4-2-2013)

### **§ 34.99 PENALTY.**

(A) Unless otherwise specified in §§ 34.01 through 34.07, any person, firm, or corporation who shall violate any of the sections of §§ 34.01 through 34.07, or any provisions of the Fire Prevention Code adopted in accordance with §§ 34.01 through 34.07, shall separately for each and every such violation and noncompliance respectively, be guilty of a violation of §§ 34.01 through 34.07, and shall, upon conviction, be punishable as a class 1 misdemeanor.

(B) A violation of §§ 34.01 through 34.07 shall be construed to be an infringement, breach, or failure to comply with any provision of §§ 34.01 through 34.07 or any order made thereunder, or any act of building in violation of any detailed statement, specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or any failure to comply with such an order within the time fixed therein.

(C) Each day that a violation continues after a service of notice as provided for in this code shall be deemed a separate offense.

(1998 Code, § 22-27) (Ord. O-2013-04, passed 4-2-2013)

## CHAPTER 35: TAXATION

### Section

#### *In General*

- 35.001 Amount of real estate tax; due date of real estate taxes; when same deemed delinquent
- 35.002 Tax relief for the elderly and handicapped
- 35.003 Lien for delinquent real estate taxes; certificate as to inability to collect taxes and levies
- 35.004 Certificates of unpaid taxes
- 35.005 Tax on net capital of banks located in town

#### *Consumer Utility Tax Other than Electricity and Natural Gas*

- 35.020 Definitions
- 35.021 Rate; levy; procedure as to payment
- 35.022 Collection
- 35.023 Records
- 35.024 Exemptions
- 35.025 Exceptions; pay telephones; long distance and the like

#### *Tax on Meals Served in Restaurants or by Caterers*

- 35.040 Definitions
- 35.041 Levy
- 35.042 Collection of tax by seller
- 35.043 Report of taxes collected; remittance of tax
- 35.044 Discount
- 35.045 Procedure when tax not reported or collected
- 35.046 Preservation of records
- 35.047 Cessation of business; tax due immediately
- 35.048 Advertising payment or absorption of tax prohibited
- 35.049 Gratuities and service charges
- 35.050 Exemptions; limits on application
- 35.051 Enforcement

### ***Consumer Utility Tax on Electricity and Natural Gas***

- 35.065 Definitions
- 35.066 Consumer utility tax on electricity
- 35.067 Consumer utility tax for natural gas
- 35.068 Conflicts

### ***Tax on Transient Room Rentals***

- 35.080 Definitions
- 35.081 Levy of tax on transient room rentals; collection generally
- 35.082 Collection from transients; when payable
- 35.083 Report of collection and remittance of tax
- 35.084 Discount
- 35.085 Failure to collect and report tax
- 35.086 Preservation of records
- 35.087 Cessation of business; tax due immediately
- 35.088 Exceptions for governmental employees on official business
- 35.089 Enforcement
  
- 35.999 Penalty

***Charter reference:***

*Collection of taxes, see §§ 13, 14, and 17*  
*Preparation of tax tickets, see § 12*

***Statutory reference:***

*Enforcement, collection, refunds, remedies, and review of local taxes, see VA Code §§ 58.1-3900 et seq.*  
*Local bank franchise tax, see VA Code §§ 58.1-1208 et seq.*  
*Local sales and use taxes, see VA Code §§ 58.1-605 et seq.*  
*Local taxes generally, see VA Code §§ 58.1-3000 et seq.*  
*Priority of taxes in distribution of assets of person or corporation, see VA Code §§ 58.1-6 et seq.*  
*Setoff Debt Collection Act, see VA Code §§ 58.1-520 et seq.*  
*Taxation generally, see VA Code §§ 58.1-1 et seq.*

### ***IN GENERAL***

#### **§ 35.001 AMOUNT OF REAL ESTATE TAX; DUE DATE OF REAL ESTATE TAXES; WHEN SAME DEEMED DELINQUENT.**

(A) There shall be and is hereby levied a tax at a rate to be set by the Town Council per each \$100 of the assessed value, as established by the county, of real property located in the town January 1 of each year.

(B) All taxes assessed on real estate in the town shall be due and payable to the Town Treasurer on or before February 15 of the following year.

(1998 Code, § 58-1) Penalty, see § 35.999

### **§ 35.002 TAX RELIEF FOR THE ELDERLY AND HANDICAPPED.**

(A) Real estate within the town that meets the requirements for relief as established by the county shall not be subject to taxation by the town.

(B) The list of eligible taxpayers shall be provided by the county.

(1998 Code, § 58-2)

***Statutory reference:***

*Exemptions for elderly and handicapped, see VA Code §§ 58.1-3210 et seq.*

### **§ 35.003 LIEN FOR DELINQUENT REAL ESTATE TAXES; CERTIFICATE AS TO INABILITY TO COLLECT TAXES AND LEVIES.**

(A) *Real estate taxes.* Real estate within the town shall be subject to a lien in favor of the town to secure the payment of taxes assessed against the property.

(B) *Collection of delinquent taxes and levies.* Pursuant to VA Code §§ 58.1-3921 et seq., the Town Treasurer, after using due diligence to collect taxes and levies due the town, shall, before the first regular meeting of the Town Council in April of each year, prepare lists of the taxes and levies that have not been collected, which lists the Treasurer shall certify by oath as follows: “I, \_\_\_\_\_, Treasurer of the Town of Occoquan, after having been duly sworn, do certify that I have used due diligence to collect the foregoing taxes and levies and that I have been unable to collect them.” Such certificate shall be acknowledged before an officer qualified to administer oaths.

(1998 Code, § 58-3)

***Statutory reference:***

*Tax to constitute lien, see VA Code § 58.1-3340*

### **§ 35.004 CERTIFICATES OF UNPAID TAXES.**

(A) The Treasurer of the town shall issue, on or before May 1, to any applicant, a certificate setting forth the entire amount of unpaid taxes assessed against any real estate within the town, by or on behalf of the town, up to and including the last day of the calendar month preceding the date of the certificate. A separate certificate shall be issued for each separate piece of property as it appears upon the current tax records of the town. A fee of \$1 shall be charged for each certificate.

(B) The facts as set forth in each certificate shall be binding upon the town. No taxes other than those reported as unpaid in the certificate shall thereafter constitute a lien upon the real estate referred to in the certificate.

(C) The certificate provided for in this section shall be designated “Certificates of Unpaid Taxes” and shall be substantially in the following form:

<p>I hereby certify that the records in the office of the Treasurer for the Town of Occoquan, Virginia, show that all town taxes due against the following property known as lot _____, block _____, and currently assessed in the name of _____, are paid in full to _____, with the exception of the following: _____</p> <p style="text-align: right;">Treasurer</p>
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(1998 Code, § 58-4)

### § 35.005 TAX ON NET CAPITAL OF BANKS LOCATED IN TOWN.

(A) There is imposed a tax in the amount of 80% of the state rate of taxation on each \$100 of net capital of any bank located within the town.

(B) If any bank described in division (A) above has a branch located outside the town, the tax imposed shall be upon such proportion of the taxable value of the net capital as the total deposits of the bank or offices located in the town bear to the total deposits of the bank as of the end of the preceding year.

(1998 Code, § 58-5)

**Statutory reference:**

*Bank franchise tax, see VA Code §§ 58.1-1200 et seq.*

### ***CONSUMER UTILITY TAX OTHER THAN ELECTRICITY AND NATURAL GAS***

### § 35.020 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**COMMERCIAL OR INDUSTRIAL USER.** The owner or tenant of property used primarily for commercial or industrial purposes, who pays for utility service for the property.

**DWELLING UNIT.** One or more rooms designed or intended for occupancy by a single family.

**MULTIPLE-FAMILY DWELLING.** A building or portion thereof containing two or more dwelling units, but not including hotels or motels.

**PERSON.** Includes individuals, firms, partnerships, associations, corporations, and combinations of individuals of whatever form and character.

**PURCHASER.** Every person who purchases a utility service.

**RESIDENTIAL USER.** The owner or tenant of property used primarily for residential purposes, who pays for utility service in or for the property, and includes, but not by way of limitation, apartment house and other multiple-family dwellings.

**SELLER.** Every person, whether a public service corporation or a municipality, or private corporation or not, who sells or furnishes a utility service.

**UTILITY SERVICE.** Includes a local exchange telephone service, electric service, and gas furnished within the town.  
(1998 Code, § 58-31) (Ord. passed 5-13-1975)

**§ 35.021 RATE; LEVY; PROCEDURE AS TO PAYMENT.**

(A) On every bill sent for services, there is hereby imposed and levied by the town a tax upon each and every purchaser of a utility service for general purposes in the amount of 15% of the charge, exclusive of any federal tax thereon, made by the seller against the purchaser with respect to each utility service, which tax in every case shall be collected by the seller from the purchaser and shall be paid by the purchaser unto the seller for the use of the town at the time that the purchase price of such charge shall become due and payable under the agreement between the purchaser and the seller. Provided, however, that in case any monthly bill submitted by any seller for residential service shall exceed \$15 for a residential user, there shall be no tax computed on so much of such bill as shall exceed \$15.

(B) In the case of any multiple-family dwelling served by a master meter or meters, the tax is limited to the lesser of 15% of the net bill or 15% of an amount calculated at \$15 times the dwelling units served. If any monthly bill submitted by any seller for commercial or industrial service shall exceed \$60, there shall be no tax computed on so much of such bill as shall exceed \$60.

(C) If a bill is submitted by the seller for more than one month's utility service, then the amount of the bill excluded in computing the tax shall be the monthly exclusion allowed in this section, multiplied by the number of months for which the bill is submitted. Bills shall be considered monthly bills if submitted 12 times per year for periods of approximately one month each.  
(1998 Code, § 58-32) (Ord. passed 5-13-1975)

**§ 35.022 COLLECTION.**

(A) It shall be the duty of every seller in acting as the tax collecting medium or agency in the town to collect from the purchaser for the use of the town the tax imposed and levied in this subchapter at the time of collecting the purchase price charged, and the taxes collected during each calendar month shall be reported by each seller to the Treasurer of the town and each seller shall remit the amount of tax shown by such report to have been collected to the Treasurer on or before the last day of the first

calendar month thereafter, together with the name and address of any purchaser who has refused to pay the tax.

(B) The required reports shall be in the form required by the Treasurer.  
(1998 Code, § 58-33) (Ord. passed 5-13-1975) Penalty, see § 35.999

### **§ 35.023 RECORDS.**

Each and every seller shall keep complete records showing all purchases in the town, which records shall show the price charged against each purchaser with respect to each purchase, the date thereof and the date of payment thereof, and the amount of tax imposed under this subchapter, and such records shall be kept open for inspection by the duly authorized agents of the town at reasonable times, and the duly authorized agents of the town shall have the right, power, and authority to make the transcripts thereof.

(1998 Code, § 58-34) (Ord. passed 5-13-1975) Penalty, see § 35.999

### **§ 35.024 EXEMPTIONS.**

The United States of America, the state, and the political subdivisions, boards, commissions, and authorities thereof and all churches and hospitals are exempted from the payment of the tax imposed and levied by this subchapter with respect to the purchase of utility service used by such governmental agencies, churches, and hospitals.

(1998 Code, § 58-35) (Ord. passed 5-13-1975)

### **§ 35.025 EXCEPTIONS; PAY TELEPHONES; LONG DISTANCE AND THE LIKE.**

The tax imposed and levied by this subchapter on purchases with respect to telephone service shall apply to all charges made for local telephone exchange service except as follows.

(A) *Coin box telephone.* No tax shall be imposed on telephone service paid for by inserting coins in coin-operated telephones.

(B) *Flat rate service.* With respect to flat rate and flat message rate service, the tax shall apply only to the amount payable for local area service and shall not apply to any specific charge payable for local area service and shall not apply to any specific charge for calls to points outside the county or to any general charge or rate differential payable for the privilege of calling points outside the town.

(C) *Message rate service.* Where purchases of telephone service are charged on a message rate basis, the tax shall apply only to the basic charge for such service and shall not apply to any charge for additional message units.

(1998 Code, § 58-36) (Ord. passed 5-13-1975)

## ***TAX ON MEALS SERVED IN RESTAURANTS OR BY CATERERS***

### **§ 35.040 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***CATERER.*** A person who furnishes food, beverages, or both, on the premises of another for compensation.

***COLLECTOR.*** The Treasurer of the town or designee.

***FOOD.*** All food, beverages, or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time, or place of service.

***FOOD ESTABLISHMENT.*** Any place in or from which a meal, food, or food products are prepared, packaged, sold, or distributed in the town including, but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shops, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar, lounge, or other similar establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a ***FOOD ESTABLISHMENT*** at which food or food products are sold for immediate consumption.

***MEAL.*** Any prepared food or beverage, including alcoholic beverages, offered or held out for sale by a food establishment or caterer for the purpose of being consumed by any person to satisfy the appetite and is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper, or by some other name, and without regard to the manner, time, or place of service.

***SELLER.*** Any food establishment or caterer selling meals or food, or the person operating such business.

***TREASURER.*** The Treasurer of the town and any duly designated deputies, assistants, inspectors, or other employees.

***TOWN.*** The Town of Occoquan, Virginia, a municipal corporation of the Commonwealth of Virginia.

(1998 Code, § 58-38) (Ord. O-2000-02, passed 6-13-2000)

#### **§ 35.041 LEVY.**

In addition to all other taxes and fees of any kind now or hereafter imposed by law, there is hereby imposed and levied by the town on each person a tax at the rate of 3% on the amount paid for every meal or food purchased from any food establishment or caterer, whether prepared in such food establishment or not, and whether consumed on the premises or not.

(1998 Code, § 58-39) (Ord. O-2000-02, passed 6-13-2000; Ord. O-2006-08, passed 9-26-2006)

#### **§ 35.042 COLLECTION OF TAX BY SELLER.**

Every person receiving any payment for a meal or food with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this subchapter from the person on whom the same is levied or from the person paying for such meal or food at the time payment for such food is made; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes. All tax collections shall be deemed to be held in trust for the town.

(1998 Code, § 58-40) (Ord. O-2000-02, passed 6-13-2000; Ord. O-2015-02, passed 6-2-2015)  
Penalty, see § 35.999

#### **§ 35.043 REPORT OF TAXES COLLECTED; REMITTANCE OF TAX.**

It shall be the duty of every person required by this subchapter to collect and remit to the town the taxes imposed by this subchapter to make a report for each calendar month thereof setting forth such information as the Treasurer may prescribe and require, including all purchases taxable under this subchapter, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon, and the amount of tax required to be collected by this subchapter. The monthly reports shall be delivered to the Treasurer on or before the twentieth day of the calendar month following the month being reported. Each report shall be accompanied by a remittance of the amount of tax due, made payable to the town and sent to the Treasurer. When the report deadline and payment deadline falls on a Saturday, Sunday, or legal holiday, then any return required by this chapter may be filed or such payment made without penalty or interest on the next succeeding business day.

(1998 Code, § 58-41) (Ord. O-2000-02, passed 6-13-2000; Ord. O-2015-02, passed 6-2-2015)  
Penalty, see § 35.999

#### **§ 35.044 DISCOUNT.**

For the purpose of compensating sellers for the collection of tax imposed by this subchapter, every seller shall be allowed 3% of the total amount of the tax due and accounted for in the form of a deduction on his or her monthly return; provided, the amount due is not delinquent at the time of payment.

(1998 Code, § 58-42) (Ord. O-1999-03, passed 6-18-1999)

**§ 35.045 PROCEDURE WHEN TAX NOT REPORTED OR COLLECTED.**

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this subchapter and make within the time provided herein any report and remittance required, the Treasurer shall proceed in such manner as he or she may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Treasurer has secured whatever facts and information he or she is able to obtain upon which to base the assessment of any tax due and payable by any person who has failed or refused to collect such tax and make such report and remittance, he or she shall proceed to determine and assess against such person the tax and penalty and interest provided for in this subchapter and shall notify such person by registered mail, sent to his or her last known address, of the amount of such tax and penalty and interest. The total amount thereof shall be payable within ten days of the mailing of such notice. The Treasurer shall have the power to examine such records for the purpose of administering and enforcing the provisions of this subchapter as provided by law.

(1998 Code, § 58-44) (Ord. 1999-03, passed 6-8-1999)

**§ 35.046 PRESERVATION OF RECORDS.**

It shall be the duty of every person liable for collection and remittance of the taxes imposed by this subchapter to keep and preserve for a period of five years suitable records as may be necessary to determine the amount of purchases taxable under this subchapter, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon, and the amount of tax required to be collected by this subchapter. The Treasurer or his or her duly authorized agents shall have the power to examine such records, at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this subchapter, and to make transcripts of all or any parts thereof.

(1998 Code, § 58-45) (Ord. O-2000-02, passed 6-13-2000) Penalty, see § 35.999

**§ 35.047 CESSATION OF BUSINESS; TAX DUE IMMEDIATELY.**

Whenever any person required to collect and pay to the town a tax imposed by this subchapter shall cease to operate, go out of business, or otherwise dispose of his or her business, any tax then payable to the town shall become immediately due and payable, and such person shall immediately make a report and pay the tax due to the Treasurer.

(1998 Code, § 58-46) (Ord. 1999-03, passed 6-8-1999) Penalty, see § 35.999

**§ 35.048 ADVERTISING PAYMENT OR ABSORPTION OF TAX PROHIBITED.**

No seller shall advertise or hold out to the public in any manner, directly or indirectly, that all or any part of a tax imposed under this subchapter will be paid or absorbed by the seller or by anyone else, or that the seller or anyone else will relieve any purchaser of the payment of all or any part of the

tax.

(1998 Code, § 58-47) (Ord. 1999-03, passed 6-8-1999) Penalty, see § 35.999

### § 35.049 GRATUITIES AND SERVICE CHARGES.

(A) Where a purchaser provides a gratuity for an employee of a seller, and the amount of the gratuity is wholly in the discretion of the purchaser, the gratuity is not subject to the tax imposed by this subchapter, whether paid in cash to the employee or added to the bill and charged to the purchaser's account; provided, in the latter case, the full amount of the gratuity is turned over to the employee by the seller.

(B) An amount or percentage, whether designated as a gratuity or a service charge, that is added to the price of a meal by the seller and required to be paid by the purchaser, as a part of the selling price of the meal, is subject to the tax imposed by this subchapter.

(1998 Code, § 58-48) (Ord. 1999-03, passed 6-8-1999)

### § 35.050 EXEMPTIONS; LIMITS ON APPLICATION.

The following classes of meals shall not be subject to tax under this subchapter.

(A) The tax imposed under this subchapter shall not be levied on factory-prepackaged candy, gum, nuts, and other items of essentially the same nature served for on- or off-premises consumption.

(B) The tax imposed under this subchapter shall not be levied on the following items when served exclusively for off-premises consumption:

(1) Donuts, ice cream, crackers, nabs, chips, cookies, and factory-prepackaged items of essentially the same nature;

(2) Food sold in bulk. For the purposes of this division (B)(2), a **BULK SALE** shall mean the sale of any item that would exceed the normal, customary, and usual portion sold for on-premises consumption (e.g., a whole cake, a gallon of ice cream); a bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption;

(3) Alcoholic and non-alcoholic beverages sold in factory sealed containers;

(4) Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the state's Special Supplemental Food Program for Women, Infants, and Children; and

(5) Any food or food product purchased for home consumption as defined in the federal Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, except hot food or hot food products ready for immediate consumption. For the purposes of administering the tax levied hereunder, the following items whether or not purchased for immediate consumption are excluded from the said definition of food in the federal Food Stamp Act: sandwiches; salad bar items sold from a salad bar; prepackaged single-serving salads consisting primarily of an assortment of vegetables; and non-factory-sealed beverages. This division (B) shall not affect provisions set forth in divisions (D)(3), (D)(4) and (D)(5) below.

(C) A grocery store, supermarket, or convenience store shall not be subject to the tax except for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages.

(D) The tax imposed hereunder shall not be levied on the following purchases of food and beverages:

(1) Food and beverages furnished by food establishments to employees as part of their compensation when no charge is made to the employee;

(2) Food and beverages sold by day care centers, public or private elementary or secondary schools, or food sold by any college or university to its students or employees;

(3) Food and beverages for use or consumption and which are paid for directly by the state, any political subdivision of the state or the United States;

(4) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof;

(5) Food and beverages furnished by a public or private nonprofit charitable organization or establishment or a private establishment that contracts with the appropriate agency of the state to offer meals at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations;

(6) Food and beverages sold on an occasional basis by a nonprofit educational, charitable or benevolent organization, church, or religious body as a fund-raising activity, the net proceeds of which are to be used by such organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes; and

(7) Food and beverages sold through vending machines.  
(1998 Code, § 58-49) (Ord. O-2000-02, passed 6-13-2000)

## **§ 35.051 ENFORCEMENT.**

(A) It shall be the duty of the Treasurer to ascertain the name of every person operating a restaurant in the town, liable for the collection of the tax imposed by this subchapter, who fails, refuses, or neglects to collect such tax or to make the reports and remittance required by this subchapter. The Treasurer may have issued a summons for such person, and the summons may be served upon such person by any town police officer in the manner provided by law. One return of the original summons shall be made to the general district court for the town.

(B) In the event the purchaser of any meal refuses to pay the tax imposed by this subchapter, the seller may call upon the Police Department for assistance; and the investigating officer may, when probable cause exists, issue the purchaser a summons returnable to the general district court as provided by law.

(1998 Code, § 58-50) (Ord. O-1999-03, passed 6-8-1999) Penalty, see § 35.999

## ***CONSUMER UTILITY TAX ON ELECTRICITY AND NATURAL GAS***

### **§ 35.065 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***CCF.*** The volume of gas at standard pressure and temperature in units of 100 cubic feet.

***COMMERCIAL OR INDUSTRIAL CONSUMER.*** The owner or tenant of property used primarily for commercial or industrial uses, but does not include apartment houses or other multiple-family dwellings.

***CONSUMER.*** Every person or business entity, individually or through agents, employees, officers, representatives, or permittees, makes a taxable purchase of electricity or natural gas services.

***ELECTRIC SUPPLIER.*** Any person or business entity owning or operating facilities for the generation, transmission, or distribution of electricity for sales, except any person owning or operating solar, water, or hydroelectric facilities with a designated generation capacity of less than 25 megawatts.

***GAS SUPPLIER.*** Any person or business entity licensed by the State Corporation Commission to engage in the business of selling natural gas.

***GAS UTILITY.*** A public utility authorized to furnish natural gas service in the state.

***KILOWATT HOURS (kWh).*** One thousand watts of electricity delivered by an electric supplier to an actual consumer, except that in the case of eligible customer-generators (sometimes called cogenerators) as defined in VA Code § 56-594, as amended, it means ***kWh*** supplied from the electric grid to such customer-generators, minus the ***kWh*** generated and fed back to the electric grid by such customer-generators.

**PIPELINE DISTRIBUTION COMPANY.** A corporation or business entity, other than a pipeline transmission company which transmits, by means of a pipeline, natural gas, manufactured gas, or crude petroleum and the products or byproducts thereof to a purchaser for purposes of furnishing heat or light.

**PIPELINE TRANSMISSION COMPANY.** A corporation or business entity authorized to transmit natural gas, manufactured gas, or crude petroleum and the products or byproducts thereof in the public service by means of pipeline or pipelines from one point to another when such gas or petroleum is not for sale to an ultimate consumer for purposes of furnishing heat or light.

**RESIDENTIAL CONSUMER.** The owner or tenant of property used primarily for residential purposes including, but not limited to, separately metered apartment houses and other multiple-family dwellings.

**SERVICE PROVIDER.** A person or business entity that delivers electricity to the consumer.

**USED PRIMARILY.** Relates to the larger portion of the use for which electric or natural gas utility service is furnished and for the purposes of this subchapter.  
(1998 Code, § 58-52) (Ord. O-2001-01, passed 10-25-2000; Ord. O-2001-05, passed 2-13-2001)

### § 35.066 CONSUMER UTILITY TAX ON ELECTRICITY.

(A) *Per meter tax.* In accordance with VA Code § 58.1-3814, as amended, effective January 1, 2001, there is hereby imposed and levied a per meter tax on each purchase of electricity provided to consumers by electric suppliers as follows.

(1) *Residential consumers.* Such tax shall be at the rate of a \$1.05 minimum charge plus \$0.011881 per kWh delivered monthly to such consumers, not to exceed \$2.25 per month.

(2) *Group or master metered apartment (multiple-family dwelling) consumers.* Such tax shall be at the rate of a \$1.05 per meter minimum charge plus \$0.011881 per kWh delivered monthly to such consumers, not to exceed the lesser of 15% of the net bill or 15% of an amount calculated at \$15 times the dwelling units served per month. Group or master metered apartment houses or other multiple-family dwellings shall be taxed at the residential electric consumer rate for each dwelling unit.

(3) *Commercial and industrial consumers.* Such tax, for the period of January 1, 2001 to December 31, 2003, shall be at the rate of a \$1.72 minimum charge plus \$0.010517 per kWh delivered monthly to such consumers, not to exceed \$9 per month.

(4) *Conversion.* The conversion of tax pursuant to this subchapter to monthly kWh delivered shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by this jurisdiction shall be in effect.

(B) *Exemptions.* The following consumers of electricity are exempt from the tax imposed by this section:

(1) Any public safety agency as defined in VA Code § 58.1-3813, as amended; and

(2) The United States of America, the state and the political subdivisions, boards, commissions, and authorities thereof.

(C) *Billing, collection, and remittance of tax.* The service provider shall bill the electricity consumer tax to all users who are subject to the tax and to whom it delivers electricity and shall remit the same to this jurisdiction on a monthly basis in accordance with the applicable provisions of VA Code Title 58.1, as amended. If any consumer receives and pays for electricity but refuses to pay the tax imposed by this section, the service provider shall notify this jurisdiction of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider must follow its normal collection procedures and, upon collection of the bill or any part thereof, must apportion the net amount collected between the charge for electric service and the tax and remit the tax portion to this jurisdiction. Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to this jurisdiction.

(D) *Computation of bi-monthly bill.* Bills shall be considered as monthly bills for the purposes of this subchapter if submitted 12 times per year at approximately 30-day intervals. The tax on a bimonthly bill (approximately 60-day intervals) shall be determined as follows:

(1) kWh consumed shall be divided by two;

(2) A monthly tax shall be calculated using the rates set forth above;

(3) The tax determined by division (D)(2) above shall be multiplied by two; and

(4) The tax in division (D)(3) above shall not exceed twice the monthly maximums set forth in division (A) above.

(1998 Code, § 58-53) (Ord. O-2001-01, passed 10-25-2000; Ord. O-2001-05, passed 2-13-2001)

### **§ 35.067 CONSUMER UTILITY TAX FOR NATURAL GAS.**

(A) *Per meter tax.* In accordance with VA Code § 58.1-3814, as amended, there is hereby imposed and levied a per meter tax on each purchase of natural gas provided to consumers by pipeline distribution companies and gas utilities as follows.

(1) *Residential consumers.* Such tax shall be at the rate of a \$1.35 minimum charge plus \$0.0141600 per CCF delivered monthly to such consumers, not to exceed \$2.25 per month.

(2) *Group or master metered apartment (multiple-family dwelling) consumers.* Such

tax shall be at the rate of a \$6.86 minimum charge plus \$0.0351952 per CCF delivered monthly to such consumers, not to exceed the lesser of 15% of the net bill or 15% of an amount calculated at \$15 times the dwelling units served per month.

(3) *Commercial and industrial consumers.* Such tax, for the period of January 1, 2001 to December 31, 2003, shall be at the rate of a \$2.51 minimum charge plus \$0.0627327 per CCF delivered monthly to such consumers, not to exceed \$9 per month.

(4) *Conversion.* The conversion of tax pursuant to this subchapter to monthly CCF delivered shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by this jurisdiction shall be in effect.

(B) *Exemptions.* The following consumers of natural gas are to be exempt from the tax imposed by this section:

- (1) Any public safety agencies as defined in VA Code § 58.1-3813, as amended; and
- (2) The United States of America, the state and the political subdivisions, boards, commissions, and authorities thereof.

(C) *Billing, collection, and remittance of tax.*

(1) The service provider shall bill the natural gas consumer tax to all users who are subject to the tax and to whom it delivers natural gas and shall remit the same to this jurisdiction on a monthly basis in accordance with the applicable provisions of VA Code Title 58.1, as amended.

(2) If any consumer receives and pays for natural gas but refuses to pay the tax imposed by this section, the service provider shall notify this jurisdiction of the name and address of such consumer.

(3) If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider must follow its normal collection procedures and upon collection of the bill or any part thereof must apportion the net amount collected between the charge for natural gas service and the tax and remit the tax portion to this jurisdiction.

(4) Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to this jurisdiction.

(D) *Computation of bimonthly bill.* Bills shall be considered as monthly bills for the purposes of this subchapter if submitted 12 times per year at approximately 30-day intervals. The tax on a bimonthly bill (approximately 60-day intervals) shall be determined as follows:

- (1) CCF consumed shall be divided by two;
- (2) A monthly tax shall be calculated using the rates set forth above;

(3) The tax determined by division (D)(2) above shall be multiplied by two; and

(4) The tax in division (D)(3) above shall not exceed twice the monthly maximums set forth in division (A) above.

(1998 Code, § 58-54) (Ord. O-2001-01, passed 10-25-2000; Ord. O-2001-05, passed 2-13-2001)

### **§ 35.068 CONFLICTS.**

Any ordinance or provision of this code, as amended, relating to the imposition of the consumer utility tax for electrical or natural gas service, and in conflict herewith stands repealed to the extent of the inconsistency, as of the effective date of this subchapter.

(1998 Code, § 58-57) (Ord. O-2001-01, passed 10-25-2000; Ord. O-2001-05, passed 2-13-2001)

## ***TAX ON TRANSIENT ROOM RENTALS***

### **§ 35.080 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***HOTEL.*** Any public or private hotel, inn, hostelry, tourist home or house, motel, rooming house, or other lodging place within the town offering lodging, as defined in this section, for compensation to any transient, as hereinafter defined in this section.

***LODGING.*** Any room or space furnished any transient.

***PERSON.*** Any individual, corporation, company, association, firm, copartnership, or any group of individuals acting as a unit.

***TRANSIENT.*** Any person who, for a period of not more than 90 consecutive days, either at his or her own expense or at the expense of another, obtains lodging or the use of any space at any hotel, for which lodging or use of space a charge is made.

***TREASURER.*** The Town Treasurer of the town and his or her duly designated deputies, assistants, inspectors, clerks, or other employees.

(1998 Code, § 58-60) (Ord. O-1999-02, passed 6-8-1999)

### **§ 35.081 LEVY OF TAX ON TRANSIENT ROOM RENTALS; COLLECTION GENERALLY.**

There is hereby imposed and levied upon every transient obtaining or occupying lodging within the town, in addition to all other taxes and fees of every kind now imposed by law, a tax equivalent to 2% of the amount charged for such lodging. The tax shall be collected from transients in the manner and at the time provided in this subchapter.

(1998 Code, § 58-61) (Ord. O-1999-02, passed 6-8-1999)

#### **§ 35.082 COLLECTION FROM TRANSIENTS; WHEN PAYABLE.**

(A) Every person receiving any payment for lodging or the use of space with respect to which a tax is levied under this subchapter shall collect the amount of such tax so imposed from the transient on whom such tax is levied, or from the person paying for such lodging, at the time payment for such lodging is made.

(B) The taxes required to be collected under this subchapter shall be deemed held in trust by the person required to collect such taxes until the same shall have been remitted to the town as provided by this subchapter.

(1998 Code, § 58-62) (Ord. O-1999-02, passed 6-8-1999)

#### **§ 35.083 REPORT OF COLLECTION AND REMITTANCE OF TAX.**

(A) The person collecting any tax as provided in this subchapter shall make out a report thereof, upon such forms and setting forth such information as the Commissioner may prescribe and require, showing the amount of lodging, charges collected, and the tax required to be collected and shall sign and deliver such reports with the remittance of such tax to the Treasurer.

(B) Such reports and remittances shall be made on or before the twentieth day of each month covering the amount of tax due and collected during the preceding month.

(1998 Code, § 58-63) (Ord. O-1999-02, passed 6-8-1999)

#### **§ 35.084 DISCOUNT.**

For the purpose of compensating persons required to collect such taxes for the collection of the tax imposed by this subchapter, every person required to collect such taxes shall be allowed 3% of the total amount of the tax due and accounted for in the form of a deduction on his or her monthly return; provided, however, the amount due is not delinquent at the time of payment.

(1998 Code, § 58-64) (Ord. O-1999-02, passed 6-8-1999)

#### **§ 35.085 FAILURE TO COLLECT AND REPORT TAX.**

If any person whose duty is to do so shall fail or refuse to collect the tax imposed under this subchapter and to make, within the time provided herein, any report and remittance required, the

Treasurer shall proceed in such manner as he or she may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Treasurer has secured whatever facts and information as he or she is able to obtain upon which to base the assessment of any tax due and payable by any person who has failed or refused to collect such tax and to make such report and remittance, he or she shall proceed to determine and assesses against such person the tax and penalty and interest as provided for in this subchapter and shall notify such person by registered mail, sent to his or her last place of known address, the amount of such tax and penalty and interest. The total amount thereof shall be payable within ten days of mailing of such notice. The Treasurer shall have the power to examine such records for the purpose of administering and enforcing the provisions of this subchapter as provided by law.

(1998 Code, § 58-66) (Ord. O-1999-02, passed 6-8-1999)

### **§ 35.086 PRESERVATION OF RECORDS.**

It shall be the duty of every person liable for the collection and remittance of the taxes imposed by this subchapter to keep and preserve for a period of two years such suitable records as may be necessary to determine the amount of such tax as he or she may have been responsible for collecting and paying to the town. The Treasurer shall have the power to examine such records, at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this subchapter, and to make transcripts of all or any parts thereof.

(1998 Code, § 58-67) (Ord. O-1999-02, passed 6-8-1999) Penalty, see § 35.999

### **§ 35.087 CESSATION OF BUSINESS; TAX DUE IMMEDIATELY.**

Whenever any person required to collect and pay to the town a tax imposed by this subchapter shall cease to operate, go out of business, or otherwise dispose of his or her business, any tax then payable to the town shall become immediately due and payable, and such person shall immediately make a report and pay the tax due to the Treasurer.

(1998 Code, § 58-68) (Ord. O-1999-02, passed 6-8-1999) Penalty, see § 35.999

### **§ 35.088 EXCEPTIONS FOR GOVERNMENTAL EMPLOYEES ON OFFICIAL BUSINESS.**

No tax shall be payable hereunder with respect to any payment for lodging of the use of space paid by or for any federal, state, or town official or employee when on official business.

(1998 Code, § 58-69) (Ord. O-1999-02, passed 6-8-1999)

### **§ 35.089 ENFORCEMENT.**

(A) It shall be the duty of the Treasurer to ascertain the name of every hotel offering lodging to a transient in the town, liable for the collection of the tax imposed by this subchapter, which fails,

refuses, or neglects to collect such tax or to make the reports and remittances required by this subchapter. The Treasurer may have issued a summons to such person responsible for the hotel offering lodging to a transient, and the summons may be served upon such person by any town police officer in the manner provided by law. One return of the original summons shall be made to the general district court for the town.

(B) In the event the purchaser of any transient room rental refuses to pay the tax imposed by this subchapter, the hotel operator may call upon the Police Department for assistance, and the investigating officer may, when probable cause exists, issue the purchaser a summons returnable to the general district court as provided by law.

(1998 Code, § 58-70) (Ord. O-1999-02, passed 6-8-1999) Penalty, see § 35.999

### **§ 35.999 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Pursuant to § 35.001, to all real estate taxes that may be delinquent, there shall be added a penalty of 8% after February 15. To all real estate taxes that may be delinquent after March 15, interest of 10% per annum shall be added to the unpaid balance, including the penalty.

(1998 Code, § 58-1)

(C) Any purchaser failing, refusing, or neglecting to pay the tax imposed or levied in §§ 35.020 through 35.025 and any seller violating the provisions of §§ 35.020 through 35.025, and any officer, agent, or employee of any seller violating the provisions of §§ 35.020 through 35.025 shall, upon conviction, be subject to a fine of not more than \$100.

(1998 Code, § 58-37)

(D) If any person whose duty it is to do so shall fail or refuse to make the report or remit the tax required by §§ 35.040 through 35.051 within the time and in the amount required, there shall be added to the tax by the Treasurer a penalty in the amount of 10% of the tax, or a minimum of \$10, whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax due. The Treasurer shall also assess interest on the tax and penalty at the rate of 10% per annum from the day after the tax is due until paid.

(1998 Code, § 58-43)

(E) (1) Any person willfully failing or refusing to file a return as required under §§ 35.040 through 35.051 shall, upon conviction thereof, be guilty of a class 1 misdemeanor except that any person failing to file such a return shall be guilty of a class 3 misdemeanor if the amount of tax lawfully assessed in connection with the return is \$1,000 or less. Any person violating or failing to comply with any other provision of §§ 35.040 through 35.051 shall be guilty of a class 1 misdemeanor.

(2) Except as provided in division (E)(1) above, any corporate or partnership officer, as defined in VA Code § 58.1-3906, or any other person required to collect, account for, or pay over the meals tax imposed under §§ 35.040 through 35.051, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade such tax or payment thereof, shall, in addition to any other penalties imposed by law, be guilty of a class 1 misdemeanor.

(3) Each violation of or failure to comply with §§ 35.040 through 35.051 shall constitute a separate offense. Conviction of any such violation shall not relieve any person from the payment, collection, or remittance of the tax provided in §§ 35.040 through 35.051.

(1998 Code, § 58-51)

(F) Any consumer of electricity or natural gas failing, refusing, or neglecting to pay the tax imposed and levied under §§ 35.065 through 35.068, and any officer, agent, or employee of any electric supplier, gas distribution company, or gas utility violating the provisions of §§ 35.065 through 35.068 shall, upon conviction thereof, be punished by a fine of not less than \$10 nor more than \$300 or by imprisonment in jail for not more than 90 days, or by both such fine and imprisonment. Such failure, refusal, neglect, or violation shall constitute a separate offense. Such conviction shall not relieve any person from the payment, collection, and remittance of the tax as provided in §§ 35.065 through 35.068.

(1998 Code, § 58-55)

(G) (1) If any person whose duty is to do so shall fail or refuse to report and remit to the Treasurer the tax required to be collected and paid under §§ 35.080 through 35.089, within the time and in the amount as provided for in §§ 35.080 through 35.089, there shall be added to such tax by the Treasurer a penalty in the amount of 10% of the tax due or the sum of \$10, whichever is greater, provided, however, that the penalty shall in no case exceed the amount of the tax due. The Treasurer shall also assess interest on the tax and penalty at the rate of 10% per year from the day after the tax is due until paid.

(1998 Code, § 58-65)

(2) Any person violating or failing to comply with any of the provisions of §§ 35.080 through 35.089 shall, upon conviction thereof, be guilty of a class 3 misdemeanor if the amount of the tax lawfully assessed is \$1,000 or less, or a class 1 misdemeanor if the amount of the tax lawfully assessed is more than \$1,000 and punishable as provided in § 10.99 of this code. Conviction shall not relieve any person from the payment, collection, or remittance of the tax as provided in §§ 35.080 through 35.089. Each violation or failure shall be a separate offense.

(1998 Code, § 58-71)

(Ord. passed 5-13-1975; Ord. O-1999-02, passed 6-8-1999; Ord. O-1999-03, passed 6-8-1999; Ord. O-2000-02, passed 6-13-2000; Ord. O-2001-01, passed 10-25-2000; Ord. O-2001-05, passed 2-13-2001)