

Chapter 10 BICYCLES, MOTORIZED SKATEBOARDS OR SCOOTERS, OR ELECTRIC POWER-ASSISTED BICYCLES AND MOPEDS¹

ARTICLE I. IN GENERAL

Sec. 10-1. Definitions.

For the purposes of this chapter, the terms "bicycle," "electric personal assistive mobility device," "moped," "motorized skateboard or scooter," "owner," "roadway," "toy vehicle," and "vehicle" are defined as set forth in Section 46.2-100 of the Code of Virginia, 1950, as amended.

Electric power-assisted bicycle means a vehicle that travels on not more than three (3) wheels in contact with the ground and is equipped with (i) pedals that allow propulsion by human power, (ii) a seat for the use of the rider, and (iii) an electric motor with an input of no more than seven hundred fifty (750) watts. Electric power-assisted bicycles shall be classified as follows:

- (1) "Class one" means an electric power-assisted bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches a speed of twenty (20) miles per hour;
- (2) "Class two" means an electric power-assisted bicycle equipped with a motor that may be used exclusively to propel the bicycle and that ceases to provide assistance when the bicycle reaches the speed of twenty (20) miles per hour; and
- (3) "Class three" means an electric power-assisted bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches the speed of twenty-eight (28) miles per hour.

(Ord. No. 7596-19, § 1; Ord. No. 7642-20, § 1)

Sec. 10-2. Violations of chapter.

Except as otherwise specifically provided, any person violating any of the provisions of this chapter shall be guilty of a Class 4 misdemeanor.

(Ord. No. 7596-19, § 1)

¹Editor's note(s)—Ord. No. 7596-19, § 1, adopted Nov. 26, 2019, repealed ch. 10 in its entirety and enacted a new ch. 10, as set out herein. The former chapter pertained to similar subject matter and derived from Ord. No. 2311, §§ 8-1, 8-3—8-5, 8-13, 8-15, 8-32; Ord. No. 2745-81; Ord. No. 3515-86; Ord. No. 4041-90; Ord. No. 4957-96, § 1; Ord. No. 5103-98; Ord. No. 5322-99; Ord. No. 5415-00; Ord. No. 5971-03; Ord. No. 6108-05, § 1; Ord. No. 6558-09; Ord. No. 6926-12, § 1; and Ord. No. 6983-13, § 1.

Cross reference(s)—Motor vehicles and traffic, Ch. 26.

State law reference(s)—Bicycles, etc., Code of Virginia, § 46.2-903 et seq.

Sec. 10-3. Altering, removing, etc., frame number.

It shall be unlawful for any person to willfully or maliciously remove, destroy, mutilate or alter the number of the frame or motor or other manufacturer's serial number of any bicycle or moped or motorized skateboard or scooter or electric power-assisted bicycle.

(Ord. No. 7596-19, § 1)

Sec. 10-4. Dealers' reports of purchase or sale of secondhand bicycles, motorized skateboards or scooters, or electric power-assisted bicycles and mopeds.

- (a) Every person engaged in the business of buying, selling, exchanging or trading in used or secondhand bicycles or mopeds or motorized skateboards or scooters or electric power-assisted bicycles shall make a weekly report to the chief of police of all used or secondhand bicycles or mopeds or motorized skateboards or scooters or electric power-assisted bicycles bought, exchanged or traded in by each such person during the preceding week, on forms provided by the police department.
- (b) Each report required by this section shall specify a full and complete description of such used or secondhand bicycle or moped or motorized skateboard or scooter or electric power-assisted bicycle, and in addition thereto, whenever available, the serial number, factory number, frame number, color, type, frame size, wheel size, name of brake and other marks of identification, the date of purchase or trade, together with the name, address, age, height and weight of the person selling or trading in such vehicle.

(Ord. No. 7596-19, § 1)

Sec. 10-5. Dealers not to purchase secondhand bicycles or mopeds from minors.

It shall be unlawful for any person engaged in the business of buying new or secondhand bicycles or mopeds or motorized skateboards or scooters or electric power-assisted bicycles to purchase such secondhand vehicles from persons under eighteen (18) years of age.

(Ord. No. 7596-19, § 1)

Secs. 10-6—10-10. Reserved.

ARTICLE II. EQUIPMENT AND OPERATING RULES

Sec. 10-11. Application of article.

The provisions of this article shall apply whenever a bicycle or moped or motorized skateboard or scooter or electric power-assisted bicycle is operated on any of the roadways or sidewalks in the city or upon any path or trail therein set aside for the exclusive use of bicycles or mopeds, subject to those exceptions stated herein.

(Ord. No. 7596-19, § 1)

Sec. 10-12. Applicability of traffic regulations to riders.

Every person riding a bicycle or moped or motorized skateboard or scooter or electric power-assisted bicycle upon a roadway within the corporate limits of the city shall be granted all the rights and shall be subject to all the duties and responsibilities applicable to the driver of motor vehicles under the laws of the state and the traffic ordinances of the city, except as to those provisions which, by their very nature, can have no application.

(Ord. No. 7596-19, § 1)

Sec. 10-13. Motorized skateboards or scooters prohibited on certain streets.

It shall be unlawful for any person to operate a motorized skateboard or scooter upon any street with a speed limit in excess of twenty-five (25) miles per hour.

(Ord. No. 7596-19, § 1)

Sec. 10-14. Warning devices.

Every bicycle or moped or motorized skateboard or scooter or electric power-assisted bicycle equipped with handlebars shall also be equipped with a horn or bell in good working order, capable of emitting sound audible, under normal conditions, for a distance of not less than one hundred (100) feet. It shall be unlawful for any person to equip a bicycle or a moped or a motorized skateboard or scooter or an electric power-assisted bicycle with a siren or whistle or to use any bell or horn otherwise than as a reasonable warning to others.

(Ord. No. 7596-19, § 1)

Sec. 10-15. Maximum height of handlebars.

No person shall operate a bicycle or motorized skateboard or scooter within the corporate limits of the city equipped with handlebars so raised that the operator must elevate his or her hands above the shoulder level in order to grasp the normal steering grip area. It shall be unlawful to operate a moped or electric power-assisted bicycle with handlebars or other type of steering mechanisms that are more than fifteen (15) inches above the level of the vehicle's seat.

(Ord. No. 7596-19, § 1)

Sec. 10-16. Operation without consent of owner.

It shall be unlawful for any person to use or operate any bicycle or moped or motorized skateboard or scooter or electric power-assisted bicycle without the consent of the owner.

(Ord. No. 7596-19, § 1)

Sec. 10-17. Operation while under influence of liquor or drugs or while physically or mentally unfit.

No person shall operate a bicycle or moped or motorized skateboard or scooter or electric power-assisted bicycle while under the influence of intoxicating liquor or beverages or drugs or while physically or mentally unfit to operate such vehicle.

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(Ord. No. 7596-19, § 1)

Sec. 10-18. Hands on handlebars and feet on pedals; acrobatic riding.

With the exception of making a turn signal, no rider of a bicycle or moped or motorized skateboard or scooter or electric power-assisted bicycle shall remove both hands from the handlebars or feet from the pedals or from the flat platform, or practice any acrobatic tricks or fancy riding on any roadway in the city.

(Ord. No. 7596-19, § 1)

Sec. 10-19. Required use of paths.

Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.

(Ord. No. 7596-19, § 1)

Sec. 10-20. Riding on sidewalks or pedestrian paths in parks.

- (a) No person over the age of fourteen (14) years shall ride a bicycle upon any sidewalk in the city unless such sidewalk is at least eight (8) feet in width and designated for use as a bicycle route, path or way. No person shall ride or operate a motorized skateboard or scooter, or an electric power-assisted bicycle or a moped on a sidewalk in the city.
- (b) Whenever any person shall ride a bicycle on the sidewalk, or ride on a roadway a bicycle, moped, motorized skateboard or scooter or electric power-assisted bicycle, whether paved or unpaved, such person shall yield the right-of-way to any pedestrian, and shall give an audible signal before overtaking and passing any pedestrian, and shall ride in single file.
- (c) No bicycle or moped or motorized skateboard or scooter or electric power-assisted bicycle shall be operated upon any pedestrian path in public parks, except that Newport News Police Officers and Park Rangers, and any other person specifically exempted in writing by the Director of the Newport News Department of Parks and Recreation, shall be exempt from the prohibition contained in this subsection.
- (d) Violations of this section shall be punishable by a civil penalty of fifty dollars (\$50.00).

(Ord. No. 7596-19, § 1)

Sec. 10-21. Racing; endurance contests.

- (a) Subject to the exception contained in subsection (b), no person shall operate a bicycle or moped or motorized skateboard or scooter or electric power-assisted bicycle in any race or speed or endurance contest with any other vehicle or bicycle or moped or motorized skateboard or scooter or electric power-assisted bicycle.
- (b) The director of engineering, or his designee, may authorize the issuance of a permit for bicycle races conducted or sponsored by athletic, civic, or charitable organizations, upon such conditions as set forth in subsection (c). Any person, group, or organization desiring to conduct a race shall make written application to the director of engineering, or his designee. If the application is denied, the applicant shall be apprised in writing of the reason therefor.

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- (c) Permit conditions. The director of engineering, or his designee, may condition the issuance of a permit by imposing such requirements or conditions as are necessary to protect the safety and rights of persons and property and for the control of traffic. In order to accommodate the rights of abutting land owners and tenants, and the needs of the public to use the streets and sidewalks, and to protect the safety of the race participants, the conditions may include but are not limited to reasonable adjustments in the date, time, route and location of the race, designation of assembly and dispersal locations; accommodations for pedestrian and vehicular traffic using the streets and sidewalks; limitations on the length and duration of the race; and the use of monitors sufficient to control the orderly conduct of the race in conformity with the permit.
 - (d) Insurance. The applicant shall provide evidence of general liability insurance for a race in amounts of one million dollars (\$1,000,000.00) for combined single limit insurance. Such insurance policy shall include an endorsement naming the City of Newport News as an "additional insured."
 - (e) Criteria for denial of permit. The director of engineering, or his designee, may deny an application, applying the following criteria and finding that:
 - (1) Due to the time, duration, route, condition of route, and size of the race, the proposed race presents an unreasonable safety or health risk to participants, spectators, or the public;
 - (2) The diversion of public safety resources to support the race are not reasonably available;
 - (3) The conduct of the race will unduly interfere with the proper fire and police protection of, and ambulance service to, all or part of the city;
 - (4) The race will cause irreconcilable interference with a competing event, or other activities;
 - (5) Other race permit requirements have not been met;
 - (6) The application contains a material falsehood or misrepresentation; or
 - (7) There is insufficient time for the city to process the application and make the necessary arrangements prior to the race.
 - (f) It shall be unlawful to violate any requirement or condition of the permit.
 - (g) The permit shall be revocable at any time by the director of engineering, or his designee.

(Ord. No. 7596-19, § 1)

Sec. 10-22. Parking; attaching bicycle or moped or motorized skateboard or scooter or electric power-assisted bicycle to fire hydrant.

- (a) A person shall park a bicycle or moped or motorized skateboard or scooter or electric power-assisted bicycle in such a manner as to afford the least obstruction to pedestrian traffic.
- (b) It shall be unlawful for any person to attach, tie, chain or secure a bicycle or moped or motorized skateboard or scooter or electric power-assisted bicycle to a fire hydrant in any manner whatsoever.

(Ord. No. 7596-19, § 1)

Sec. 10-23. Helmets required.

- (a) **Every person fourteen (14) years of age or younger shall wear a protective helmet** that at least meets the consumer product safety commission standard whenever riding or being carried on a bicycle, electric personal assistive mobility device, or class one or class two electric power-assisted bicycle on any roadway,

sidewalk or bicycle path. Violation of this subsection shall be punishable by a fine of twenty-five dollars (\$25.00). However such fine shall be suspended (i) for first-time violators and (ii) for any violator who, subsequent to the violation but prior to imposition of the fine, purchases a helmet of the type required by this subsection.

- (b) Every person fourteen (14) years or younger shall wear a properly fitted and fastened bicycle helmet that meets the U.S. Consumer Product Safety Commission or the American Society for Testing and Materials International whenever riding or being carried on a class three electric power-assisted bicycle on any roadway, sidewalk, or bicycle path. Violation of this subsection shall be punishable by a fine of twenty-five dollars (\$25.00). However such fine shall be suspended (i) or first time violators and (ii) for any violator who, subsequent to the violation but prior to imposition of the fine, purchases a helmet of the type required by this subsection.

(Ord. No. 7596-19, § 1; Ord. No. 7642-20, § 1)

Sec. 10-24. Certain safety equipment required for moped operators and passengers; identification required.

- (a) Every person operating a moped on a roadway shall wear a face shield, safety glasses, or goggles of a type approved by the Superintendent of the Department of State Police of the Commonwealth of Virginia, or shall have his moped equipped with safety glass or a windshield at all times while operating such moped.
- (b) All operators and passengers of mopeds shall wear protective helmets of a type approved by the Superintendent of the Department of State Police of the Commonwealth at all times while operating or riding such moped.
- (c) Pursuant to Section 46.2-915.2 of the Code of Virginia, 1950, as amended, violation of this section shall not constitute negligence, be considered in mitigation of damages of whatever nature, be admissible in evidence or be the subject of comment by counsel in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a moped or motor vehicle, nor shall anything in this section change any existing law, rule, or procedure pertaining to any such civil action.
- (d) Every person operating a moped on a roadway shall carry a government-issued form of photo identification that includes his name, address, and date of birth.
- (e) Any person who knowingly violates this section shall be guilty of a traffic infraction and subject to a fine of fifty dollars (\$50.00).

(Ord. No. 7596-19, § 1)

Secs. 10-25—10-29. Reserved.

ARTICLE III. SHARED MOBILITY DEVICES

Sec. 10-30. Definitions.

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

Applicant means any person who files an application in accordance with this chapter.

Application means an initial application, any renewal application, any reinstatement application filed in accordance with this chapter.

Licensee means any person who holds a license issued in accordance with this chapter.

Shared mobility device means a motorized skateboard or scooter, bicycle, or electric power-assisted bicycle which is offered by the owner thereof for hire to the public.

Shared-use path means a bikeway that is physically separated from motorized vehicular traffic by an open space or barrier and is located either within the highway right-of-way or within a separate right-of-way. Shared-use paths may also be used by pedestrians, skaters, users of wheel chairs or wheel chair conveyances, joggers, and other nonmotorized users and electric personal delivery devices.

Trip means each period of exclusive use of a shared mobility device by an individual.

(Ord. No. 7596-19, § 1)

Sec. 10-31. Administration of license program for shared mobility devices.

The city manager, or designee shall administer the license process for which this chapter provides. The city manager, or designee shall issue, enforce, and, from time to time, modify rules, regulations, or guidelines consistent with this chapter and other applicable law to carry out the requirements of this chapter. Such rules, regulations, and guidelines, and any and all modifications thereto, must be approved as to form by the city attorney or the designee thereof prior to issuance.

(Ord. No. 7596-19, § 1)

Sec. 10-32. License requirement.

No person shall operate or park a shared mobility device within the city unless such person has obtained or such shared mobility device is covered by a license in accordance with this article. Any shared mobility device operated or parked without a license issued in accordance with this article may be removed by the city and stored at the expense of the owner. Before obtaining possession of their shared mobility device(s), the owner shall pay to the city all costs incidental to its removal or storage.

(Ord. No. 7596-19, § 1)

Sec. 10-33. Application; issuance and denial of licenses.

- (a) Any person may file an application on forms provided by the city manager to obtain a license or, as applicable, a renewal license, or a reinstated license for the operation or parking of one (1) or more shared mobility devices within the city. The city manager, or designee shall review all applications according to the provisions of this division and the rules, regulations, and guidelines issued in accordance with section 10-31.
- (b) Licenses issued in accordance with this chapter shall be subject to the following general terms and conditions:
 - (1) The applicant shall demonstrate on such applicant's application that the applicant has met all the requirements.
 - (2) Each application to obtain, renew, or reinstate a license shall be accompanied by payment of an application fee of one thousand two hundred fifty dollars (\$1,250.00) and the annual fee of ten dollars (\$10.00) per shared mobility device covered by the license.

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- (3) Each application to obtain, renew, or reinstate a license shall, in accordance with the rules, regulations, and guidelines issued in accordance with section 10-31, be accompanied by a certificate of insurance demonstrating evidence of commercial general liability insurance coverage of at least three million dollars (\$3,000,000.00) for each occurrence and at least five million dollars (\$5,000,000.00) in the aggregate, listing the city as an additional insured, and indicated that the city will receive at least ten (10) days notice of cancellation or material modification of the policy.
 - (4) Each license issued by the city manager, or designee shall state the following:
 - a. The name of the licensee and the name, address, and phone number of the authorized representative of the licensee, if applicable.
 - b. The dates and time period during which the license shall be effective.
 - c. Specifications concerning the parking of the shared mobility device on city sidewalks, including, but not limited to, a requirement that the shared mobility device shall be parked in an upright position on city sidewalks so as not to create a hazard for or interfere with public use and travel.
 - d. A prohibition against the parking of the shared mobility device on shared-use paths, and in parks and athletic fields owned by the city.
 - e. A prohibition against the parking or leaning of the shared mobility device or located on city-owned amenities or structures.
 - f. A requirement that the licensee ensure that each user of shared mobility devices covered by a license issued in accordance with this chapter have a valid driver's license to the extent that a driver's license is required by law for operation of a shared mobility device.
 - g. Any other information, as permitted by law, that the city manager deems necessary for the administration of the license.
 - (5) Licenses may be issued and renewed annually for a period of twelve (12) months from the date of any such issuance, subject to the requirements of this chapter and the rules, regulations, and guidelines issued in accordance with section 10-31. The city manager shall not issue any more than one (1) license to the same person during any part of a twelve-month period covered by a license issued in accordance with this chapter.
 - (6) The licensee shall pay to the city a fee of .05 cents per trip.
 - (7) Licenses shall incorporate by reference the provisions of this chapter and the rules, regulations, and guidelines issued in accordance with section 10-31.
 - (8) The licensee is limited to two hundred (200) shared mobility devices employed in the city per licensee, except as the limit is increased pursuant to section 10-34.
 - (9) The licensee shall execute a release, waiver of liability, and indemnification agreement prior to the issuance of any license. This subdivision (9) shall not apply to governmental organizations.
 - (10) Upon revocation or expiration of a license, the licensee shall be responsible for ensuring that any and all shared mobility devices to which a license relates are removed permanently from every sidewalk within ten (10) days unless another license is obtained or the shared mobility devices are otherwise stored in the manner provided in the rules, regulations, and guidelines issued in accordance with section 10-31.
 - (11) The city manager may deny a license to any applicant upon determining that the applicant has not complied with a requirement of this chapter or the rules, regulations, and guidelines issued in accordance with section 10-31.

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- (12) The city manager may deny a license to any applicant upon determining that the applicant has not complied with any applicable federal, state, or local law or that applicant is delinquent on any tax, fee, fine, or other obligation to the city.
 - (13) A license shall only be issued to an applicant whose shared mobility devices to be covered by the license are equipped with a speed controller limiting the maximum motor-assisted speed of such devices to no more than fifteen (15) miles per hour and that are equipped with global positioning system (gps) technology, and geo-fencing capability.
 - (14) Licenses issued in accordance with this division shall not be transferred or assigned.
 - (15) Licenses issued in accordance with this chapter may be modified by the city manager or designee upon request of the licensee or as the city manager or designee determines may be necessary for the preservation of the safety, health, and welfare of the general public.

(Ord. No. 7596-19, § 1)

Sec. 10-34. Increasing the number of permitted shared mobility devices.

- (a) Once per year at the time of seeking renewal of a license issued in accordance with this chapter and upon payment of the annual fee for each additional shared mobility device permitted by this section, any licensee may submit a written request to the city manager or designee to increase the maximum number of shared mobility devices covered by such licensee's license issued in accordance with this chapter. Upon receipt of such request and payment of the fee referenced above, the city manager or designee shall consider such request in accordance with the requirements of this section. Within thirty (30) days from the date of the receipt of such request, the city manager or designee shall increase the maximum number of shared mobility devices covered by such licensee's license by an amount equal to twenty-five (25) percent of the maximum number of shared mobility devices covered by such license on the date of issuance of such license if the licensee, along with such written request, provides the city manager or designee with such evidence as the city manager or designee may lawfully require demonstrating that the following conditions have been met:
 - (1) The shared mobility devices covered by a license issued in accordance with this division have been operated on an average of three (3) or more trips per day, which trips may begin or end in the city, either or both, for each day of the previous annual period covered by the license.
 - (2) The licensee has complied with all of the requirements of (i) the license for which an increase in the maximum number of shared mobility devices has been requested, (ii) this chapter, and (iii) all applicable state, federal, and local laws.
- (b) If a licensee is granted an increase of shared mobility devices allowed pursuant to this section, the increased limit shall continue to apply if the licensee renews their license.
- (c) If a licensee is granted an increase of shared mobility devices allowed pursuant to this section, and the licensee's license is revoked, the limit for the licensee shall revert to two hundred (200) shared mobility devices.

(Ord. No. 7596-19, § 1)

Sec. 10-35. Revocation of license; reinstatement; unlawful actions.

- (a) The city manager or designee shall have the authority to revoke, which revocation shall not be appealable, a license issued in accordance with this chapter if the city manager or designee determines that any of the following have occurred:

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- (1) The licensee has not complied with the requirements of the licensee's license, this chapter or the rules, regulations, or guidelines issued in accordance with section 10-31, other federal, state, or local law, or that the licensee is delinquent on any tax, fee, fine, or other obligation to the city.
 - (2) The licensee has misrepresented or provided false information in an application.
 - (3) The licensee has parked, or suffered to be parked, a shared mobility device in such manner as to create a public nuisance or to constitute a hazard to the public health, safety, or welfare.
 - (4) The licensee has any unsatisfied judgments arising out of the licensee's operations within the city.
 - (5) The licensee has transferred or assigned such licensee's license.
- (b) An applicant whose license has been revoked pursuant to this section may submit a reinstatement application to reinstate such license. If such reinstatement application is submitted before the expiration of the license period covered by the license that was revoked, such application shall be accompanied by the reinstatement fee of six hundred and twenty-five dollars (\$625.00) and the reinstated license shall cover only the period remaining on the revoked license. If such application submitted on the date of or after the expiration of the license period covered by the license that was revoked, such application shall be accompanied by the application fee and annual fee set forth in section 10-33. Any licensee who has a license revoked during any part of a period covered by a previously issued license that has been revoked shall not be eligible to file a reinstatement application for a reinstated license until after the expiration of the period covered by the license that was previously revoked.
- (c) It shall be unlawful for any licensee whose license has been revoked, or any employee or agent thereof, to park, or suffered to be parked, on any sidewalk a shared mobility device owned or controlled by that licensee or to commit, or suffer to be committed, any act that is in violation of this chapter or any applicable law or regulation. The city manager or designee shall provide the licensee with written notice of any costs incurred by the city for removing from sidewalks any shared mobility device owned by the licensee whose license has been revoked, which costs the licensee shall reimburse the city within thirty (30) days from the written notice.

(Ord. No. 7596-19, § 1)

Sec. 10-36. Permission to operate and park granted.

A license issued pursuant to this chapter shall permit a person authorized by the licensee to operate on city roadways and park on city sidewalks, for the period specified in the license in accordance with the provisions of this chapter and the rules, regulations, and guidelines issued pursuant to section 10-31.

(Ord. No. 7596-19, § 1)

Sec. 10-37. Safety requirements.

In order to ensure that licenses issued in accordance with this chapter for the parking of shared mobility devices on the city's sidewalks and operation within the city do not create hazards to the safety, health, and welfare of the city, the city hereby requires that all licensees follow the following safety requirements:

- (1) Licensees shall perform regular maintenance on the shared mobility devices covered by a license issued in accordance with this chapter to ensure that each such device is in safe working conditions.
- (2) Licensees shall ensure that all shared mobility devices covered by a license issued in accordance with this chapter are equipped with brakes, reflectors, a bell, and front and rear lighting.

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- (3) Licensees shall ensure that all shared mobility devices covered by a license issued in accordance with this chapter are only operated from 5:00 a.m. to 9:00 p.m.
 - (4) Licensees shall ensure that all shared mobility devices covered by a license issued in accordance with this chapter are parked in an upright position on city sidewalks so as not to create a hazard for or interfere with public use and travel.
 - (5) Licensees shall ensure that all shared mobility devices covered by a license issued in accordance with this chapter are parked in such a manner that does not block or otherwise interfere with access to city sidewalk access ramps.
 - (6) Licensees shall ensure that all shared mobility devices covered by a license issued in accordance with this chapter are not parked on shared-use paths, and in parks and athletic fields owned by the city.
 - (7) Licensees shall ensure that all shared mobility devices covered by a license issued in accordance with this chapter are not parked or leaned against city-owned amenities and structures.

(Ord. No. 7596-19, § 1)

Sec. 10-38. City's authority to remove and/or store shared mobility devices and charge costs.

The city may remove, take possession of, and store any shared mobility device covered by a license issued in accordance with this chapter that is operated or parked in a way that violates the provisions of this chapter. The city shall charge the owner of such shared mobility device with the costs incidental to the removal and storage of the shared mobility device. The owner must pay to the city all associated costs before taking possession of the shared mobility device.

(Ord. No. 7596-19, § 1)

Sec. 10-39. Number of riders on shared mobility device limited.

No more than one (1) person shall operate or ride on a shared mobility device per trip.

(Ord. No. 7596-19, § 1)

Sec. 10-40. Reporting requirements.

Upon the request of the city manager, or designee each licensee shall provide to the city manager or designee at such intervals, no more frequently than once a month, from the date of issuance of the license as may be determined by the city manager, or designee reports demonstrating the licensee's compliance with the requirements of this chapter, the rules, regulations, and guidelines issued in accordance with section 10-31, and any other applicable federal, state, or local laws. Each licensee shall also provide to the city manager, or designee as may be requested by the city manager, or designee reports containing trip origination and destination information and such other information as may be necessary for the city manager, or designee to determine the allocation of city resources to carry out the requirements of this chapter.

(Ord. No. 7596-19, § 1)

Secs. 10-41—10-45. Reserved.

(Supp. No. 67)

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Sec. 13-4. Definitions.

The following definitions shall be applicable to the provisions of this chapter:

- (a) *Board* means the board of appeals as provided in this chapter.
- (b) *Boarding up* means covering entirely all window, door and similar openings with a minimum of three-eighths ($\frac{3}{8}$) inch thick exterior plywood, fitted into said openings, and secured by nails, screws or other approved devices. All coverings shall be provided with a protective coat of paint or other approved weather resistant material which is consistent with the exterior color scheme of the building.
- (c) *Building code* means the Virginia Uniform Statewide Building Code, as amended.
- (d) *City Code* means the Code of Ordinances of the City of Newport News, Virginia.
- (e) *Codes compliance administrator* means the director of the department of codes compliance.
- (f) *Corner lot* means a lot abutting upon two (2) or more streets at their intersection, the shortest side fronting upon a street shall be considered the front of the lot, and the longest side fronting upon a street shall be considered the side of the lot.
- (g) *Decorative fence* means a fence that is designed as an ornament, embellishment or decoration to the property although it may incidentally provide some measure of privacy or security, such as split rail and wrought iron fences.
- (h) *Director* means the director of the department of codes compliance as well as city employees, agents and other assignees who assist the director to in performing the duties and authority assigned and delegated to the department of codes compliance.
- (i) *Fence* means a physical structure commonly attached to the ground or a building which is made of wood, rock, metal, or other natural or synthetic material, and which is intended to delineate a boundary line, property line, access line or other desired demarcation, or to provide a decorative effect to the property.
- (j) *Front yard* means open land area extending across the full width of a lot and lying between the front lot line and the principle structure(s).
- (k) *Inoperative motor vehicle* means any motor vehicle which is not in operating condition; or that does not display valid license plates; or which does not display an inspection decal which is valid or does display an inspection decal that has been expired for more than sixty (60) days.
- (l) *Inoperative trailer or semitrailer* means any trailer or semitrailer which is not in operating condition; or that does not display valid license plates; or which does not display an inspection decal which is valid or does display an inspection decal that has been expired for more than sixty (60) days.
- (m) *Motor vehicle* means every vehicle which is self-propelled or designed for self-propulsion except as otherwise provided in this chapter. Any structure designed, used, or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office, or commercial space shall be considered a part of a motor vehicle. For the purposes of this title, any device herein defined as a bicycle or a moped shall be deemed not to be a motor vehicle.
- (n) *Owner* means the holder of title in fee simple; and/or any person, group of persons, company, association or corporation in whose name tax bills on the property are submitted. It shall also mean any person who alone or jointly or severally with others:
 - (1) Shall have legal title to any building or building unit with or without accompanying actual possession thereof; and

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- (2) Shall have charge, care or control of any building or building unit as owner, executor, executrix, administrator, trustee, guardian of the estate of the owners, mortgagee or vendee in possession, assignee of rents, lessee, or other person, firm or corporation in control of a building; or their duly authorized agents.

Any such person, group of persons, company, association or corporation or entity shall have joint and several responsibility from compliance with the provisions of this article.

- (o) *Person* means, without limitation, person, firm, partnership, corporation, company, limited liability company, partnership, or entity and any other term that denotes a human being or legal entity.
- (p) *Person responsible for real property* means an owner, tenant, lessee, or any other person exercising dominion, management or control of real property in Newport News, Virginia.
- (q) *Rear yard* means open land area extending across the full width of the lot and lying between the rear lot line and the principal structure.
- (r) *Required yard* means the open land area between the minimum setback lines required in a zoning district and the lot lines.
- (s) *Secure against unauthorized entry* means secured in such a manner as to exclude unauthorized entry by humans, animals or birds.
- (t) *Security fence* means a fence that is primarily designed and is intended to provide privacy or security regardless of its decorative effect. Such security fences normally cause a parcel of land to be so enclosed as to result in the prohibition of free ingress and egress, or the shielding of a parcel from view from outside the security fence, and include but are not limited to barbed wire fences, metal fences generally known as "chain link fences" and wooden fences generally known as "stockade fences."
- (u) *Semitrailer* means every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests on or is carried by another vehicle.
- (v) *Side yard* means open land area between the side lot line and the principal structure(s) and extending from the front yard to the rear yard.
- (w) *Street* shall be deemed to include private as well as public rights-of-way.
- (x) *Trailer* means every vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle, including mobile homes.
- (y) *Vacant or unoccupied building* means any building or structure which is not occupied, used or inhabited on a regular and continuing basis by some person with a valid claim of right to possession or a fee simple title. The intrusion of trespassers or squatters into such buildings on any basis shall not render such building occupied or nonvacant within the meaning of this chapter.
- (z) *Vehicle* means every device in, on or by which any person or property is or may be transported or drawn on a highway, including, but not limited to, motor vehicles, trailers and semitrailers, except devices moved by human power or used exclusively on stationary rails or tracks. For the purposes of this chapter, bicycles, mopeds, motorized scooters and electric power-assisted bicycles shall not be considered vehicles.
- (aa) *Weeds* means any grass or plants out of place, wild or uncontrolled growth or vegetation of every kind on any land, alley, sidewalk or street in the city, whether growing or severed from the land, of such height or of such profusion as to constitute or which is likely to constitute a harborage for rats, a place where mosquitoes or other harmful pests or insect infestations may breed or water may stagnate or which conceals or is likely to conceal deposits of garbage, trash or debris.

Chapter 16 FIRE PREVENTION AND PROTECTION²

ARTICLE I. IN GENERAL

Sec. 16-1. Fire department generally.

- (a) There is hereby established a fire department, which shall consist of the fire chief, to be appointed by the city manager, and such other officers and employees organized into such bureaus, divisions and other units as may be provided by ordinance or by orders of the fire chief consistent therewith.
- (b) The fire chief shall be the head of the fire department and shall, under the supervision of the city manager, have general management and control of the several bureaus, divisions and other units of the department. The city manager shall, through the fire chief, promulgate all orders, rules and regulations for the government of the fire department.
- (c) In case of the disability of the fire chief to perform his duties, by reason of sickness, absence from the city or other cause, the city manager shall designate one (1) of the officers of the fire department to act as fire chief.
- (d) The officers and members of the fire department shall be responsible to protect life and property from fire or other emergencies and it shall be their duty to use their best endeavors to prevent fire by enforcement of the fire prevention code and other city ordinances pertaining to open burning, fireworks, obstructing fire hydrants and fire lanes and similar ordinances.
- (e) No member of the fire department shall receive any fee or other compensation for any services rendered in the performance of duties, other than the salary paid by the city.

(Ord. No. 6745-10, § 1)

Editor's note(s)—Ord. No. 6745-10 shall be in effect on and after January 1, 2011.

Charter reference(s)—Authority of council to create departments, § 4.02(B).

Cross reference(s)—Membership of firefighters in employees' retirement fund, § 31-30.

²Cross reference(s)—Fire prevention and protection regulations for automobile graveyards, §§ 8-13—8-15; attaching bicycles to fire hydrants, § 10-35; building regulations, Ch. 13; fire prevention in mobile home parks generally, § 25-42; storage of fuel in mobile home parks, § 25-43; calling firefighting apparatus without cause or malicious activation of fire alarm in public building, § 28-7; making fires in parks or squares or on beaches, § 29-37; discharge of flammables or explosives into sewerage system, § 33-50(b); smoking, Ch. 33.1; sidewalk vaults not to interfere with fire hydrants, § 38-126; smoking on buses, § 41-18; application for connection of fire sprinklers to city's water system, § 42-2; water charges for fire hydrants and fire sprinklers, §§ 42-32, 42-33; protective devices for fire service systems connected to waterworks, § 42-57; installation of fire hydrants in subdivisions, App. B, § 9-06.

State law reference(s)—Fire protection, Code of Virginia, title 27; Virginia Statewide Fire Prevention Code Act, Code of Virginia, § 27-94 et seq.

Sec. 16-2. Physical examination of firefighters.

Every firefighter shall, prior to entering employment with the fire department, undergo a physical examination in accordance with city policy.

(Ord. No. 1788; Code 1961, § 2-87; Ord. No. 6745-10, § 1)

Editor's note(s)—Ord. No. 6745-10 shall be in effect on and after January 1, 2011.

Sec. 16-3. Authority of chief or other officer in charge when answering alarm or operating at an emergency incident; penalty for refusal to obey orders.

While any unit of the fire department is in the process of answering an alarm or operating at an emergency incident where there is imminent danger or the actual occurrence of fire or explosion or the uncontrolled release of hazardous materials which threaten life or property and returning to the station, the chief or other officer in charge at that time shall have the authority to:

- (1) Maintain order at such emergency incident or its vicinity;
- (2) Direct the actions of the firefighters at the incident;
- (3) Notwithstanding the provision of Section 46.2-890, Code of Virginia, 1950, as amended, keep bystanders or other persons at a safe distance from the incident and emergency equipment;
- (4) Facilitate the speedy movement and operation of emergency equipment and firefighters;
- (5) Cause an investigation to be made into the origin and cause of the incident; and
- (6) Until the arrival of a police officer, direct and control traffic in person or by deputy and facilitate the movement of traffic.

The fire chief or other officer in charge shall display his firefighter's badge, or other proper means of identification. Notwithstanding any other provision of law, this authority shall extend to the activation of traffic-control signals designed to facilitate the safe egress and ingress of emergency equipment at a fire station. Any person or persons refusing to obey the orders of the fire chief, or his deputies or other officer in charge at that time shall be guilty of a Class 4 misdemeanor. The chief or other officer in charge shall have the power to make arrests for violations of the provisions of this section. The authority granted under the provisions of this section may not be exercised to inhibit or obstruct members of law enforcement agencies or rescue squads from performing their normal duties when operating at such emergency incident, nor to conflict with or diminish the lawful authority, duties and responsibilities of forest wardens, including, but not limited to, the provisions of Chapter II, Article 2, (Section 10.1-1104, et seq.) of Title 10.1, Code of Virginia, 1950, as amended. Personnel from the news media, such as the press, radio and television, when gathering the news, may enter at their own risk into the incident area only when the officer in charge has deemed the area safe and only into those areas of the incident that do not, in the opinion of the officer in charge, interfere with the fire department or rescue workers dealing with such emergencies, in which case the chief or other officer in charge may order such person from the scene of the emergency incident.

(Ord. No. 173, § 14; Code 1961, § 25-30; Ord. No. 4053-90, § 1)

Sec. 16-4. Reserved.

Editor's note(s)—Ord. No. 6385-07, § 2, repealed § 16-4, which pertained to emergency medical service charge and collection fee. See also the Code Comparative Table.

Sec. 16-5. Designation of fire lanes.

The fire chief shall designate fire lanes for all parking lots and parking garages which are open to the public and which are designed to accommodate fifty (50), or more, vehicles. All fire lanes shall conform to the statewide fire prevention code. In designating fire lanes, the fire chief shall take into consideration the necessity for the efficient and effective use of fire apparatus, the nature and location of the property and structures to be protected, and the location of fire hydrants and other sources of water. The designated fire lanes shall be indicated by signs and by markings on the pavement or curb so as to clearly delineate them.

(Ord. No. 4133-90)

Sec. 16-6. Fire protection service fee.

There is hereby imposed on all property located within the City of Newport News a fire protection service fee which shall be based upon the size of each water meter serving the property in accordance with the following schedule:

Meter Size (inches)	Monthly Fee
¾	\$ 1.35
¾	1.35
1	2.05
1½	2.70
2	4.05
3	5.40
4	5.40
6	6.80
8	6.80
10	6.80

The fee imposed hereby shall be added to the service fee set forth in section 42-33 of this Code, but may be charged with the service fee as a single amount.

(Ord. No. 4211-91, § 1; Ord. No. 6234-06; Ord. No. 6586-09, § 1; Ord. No. 7468-18, § 1)

Note(s)—Ord. No. 6586-09, § 2, provides for an effective date of July 1, 2009.

Secs. 16-7—16-13. Reserved.

ARTICLE II. FIRE PREVENTION³

³Editor's note(s)—Ord. No. 4053-90, § 1, adopted June 12, 1990, amended Art. II to read as herein set out in §§ 16-14—16-22. Prior to inclusion of said ordinance, Art. II, §§ 16-14—16-21, pertained to the fire prevention code and derived from Ord. No. 2332, §§ 17-1—17-6; Ord. No. 2880-82; Ord. No. 3002-83 and Ord. No. 3354-85.

Sec. 16-14. Enforcement; fire marshal's office.

- (a) The Virginia Statewide Fire Prevention Code shall be enforced by the fire marshal's office, which is hereby established and which shall be operated under the supervision of the fire chief.
- (b) The fire chief shall designate the officer in command of the fire marshal's office, who shall be the fire marshal, and may also detail such members of the fire department to the bureau as shall, from time-to-time, be necessary. The fire marshal, the deputy fire marshals, the assistant fire marshals and the arson investigators shall have all of the authority granted to local fire marshals by state law and shall have the same police powers as a sheriff, police officer or law enforcement officer.
- (c) The Virginia Statewide Fire Prevention Code, and supplements thereto, are hereby adopted by reference, and the same are incorporated herein as fully as if set out at length.

(Ord. No. 4053-90, § 1; Ord. No. 6341-07; Ord. No. 6745-10, § 1)

Editor's note(s)—Ord. No. 6745-10 shall be in effect on and after January 1, 2011.

Sec. 16-15. Fire code inspection fee.

- (a) There is hereby established an annual fire code inspection fee which shall be paid to the city pursuant to the Virginia Statewide Fire Prevention Code. The fee shall be charged to the owner for each premises that is subject to maintenance inspection under the Statewide Fire Prevention Code based upon the following schedule:

Building Space (sq. ft.)	Amount
0—999	\$25.00
1,000—5,000	75.00
5,001—10,000	100.00
10,001—20,000	125.00
20,001—50,000	225.00
50,001—100,000	275.00
100,001—200,000	325.00
>200,000	375.00

The fee hereby established shall not be charged to the United States of America, the Commonwealth of Virginia, its political subdivisions, or the City of Newport News.

- (b) The fee established by this provision shall be due and payable from the date that a statement of account reflecting the charge is mailed by the city. The charges established by this provision shall be maintained in an open account in the name of the person or persons responsible for payment of this fee. Any account which is more than thirty (30) days delinquent may be forwarded to the city attorney for collection. In the event that the account is forwarded to the city attorney for collection, the person in whose name the account is maintained shall be liable to the city, in addition to the fire code inspection fee, for a collection fee in the amount of thirty-five dollars (\$35.00), or twenty-five (25) percent of the outstanding balance on the account, whichever is greater, said collection fee representing administrative costs and attorney's fees to the city for collecting said debt. Tender of payment and acceptance of the amount originally due the city under subsection (a) above shall not constitute satisfaction of the account unless and until the collection fee is paid.

(Ord. No. 4053-90, § 1; Ord. No. 4205-91, § 1; Ord. No. 4463-93, § 1; Ord. No. 4642-94; Ord. No. 5498-00; Ord. No. 6346-07, § 1)

Sec. 16-15.1. Reserved.

Editor's note(s)—Ord. No. 4463-93, § 1, adopted May 25, 1993, repealed § 16-15.1, which pertained to annual inspection of fire protection systems, fee. See the Code Comparative Table.

Sec. 16-16. Local board of appeals.

The local board of appeals for hearing appeals from the decisions of the fire marshal made under the Virginia Statewide Fire Prevention Code shall be the board of appeals, as appointed under the provisions of Article III, Chapter 13, of this Code.

(Ord. No. 4053-90, § 1)

Sec. 16-17. Appeal.

An appeal to the local board of appeals shall be made within seven (7) days of the date of the notice or order of the fire marshal and shall be accompanied by a filing fee as set forth in section 13-65 of the City Code.

(Ord. No. 4053-90, § 1; Ord. No. 6745-10, § 1)

Editor's note(s)—Ord. No. 6745-10 shall be in effect on and after January 1, 2011.

Sec. 16-18. Self-service gasoline dispensers.

If the dispensing of Class 1 flammable liquids at a service station available and open to the public is to be done by a person other than the service station attendant, the nozzle shall be either an approved automatic-closing type without a hold-open latch, or an automatic-closing type nozzle with a hold-open clip that complies with NFPA-30A.

(Ord. No. 4053-90, § 1; Ord. No. 5316-99)

Sec. 16-19. Adoption of NFPA Standards.

There is hereby adopted, by reference, the National Fire Prevention Association Standard 1123, Code for Fireworks Display, and Standard 1124, Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles.

(Ord. No. 4053-90, § 1; Ord. No. 6745-10, § 1)

Editor's note(s)—Ord. No. 6745-10 shall be in effect on and after January 1, 2011.

Sec. 16-20. Fireworks permit required; permit fee.

- (a) It shall be unlawful for any person to own, sell, possess, store, display, use, explode or manufacture pinwheels, sparklers, fountains or Pharaoh's serpents without a permit issued by the fire marshal. A fee of two hundred fifty dollars (\$250.00) shall be paid before such permit may be issued.

(b) It shall be unlawful for any person to possess, display or explode any other fireworks without a permit issued by the fire marshal.

(c) For purposes of this section, fireworks do not include pyrotechnic bird scaring devices.

(Ord. No. 4053-90, § 1; Ord. No. 4206-91, § 1; Ord. No. 6290-06; Ord. No. 6745-10, § 1)

Editor's note(s)—Ord. No. 6745-10 shall be in effect on and after January 1, 2011.

Sec. 16-20.1. Permit fee for explosives, ammunition and blasting agents permits.

Permits required by Chapter 33, Explosives and Fireworks, of the Virginia Statewide Fire Prevention Code shall not be issued until a permit fee of two hundred fifty dollars (\$250.00) shall have been paid.

(Ord. No. 4206-91, § 1; Ord. No. 6745-10, § 1)

Editor's note(s)—Ord. No. 6745-10 shall be in effect on and after January 1, 2011.

Sec. 16-21. Insurance required.

Before the fire marshal shall issue any permit required by section 16-20 or section 16-20.1, the applicant for the permit shall submit evidence of liability insurance for the protection of persons and property from death, bodily injury and damage in an amount not less than one million dollars (\$1,000,000.00) and in a form satisfactory to the city attorney.

(Ord. No. 4053-90, § 1; Ord. No. 4206-91, § 1)

Sec. 16-22. Violations.

Any person violating any provision of this article for which no penalty is otherwise provided shall be guilty of a Class 1 misdemeanor.

(Ord. No. 4053-90, § 1)

Secs. 16-23—16-31. Reserved.

ARTICLE III. OPEN BURNING⁴

Sec. 16-32. Generally.

Subject to state law and applicable air pollution regulations, the city council may, from time-to-time, authorize open burning upon such conditions as it shall deem advisable.

(Ord. No. 2134, § 1; Code 1961, § 20-41; Ord. No. 4053-90, § 1)

⁴Editor's note(s)—Ord. No. 4053-90, § 1, adopted June 12, 1990, amended Article III (tit.) to read "Open Burning". Prior to inclusion of said ordinance the title of Art. III read, "Open Burning of Leaves".

Cross reference(s)—Open fires prohibited at automobile graveyards, § 8-14.

Sec. 16-33. Prohibited during air pollution episode or when deemed advisable by fire chief.

Open burning permitted under this article shall not be commenced and shall be immediately terminated upon declaration of an alert, warning or emergency stage of an air pollution episode, as described in part VII of the state regulations for the control and abatement of air pollution or when deemed advisable by the chief of the fire department, or his designated representative, to prevent a hazard to or an unreasonable burden upon public health or welfare.

(Ord. No. 2134, § 1; Code 1961, § 20-42)

Cross reference(s)—Air pollution control, Ch. 4.

Sec. 16-34. Fee for open burning permits; reinstatement fee.

Open burning permits required by the Virginia Statewide Fire Prevention Code shall not be issued until a permit fee has been paid. The fee shall be the sum of three hundred dollars (\$300.00) plus thirty-five dollars (\$35.00) per acre or fraction thereof. Reinstatement of a revoked permit shall require the payment of a fifty dollar (\$50.00) fee.

(Ord. No. 4207-91, § 1; Ord. No. 4463-93, § 1)

Sec. 16-35. Violations of article.

Any person violating any of the provisions of this article shall be guilty of a Class 3 misdemeanor.

(Ord. No. 2134, § 1; Code 1961, § 20-44)

Secs. 16-36—16-39. Reserved.

ARTICLE IV. SMOKE ALARMS⁵

Sec. 16-40. Definitions.

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

Dwelling. Any building containing one (1) or more dwelling units.

Dwelling unit. A room or combination of rooms containing living, sleeping and kitchen facilities for one (1) family.

Hotel. Any building which is regularly used, offered for use, or intended to be used to provide overnight sleeping accommodations for one (1) or more persons for compensation.

Motel. Any building or collection of buildings which is regularly used, offered for use, or intended to be used to provide overnight sleeping accommodations for one (1) or more persons for compensation.

⁵Editor's note(s)—Ord. No. 7532-19, § 1, adopted July 1, 2019, amended the title of Art. IV to read as herein set out. The former Art. IV pertained to smoke detectors.

Owner. The holder of title in fee simple; any person, group of persons, company, association or corporation in whose name tax bills on the property are submitted; or any person who alone or jointly or severally with others:

- (1) Shall have legal title to any building unit with or without accompanying actual possession thereof; or
- (2) Shall have charge, care or control of any building or building unit as owner, executor, administrator, trustee, guardian of the estate of the owner, mortgage vendee in possession, assignee of rents, lessee or other person, firm or corporation in control of a building, or their duly authorized agent.

Any such person, group of persons, company, association or corporation shall have joint and several responsibility for compliance with the provisions of this article.

Roominghouse. A dwelling regularly used, offered for use or intended to be used to provide overnight sleeping accommodations for one (1) or more persons for compensation.

(Ord. No. 2879-82; Ord. No. 4053-90, § 1)

Sec. 16-41. Smoke alarms required.

It shall be unlawful for the owner of any building to occupy, lease or rent any dwelling or dwelling unit or to operate, use or permit any building, or part thereof, to be operated or used as a hotel, motel or rooming house until smoke alarms have been installed in it in conformance with the provisions of the Uniform Statewide Building Code. Smoke alarms installed pursuant to this section shall be installed only in conformance with the provisions of the Uniform Statewide Building Code and shall be permitted to be either battery operated or AC powered. Such installation shall not require new or additional wiring and shall be maintained in accordance with the Statewide Fire Prevention Code and subdivision C 6 of § 36-105, Part II of the Uniform Statewide Building Code.

(Ord. No. 2879-82; Ord. No. 2966-82; Ord. No. 4053-90, § 1; Ord. No. 7532-19, § 1)

Editor's note(s)—Ord. No. 7532-19, § 1, adopted July 1, 2019, amended the title of § 16-41 to read as herein set out. The former § 16-41 pertained to smoke detectors required.

Sec. 16-42. Certification.

The owner of any rented or leased dwelling unit shall provide to each tenant at the beginning of each tenancy, and at least annually thereafter, a certificate stating that all smoke alarms are present, have been inspected by the owner, his employee, or an independent contractor, and are in good working order.

(Ord. No. 2879-82; Ord. No. 4053-90, § 1; Ord. No. 7532-19, § 1)

Sec. 16-43. Maintenance.

- (a) Smoke alarms located in public or common areas of multi-family buildings shall be maintained in good working condition by the owner.
- (b) Except for smoke alarms located in public or common areas of multi-family buildings, interim testing, repair, and maintenance of smoke alarms in rented or leased dwelling units shall be the responsibility of the tenant in accordance with § 55-225.4 or § 55-248.16 of the Code of Virginia, 1950, as amended, as applicable.

(Ord. No. 2879-82; Ord. No. 4053-90, § 1; Ord. No. 7532-19, § 1)

Sec. 16-43.1. Records.

The owner of any building subject to this article shall maintain records of the inspections, repairs and certificates required by sections 16-42 and 16-43 for a period of two (2) years. Such records shall be made available to the chief of the fire department, or his designated representative, upon request.

(Ord. No. 4263-91)

Sec. 16-44. Exemptions.

Nothing herein shall require the upgrading of any smoke alarms provided by the building code in effect at the time of the last renovation of such building, for which a building permit was required, or as otherwise provided in the Uniform Statewide Building Code.

(Ord. No. 2879-82; Ord. No. 4053-90, § 1; Ord. No. 4629-94; Ord. No. 7532-19, § 1)

Sec. 16-45. Violations.

Any person violating a provision of this article shall be guilty of a Class 1 misdemeanor.

(Ord. No. 2879-82; Ord. No. 7532-19, § 1)

Secs. 16-46—16-49. Reserved.

ARTICLE V. FIRE ALARM SYSTEMS

Sec. 16-50. Definitions.

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

False alarm means any fire alarm signal communicated, directly or indirectly, to the emergency communications center which is not generated by actual or potential fire or other life or property threatening activity requiring immediate fire or rescue response. False alarms include negligently or accidentally activated signals; signals which are the result of faulty, malfunctioning or improperly installed or maintained equipment; signals which are purposely activated to summon fire or rescue personnel in nonemergency situations; and alarm signals for which the actual cause is not determined. False alarms shall not include signals activated by unusually severe weather conditions or other causes which are identified and determined by the fire chief to be beyond the control of the user.

Fire alarm system means any device or system which transmits a signal visibly, audibly, electronically, mechanically or by any combination of these methods, directly or indirectly, to the emergency communications center which indicates a fire or other threat to life or property at a premises requiring an immediate response by fire or rescue personnel to the scene.

Nonemergency situation means any set of circumstances not involving perceived, actual or potential activity that constitutes an immediate danger to life or property.

Premises means a single occupancy apartment, home or business with an alarm system within its control or a multiple occupancy apartment, home or business with a common fire alarm system where fire alarms for the individual units are tied to a common alarm panel operated and controlled by the owner or his agent.

User means the occupant of any premises equipped with a fire alarm system or the owner of such premises if they are unoccupied or the owner of such premises for which a common fire alarm system is provided and tied to a common alarm panel operated and controlled by that owner or his agent.

(Ord. No. 4202-91, § 1; Ord. No. 6347-07)

Sec. 16-51. Duty of users to instruct personnel as to proper operation.

Fire alarm users shall instruct employees and others who may have occasion to activate an alarm that the alarm system shall be activated only in emergency situations requiring an immediate response by fire or rescue personnel. Alarm users shall also instruct appropriate employees in the operation of the fire alarm system, including deactivation and resetting of the alarm.

(Ord. No. 4202-91, § 1)

Sec. 16-52. Names of persons familiar with system, etc., to be posted on premises; duty of such persons to respond to fire department request.

Fire alarm system users shall post on the premises, in a conspicuous place visible from outside the premises, a sticker or other sign indicating the telephone numbers of at least two (2) responsible persons who are capable of deactivating and resetting the alarm system and of assisting the fire or rescue personnel, if necessary, and who may be notified by the fire department to respond to the scene. Such person or persons shall respond to the scene within one (1) hour after being requested to do so by the fire department.

(Ord. No. 4202-91, §1)

Sec. 16-53. Maintenance.

Fire alarm users shall be responsible for seeing that alarm systems are maintained in good working order and that defects which could cause false alarms are promptly repaired.

(Ord. No. 4202-91, §1)

Sec. 16-54. Testing of fire alarms.

Nothing in this article shall be construed to prohibit the periodic testing of fire alarm systems, provided sufficient advance notice is given to the fire chief.

(Ord. No. 4202-91, § 1; Ord. No. 4935-96)

Sec. 16-55. False alarms prohibited; penalty.

- (a) It shall be unlawful for any user to send a false alarm.
- (b) For each false alarm after three (3) false alarms originating from the same premises within a ninety-day period, there is hereby imposed a civil penalty in the amount of one hundred dollars (\$100.00) for each such

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false alarm. In no event shall a fee of more than two hundred fifty dollars (\$250.00) per day be charged for false alarms originating from the same premises.

- (c) The fire chief shall bill each user responsible for the false alarm with the appropriate amount of penalty as set forth above. All such penalties shall be paid within thirty (30) days of billing.

(Ord. No. 4202-91, § 1; Ord. No. 4463-93, § 1; Ord. No. 6745-10, § 1)

Editor's note(s)—Ord. No. 6745-10 shall be in effect on and after January 1, 2011.

Sec. 16-56. Exceptions.

The civil penalty set forth in this article shall not apply to any premises equipped with a fire alarm system used, owned or occupied by the United States government or any of its agencies or instrumentalities or to the Commonwealth of Virginia, its agencies or political subdivisions, but all the other provisions of this article, including the termination of service, shall apply to them.

(Ord. No. 4202-91, § 1)

Secs. 16-57—16-59. Reserved.

ARTICLE VI. AMBULANCE TRANSPORT FEES

Sec. 16-60. Imposition of fees.

- (a) Except as otherwise provided by subsection (d), a service charge for basic life support transport (BLS), for advanced life support transport (ALS) and for ground transport mileage is imposed on each person being transported by an emergency medical services vehicle that is operated or maintained by the city. The funds received from the payment of this fee shall be paid into the general fund of the city to aid in defraying the cost of providing such service.

- (b) *Definitions.* The following definitions shall apply to this article:

Advanced life support (ALS)—Level 1: Medical treatment for [or] procedures provided to a patient beyond the scope of practice of an emergency medical technician (EMT) - basic and transportation by ground ambulance vehicle including the provision of medically necessary supplies and services which may include the provision of an ALS assessment and/or at least one (1) ALS intervention.

Advanced life support (ALS)—Level 2: Medical treatment of [or] procedures beyond the scope of practice of an emergency medical technician (EMT) - basic and transportation by ground ambulance vehicle and the provision of medically necessary supplies and services, including: at least three (3) separate administrations of one (1) or more medications by intravenous/bolus or by continuous infusion (excluding crystalloid fluids); or ground ambulance transportation and the provision of at least one (1) of the ALS procedures listed below:

- (1) Manual defibrillation/cardioversion;
- (2) Endotracheal intubation;
- (3) Central venous line;
- (4) Cardiac pacing;
- (5) Chest decompression;

(6) Surgical airway; or

(7) Intraosseous line.

Basic life support (BLS): Services shall be medical treatment or procedures to a patient as defined in the National Emergency Medical Services (EMS) Education and Practice Blueprint for the emergency medical technician (EMT) - basic.

Emergency medical services vehicle: Shall be defined as specified in the Code of Virginia, section 32.1-111.1, as amended.

Emergency medical services vehicle response and treatment, no transport: Emergency medical services vehicle response to a call for service and emergency medical services, including, but not limited to, evaluation, are rendered, but where the individual receiving the emergency medical services was not transported by emergency medical services vehicle to a medical facility.

Ground transport mileage: Mileage shall be assessed in statute miles from the location of the incident to a hospital or other facility where a patient is transported.

Statute mile: An imperial unit of length equal to five thousand two hundred eighty (5,280) feet.

(c) The city manager is hereby authorized and directed to establish uniform rules and regulations for the administration and collection of the charges imposed by this section, including, but not limited to, payment standards for those persons who demonstrate economic hardship. Such rules and regulations shall comply with applicable laws and be submitted to, and approved by, the city council.

(d) The following rates shall apply for mileage and for BLS and ALS fees:

Basic life support \$500.00

Advanced life support—Level 1 \$600.00

Advanced life support—Level 2 \$750.00

Patient transport mileage, per statute mile from pickup to medical facility or facilities \$11.00

Patient assessment fee (emergency medical services vehicle response with evaluation and/or treatment, no transport) \$125.00

(e) No charge shall be imposed on persons in the following instances:

(1) Persons determined to be financially indigent by the city in accordance with administrative policies established pursuant to subsection (c) above;

(2) Persons in the custody of the Newport News City Sheriff, the City of Newport Department of Adult Corrections, or the City of Newport News Department of Juvenile Services;

(3) Persons in the custody of the city police department;

(4) Persons in the custody of the Hampton Roads Regional Jail of which the city is a participating member;

(5) During the time of a declared local emergency, the city manager may suspend the collection of the fees imposed under this article for a period of time up to fourteen (14) days or until the next regularly scheduled or special meeting of the city council whichever is less. The city council may extend the suspension of the collection of fees under this article for such period of time it deems necessary and appropriate; and

(6) City of Newport News employees and its volunteers transported for any work related injury or illness compensable under the Virginia Worker's Compensation Act.

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- (f) If the emergency medical services charge is not paid by the person receiving the service, or any person agreeing in writing to pay for said service, after notice to pay is given by the office of the city attorney, the ambulance service charge shall be immediately due and payable, and such person or persons shall be liable for the payment of such amount. In addition thereto, the aforesaid person or persons shall be liable to the city for a collection fee in the sum of thirty-five dollars (\$35.00), said fee representing administrative costs to the city for collecting the debt. Tender of payment and acceptance of the amount originally due the city under subsection (d) above shall not constitute satisfaction, after written notice to pay is given by the office of the city attorney, unless and until the collection fee is paid.

(Ord. No. 6124-05, § 1; Ord. No. 6385-07, § 1; Ord. No. 6680-10, § 1; Ord. No. 6869-12, § 1)

Editor's note(s)—Ord. No. 6869-12 shall be in effect on and after July 1, 2012.

Secs. 16-61—16-69. Reserved.

ARTICLE VII. EMERGENCY MANAGEMENT

Sec. 16-70. Established; composition.

Section 44-146.19 of the Code of Virginia requires each political subdivision in the commonwealth to maintain an agency of emergency management. The fire department division of emergency management is hereby designated as the local agency of emergency management. There shall be a director of emergency management, who shall be the city manager, a coordinator of emergency management appointed by the city manager with the consent of the city council, and such other officers and employees, organized into branches, sections or other units, as may be provided by ordinance or by orders or directives of the city manager consistent therewith.

(Ord. No. 6595-09, § 2)

Sec. 16-71. Responsibilities.

The division of emergency management, under the direction and control of the director of emergency management, shall be specifically responsible for:

- (1) Overall comprehensive coordination and management (including mitigation, preparedness, response and recovery) of declared or undeclared emergencies and disasters affecting the city, in order to protect public health and safety, and to preserve the lives, property and economy of the city and its citizens.
- (2) Preparation and maintenance of the city's emergency operations plan in coordination with the various city departments and agencies.
- (3) Designation, availability, preparation and maintenance of the city's primary, alternate and mobile emergency operations centers.
- (4) Coordination of search and rescue (SAR) operations as the city's designated SAR coordinator.
- (5) Participation as the city's emergency coordinator for the Peninsula Local Emergency Planning Committee.
- (6) Public education on emergencies and disasters, including family emergency preparedness.
- (7) Coordination with local organizations, businesses and industries to develop and maintain emergency and disaster contingency plans.

(8) Emergency management training and exercises for the city.

(Ord. No. 6595-09, § 2)

Sec. 16-72. Powers and duties of coordinator of emergency management.

The coordinator of emergency management shall manage the daily operations of emergency management, as assigned by the director of emergency management.

(Ord. No. 6595-09, § 2)

Sec. 16-73. Reserved.

Editor's note(s)—Ord. No. 7724-21, § 1, adopted July 13, 2021, repealed § 16-73 which pertained to the oath of office and derived from Ord. No. 6595-09, § 2.

Sec. 19-23. Placement of authorized containers, bulk waste and residential vegetative waste for collection; exception.

- (a) Residential trash shall be set out for collection entirely within fully closed authorized trash containers and placed on the street abutting the residential dwelling unit for which the container was assigned, as near to the curb as possible, and far enough away from other containers, vehicles, utility lines and boxes, poles, mail-boxes, and other objects so as to facilitate collection by automated collection vehicles. Such placement shall not restrict access to public sidewalks, pathways and bicycle paths. Where there is no curb, authorized containers shall be placed next to the edge of the road pavement in the same manner as if there were a curb. For proper automated collection, the authorized trash container shall be placed in such a manner as to have sufficient clearance on each side so as to be accessible to the automated collections vehicle with the container handle facing away from the street or right-of-way. If an authorized trash container is obstructed in such a manner as to prohibit the automated collection vehicle from dumping the container, the container's contents will not be collected. Waste placed in containers other than authorized containers will not be collected.
- (b) Residential recyclable materials shall be set out for collection entirely within a fully closed authorized recycling container and placed on the street abutting the residential dwelling unit for which the container was assigned, as near to the curb as possible, and far enough away from other containers, vehicles, utility lines and boxes, poles, mail-boxes, and other objects so as to facilitate collection by automated collection vehicles. Such placement shall not restrict access to public sidewalks, pathways and bicycle paths. Where there is no curb, authorized containers shall be placed next to the edge of the road pavement in the same manner as if there were a curb. For proper automated collection, the residential recycling container shall be placed in such a manner as to have sufficient clearance on each side so as to be accessible to the automated collections vehicle with the container handle facing away from the street or right-of-way. If a residential recycling container is obstructed in such a manner as to prohibit the automated collection vehicle from dumping the container, the container's contents will not be collected. Bottles, jars, cans, and similar vessels shall be rinsed free of putrescible material, and lids and caps shall be removed, before placing same in a residential recycling container. Waste placed in containers other than authorized containers will not be collected.
- (c) Although bulk waste shall not be required to be placed in an authorized container, it shall be otherwise placed at curbside for collection in generally the same manner as provided in subparagraph (a) of this section, except that it shall be placed adjacent to and separate from authorized containers, and far enough

from such containers to allow pickup by collection vehicles. If such bulk waste is placed in a manner that prohibits the collections vehicle from collecting it, the bulk waste will not be collected.

- (d) Residential vegetative waste set out for collection shall be placed in generally the same manner as provided in subparagraph (a) and (b) of this section except that residential vegetative waste shall be placed adjacent to and separate from authorized containers and bulk waste, and far enough from such containers and bulk waste to allow collection by collections vehicles. Such waste shall not be contaminated with soil, trash, or other waste such as grass and leaves commonly thrown away in the course of maintaining lawns and gardens. If such vegetative waste is placed in a manner that prohibits the collections vehicle from collecting it, or if the vegetative waste is contaminated, it will not be collected.

(Ord. No. 6443-07, § 1)

Sec. 28-12. Intoxication in public; penalty; transportation of public inebriates to detoxification center.

If any person is intoxicated in public, whether such intoxication results from alcohol, narcotic drug or other self-administered intoxicant or drug of whatever nature, he shall be deemed guilty of a Class 4 misdemeanor. If a court-approved detoxification center is available for the admission of such person, a law enforcement officer may authorize the transportation, by police or otherwise, of public inebriates to such detoxification center in lieu of arrest; however, no person shall be involuntarily detained in such center.

(Ord. No. 173, § 12; Ord. No. 1653, § 1; Ord. No. 2178; Code 1961, § 25-34; Ord. No. 4051-90)

Cross reference(s)—Intoxicated persons prohibited at public dance halls and teenage dance clubs, § 5-30; operating bicycle or moped while under influence of liquor, § 10-24; driving while under influence of alcohol, § 26-72; intoxicated persons prohibited in recreation buildings, § 29-46.

State law reference(s)—Similar provisions, Code of Virginia, § 18.2-388; authority for above section, Code of Virginia, § 15.2-926.2.

Sec. 32-27. Unclaimed bicycles, electric power-assisted bicycles, mopeds, and electric personal assistive mobility devices.

- (a) Notwithstanding the provisions of section 32-21 above, any bicycle, electric personal assistive mobility device, electric power-assisted bicycle, or moped which has been in the possession of the police department, unclaimed, for more than thirty (30) days may be sold at public auction or donated to a charitable organization. The police department shall comply with the provisions of sections 32-22 and 32-23 prior to any such sale or donation.
- (b) If requested by the finder at the time of the delivery of the item to the police department, any bicycle, electric personal assistive mobility device, electric power-assisted bicycle, or moped found and delivered to the police department by a private person which thereafter remains unclaimed for more than thirty (30) days after the final date of publication required herein shall be given to the finder, provided the location and description of the bicycle or moped shall have been published at least once a week for two (2) successive weeks in a newspaper of general circulation in the city.
- (c) For purposes of this section, a "charitable organization" means a charitable institution or association located within the city limits, or outside the city limits if such institution or association provides services to residents of the city; provided, however, that such institution or association shall not be controlled in whole or in part by any church or sectarian society. The words "sectarian society" shall not be construed to mean a

nondenominational Young Men's Christian Association, a nondenominational Young Women's Christian Association, Habitat for Humanity, or the Salvation Army.

(Ord. No. 7115-14, § 1)

Chapter 38 STREETS AND SIDEWALKS⁶

ARTICLE I. IN GENERAL

Sec. 38-1. Certain ordinances relating to streets and alleys not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall affect any ordinance naming, renaming, opening, accepting or vacating streets or alleys in the city; and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

Sec. 38-2. Violations of chapter.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a Class 4 misdemeanor.

Sec. 38-3. Obstructions generally.

- (a) It shall be unlawful for any person to place or have placed or installed on any sidewalk, street, alley or public right-of-way or easement in the city any fence, gate, porch, step, post, barrel, bench, bar, table, box, cart, trailer, vehicle, merchandise, goods, wares or other fixtures or articles whatsoever, whether they be for sale, exhibition or any other purpose. This section shall be subject, however, to exceptions, limitations and provisions set out in this chapter.
- (b) In addition to any other remedy at law, the city manager or his designee may compel the abatement or removal of all items, fixtures or articles identified in subparagraph (a) herein, and hereinafter referred to as an "obstruction" on a sidewalk, street, alley or public right-of-way or easement.

⁶Cross reference(s)—Responsibilities of department of public works relative to streets, § 2-387; restrictions on posting, distribution, etc., of advertising matter on or near streets and sidewalks, § 3-3 et seq.; depositing dead animals on streets or sidewalks, § 6-11; leaving maimed or diseased animal in street, § 6-61; streets and sidewalks abutting automobile graveyards to be kept clean and clear, §§ 8-11, 8-12; Bicycles, motorized scooters or electric power-assisted bicycles and mopeds, Ch. 10; building regulations, Ch. 13; use of streets by ice cream vendors, § 17-99 et seq.; duty of property owners to keep sidewalks free of litter, § 19-26; expectorating on sidewalks, § 20-6; streets and street lights in mobile home parks, §§ 25-34, 25-35; traffic, Ch. 26; disorderly conduct in responsibility of division of recreation and parks relative to street trees, § 29-4; streets, § 28-11; parks, squares and recreational facilities, Ch. 29; discharge of firearms along, across or near streets, § 43-9; location of gunnery ranges near streets, § 43-22; zoning ordinance, Ch. 45; design standards for streets and required street and sidewalk improvements in subdivisions, App. B, §§ 8-03, 9-01, 9-02; street lights in subdivisions, App. B, § 9-07; city's acceptance of streets in subdivisions, App. B, § 9-11.

State law reference(s)—General authority of city relative to streets and sidewalks, Code of Virginia, § 15.2-2000 et seq.; official map, Code of Virginia, § 15.2-2233; local authority over highways, Code of Virginia, § 33.1-224 et seq.

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- (c) Any person who shall cause or permit the existence of any obstruction governed by this section and not otherwise provided for in the provisions of this Code or other ordinances of the city shall be guilty of a Class 4 misdemeanor for each day the obstruction may continue, after due notice shall have been given to remove, correct or abate the same.
 - (d) The city manager or his designee may mail notices of violations of this section to the owner or owners of record of the property at the address maintained by the real estate assessor for the mailing of tax assessments and/or to the occupant or occupants of the property. The notices shall advise the owner or owners or the occupant or occupants of the requirements of this ordinance and that failure to remove, correct or abate the obstruction shall result in the city removing, correcting or abating that obstruction with the person or persons to whom notice was sent being responsible for the costs thereof as provided below.
 - (1) Upon the failure, neglect or refusal of any person to whom notice of abatement was given or who is responsible for removing, correcting or abating an obstruction, the city manager or his designee is authorized to have the removal, correction or abatement performed by city forces or by contract. The actual costs of such removal, correction or abatement, plus a charge for administrative costs of one hundred fifty dollars (\$150.00) shall be charged to the person or persons to whom the notice was directed.
 - (2) Whenever the city or its agent has work done pursuant to subsection (1) above, the cost and expenses of such work shall be determined and collected as provided below:
 - a. When the notice required by this section was directed to a person other than the owners of the property, the person to whom the notice was directed shall be billed for the actual costs of such work plus the charge for administrative costs. If such bill is not paid within thirty (30) days, legal action may be instituted for its collection.
 - b. When the notice required by this section was directed to the owner or owners of the property, the city manager or his designee shall certify to the city treasurer the amount of the actual cost of such work, plus the administrative costs; and the city treasurer shall include such total amount in the next regular tax bill for payment, and such amount shall be collected by the treasurer as other taxes and levies are collected. Every charge over two hundred dollars (\$200.00) assessed under this section which remains unpaid shall constitute a lien against such real property.
 - c. Liens established in accordance with subsection (2)b. shall have the same priority as other unpaid local taxes and shall be enforceable in the same manner as provided in Articles 3 and 4 of Chapter 39 of Title 58.1, or as those articles are subsequently amended. The city manager may waive such liens in order to facilitate the sale of the property; provided, however, such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has not business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed.

(Ord. No. 268, § 33; Code 1961, § 36-16; Ord. No. 6055-04. § 1)

Sec. 38-3.1. Dumpsters on public streets, public rights-of-way and public easements of right-of-way.

- (a) Except as otherwise provided in the City Code, it shall be unlawful to place dumpsters, which term includes similar commercial or privately owned containers but not residential-use containers, on a public street or in a public right-of-way or public easement of right-of-way. The term "right-of-way" specifically includes public sidewalks, pedestrian pathways and bicycle paths.

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- (b) Upon proper application by the property owner to the department of engineering, a permit may be issued that authorizes the placement of a dumpster to serve the applicant's property on a public street, public right-of-way and public easement right-of-way, conditioned upon the following criteria:
- (1) There must be no other practicable location for the dumpster on the applicant's private property as determined by the department of engineering.
 - (2) If determined necessary by the director of engineering or his designee, the applicant shall construct or reconstruct necessary portions of the street, public right-of-way or public easement of right-of-way as required in order to withstand the additional weight and pressure of the dumpster itself and any vehicle that would be used to empty the dumpster.
 - (3) The dumpster shall be placed as determined by the director of engineering or his designee so as to be the last obstructive to the street, public right-of-way or public easement of right-of-way.
 - (4) The applicant shall indemnify, hold harmless and defend the city and its employees from and against all claims of personal injury, including death, and property damage alleged to have arisen as a result of the placement of the dumpster in the public street, public right-of-way or public easement right-of-way. The applicant shall provide and maintain liability insurance covering the placement of the dumpster in the street, public right-of-way or public easement of right-of-way, which insurance shall include a separate endorsement adding the city as additional insured thereon. The insurance shall be of a "per occurrence" type and shall be in a combined single limit amount of at least three hundred thousand dollars (\$300,000.00). The insurance required by this section shall be approved by the city attorney's office prior to issuance of the relevant permit.
- (c) Each application for a permit under this section shall be accompanied by the payment of a non-refundable processing fee in the amount of fifty dollars (\$50.00).
- (d) Each permit issued pursuant to this section shall expire three (3) years to the day from the date of its issuance unless sooner terminated by the director of engineering or his designee as a result of a violation of the conditions of the permit by the permittee.
- (e) In the event any of the conditions of the permit are violated, the director of engineering or his designee, in his or her sole discretion, may terminate the permit. In the event the permit is terminated, notice shall be provided the permittee at the address provided on the permit application. Such notice shall be deemed delivered whether by hand or by certified mail and shall direct the permittee to immediately remove the dumpster from the street, public right-of-way or public easement of right-of-way and properly relocate the dumpster. If the dumpster is not removed in accordance with the termination notice, the director of engineering or his designee shall cause the dumpster to be removed and the costs therefor shall be a debt of, charged to and collected from the permittee.

(Ord. No. 4616-94, § 1)

Sec. 38-3.2. Permit for sidewalk use in Hilton Village Historic District commercial area.

- (a) *Permit required.* The director of engineering may issue a permit authorizing the use of the special sidewalk easement area within the Hilton Village Historic District commercial area for certain items of street furniture, which is defined as chairs, tables, awnings, umbrellas, planters, and other outdoor furniture related to the operation of a business that is adjacent to the special sidewalk easement. The special sidewalk easement area is that area for which individual property owners granted sidewalk easements to the city, in addition to the right-of-way for Warwick Boulevard which pre-existed those grants. When issuing a permit the director of engineering shall consider the recommendations of the Hilton Village Architectural Review Board.

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- (b) *Application; architectural review board recommendation.* Persons wishing to place any item(s) of street furniture in the special sidewalk easement area shall make application to the Hilton Village Architectural Review Board prior to requesting a permit from the director of engineering. The board shall review and recommend to the director of engineering the placement, number, character, color, size, decorative features and construction of such street furniture for use in the special sidewalk easement area identified in subsection (a). The board then shall recommend to the director of engineering whether or not a permit should be issued, and under what conditions, if any.
- (c) *Guidelines for street furniture.* All items placed in the special sidewalk easement area shall be constructed of materials and have colors appropriate and compatible to the historic district. Tables, benches and chairs shall be made of wood, wrought iron, or other materials determined to be appropriate or compatible by the Hilton Village Architectural Review Board. Awnings and umbrellas shall be made of canvas or other fabric determined to be compatible and appropriate by the board, and shall have a size and color approved by the board. Planters shall be made of terra cotta, concrete, wood or other material determined by the board to be appropriate and compatible to the historic district, and shall have a size and color approved by the board. The items of street furniture listed in Table 1 have been preapproved by the board as to color, size and material.

The requirements to make application to the Hilton Village Architectural Review Board or to utilize street furniture previously approved by said Board or materials, designs or colors required by this subsection shall not apply to those applicants for a permit authorizing the use of the special sidewalk easement who desire to utilize street furniture that has been used since March 12, 1997. This exception notwithstanding, on and after May 1, 1997, the other requirements of this ordinance must be complied with before the grandfathered street furniture may be used in the special sidewalk easement area. Any street furniture so grandfathered must be maintained in good, safe condition and be serviceable for the purpose for which it was designed; and any street furniture that is removed from use due to wear and tear or its inability to serve the purpose for which it was designed may not be replaced by items of street furniture that do not meet all requirements of this ordinance.

Items placed in the special sidewalk easement area shall be located in the running bond paver sections of sidewalks adjacent to buildings. Items shall not be placed on the herring bone patterned paver fields or the adjoining soldier course borders.

- (d) *Insurance required.* As a condition precedent to the issuance of a permit, the applicant, the street furniture owner, or the property owner shall file with the city attorney evidence of general comprehensive liability insurance insuring against claims, demands or actions arising out of or in connection with the existence of the items to be placed within the special sidewalk easement area. The policy of insurance shall require the insurer to defend, indemnify and hold the city harmless from any and all claims for injury or damage, and shall pay all judgments, costs or expenses which the city may incur or suffer by reason of granting a permit in connection with the erection, alteration, maintenance, repair, removal or existence of such items. Such policy of insurance shall provide liability coverage for bodily injury, death and property damage of not less than three hundred thousand dollars (\$300,000.00) combined single limit during any one (1) occurrence for injury to or death of any one (1) or more persons and for property damage or destruction suffered as a result of the existence of such street furniture and shall name the City of Newport News as an additional insured. All such insurance required to be carried by the permit holder shall be with an insurance company licensed to do business in the Commonwealth of Virginia and approved by the Newport News City Attorney's Office. Such insurance (i) shall contain an endorsement that such policy shall remain in full force and effect notwithstanding that the insured has released its right of action against any party before the occurrence of a loss; (ii) shall name the City of Newport News as an additional insured party; and (iii) shall provide that the policy shall not be canceled, terminated or materially amended without at least forty-five (45) days' prior written notice [fifteen (15) days if due to nonpayment of premium] to the City of Newport News. Prior to the issuance of the permit, evidence satisfactory to the Newport News City Attorney's Office of the payment of all premiums for such policy, shall be delivered to the Newport News City Attorney's Office for review. As a

condition subsequent to the issuance of the permit, the permit holder shall maintain the required insurance at all times during which the permitted item or items are located in the special sidewalk easement area.

TABLE 1

Wrought Iron Furniture Arm Benches		
Manufacturer	Brand Name	Model Number
Victor Stanley	Classics	4 ft. C - 10
		6 ft. C - 10
		8 ft. C - 10
Victor Stanley	Classics	4 ft. CL - 40
		6 ft. CL - 40
		8 ft. CL - 40
Columbia Cascade	TimberForm	#2118-6
		#2814-AT
King River Casting	Victorian	*VBS 48"
		*VBP 60"

*Black Only

Backless Benches		
Manufacturer	Brand Name	Model Number
Victor Stanley	Classics	4 ft. C-7
		6 ft. C-7
		8 ft. C-7
Columbia Cascade	TimberForm	#2123-6

Loveseats		
Manufacturer	Brand Name	Model Number
King River Casting	Victorian	VBL5 40"

Backed Chairs		
Manufacturer	Brand Name	Model Number
Landscape Forms	Traverse	*TR3001 BS-20
	Firenze	*FZ3001-BS-21
Smith & Hawken	Bristro	M4159 Green
		M4358 Black
Hauser	Erin Mills	#1465

*Red Chairs Not Allowed.

Wrought Iron Furniture Backed Chairs With Armrest		
Manufacturer	Brand Name	Model Number
Landscape Forms	Traverse	*TR3001-BA-20
	Tables	
Victor Stanley	Classics	4 ft. C-9
		6 ft. C-9
		8 ft. C-9
Smith & Hawken	Bristro	26 in. M4158 Green
		26 in. M4495 Black
		38 in. M392324 Black

Wood Furniture Arm Benches		
Manufacturer	Brand Name	Model Number
Country Casual	Windermere	4 ft. #4501
		5 ft. #4502
		6 ft. #4503
		8 ft. #4504
Country Casual	Windsor	4 ft. #4401
		5 ft. #4402
		6 ft. #4403
Country Casual	Mendip	4 ft. #4601
		5 ft. #4602
		6 ft. #4603
		8 ft. #4604
Country Casual	Clifton	4 ft. #4201
		5 ft. #4202
Kingsley Bate	Evanston	66 in. TR66
DSF	Evenlode	4 ft. #420
		5 ft. #421
		6 ft. #422
DSF	Gloster	5 ft. #409
		6 ft. #410
		8 ft. #412

*Red Chairs Not Allowed

Wood Furniture Arm Benches		
Manufacturer	Brand Name	Model Number
Smith & Hawken	Gloucester	5 ft. M496919
		6 ft. M496927
		8 ft. M496935
DSF	Mata Hari	5 ft. #290
Landscape Forms	Cumberland	CU3005-BS-72
Landscape Forms	Prairie	PR30005-BS-72

Backless Benches		
Manufacturer	Brand Name	Model Number
Country Casual	Banbury	4 ft. #4310
		5 ft. #4311
		6 ft. #4312
DSF	Brunel	6 ft. #428
Kingsley Bate	Evanston	ET 50
		ET 60

Loveseats		
Manufacturer	Brand Name	Model Number
Country Casual	Brittany	4½ ft. #6302
		5½ ft. #6303

Armchair		
Manufacturer	Brand Name	Model Number
Country Casual	Amberley Carver	#4844
	Windermere	#4505
	Windsor	#4405
	Brittany	#6305
	Devon Carver	#4826
	Clifton	#4205
DSF	Evenlode	#425
Smith & Hawken	Giverny	M5281
	Inverness	M5932
Kingsley Bate	Dunbarton	DN25
		MDN25

Wood Furniture Sidechairs		
Manufacturer	Brand Name	Model Number
Country Casual	Amberley	#4845
	Devon	#4825

Smith & Hawken	Inverness	M5932
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Tables		
Manufacturer	Brand Name	Model Number
Country Casual	Arundel	3 ft. sq. #4855
	Chelmsford	43 in. #4882
		52 in. #4880
		59 in. #4881
	Kendall	3 ft. #4860
	Kingston	3 ft. #4854
	Minton	6 ft. #4886
Smith & Hawken	Hawthorn	M5913
DSF	Thornbury	3 ft. #660
		4 ft. #661
		5 ft. #662
		3 ft. sq. #663 Oak
		6 ft. sq. #680 Oak
Smith & Hawken	Sussex	4 ft. M5666
		6 ft. M498006

Umbrellas		
Manufacturer	Brand Name	Model Number
Country Casual	Octagonal	8 ft. Oyster #4890OY
		8 ft. Green #4890GR
		10 ft. Oyster #4895OY
		10 ft. Green #4895GR
Landscape Forms	Bristro	6 ft. UM7002-BR-72
	Morgan	8 ft. UM7002-MG-90
	Market Place	6 ft. octag. UM7008-MK-72
		8 ft. octag. UM7008-MK-96
		11 ft. octag. UM7008-MK-132
		12½ ft. UM7008-MK-150
		7 ft. sq. UM7001-MK-84
		9½ ft. sq. UM7001-MK-114
		11 ft. sq. UM7001-MK-132

*Umbrellas may be one (1) solid dark color or two (2) dark colors only.

TRASH RECEPTACLES		
Manufacturer	Brand Name	Model Number
Victor Stanley	Ironsites	S-20
		S-35
		S-42
Victor Stanley	Economy	ES-135
		ES-142

		ES-235
		ES-242
		ES-335
		ES-342

(Ord. No. 4996-97, § 1)

Sec. 38-3.3. Permit for outdoor dining.

- (a) *Permit required.* The director of engineering may issue a permit authorizing the use of the right of way for outdoor dining when the outdoor dining does not adversely impact pedestrian and vehicular flow and safety.
- (b) *Application.* Application for outdoor dining must be filed with the department of engineering on forms provided by that department. The non-refundable application fee is fifty dollars (\$50.00). The annual permit fee is five hundred dollars (\$500.00). Permits must be renewed annually.
- (c) *Guidelines.* The following provisions will be applicable to all operators of outdoor dining facilities who have obtained a permit:
 - (1) The business must be a properly zoned and licensed food or beverage establishment located on the interior first floor of a structure adjacent to the sidewalk area where the outdoor dining is proposed.
 - (2) The permit shall be revocable at any time by the director of engineering or his designee.
 - (3) The outdoor dining area shall be temporary, such that posts, chairs, tables, planters and other equipment, referred to herein as "dining equipment," can be removed when not in use and the interior food and beverage establishment is closed.
 - (4) The outdoor dining area may extend into the right of way a maximum of one-half (½) of the sidewalk width from the property line of the permittee, provided that no less than five (5) feet of clear and unobstructed sidewalk width remains for pedestrian use.
 - (5) The director of engineering may reduce the outdoor dining area based upon right of way flow and safety concerns.
 - (6) The outdoor dining area, when not in use, shall be maintained in a useable state and chairs, tables and other appurtenances and dining equipment shall not be stacked or stored outdoors. The outdoor dining area shall not be enclosed.
 - (7) The permittee agrees to maintain in good condition all appurtenances and dining equipment placed in the city right of way or on city property and must protect sidewalk finishes and surfaces from damage.
 - (8) Dining equipment must be located in the public right of way immediately adjacent to the permittee's food and beverage establishment and may not extend beyond the street frontage of same.
 - (9) The applicant shall submit and if a permit is issued shall adhere to an outdoor dining layout identifying the number, type and location of tables, chairs, umbrellas and other dining equipment.
 - (10) The number, type, size and location of outdoor dining equipment is subject to the approval of the director of engineering or designee.
 - (11) The hours of operation of the outdoor dining area may not exceed those of the permittee's food and beverage establishment.
 - (12) The permit is not transferable or assignable without written approval of the director of engineering or his designee.

(13) The permittee shall comply with all applicable codes, ordinances, policies and regulations of the federal, state and local governments and shall obtain and maintain all necessary licenses and permits.

- (d) *Insurance required.* As a condition precedent to the issuance of a permit, the permittee shall file with the city attorney evidence of general comprehensive liability insurance insuring against claims, demands or actions arising out of or in connection with the existence of the dining equipment to be placed within the outdoor dining area. The policy of insurance shall require the insurer to defend, indemnify and hold the city harmless from any and all claims for injury or damage, and shall pay all judgments, costs or expenses which the city may incur or suffer by reason of granting a permit in connection with the erection, alteration, maintenance, repair, removal or existence of such items. Such policy of insurance shall provide liability coverage for bodily injury, death and property damage of not less than one million dollars (\$1,000,000.00) combined single limit during any one (1) occurrence for injury to or death of any one (1) or more persons and for property damage or destruction suffered as a result of the existence of such street furniture and shall name the City of Newport News as an additional insured. All such insurance required to be carried by the permittee shall be with an insurance company licensed to do business in the Commonwealth of Virginia and approved by the City of Newport News City Attorney's Office. Such insurance shall: (i) contain an endorsement that such policy shall remain in full force and effect notwithstanding that the insured has released its right of action against any party before the occurrence of a loss; (ii) name the City of Newport News as an additional insured party; and (iii) provide that the policy shall not be cancelled, terminated or materially amended without at least forty-five (45) days prior written notice (fifteen (15) days if due to nonpayment of the premium) to the City of Newport News. Prior to the issuance or renewal of the permit, evidence satisfactory to the City of Newport News City Attorney's Office of the payment of all premiums of such policy, shall be delivered to the city attorney's office for review. As a condition subsequent to the issuance of the permit, the permit holder shall maintain the required insurance at all times during which the permitted item or items are located in the sidewalk area.

(Ord. No. 6080-05)

Sec. 38-4. Temporary fence or barricade for protection of newly seeded or sodded grass plots in sidewalk area.

- (a) A permit for the erection of a temporary fence or barricade, for a period not exceeding ninety (90) days, in the sidewalk area in front of any premises, for the protection of newly sodded or seeded grass plots, may, upon application to the director of engineering, be issued to the owner of such premises. Such fence or barricade shall conform to the specifications therefor on file in the office of the director of engineering, but in no event shall such fence or barricade be less than twenty-four (24) inches or more than thirty (30) inches in height above the level of the grade of the sidewalk, and shall be constructed of well dressed lumber, not less than one (1) inch nor more than two (2) inches square, and shall consist of only one (1) rail and the necessary posts supporting the same, and shall not extend beyond the building line further than within six (6) inches of the walkway or paved sidewalk in front of the premises.
- (b) The granting of a permit under this section and the acceptance and use thereof by the owner of the premises shall not be deemed or taken to be a release from liability of the owner or person installing or maintaining such fence or barricade for damages to persons or property occasioned by its installation or maintenance, but such owner or person, by accepting the permit and constructing and maintaining the fence or barricade, assumes all liability for damage that may be occasioned thereby and agrees to save the city harmless from all loss, cost, damage and expense that may accrue to it or to any person by reason of the construction and maintenance of the fence or barricade.

(Ord. No. 297; Code 1961, § 36-17; Ord. No. 5839-02)

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Sec. 38-5. Removal of fixtures and appliances, interfering with public improvements.

The owner of any pipes, poles, wires or other fixtures or appliances located or erected under or upon any of the streets of the city shall remove the same, within a reasonable time, to such place as may be approved by the city manager, when so notified by the manager that such pipes, poles, wires or other fixtures and appliances are in the way of, interfere with or retard the erection and construction of any public improvement in the city. Should the owner of such pipes, poles, wires or other fixtures and appliances fail or refuse to remove the same within a reasonable time after having been so notified by the city manager, the city manager shall proceed to have the same removed to such place as the manager may approve, and collect the cost of such removal from the owner thereof.

(Ord. No. 268, § 32; Code 1961, § 36-15)

Sec. 38-6. Obstruction by loitering or gathering of persons.

- (a) It shall be unlawful for any person to loiter or needlessly be and remain upon the streets or sidewalks of the city, thereby obstructing pedestrian or vehicular traffic.
- (b) It shall be unlawful for any person to cause to gather in crowds, or for persons to gather in crowds, upon the streets or sidewalks of the city, so as to obstruct the free and unimpeded use of the streets and sidewalks for travelers or pedestrians upon such streets or sidewalks.

(Ord. No. 173, § 31; Code 1961, § 36-1)

Sec. 38-7. Packing and unpacking on sidewalks.

No person receiving or shipping goods, wares or merchandise in boxes, crates or other packing shall pack, unpack, store or otherwise place the same upon the sidewalk or street, unless such package, crate or box is too large to enter the door of the building through which the contents of such package, crate or box are to be carried, in which case, such package, crate or box or container received or to be shipped may be packed or unpacked upon the sidewalk without unreasonable delay, and all packing material, trash and boxes shall be immediately removed by the owner or proprietor receiving or shipping the goods, wares or merchandise.

(Ord. No. 268, § 31; Ord. No. 1408, § 1; Code 1961, § 36-14)

Sec. 38-8. Street sales generally.

It shall be unlawful for any person to occupy or use any part of the streets or public places of the city as a stand for the sale of trinkets, wares, merchandise, patent medicines or other articles, except flowers and articles used for food. The commissioner of the revenue shall issue no licenses for any activity that would violate this section.

(Ord. No. 268, § 27; Code 1961, § 36-9)

Sec. 38-9. Sale of Christmas trees and other decorative greens; exhibits and sales of arts and crafts.

It shall be unlawful for any person to exhibit or offer for sale Christmas trees or other decorative greens upon the streets or sidewalks of the city or to exhibit and sell arts and crafts on such streets and sidewalks without first obtaining a permit to do so from the city manager. Application for such permit shall be in writing, stating the

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location desired, and shall be accompanied by the written consent of the owner of the property on which such location abuts. The city manager, in passing on such application, shall take into consideration the desired location, the traffic on the street and the public safety and convenience and accordingly grant or refuse the application, as to the manager may seem best.

(Ord. No. 268, § 36; Code 1961, § 36-21; Ord. No. 3010-83)

Sec. 38-10. Reserved.

Editor's note(s)—Ord. No. 4436, adopted April 13, 1993, repealed § 38-10, which pertained to sale of flowers or food. See the Code Comparative Table.

Sec. 38-11. Sidewalk photographers.

- (a) It shall be unlawful for any person, on any street or sidewalk in the city, to take any picture, photograph or snapshot, by any process whatsoever, of any person and offer to furnish to such person or to any other person a copy of the picture so taken, for a consideration in any form. The passing out of written, printed, typewritten or mimeographed matter, or giving information orally, concerning the means by which a copy of the picture taken may be obtained, is hereby defined to be an offer to furnish a copy of the picture taken for a consideration.
- (b) The provisions of this section shall not be deemed to apply to the taking of a picture solely for the purpose of reproducing it in a book, newspaper, magazine or periodical.
- (c) A violation of this section shall constitute a Class 3 misdemeanor.

(Ord. No. 173, § 62; Code 1961, § 36-10)

Sec. 38-12. Visibility of drive-in theater screen to motorists.

- (a) It shall be unlawful for any person to operate a drive-in motion picture theater in the vicinity of any public street or highway in such a manner that the surface of the theater screen upon which pictures are being projected is visible to any person operating a motor vehicle upon such street or highway.
- (b) A violation of this section shall constitute a Class 3 misdemeanor.

(Ord. No. 1753; Code 1961, § 36-18)

Sec. 38-13. Playing on through streets.

No person shall play on a through street in the city.

(Ord. No. 173, § 24; Ord. No. 2235, § 1; Code 1961, § 36-2)

Sec. 38-14. Streets constituting quiet zones.

- (a) Those portions of all streets within three hundred (300) feet of any church or hospital shall constitute a "quiet zone" and it shall be unlawful for any person to make any unnecessary or loud noise within such a zone adjacent to any church from 11:00 a.m. to 1:00 p.m., and from 7:30 p.m. to 9:00 p.m. on Sundays, and within such a zone adjacent to a hospital at any time.

(b) The churches and hospitals to which this section applies shall keep upon such streets the necessary signs to notify the public that such constitutes a "quiet zone."

(c) A violation of this section shall constitute a Class 3 misdemeanor.

(Ord. No. 268, § 26; Code 1961, § 36-8)

Sec. 38-15. Mixing or depositing mortar or cement or placing building material on street.

(a) No person shall mix, place or deposit any mortar or cement upon any paved street or avenue, unless the same is mixed, placed or deposited in watertight boxes, which boxes must be placed upon barriers or sleepers, leaving under them an air space of at least four (4) inches.

(b) Any person placing building material of any kind, to be used in erecting or repairing any building, upon any street, shall rack or pile the same in as small a space as possible near the curb.

(Ord. No. 166, §§ 1, 2; Code 1961, § 36-4)

Sec. 38-16. Entrances from sidewalks to basements to be lighted at night.

The owners of all buildings, where there are areaways or steps leading from the sidewalks into the basement of such buildings, shall keep and maintain an electric light over such entrance, which light shall burn every night and all night. Each night's failure to so maintain a light shall constitute a separate offense.

(Ord. No. 268, § 19; Code 1961, § 36-5)

Sec. 38-17. Removal of snow from sidewalks.

(a) The tenant or occupant, and in case there is no tenant, the owner or any person having charge of any building or lot of land bordering on a street, lane, court, square or public place within the city where there is any paved sidewalk shall, after snow ceases to fall in the daytime within six (6) hours, and if in the nighttime before noon of the following day, cause the snow to be removed from that portion of the sidewalk between the building line and a line five (5) feet distant from and parallel to the curb line. Where the paved portion of such sidewalk in front of a residence does not cover the entire area between the curb line and the building line, the snow may be removed from only that portion of the sidewalk which is paved. In all blocks where fifty (50) percent or more of the abutting lots are occupied by buildings or structures, the snow shall be removed from all unpaved sidewalks in such blocks for a width of five (5) feet in the center of the sidewalk area.

(b) Snow removed under this section shall be deposited on that portion of the sidewalk in front of the abutting property immediately adjacent to the curb, but more than five (5) feet therefrom.

(c) It shall be unlawful for any person to remove or cause to be removed any snow from the sidewalk into the street, except employees of the public works department in the performance of their duties in cleaning the streets.

(Ord. No. 167, §§ 1, 2; Code 1961, § 36-3)

Sec. 38-18. Flag pole sockets in sidewalks—Use generally.

It shall be unlawful for any person, except upon permission first obtained from the city manager, to use any of the flag pole sockets placed at the sidewalks by the city for any purpose whatever, other than the display of the

American national flag or the state flag of Virginia, and no American national flag or other flag, except a flag four (4) feet by six (6) feet upon poles twelve (12) feet in length, shall be displayed from such sockets and then only between the hours of sunrise and sunset on national or state holidays or on such other days as shall be designated by the city manager. No person not the owner or having control of any flag placed in any of the sockets shall interfere with, tear, soil, injure, damage or remove such flag or pole.

(Ord. No. 268, § 37; Code 1961, § 36-22)

Sec. 38-19. Same—Removal of caps.

It shall be unlawful for any person to remove, or cause to be removed, any cap or covering placed on or over any hole in any sidewalk made for the placement of flag poles; provided, that the owner or occupant of any premises opposite such opening may remove such cap or covering for the purpose of placing flag poles, but only upon condition that, on removal of such flag, the cap or covering shall be immediately replaced, and failure to so replace shall be unlawful.

(Ord. No. 268, § 38; Code 1961, § 36-23)

Sec. 38-20. Removing street barriers; driving on barricaded street.

No person shall remove barriers or other guards placed across the streets of the city, while paving, grading, macadamizing or any other public improvement is in progress. No person shall ride or drive over such street so barricaded or guarded.

(Ord. No. 268, § 40; Code 1961, § 36-25)

Sec. 38-21. Vacation of street on request—Fee for processing application; taxing of publishing notice to applicant.

On each and every application to alter or vacate a public street or alley pursuant to Title 15.2 of the Code of Virginia, 1950, as amended, there shall be a fee of fifty dollars (\$50.00), payable at the time of application, for processing and administration of such application. The fee shall be in addition to the sum allowed each viewer pursuant to Title 15.2. The applicant shall also be taxed the actual cost of publishing the newspaper notice of the street or alley vacation hearing held by the council.

(Ord. No. 1738, § 1; Code 1961, § 36-26.2; Ord. No. 2950-82; Ord. No. 5308-99)

State law reference(s)—Authority for above fee, Code of Virginia, § 15.2-2007.

Sec. 38-22. Same—Payment of cost of relocation or removal of utilities.

Unless otherwise specifically provided, whenever any street, alley or other public way is vacated or abandoned by the city at the request of any private individual, association, corporation or public authority, the cost of any necessary relocation or removal of public utility facilities, including those of public service corporations, located in such street, alley or other public way shall be paid by the private individual, association, corporation or public authority requesting such vacation or abandonment.

(Ord. No. 1189; Code 1961, § 36-26.1)

Sec. 38-23. Liability insurance for signs overhanging public right-of-way.

- (a) It shall be unlawful for any person to erect or maintain any sign overhanging any sidewalk, street or other public right-of-way, unless such person shall file and maintain with the codes compliance administrator evidence of public liability insurance covering the existence of such sign. Such insurance shall have liability limits for bodily injury not less than one hundred thousand dollars (\$100,000.00) for each person, two hundred thousand dollars (\$200,000.00) for each accident and twenty-five thousand dollars (\$25,000.00) for property damage, and shall indemnify and save harmless the city as an additionally insured party from any and all damages, judgments, costs or expense which the city may incur or suffer by reason of granting a permit in connection with the erection, alteration, maintenance, repair, removal or existence of such sign. It shall be the duty of the owner of any premises upon which such sign is located to notify the codes compliance administrator of any change, expiration, renewal or claim that shall occur with respect to such insurance.
- (b) A violation of any provision of this section shall constitute a Class 3 misdemeanor.

(Ord. No. 1890, § 1; Code 1961, § 10-25)

Cross reference(s)—Advertising, Ch. 3.

Sec. 38-24. Entrance signs.

Signs located at the entrance of (i) residential developments;(ii) business and/or industrial development parks; (iii) publicly managed business and/or industrial development parks; or (iv) publicly managed mixed-use developments may be erected in the public right-of-way as permanent markers provided that a permit is first obtained from the director of engineering as provided for in section 38-25. For the purposes of this section and section 38-25, "publicly managed" means public control in the form of covenants and restrictions applicable to property of the development enforced by a public body. The provisions of sections 38-24 and 38-25 shall govern in any instance of conflict between those sections and other provisions of this Code.

(Ord. No. 2607-79; Ord. No. 3028-83; Ord. No. 3111-83, § 1; Ord. No. 4012-90; Ord. No. 6096-05; Ord. No. 7495-18)

Sec. 38-25. Entrance sign rules and regulations and permits.

- (a) *Permit required.* It shall be unlawful for any person to erect or construct a sign authorized by section 38-24 unless such person shall first have obtained a permit therefor from the director of engineering. Signs for (i) business and/or industrial development parks; (ii) publicly managed business and/or industrial development parks; or (iii) publicly managed mixed-use developments shall be limited to those developments of one hundred (100) acres or more.
- (b) *Entrance sign regulations.*
- (1) *General regulations.*
- a. Entrance signs shall not be permitted in medians on arterial streets designated in the city's transportation plan;
 - b. Entrance signs shall be constructed under the provisions of the Uniform Statewide Building Code; and
 - c. Entrance signs shall be authorized only at the primary entrances consistent with the type of development and use.

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- (2) Residential development entrance signs shall be subject to the following:
- a. Such sign shall not exceed three (3) feet in height measured from top of nearest curb;
 - b. Such sign shall not exceed ten (10) feet in width;
 - c. No more than two (2) signs shall be located at any one (1) entrance; and
 - d. Signs other than those in medians shall be located within a twenty-five-foot square whose sides shall be measured by starting at a point at the intersection of the paved portion of the street and the paved portion of the entranceway involved.
- (3) Business and/or industrial development parks entrance signs shall be subject to the following:
- a. Such sign shall not exceed ten (10) feet in height measured from top of nearest curb;
 - b. Such sign shall not exceed ninety (90) square feet in area;
 - c. The location and setback of the sign shall be approved by the director of engineering. The director shall evaluate the sign's location and setback for traffic safety. Adequate sight distance shall exist. The evaluation shall consider existing traffic and physical conditions and programmed road improvements;
 - d. The director of planning also shall approve the sign's location. The director shall evaluate the sign's impact on signage and development at the intersection and shall determine that the sign does not substantially block the visibility of signage or development on property in the vicinity;
 - e. No more than one (1) sign shall be located at any one (1) entrance;
 - f. The intersection where the sign is to be located shall be controlled by traffic signals.
- (4) Publicly managed business and/or industrial development parks and publicly managed mixed-use development entrance signs shall be subject to the following:
- a. Such signs shall not exceed thirty (30) feet in height measured from top of nearest curb;
 - b. Each sign shall not exceed three hundred twenty-five (325) square feet in area;
 - c. The location and setback of the signs shall be approved by the director of engineering. The director shall evaluate the signs' location and setback for traffic safety. Adequate sight distance shall exist. The evaluation shall consider existing traffic and physical conditions and programmed road improvements;
 - d. The director of planning also shall approve the location of the signs. The director shall evaluate the signs' impact on signage and development at the intersection and shall determine that the sign does not substantially block the visibility of signage or development on property in the vicinity; and
 - e. The intersection where the sign or signs are to be located shall be controlled by traffic signals.
- (c) *Permit application.*
- (1) Application for a permit required by this section shall be filed in the office of the director of engineering, accompanied by a fifty dollar (\$50.00) nonrefundable application fee.
 - (2) Applications shall include a sketch of the sign to be erected or constructed as well as a sketch showing property lines and street right-of-way lines with reference to the proposed location of the sign.
 - (3) Application shall include a description of the proposed type of construction of the sign. Only wood, metal, plastic, or masonry shall be authorized construction material.
- (d) *Insurance.* Signs not erected or constructed by the city shall be subject to the following:

Any person maintaining such a sign shall file and maintain with the director of engineering evidence of public liability insurance covering the existence of such sign. Such insurance shall have combined liability limits for bodily injury and property damage of not less than one million dollars (\$1,000,000.00) and two million dollars (\$2,000,000.00) aggregate per year, and shall indemnify and save harmless the city as an additionally insured party from any and all damages, judgments, costs or expense which the city may incur or suffer by reason of granting a permit in connection with the erection, alteration, maintenance, repair, removal or existence of such sign. Said proof of insurance shall include an endorsement to provide the city with thirty (30) days advance notice of cancellation, ten (10) days for non-payment of premium.

- (e) *Removal of signs.* Upon a finding by the director of engineering that the right-of-way is needed for city purposes and the location of the sign impedes that need, or that a change of condition has occurred affecting pedestrian and/or vehicular safety, said sign shall be removed, without cost to the city, upon thirty (30) days' written notice to the owner of the sign.

(Ord. No. 2607-79; Ord. No. 3028-83; Ord. No. 3060-83; Ord. No. 3111-83, § 1; Ord. No. 3703-88; Ord. No. 4012-90; Ord. No. 6096-05; Ord. No. 7495-18)

Sec. 38-26. Signs in city right-of-way.

- (a) Unless otherwise specifically provided for, it shall be unlawful for any person to erect, construct, locate, maintain or otherwise place any sign or similar structure or display on or over any street right-of-way. Such action on the part of any person shall, upon conviction, constitute a Class 4 misdemeanor.
- (b) Any permanent sign or similar structure or display existing on the effective date of this section [June 23, 1980] in contravention of subsection (a) above may continue to exist as a nonconforming display provided that:
- (1) Any damaged or destroyed nonconforming sign requiring repairs in excess of fifty (50) percent of its initial cost shall be removed.
 - (2) For the purpose of this section, a nonconforming sign shall be considered an accessory to the use that exists at the time this section becomes effective. Should such use cease to exist or change to the point of requiring modification valued in excess of fifty (50) percent of its initial cost, such nonconforming sign shall be removed.
 - (3) No nonconforming sign shall be altered, modified or changed to cause the sign to exceed the size and shape that exists at the time this section becomes effective. This shall not be construed to prohibit normal maintenance.
- (c) Any person maintaining such a nonconforming sign shall file and maintain with the director of engineering evidence of public liability insurance with limits and necessary endorsements as required by section 38-25(d) and shall indemnify and save harmless the city as an additionally insured party from any and all damages, judgments, costs or expense which the city may incur or suffer by reason of granting a permit in connection with the erection, alteration, maintenance, repair, removal or existence of such sign. It shall be the duty of the owner of any premises upon which such sign is located to obtain an endorsement from its carrier providing thirty (30) days advance notice of cancellation and ten (10) days for non-payment of premium.
- (d) *Removal of signs.* Upon a finding by the director of engineering that the right-of-way is needed for city purposes and the location of the sign impedes that need, or that a change of condition has occurred affecting pedestrian and/or vehicular safety, said sign shall be removed, without cost to the city, upon thirty (30) days' written notice to the owner of the sign.

(Ord. No. 2671-80; Ord. No. 2984A-82; Ord. No. 3111-83, § 1; Ord. No. 4119-90; Ord. No. 7495-18)

Sec. 38-26.1. Signs for public regional transportation facilities.

- (a) All publicly owned and operated regional transportation facilities may erect an entrance sign within the public right-of-way within one (1) block of the actual entrance to such facility. A directional sign may also be permitted in the public right-of-way within nine hundred (900) feet of the entrance to the facility. Erection and continued existence of such signs shall be at the sole discretion of the city and shall be subject to all conditions contained in this section.
- (b) No entrance sign shall exceed fifteen (15) feet in height, nor shall it exceed one hundred (100) square feet in total sign area. No directional sign shall exceed ten (10) feet in height, nor shall it exceed seventy-five (75) square feet in total sign area.
- (c) The location, size and set back of any such sign shall be approved by the director of engineering. The director shall evaluate the sign's location, size and setback for traffic safety. Adequate site distance shall exist. The evaluation shall consider existing traffic and physical conditions and programmed road improvements.
- (d) The director of planning also shall approve the sign's location and size and shall, in addition, approve the materials and type of construction to be utilized. The director shall evaluate the sign's impact on signage and development at the intersection and shall determine that the sign does not substantially block the visibility of signage or development on property in the vicinity.
- (e) Any intersection where such entrance sign may be located shall be controlled by traffic signals.
- (f) Signs shall be constructed under the provisions of the Uniform Statewide Building Code.
- (g) Any person maintaining a sign allowed by this section shall file and maintain with the director of engineering evidence of public liability insurance covering the existence of any and all such signs. Such insurance must include the basic limits and an additional insured endorsement and an endorsement providing that the city will receive thirty (30) days advance notice of cancellation and ten (10) days for non-payment of premium, and shall indemnify and save harmless the city as an additionally insured party from any and all damages, judgments, costs or expense which the city may incur or suffer by reason of permitting the erection, alteration, maintenance, repair, removal or existence of such sign. It shall be the duty of the sign owner to notify the director of engineering of any change, expiration, renewal or claim that shall occur with respect to such insurance.
- (h) Upon a finding by the director of engineering that the right-of-way is needed for city purposes and that the location of the sign impedes that need, or that a change of condition has occurred affecting pedestrian and/or vehicular safety, or for any reason advancing the city's interest, said sign shall be removed, without cost to the city, upon thirty (30) days' written notice to the owner of the sign.

(Ord. No. 4549-93; Ord. No. 7495-18)

Sec. 38-27. Fences in city rights-of-way and easements of rights-of-way.

- (a) *Fences prohibited.* Except as otherwise specifically provided in this section, it shall be unlawful for any person to erect, construct, locate, maintain or otherwise place any fence or like structure on any street right-of-way or easement of right-of-way. Such action on the part of any person shall upon conviction, constitute a Class 4 misdemeanor.
- (b) *Fence encroachment by permit.*
 - (1) The director of engineering may permit fences to encroach into a city right-of-way or easement-of-right-of-way in accordance with the provisions of this subsection. The decision of the director of

engineering shall be based upon the city's needs and the impact that the fence may have on vehicular and pedestrian safety or upon adjacent property owners.

(2) *Allowed encroachments.*

- (i) Fence encroachments may be permitted in residential zoning districts as long as those horizontal encroachments are no greater than twenty-four (24) inches, more or less, from the property line.
- (ii) Fence encroachments may be permitted by the director of engineering within the special sidewalk easement area defined in section 38-3.2 of this Code if the encroachment is recommended by the Hilton Village Architectural Review Board (hereinafter the "board"). In the Hilton Village Historic District Commercial Area, fence types may be wood picket or other material approved by the Board. Maximum fence height above the ground level shall not exceed thirty (30) inches. Fences shall be installed with the finished side facing the adjacent property. When recommending a fence in the easement area the Board shall consider the height of the fence and its relationship to the sidewalk and street levels. Fences shall be finished and painted a color compatible with and appropriate to the historic district.

In the special sidewalk easement area fence encroachments may be placed in the running bond paver section of sidewalks adjacent to buildings. Fences shall not be placed on the herringbone patterned paver fields or the adjoining soldier course borders of the pavement.

(3) *Permit procedure.*

- (i) Any property owner desiring to obtain a permit to allow a fence to encroach into the city right-of-way or easement-of-right-of-way (including the special sidewalk easement area defined in section 38-3.2 of this Code) shall file an application therefore with the director of engineering. Applicants for encroachments in the Hilton Village Historic District shall first obtain a certificate of appropriateness from the board for the fence. A non-refundable application fee of fifty dollars (\$50.00) shall be paid at the time of submission of the permit application to the director of engineering. As used in the for purposes of this section, "property owner" and "permit holder" shall be defined as the original owner/applicant of the property adjacent to a right-of-way or easement-of-right-of-way who applies or applied for a permit, as well as all subsequent fee simple owners of the subject property. Once issued, a permit shall run with the land and ensure to the benefit of the original owner/applicant and all subsequent owners of the property, and such subsequent property owners shall be subject to the provisions of this section as well as the terms of the permit and any other applicable provision of the state and city codes.
 - (ii) The property owner shall provide a plot diagram with each application showing the location of the proposed fence, the location of all adjacent right-of-way and easements-of-rights-of-way, the height of the fence, and the type(s) of material proposed to be used for the fence.
 - (iii) The property owner shall provide evidence that Miss Utility, or its successor, has been notified and that all other required permits have been obtained, specifically including a right-of-way permit.
 - (iv) It shall be the responsibility of the permit holder to insure that a permitted fence is not placed or maintained on the right-of-way or easement-of-right-of-way except in strict conformity with this section and the terms of the permit.
- (c) *Building code.* All fences permitted in accordance with this section shall be constructed and maintained in accordance with the requirements of the Virginia Uniformed Statewide Building Code and applicable provisions of the City Code related to fence construction and maintenance standards.
- (d) *Insurance.* As a condition precedent to the issuance of a permit, the property owner shall file with the city attorney evidence of general comprehensive liability insurance covering the existence of such fence. The

policy of insurance shall require the insurer to defend, indemnify and hold the city harmless from any and all claims for injury or damage, and shall pay all judgments, costs or expenses which the city may incur or suffer by reason of granting a permit in connection with the erection, alteration, maintenance, repair, removal or existence of such items. Such policy of insurance shall provide liability coverage for bodily injury, death and property damage of not less than three hundred thousand dollars (\$300,000.00) combined single limit during any one (1) occurrence for injury to or death of any one (1) or more persons and for property damage or destruction suffered as a result of the existence of such fence and shall name the City of Newport News as an additional insured. All such insurance required to be carried by the permit holder shall be with an insurance company licensed to do business in the Commonwealth of Virginia and approved by the Newport News City Attorney's Office. Such insurance (i) shall contain an endorsement that such policy shall remain in full force and effect notwithstanding that the insured has released its right of action against any party before the occurrence of a loss; (ii) shall name the City of Newport News as an additional insured party; and (iii) shall provide that the policy shall not be canceled, terminated or materially amended without at least forty-five (45) days' prior written notice [fifteen (15) days if due to nonpayment of premium] to the City of Newport News. Prior to the issuance of the permit, evidence satisfactory to the Newport News City Attorney's Office of the payment of all premiums for such policy, shall be delivered to the Newport News City Attorney's Office for review. As a condition subsequent to the insurance of the permit, the permit holder shall maintain the required insurance at all times during which the permitted fence is located in the right-of-way or easement-of-right-of-way.

- (e) *Removal of fences.* Upon a finding by the director of engineering that no permit exists for a fence encroaching into a right-of-way or easement-of-right-of-way, or that a permit holder has violated the provisions of this section or of the fence permit, or that the right-of-way or easement-of-right-of-way is needed for city purposes and the location of the fence impedes that need, or that a change of conditions has occurred affecting pedestrian and/or vehicular safety, or the permit holder as failed to maintain the fence as required by other provisions of this Code, the director of engineering may cause the fence to be removed and the costs thereof charged to the permit holder and collected as taxes are collected, or by any other method provided by law.

(Ord. No. 4113-90; Ord. No. 4997-97)

Secs. 38-28—38-33. Reserved.

ARTICLE II. WORK ON, OVER, UNDER OR AFFECTING STREETS

DIVISION 1. GENERALLY

Sec. 38-34. Definitions.

For the purpose of this article, the following words and terms shall have the meanings respectively ascribed to them by this section:

Permittee. The word "permittee" shall mean any person to whom a permit is issued pursuant to this article.

Street. The word "street" shall embrace alleys, avenues, boulevards, parks, public rights-of-way and all other public places or easements.

Structure. The word "structure" shall mean any building, pole and appurtenance thereto, fixture, post, wire, guy and tower and cable, vault, culvert, manhole or underground installation.

(Ord. No. 62, § 1; Code 1961, § 36-27)

Sec. 38-35. Warning signs, lights or barricades.

Whenever any person performs any work which might tend to affect the use of any street, whether or not a permit therefor is required by this article, appropriate warning signs, lights or barricades shall be set forth in such manner as to give effective notice thereof to the public.

(Ord. No. 62, § 25; Code 1961, § 36-54)

Sec. 38-36. Inspection.

- (a) The director of engineering shall conduct such inspections as may be necessary to assure that work being done and completed under a permit issued pursuant to the provision of this article conforms to such permit. When the permittee reports that such work is completed, the director of engineering shall inspect the work and advise the permittee of the approval or disapproval of such work.
- (b) If, in the opinion of the director of engineering, a permittee is not going forward with the work in a continuing manner and it appears that more than the normal number of inspections will therefore be necessary, the director shall give the permittee notice in writing of this fact. Should additional inspections thereafter result, the director may charge the expense thereof against the letter of credit provided for in Division 3 of this article or, where a bond has been given pursuant to section 38-69, appropriate proceedings may be carried out to recover the cost thereof.

(Ord. No. 62, § 11; Code 1961, §§ 36-41, 36-42; Ord. No. 3111-83, § 1; Ord. No. 3223-84)

Sec. 38-37. Notice and correction of defects.

- (a) If work done or being done pursuant to a permit issued under the provisions of this article has not been done or is not being done in accordance with the permit or a street is not left in satisfactory condition, notice of such defect shall be given to the permittee in question. Such permittee shall be required to respond and correct the same according to the following schedule:
 - (1) Immediately, when a hazard exists, posing danger to the health and safety of the public.
 - (2) Within forty-eight (48) hours if condition (1) does not apply and the conditions exist within the pavement of a primary roadway.
 - (3) Within seventy-two (72) hours if condition (1) or (2) does not apply and the condition exists within the pavement of any other roadway.
 - (4) Within fourteen (14) calendar days if condition (1), (2) or (3) does not apply.
- (b) Upon receipt of a notice given under this section, should the permittee in question refuse or fail to correct the condition referred to in such notice within the specified time, the director of engineering may cancel the permit in question and/or cause the necessary work to be done, deducting the cost thereof from the bond or letter of credit; provided that, where a bond has been given pursuant to section 38-69, appropriate proceedings shall be carried out to recover the cost thereof. Where a bond or letter of credit is not required by this article, the cost of correcting any defective work shall be recovered through legal means.

(Ord. No. 62, § 11; Code 1961, §§ 36-43, 36-44; Ord. No. 3111-83, § 1; Ord. No. 3223-84)

(Supp. No. 67)

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Sec. 38-38. Location of mail and newspaper boxes in street.

Mail and newspaper boxes may be placed in the streets without obtaining a permit under the provisions of this article. No such box shall be located within one hundred fifty (150) feet of any federal or state courthouse. All such boxes shall be so located as not to interfere with or endanger public travel or maintenance on the streets. Any such box so located as to interfere with or endanger public travel or maintenance on the streets shall be moved to an approved location, upon reasonable notice from the director of engineering. Failure to remove such boxes after such notice has been given shall constitute a misdemeanor.

(Ord. No. 62, § 18; Code 1961, § 36-50; Ord. No. 3111-83, § 1; Ord. No. 7583-19)

Sec. 38-39. Illumination of business place from across highway.

Illumination or floodlighting of a business place from light structures across a highway from the business place shall be unlawful and no permit shall be issued under the provisions of this article for this purpose.

(Ord. No. 62, § 19; Code 1961, § 36-51)

Sec. 38-40. Access driveways and ramps; curb and gutter work.

- (a) Vehicle access from the public street pavement to private or public property may be allowed only over an approved driveway or ramp constructed under the conditions described in this section.
- (b) No person shall install any curb and gutter or lower the curb on any street, or create, repair or modify any driveway or ramp, either temporary or permanent, within the right-of-way lines of the city, without first obtaining a permit therefor from the director of public works under the provisions of this article. All such curb and gutter, driveways or ramps shall be constructed and curbs lowered according to plans approved by the director of public works and under the supervision of the director of public works and subject to such conditions as the director may prescribe as to materials used and manner of construction. All driveways or ramps shall be fully constructed according to city standards over their entire width between the edge of the pavement of the street and the property line of the property to be served by such driveway or ramp. All driveway or ramp construction, reconstruction, replacement and repairs, where necessary, shall be done at the expense of the owner of the property being served by such driveway and it shall be such owner's responsibility at all times to keep the driveway or ramp and the sidewalk crossed by such driveway or ramp in good repair at such owner's own expense.
- (c) When and if the use of any driveway or ramp is discontinued, the owner of the abutting property shall obtain a permit to remove the same and shall, at such owner's own expense, restore the area from the edge of the pavement to the property line in accordance with the established street and sidewalk pattern.

(Ord. No. 268, § 25; Code 1961, § 36-7)

Sec. 38-41. Restoration of street surface when permit not required for disturbance thereof.

Whenever any person disrupts or disturbs the paved or improved surface of any street used primarily for public travel and a permit therefor is not required by this article, such person shall notify the director of engineering when the paved or improved surface should be restored. The city may restore the paved or improved section and shall render to such person a statement of its costs. Such person shall reimburse the city for its costs in such restoration.

(Ord. No. 62, § 23; Code 1961, § 36-35; Ord. No. 3111-83, § 1)

Sec. 38-42. Installation of underground wiring, piping and equipment.

It shall be unlawful for any person to install underground wiring, piping and/or equipment, including but not limited to electrical wiring, cablevision wiring, and water and sewer piping within the city right-of-way, unless such wiring, piping and/or equipment is installed at a depth of not less than eighteen (18) inches below the top of the curb or the finished grade, whichever is lower. Where it is necessary to install such wiring, piping and/or equipment at depths of less than eighteen (18) inches, such may be placed at the reduced depth upon written approval of the director of engineering.

(Ord. No. 3085-83; Ord. No. 3111-83, § 1)

Secs. 38-43—38-46. Reserved.

DIVISION 2. PERMIT GENERALLY

Sec. 38-47. General requirements and exceptions.

Except as otherwise provided in this article, it shall be unlawful for any person to perform any work in connection with the erection, construction, removal, relocation or maintenance of any surface, overhead or underground installation, or to cut, trim or spray trees, or to place construction signs or materials if such work, cutting, trimming, spraying or placing is on, under, over or in any way affects the surface or subsurface of any street, lane, alley, right-of-way or easement in the city without first having obtained a permit therefor from the director of engineering or the director's authorized representative; nor shall such work be performed after such permit shall have been revoked by the director of engineering or the director's authorized representative, or by the terms of the permit.

Except as otherwise provided herein, it shall be unlawful for any person to dig up, break, excavate, tunnel, undermine or in any manner disturb the surface or subsurface of any street, lane, alley, right-of-way or easement in the city without first having obtained a permit therefor from the director of engineering or the director's authorized representative; nor shall such work be performed after such permit shall have been revoked by the director of engineering or the director's authorized representative, or by the terms of the permit.

The aforementioned permits shall not be required where the work is performed by or on behalf of a subdivision or site developer within his/its approved subdivision or site development, and where the affected surface or subsurface has not yet been accepted by the city; neither shall such permits be required where the work affects only a private street, lane, alley, right-of-way or easement which has not been nor is intended to be dedicated to and/or accepted by the city. However, nothing in this section exempts the requirement of and in fact specifically requires a permit for the installation of driveways, sidewalks or other improvements or structures which are constructed in a subdivision or site development and which are not constructed by or on behalf of the aforementioned developer, even though the affected street, lane, alley, right-of-way or easement may not yet have been accepted by the city.

If an excavation is required in order to make emergency repairs and the emergency existing requires that excavation operations commence prior to the earliest possible issuance of a permit and within seventy-two (72) hours from the discovery of said emergency, a permit shall not be required to commence said excavation; provided, however, that an application as required by section 38-50 shall be submitted within seventy-two (72) hours after the commencement of said excavation; and provided, further, that notification of such emergency work shall be given by telephone, or other means, to the director of engineering or the director's authorized representative immediately. Such application will be made upon the same form and in the same manner as that required by section 38-50 except that it will specify the emergency condition that existed. Any person commencing

an emergency excavation without a permit as allowed herein thereby implies that the person accepts all those conditions and agreements set forth in section 38-50 and elsewhere in this article and that the person will conform to the requirements set forth in sections 38-62 through 38-80.

(Ord. No. 62, § 2; Code 1961, § 36-28; Ord. No. 3051-83; Ord. No. 3111-83, § 1; Ord. No. 3134-84)

Sec. 38-48. Only one permit required for work of continuing nature.

For work of a continuing nature along one (1) or more routes, only one (1) application shall be made and only one (1) permit shall be required under this division.

(Ord. No. 62, § 22; Code 1961, § 36-40; Ord. No. 3051-83)

Sec. 38-49. Application.

- (a) Application for a permit required by this division shall be filed in the office of the director of engineering on forms supplied by the city. Such application shall show all required information and be signed by the applicant or the applicant's authorized agent. Such application shall include a description of the work to be done and a sketch showing such work, if required by the director of engineering.
- (b) Sketches filed with an application under this section shall show the following:
 - (1) The nature of the work to be done.
 - (2) Property lines, where appropriate, and street right-of-way lines with location of the work with reference to a fixed point on the street.
 - (3) Where surface or underground work is involved, a cross section indicating conditions and proposed changes.
 - (4) Where grading operations are involved, the pavement, shoulder, ditch and slope.
 - (5) Any tree which is to be removed.
- (c) An application for a permit involving underground installations filed as provided in this section shall be accompanied by a sketch showing:
 - (1) The exact location and dimensions of conduits, pipes, vaults, manholes, crossings and other installations.
 - (2) Type (concrete, iron, etc.).
 - (3) Depth of covering material.
 - (4) Outlets, showing type and size.
 - (5) Design and location of identification indicators.
- (d) The following information shall be included in an application for a permit in reference to the construction of a drive-in theater entrance:
 - (1) Approximate capacity (cars) of theater.
 - (2) Location of ticket booth or booths.
 - (3) Direction in which screen will face.
 - (4) Distance from street to face of screen.

(5) Location and length of storage lanes.

(Ord. No. 62, §§ 4, 5, 15, 20; Code 1961, §§ 36-29—36-32; Ord. No. 3051-83; Ord. No. 3111-83, § 1)

Sec. 38-50. Issuance and term generally.

- (a) Any person, company or corporation required to obtain a permit by section 38-47 shall make application therefor to the director of engineering on a form prescribed by him, which form shall state the type, amount and dimensions of the work to be performed; the place where such work is to be performed; the purpose of such work; the time at which the work is to be commenced; and the time at which the work is to be completed. Upon the filing of an application for a permit under this article, it shall be the duty of the director of engineering to ascertain that all work to be done pursuant to the permit otherwise complies in all respects with prevailing planning practices, zoning regulations, appropriate construction standards and with the provisions of this Code and other ordinances of the city and the resolutions, policies and regulations of the city before issuing the permit. Additionally, no construction sign shall be erected and no material shall be placed in such a manner as to result in a traffic hazard or otherwise impede the normal use of the right-of-way, if any, such as walkways, bike paths, drainage ditches, etc. The director of engineering shall issue a permit when such compliance is apparent or can be assured by the terms of the permit and when all applicable requirements for obtaining the permit have been met.
- (b) The director of engineering may prescribe a limit for the duration of such permit and may extend the same, so long as the time limitation of extension is based upon reasonable standards prevailing in the industry at the time, taking into consideration weather, availability of material and labor, as well as the applicant's own estimation of the time period needed to complete the project. In no event shall the permit exceed one (1) year, though the permit may be extended for good cause shown. The director of engineering may establish a limited period of work during the term of the permit.
- (c) A permit as issued under this article may be revoked at any time during the period it covers by the director of engineering for failure of the permittee to comply with the provisions of this article or the conditions and agreements of his application by giving written notice to the permittee at his address of record. For failure to rectify such default after revocation, the former permittee shall be held to be in violation of this article for each and every day such default shall continue and each violation shall be considered a Class 4 misdemeanor, and the director of engineering may in his discretion cause such work to be performed as is necessary to rectify such default, and the costs or expenses thereof shall be chargeable to and paid by the former permittee.

(Ord. No. 62, §§ 3, 6, 11; Code 1961, §§ 36-33, 36-39; Ord. No. 3051-83; Ord. No. 3111-83, § 1; Ord. No. 3223-84; Ord. No. 7271-16, § 1)

Sec. 38-51. Liability insurance and bond or letter of credit prerequisite to issuance of permit.

- (a) Before any permit shall be issued pursuant to the provisions of this division to any person to cut, undermine, disrupt or disturb in any manner the paved or improved surface (including shoulders, sidewalks, curbs and gutters) of any street, and before any such permit is issued for the placement of construction signs or materials on the unimproved portion of a right-of-way or easement, evidence of public liability insurance shall be given by such person to defend, indemnify, keep and hold the city free and harmless from liability on account of injury or damage to persons or property growing out of the activity to be authorized by such permit in the amount of one hundred thousand dollars (\$100,000.00). Such insurance policy shall name the city as an additional insured by separate endorsement to the policy or as otherwise approved by the city attorney's office.

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- (b) Before any permit shall be issued pursuant to the provisions of this division to any person, the applicant shall submit, accompanying a properly signed application, a bond or letter of credit in a form and of a type approved by the city attorney. The bond or letter of credit shall be in an amount equal to the estimated value of the work and repairs to be performed on the right-of-way but in no case less than five thousand dollars (\$5,000.00) and shall be payable to the city and conditioned upon the applicant's compliance with this article and the conditions and agreements of his application.
 - (c) Each utility company shall furnish an annual performance bond or letter of credit with a minimum value of five thousand dollars (\$5,000.00), in a form acceptable to the city attorney. An additional bond or letter of credit shall be required if the estimated costs of construction and repairs, within the right-of-way, exceed the minimum amount. A larger valued minimum bond or letter of credit is an acceptable alternative to the use of several instruments.

(Ord. No. 62, § 10; Code 1961, § 36-38; Ord. No. 3051-83; Ord. No. 3223-84)

Sec. 38-52. Prerequisite to issuance for drive-in theater entrance.

No permit required by this division shall be issued for the construction of a drive-in theater entrance, unless adequate off-street storage lanes are provided between the street right-of-way and the theater ticket booth or entrance to the theater parking area.

(Ord. No. 62, § 15; Code 1961, § 36-34; Ord. No. 3051-83)

Sec. 38-53. Issuance for logging roads, tram roads and other temporary entrances.

The director of engineering may issue permits under this provision authorizing logging roads, tram roads and other temporary private entrances, but slash or other material shall not be permitted to block or impede drainage.

(Ord. No. 62, § 16; Code 1961, § 36-48; Ord. No. 3051-83; Ord. No. 3111-83, § 1)

Sec. 38-54. Issuance for service or frontage roads.

The director of engineering may issue permits under the provisions of this division for service or frontage roads to be constructed by the permittee at the permittee's expense, upon such terms and conditions as may be necessary to protect the public interest.

(Ord. No. 62, § 17; Code 1961, § 36-49; Ord. No. 3051-83; Ord. No. 3111-83, § 1)

Sec. 38-55. Issuance for cutting, trimming or spraying trees.

The director of engineering may issue a permit under this division for the cutting, trimming or spraying of trees on a street only when such work is fully justified in the public interest. Such work shall be done only in a manner prescribed in the permit so issued.

(Ord. No. 62, § 24; Code 1961, § 36-52; Ord. No. 3051-83; Ord. No. 3111-83, § 1)

Secs. 38-56, 38-57. Reserved.

Editor's note(s)—Section 38-56, relating to issuance of emergency permits, derived from Ord. No. 62, § 8, and Code 1961, § 36-35, and § 38-57, relating to issuance and term of blanket permits, derived from Ord. No. 62, § 22, and Code 1961, § 36-40, were both repealed by Ord. No. 3051-83.

Sec. 38-58. Issuance to, and responsibilities of, contractor for work on government project.

Where work on any government project is to be performed by a contractor, the permit required under the provisions of this division shall be issued in the name of the contractor. The contractor in such a case shall be responsible for inspection and guarantee fees under the provisions of Division 3 of this article and shall give evidence of liability insurance or bond as required in section 38-51.

(Ord. No. 62, § 13; Code 1961, § 36-46; Ord. No. 3051-83)

Sec. 38-59. Contents of permits.

Permits issued under this division shall specify the manner and the conditions under which the permitted work shall be done. Unless otherwise specified in the permit, every permit issued shall be deemed to include the following provisions:

- (1) Public travel is to be protected by adequate lights, barricades and appropriate warning signals and signs at all times.
- (2) Public travel is to be blocked only in the manner and as specified in the permit.
- (3) Pavement is to be used for piling or storing of excavated material or for deposit of material and the placing of equipment only as specified in the permit.
- (4) The maximum amount of ditch, trench or other excavation to be opened at any one (1) time shall not exceed two hundred fifty (250) feet, including the backfilled portion of any trench which is not in condition for public travel, unless the director of engineering finds reason for an exception.
- (5) All backfilling of excavations shall be done to a ninety-five (95) percent density compaction. Excavations within the improved section of the right-of-way shall be backfilled in accordance with section 38-62 of this article. Compaction by using water is not permitted.
- (6) On pavement cuts, the pavement shall be restored to its former dimensions, cross-section and profile with material conforming to city specifications.
- (7) No tree roots shall be cut to the extent of rendering the tree unsafe and, if possible, tunneling through or under roots instead of cutting anchor roots shall be followed.
- (8) Shoulders, ditches and drainage mediums shall be left in the same condition as found, or as specified in the permit.
- (9) The permittee agrees to repair any sinks in the backfill or pavement occurring within one (1) year after the work done under the permit is completed.
- (10) If entrances to adjacent property are affected, the permittee shall, if practical, provide temporary facilities for safe ingress and egress to such property.
- (11) The permittee agrees to restore the street to a satisfactory condition consistent with adjoining sections of the street in accordance with this article and as specified in the permit.
- (12) The permittee agrees, by the acceptance of the permit, to defend, indemnify, keep and hold the city free and harmless from liability on account of injury or damage to person or property growing out of activity authorized by the permit, whether suit is brought against the city either independently or jointly with the permittee.
- (13) The permittee agrees, by the acceptance of the permit, upon notice in writing, to remove or relocate any structure or installation placed in, on, under or over any street, if such structure or installation

interferes with the use of the street or any public improvement or repair planned or found necessary thereon.

- (14) The permittee shall be responsible for complying with the Virginia Underground Utility Damage Prevention Act and city ordinances and state laws on erosion and sediment control.
- (15) The permittee shall give the director of engineering or his authorized representative twenty-four (24) hours' advance notice of the time permitted work is to begin. Additionally, permittees shall give four (4) hours' advance notice of requests for inspection prior to repairs of construction openings and/or prior to concrete pouring.

(Ord. No. 62, §§ 9, 21; Code 1961, §§ 36-36, 36-37; Ord. No. 3051-83; Ord. No. 3111-83, § 1; Ord. No. 3223-84; Ord. No. 7271-16, § 1)

Sec. 38-60. Permit may provide for construction of entrances by city.

Whenever in the opinion of the director of engineering it is in the public interest for the city to construct an entrance for which a permit has been requested by an application filed as provided in section 38-49, the director may provide in the permit that the city will install pavement, pipe, curb and gutter or do such other work as the director deems to be in the public interest; but in all such cases the permittee shall furnish and deliver to the site any pipe or other materials necessary for the entrance.

(Ord. No. 62, § 14; Code 1961, § 36-47; Ord. No. 3051-83; Ord. No. 3111-83, § 1)

Sec. 38-61. Authority of city when work done without permit.

Whenever any person uses a street for any purpose for which a permit is required under the provisions of this division, without such permit, the city may remove such work and restore the street to its original condition. Where the city exercises such right, it shall have the right to recover from such person its cost and expense.

(Ord. No. 62, § 12; Code 1961, § 36-45; Ord. No. 3051-83)

Sec. 38-62. Backfilling and repair.

The permittee shall promptly refill any trenches or openings made with approved fill material in layers not to exceed six (6) inches in thickness, thoroughly tamping each layer with metal tampers having a tamping face of not more than twenty-five (25) square inches or machine compacted. The backfill materials shall be in optimum moisture content and shall be compacted within a tolerance of plus or minus twenty (20) percent as compared to the theoretical maximum density determined in accordance with Virginia Test Method I. On unimproved areas of the right-of-way, this process shall continue until such trench or opening is filled level with the adjoining surface, leaving the same smooth and ready to receive sod or seed. On improved areas of the right-of-way of primary streets, this process shall continue to within fifteen (15) inches of the surface grade where crusher run stone shall be used to complete the compaction process level with the adjoining surface, leaving the same smooth and safe for travel. On all other streets, the same shall apply, except that twelve (12) inches of crusher run stone shall be used. The designation of primary street shall be made by the director of engineering. Patching and repair of all streets shall be in accordance with city standards and as designated in the permit.

Tunnels will be backfilled evenly and fully so that the density of the fill will not be equal to that of the surrounding surfaces. Broken pavement, large stones, roots and other debris shall not be used in the backfill.

(Ord. No. 3051-83; Ord. No. 3111-83, § 1; Ord. No. 3223-84)

Secs. 38-63—38-66. Reserved.

DIVISION 3. PERMIT, INSPECTION AND GUARANTEE FEES

Sec. 38-67. Schedule.

- (a) Minimum permit and inspection fees for work for which a permit is required by this article shall be required in accordance with the following schedule except as otherwise specifically established by franchise agreement:

Residential Apron	\$50.00
Test Pit/Core	\$50.00
Multiple Family/Commercial/Industrial/Utility	\$50.00 + \$2.00 per linear foot of disturbance measured along the longest dimension of the cut.
Blanket permit for tree trimming	\$200.00
Renewal Fee—Residential	\$50.00
Renewal Fee—MF/Comm/Ind/Util	\$1,000.00 per month or fraction thereof of extension of work period.

- (b) In lieu of separate permits for tree trimming, utilities regularly performing tree trimming within the various rights-of-way and easements of the city may apply for and be issued a blanket permit by the director of engineering pursuant to stated conditions and for a period not to exceed one (1) year. Such permit shall be issued only for work which does not entail the disruption of a right-of-way or easement and may be issued upon payment of an annual inspection fee of two hundred dollars (\$200.00).

(Ord. No. 62, § 26; Code 1961, § 36-61; Ord. No. 3051-83; Ord. No. 3111-83, § 1; Ord. No. 3223-84; Ord. No. 5933-03, § 1; Ord. No. 6863-12, § 1; Ord. No. 7271-16, § 1)

Editor's note(s)—Ord. No. 7271-16 shall be in effect on and after July 1, 2016.

Sec. 38-68. Amount of inspection fees.

Except as to the minimum fees set forth in section 38-67, inspection fees under this article shall be the actual cost of making inspections necessary to assure that the work is done in a proper and orderly manner. For work requiring more than four (4) hours of inspection time, a fee of fifty dollars (\$50.00) per hour shall be charged in addition to the minimum fee.

(Ord. No. 62, § 7; Code 1961, § 36-59; Ord. No. 3051-83; Ord. No. 6863-12, § 1; Ord. No. 7271-16, § 1)

Editor's note(s)—Ord. No. 7271-16 shall be in effect on and after July 1, 2016.

Sec. 38-69. Payment before issuance of permit; exception.

Fees required by section 38-67 shall be paid before the director of engineering shall issue a permit under the provisions of this article.

No such permit and inspection fee, however, shall be required in the event any person is required to dig up, break, excavate, tunnel, undermine or in any manner disturb the surface or subsurface of any street, lane, alley or public right-of-way if such actions are required by the city through its repair, alteration or widening of any such street, lane, alley or public right-of-way or any sidewalk and if such actions are to be performed within the limits of the project.

(Ord. No. 62, § 7; Code 1961, §§ 36-56, 36-57; Ord. No. 3051-83; Ord. No. 3111-83, § 1; Ord. No. 3134-84; Ord. No. 3223-84)

Secs. 38-70, 38-71. Reserved.

Editor's note(s)—Section 38-70, relating to sufficiency of guarantee fees, derived from Ord. No. 62, § 7; Code 1961, § 36-58; and Ord. No. 3051-83; and § 38-71, relating to return of the guarantee fee, derived from Ord. No. 62, § 11; Code 1961, § 36-60; Ord. No. 3051-83; and Ord. No. 3111-83, § 1, were repealed by Ord. No. 3223-84.

Sec. 38-72. Protective measures.

The permittee shall, by the use of city-approved barricades, fencing, railways, passways, lights or any other necessary safety equipment, protect the public from injury. Such protective measures shall be maintained until the city or its contractor commences resurfacing such area or until the city accepts such area without further resurfacing.

(Ord. No. 3051-83)

Sec. 38-73. Protection of traffic.

The permittee shall not block or reroute traffic without the permission of the traffic engineer, which shall take the form of a sign plan submitted to and approved by the traffic engineer or his representative. Control of traffic shall be in accordance with this approved sign plan. Proper warning signs, cones, flagmen or any other necessary traffic-control device shall be in conformance with the federal manual on traffic-control devices, Virginia manual on traffic-control devices, and the Virginia Department of Highways and Transportation specifications for reflectorized sign materials and shall be provided by the permittee and maintained and positioned at such site so as to protect persons and property at all times during which traffic flow is or may be disturbed.

(Ord. No. 3051-83)

Sec. 38-74. Protection of utilities.

The permittee shall not interfere with any existing utility without the written consent of the director of engineering and the utility company or person owning the utility. If it becomes necessary to remove an existing utility, this shall be done by its owner. No utility owned by the city shall be moved to accommodate the permittee unless the cost of such work is borne by the permittee. The cost of moving privately owned utilities shall be similarly borne by the permittee unless it makes other arrangements with the person owning the utility. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work, and do everything necessary to support, sustain and protect them under, over, along or across said work. In case any of said pipes, conduits, poles, wires or apparatus should be damaged, they shall be repaired by the agency or person owning them; and the expense of such repairs shall be charged to the permittee; and his or its bond shall be liable therefor. The permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any water pipes, sewer, gas

pipe, electric conduit or other utility; and its bond or insurance carrier shall be liable therefor. The permittee shall inform itself as to the existence and location of all underground utilities and protect the same against damage in accordance with the Virginia Underground Utility Damage Prevention Act.

(Ord. No. 3051-83; Ord. No. 3111-83, § 1)

Sec. 38-75. Protection of adjoining property.

The permittee shall at all times at his or its own expense preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. The permittee shall, at its own expense, shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property or highways resulting from its failure properly to protect and carry out said work. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began. The permittee shall not remove, even temporarily, any trees or shrubs which exist in parking strip areas or easements across private property without first having notified the property owner, or in the case of public property, the appropriate city department or city official having control of such property.

(Ord. No. 3051-83)

Sec. 38-76. Protection of sidewalks.

Any excavation made along or under the length of a sidewalk run shall be provided with adequate protection for pedestrians as specified by the director of engineering or his representative. Where sidewalk areas have been removed, adequate sidewalk space shall be provided to ensure the safe passage of pedestrians.

Any excavation of a sidewalk which disturbs any portion of the square or rectangular pattern will require the repaving of the entire square or rectangle.

(Ord. No. 3051-83; Ord. No. 3111-83, § 1)

Sec. 38-77. Protection of watercourses.

The permittee shall provide for the flow of all watercourses, sewers or drains intercepted during the excavation work and shall pay all expenses experienced by the city in the proper replacement of such or shall make such provisions for them as the director of engineering may direct. The permittee shall not obstruct the gutter of any street but shall use all proper measures to provide for the free passage of surface water. The permittee shall make provision to take care of all surplus water, muck, silt, slickings or other runoff pumped from excavations or resulting from sluicing or other operations in accordance with city ordinances and state laws on erosion and sediment control, and shall be responsible for any damage resulting from its failure to so provide.

(Ord. No. 3051-83; Ord. No. 3111-83, § 1)

Sec. 38-78. Protection of monuments.

The permittee shall not remove or disturb any monuments or property line pins found on the line of the excavation work without first obtaining the permission of the director of engineering to do so. Permission to remove or disturb such monuments shall only be granted upon the condition that the permittee shall pay all expenses incident to the proper replacement of such monument or pin by the city.

(Supp. No. 67)

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(Ord. No. 3051-83; Ord. No. 3111-83, § 1)

Sec. 38-79. Return to city or replacement of bricks, materials.

The permittee shall save and return to the city, if it so desires, all brick or other material taken up, or replace same if lost or broken.

(Ord. No. 3051-83)

Sec. 38-80. Cleanup.

As the excavation work progresses, the work area shall be thoroughly cleaned of all rubbish, excess earth, rock or other debris resulting from such work. All cleanup operations at such site shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the director of engineering.

(Ord. No. 3051-83; Ord. No. 3111-83, § 1)

Sec. 38-81. Reserved.

ARTICLE III. CHRISTMAS STREET DECORATIONS

Sec. 38-82. Permit required.

It shall be unlawful for any person to place upon, or to extend same across, any street or sidewalk in the city any ornamental Christmas decoration, whether illuminated or not, unless the same has been approved by the city manager and a permit therefor has been secured from the city manager.

(Ord. No. 268, § 39; Code 1961, § 36-24)

Sec. 38-83. Permit to state time of installation and removal.

Permits issued under this article shall state the time when the decorations will be placed or installed and when the same will be removed.

(Ord. No. 268, § 39; Code 1961, § 36-24)

Sec. 38-84. Bond and insurance.

Before any permit is issued under this article, the applicant shall furnish bond in the amount of five hundred dollars (\$500.00), with surety to be approved by the city manager, conditioned that the terms of the permit shall be fully complied with and to save the city harmless from any loss, cost, damage or expense resulting from such installation. A public liability insurance policy or certificate of insurance providing ten thousand dollars (\$10,000.00) to fifty thousand dollars (\$50,000.00) coverage shall also be deposited by such applicant with the city manager.

(Ord. No. 268, § 39; Code 1961, § 36-24)

(Supp. No. 67)

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Sec. 38-85. Installation of illuminated decorations.

All illuminated decorations installed pursuant to this article shall be installed under the supervision of the division of codes compliance. No such illuminated decorations shall be installed except by an electrician duly qualified under the provisions of Article VI of Chapter 13 of this Code and other ordinances of the city.

(Ord. No. 268, § 39; Code 1961, § 36-24)

Sec. 38-86. Permission to use poles and wires of VEPCO.

Where the use of the poles and wires of the Virginia Electric and Power Company is contemplated, the applicant for a permit under this article shall first obtain the permission of such company for such use.

(Ord. No. 268, § 39; Code 1961, § 36-24)

Secs. 38-87—38-96. Reserved.

ARTICLE IV. CONSTRUCTION OF SIDEWALKS

Sec. 38-97. Violations of article.

A violation of any provision of this article shall constitute a Class 3 misdemeanor, unless otherwise specifically provided.

Sec. 38-98. Permit required.

No sidewalk shall be laid or constructed until a permit therefor has been obtained from the department of engineering.

(Ord. No. 268, § 21; Code 1961, § 36-119; Ord. No. 3111-83, § 1)

Sec. 38-99. Lines and grades.

No sidewalk shall be laid or constructed until lines and grades therefor shall have been obtained from the department of engineering. Sidewalk installations shall be in accordance with the lines and grades so given.

(Ord. No. 268, § 21; Code 1961, § 36-120; Ord. No. 3111-83, § 1)

Sec. 38-100. Work to be done in accord with approved plans.

All sidewalks shall be constructed according to plans approved by the director of engineering.

(Ord. No. 3111-83, § 1)

Sec. 38-101. Specifications generally.

Subject to the provisions of sections 38-102 and 38-103, sidewalks constructed of brick or concrete shall be in conformity with the specifications on file in the department of engineering.

(Ord. No. 268, § 21; Code 1961, § 36-125; Ord. No. 3111-83, § 1)

Sec. 38-102. Specifications for concrete sidewalks, one course.

- (a) *Generally.* The laying of concrete sidewalks, one (1) course, shall be in accordance with the specifications set out in the following subsections of this section.
- (b) *Subgrade; forms; etc.* Subgrades shall be true and thoroughly compacted. Forms shall be four (4) inches wide and unyielding. Division plates shall be one-eighth ($\frac{1}{8}$) inch thick, five (5) inches wide and five (5) feet long. Sidewalks shall have a slope of one-quarter ($\frac{1}{4}$) inch per foot toward the curb.
- (c) *Cement.* The cement shall meet the requirements of the current standard specifications for portland cement of the American Society for Testing Materials. A sack containing ninety-four (94) pounds of cement will be considered one (1) cubic foot.
- (d) *Fine aggregate.* Fine aggregate shall consist of clean, hard, curable, uncoated particles of sand, free from all organic matter. One hundred (100) percent shall pass a one-quarter ($\frac{1}{4}$) inch screen, and ninety-five (95) percent shall be retained on a one hundred (100) mesh screen. It shall be well graded from coarse to fine.
- (e) *Coarse aggregate.* Coarse aggregate may be broken stone or gravel. The broken stone or gravel shall be clean, hard, durable, uncoated rock. It shall contain no vegetable or other deleterious matter and shall be free from soft, thin, elongated or laminated pieces.
- (f) *Proportioning concrete.* The concrete shall consist of one (1) part portland cement, two (2) parts fine aggregate, and three (3) parts coarse aggregate. All materials shall be accurately measured in a manner approved by the director of engineering.
- (g) *Mixing concrete.* The concrete shall be mixed in a bath mixer for at least one (1) minute, and enough clear water added to give a consistency that will meet the requirements of the standard slump test.
- (h) *Placing concrete.* Freshly mixed concrete shall be placed immediately on the prepared subgrade and shall be struck off and lightly tamped with a straight edge.
- (i) *Joints generally.* Joints shall be made over five (5) linear feet of the walk by division plates and at right angles to the surface and edge of the walk, and finished with a creaser having a one-quarter-inch turn.
- (j) *Finishing.* The surface shall be lightly tamped until the air and water have been released and a sufficient amount of mortar brought to the top for finishing. The finishing shall be done with a trowel and a true plane surface made and compacted. All edges shall be finished with an edger having a one-quarter-inch turn. During very hot or dry weather the walk shall be protected by a suitable cover for seven (7) days.
- (k) *Expansion joints.* Expansion joints in a sidewalk shall be left at intervals of not less than twenty-five (25) feet nor more than fifty (50) feet. The expansion joint shall extend entirely through the sidewalk, vertically, and shall be the equivalent of one-half ($\frac{1}{2}$) inch in width for every twenty-five (25) linear feet of sidewalk.

(Ord. No. 268, § 23; Code 1961, § 36-126; Ord. No. 3111-83, § 1)

Sec. 38-103. Specifications for brick sidewalks.

- (a) *Generally.* The laying of brick sidewalks shall be in accordance with the specifications set out in the following subsections of this section.
- (b) *Subgrade.* Subgrades shall be true and thoroughly compacted.
- (c) *Base.* There shall be a concrete base, as described in the specifications for concrete sidewalks.

(d) *How laid.* Brick shall be laid with one-quarter ($\frac{1}{4}$) inch sand joints and true to line and grade.

(Ord. No. 268, § 23; Code 1961, § 36-127)

Sec. 38-104. Width.

All sidewalks, whether of brick or concrete, shall have a width of five (5) feet; provided, however, that the director of engineering may permit a lesser width but shall not permit a width of less than four (4) feet when such width is necessary to conform to the width of sidewalks already laid.

(Ord. No. 268, § 22; Code 1961, § 36-122; Ord. No. 3111-83, § 1)

Sec. 38-105. Supervision.

The construction of sidewalks shall be under the supervision of the director of engineering and subject to such conditions as the director may prescribe as to materials and manner of construction.

(Ord. No. 268, § 21; Code 1961, § 36-121; Ord. No. 3111-83, § 1)

Sec. 38-106. Warning lights.

While a sidewalk is being prepared for pavement and while the pavement is being laid, there shall be placed on the sidewalk, at night, a sufficient number of red lights to warn the public and prevent accident.

(Ord. No. 268, § 24; Code 1961, § 36-123)

Secs. 38-107—38-116. Reserved.

ARTICLE V. VAULTS UNDER SIDEWALKS

DIVISION 1. GENERALLY

Sec. 38-117. "Vault" defined.

As used in this article, the word "vault" shall mean any excavation, elevator shaft, pit, well or cellar opening made or constructed in or under any sidewalk in the city.

(Ord. No. 268, § 1; Code 1961, § 36-62)

Sec. 38-118. Compliance with article and other applicable ordinances.

In the construction, maintenance and use of any vault and of all fixtures, appliances and appurtenances therein or connected therewith, the provisions of this article and other ordinances of the city in regard to vaults shall at all times be complied with.

(Ord. No. 268, § 10; Code 1961, § 36-79)

Sec. 38-119. Violations of article.

Each violation of any provision of this article shall constitute a Class 3 misdemeanor, unless otherwise specifically provided.

Sec. 38-120. Beginning construction of or using vault constitutes acceptance of and assent to provisions of article.

Whenever work on the construction of a vault shall have been begun or whenever any use shall have been made of a vault, such work or use, as the case may be, shall be deemed to be an acceptance of and assent to the terms, conditions and restrictions set forth in this article.

(Ord. No. 268, § 10; Code 1961, § 36-98)

Sec. 38-121. Application of article to vaults constructed prior to September 13, 1960.

Permission is hereby granted for the maintenance and use of all vaults constructed prior to September 13, 1960; provided that, all such vaults and the maintenance and use thereof shall be subject to all the provisions of this article relating to vaults, and upon the refusal or failure of the proprietor or lessee of any such vault to comply with this section, the director of engineering shall order such vault closed and the sidewalk placed in its original condition. If such order is not complied with within sixty (60) days, the director of engineering shall have the same done and paid for out of the appropriation for sidewalk repairs and shall certify the expense thereof to the city treasurer for collection from the proprietor or lessee of such vault.

(Ord. No. 268, § 16; Code 1961, § 36-66; Ord. No. 3111-83, § 1)

Sec. 38-122. General duties of director of engineering under article.

It shall be the duty of the director of engineering to require that all the provisions of this article and other ordinances of the city in regard to vaults and all conditions for permits for the same are complied with.

(Ord. No. 268, §§ 5, 11; Code 1961, § 36-74; Ord. No. 3111-83, § 1)

Sec. 38-123. Supervision and approval of construction.

The construction of every vault, including the retaining walls thereof, shall be under the supervision of the director of engineering; and all work thereon shall be done in a manner satisfactory to the director and shall be subject to the director's approval.

(Ord. No. 268, § 10; Code 1961, § 36-96; Ord. No. 3111-83, § 1)

Sec. 38-124. Safety precautions during construction.

During the construction of a vault, all necessary precautions shall be observed, as prescribed by the director of engineering, in order to prevent injury to persons or property.

(Ord. No. 268, § 10; Code 1961, § 36-96; Ord. No. 3111-83, § 1)

Sec. 38-125. Limitation on space.

The space under the sidewalk which may be excavated for the construction of a vault, or used as a vault, shall be limited to the space between the building line and a line drawn four and one-half (4½) feet from and parallel to the inner side of the curb.

(Ord. No. 268, § 10; Code 1961, § 36-75)

Sec. 38-126. Interference with sewer or water pipes, fire hydrants, etc.

Vaults and all fixtures, appliances and appurtenances therein or connected therewith shall be constructed, maintained and used so as not to interfere with any sewer pipe, water pipe, fire hydrant, manhole, catch basin, conduit or other public work.

(Ord. No. 268, § 10; Code 1961, § 36-81)

Cross reference(s)—Sewers and sewerage, Ch. 33; water supply, Ch. 42.

Sec. 38-127. Roof.

The roof of a vault shall be constructed of glass floor lights, iron, flagging, concrete, terra-cotta or hard bricks, and shall have its crown at least six (6) inches below the established surface of the sidewalk.

(Ord. No. 268, § 10; Code 1961, § 36-91)

Sec. 38-128. Paving of sidewalk over vault.

- (a) The sidewalk over a vault not occupied by floor lights shall be paved with stone or concrete according to specifications of the director of engineering, and shall be laid to the grade designated by such director. All such paving shall be laid and maintained at the expense of the owner of the land abutting on such vault.
- (b) Glass prisms or blanks may be set in the paving referred to in subsection (a) above, not exceeding two (2) inches square or two (2) inches in diameter, and not less than one and three-quarters (1¾) inches thick at the edges. Glass floor lights may be set in such paving; but the thickness of such lights and the method of setting the same shall be such as, in the judgment of the director of engineering, may be necessary.

(Ord. No. 268, § 10; Code 1961, § 36-92; Ord. No. 3111-83, § 1)

Sec. 38-129. Limitation on number of sidewalk openings; size of openings generally.

The number of openings in the sidewalk over a vault shall be limited to one for each fifty (50) feet of frontage of such sidewalk; provided that, if such fifty (50) feet of frontage shall embrace two (2) places of business, then one opening may be permitted for each place of business. No such opening, except for a lift or elevator, shall be more than sixty (60) inches square, or sixty (60) inches in diameter, if circular.

(Ord. No. 268, § 10; Code 1961, § 36-93)

Sec. 38-130. Lifts and elevators and openings therefor.

No lift or elevator shall be installed in a vault if the sidewalk over the same has a less width than six (6) feet. No opening for a lift or elevator shall be more than four (4) feet, measured perpendicular to the curb, or extend across more than one-third ($\frac{1}{3}$) of the width of the sidewalk. No opening for a lift or elevator shaft shall be more than seventy-two (72) inches in diameter.

(Ord. No. 268, § 10; Code 1961, § 36-94)

Sec. 38-131. Covers for openings; pit or well ventilating fans.

- (a) Every opening into a vault from the sidewalk shall, at all times have a heavy iron cover set in a substantial iron frame and fastened thereto by noncorroding metal hinges. Such cover and the frame into which it is set shall be kept well scored, and no part of either, or of the hinges attached thereto, shall project above the established surface of the sidewalk. Such cover shall be fastened down with an iron rod or chain, except when raised to permit access to the vault.
- (b) No opening into a vault from the sidewalk shall have a grated covering, except on well or pit openings designed to provide ventilation in the abutting basement by means of suction fans. The space between the grates of such covers shall not exceed one-half ($\frac{1}{2}$) inch and shall be of such construction as is approved by the director of engineering. Fans provided in pits or wells for ventilation shall be of suction type only and limited to such capacity as may be approved by the director of engineering and installed and operated under such director's supervision.

(Ord. No. 268, § 10; Code 1961, § 36-95; Ord. No. 3111-83, § 1)

Sec. 38-132. Sidewalk repairs.

The right of the city to make any necessary repairs to the sidewalks over a vault shall not be interfered with, and the city shall not be liable for any damage done to such vault, its fixtures or appurtenances during or in consequence of any such repairs. The owner of the land abutting on a vault shall reimburse the city for all moneys expended in making repairs to the sidewalk over the same during the continuance of the permit for maintenance thereof.

(Ord. No. 268, § 10; Code 1961, § 36-88)

Sec. 38-133. Change in sidewalk grade.

Whenever any change shall be made in the grade of the sidewalk over a vault, such vault shall be made to conform to such new grade and paved over, if necessary, at the expense of the proprietor of such vault or the owner of the land abutting thereon.

(Ord. No. 268, § 10; Code 1961, § 36-90)

Sec. 38-134. Changes when adjacent street widened.

Whenever the street adjacent to a vault is widened, all necessary changes in the construction of such vault, its fixtures and appurtenances, shall be made by the owner or proprietor thereof, and if not made within a reasonable time after notice, may be made by the director of engineering, at the risk and expense of such owner or proprietor.

(Ord. No. 268, § 10; Code 1961, § 36-85; Ord. No. 3111-83, § 1)

Sec. 38-135. Warning bells; attendants.

Each vault shall be provided, at all times, with an automatic bell device so constructed that it will ring, whenever the vault is being opened or closed, as a warning to pedestrians. Every owner or occupant of any lot in front of which any vault is located shall, immediately prior to the opening of such vault, and so long as the same shall remain uncovered or opened, cause an attendant to be stationed at such vault to warn pedestrians of the opening of such vault.

(Ord. No. 268, § 17; Code 1961, § 36-76)

Sec. 38-136. Prohibited equipment, appliances, etc.

No person shall place, locate, install, maintain or use, in any vault:

- (1) Any boiler;
- (2) Any engine operated by steam, gas or gasoline;
- (3) Any tank or container for storing oil, gas or gasoline;
- (4) Any explosive;
- (5) Any pump, water closet or urinal;
- (6) Any appliance or pipe for generating or emitting gas, steam or any offensive odor;
- (7) Any fan for ejecting vitiated or superheated air; or
- (8) Any exhaust pipe intended to open or discharge into such vault.

(Ord. No. 268, § 10; Code 1961, § 36-89)

Sec. 38-137. Maintenance or use does not vest title in owner of abutting land or affect city's rights.

The maintenance or use of a vault shall not be taken to vest any title thereto in the owner of the abutting land, or to abridge in any manner the rights of the city therein.

(Ord. No. 268, § 10; Code 1961, § 36-86)

Sec. 38-138. City not liable for losses, damages, etc., resulting from construction, maintenance or use.

The city shall not be liable for any loss, damage, injury, cost or expense incurred by any person by reason of the construction, maintenance or use of a vault or any fixture therein or any appliance or appurtenance thereof.

(Ord. No. 268, § 10; Code 1961, § 36-87)

Sec. 38-139. Installation of public work in, under or through vault.

The director of engineering shall have the right at any time, without making compensation therefor, to install and maintain any public work in, under or through a vault; and the owner or proprietor of the land abutting on such vault, upon being notified by the director of engineering, by registered mail addressed to such owner or proprietor at his or her last-known post office address, to the effect that it is desired to make any such installation, or any extension or alteration of any such installation, shall, without cost to the city, at once remove from such vault any pipe, wall, beam, fixture or other part, appurtenance or appliance therein or connected therewith, which in the opinion of such director should be removed, so as to leave a clear space in such vault sufficient of the installation, operation, maintenance or extension of such public work. Upon failure of such owner or proprietor to comply with such notice, such removal may be made by the director of engineering at the risk and expense of the person so in default, or the permit for such vault may be revoked by the director of engineering.

(Ord. No. 268, § 10; Code 1961, § 36-83; Ord. No. 3111-83, § 1)

Sec. 38-140. Right of entry of city agents or employees.

The agents and employees of the city shall at all times have the right to enter a vault for the purpose of inspecting the same or installing, inspecting, extending or repairing any public works therein.

(Ord. No. 268, § 10; Code 1961, § 36-84)

Secs. 38-141—38-145. Reserved.

DIVISION 2. CONSTRUCTION AND MAINTENANCE PERMITS

Sec. 38-146. Required.

- (a) It shall be unlawful for any person to construct any vault, without first obtaining a permit so to do from the director of engineering.
- (b) It shall be unlawful for any person to maintain or use any vault constructed after September 13, 1960, without first obtaining a permit for such purpose from the director of engineering.

(Ord. No. 268, §§ 2, 3; Code 1961, §§ 36-63, 36-64; Ord. No. 3111-83, § 1)

Sec. 38-147. Application.

Application for a permit for the construction of a vault shall be filed with the director of engineering by the owner of the land fronting on the sidewalk under which the vault is to be constructed. Such application shall state the purposes for which the vault is intended, the nature of all fixtures, machinery and appliances to be installed therein, and such other information as the director of engineering may require. Such application shall be accompanied by plans and specifications showing the dimensions of the vault, the character of the proposed construction, the method of draining the same, the number, size and location of all openings therein from the street, the method proposed for protecting such openings and any other facts that may be required by the director of engineering.

(Ord. No. 268, §§ 5, 8; Code 1961, § 36-67; Ord. No. 3111-83, § 1)

Sec. 38-148. Compliance with article and other applicable ordinances prerequisite to grant.

No permit required by this division shall be granted until, in the judgment of the director of engineering, all the provisions of this article and other ordinances of the city have been complied with, insofar as they apply to the vault involved.

(Ord. No. 268, § 7; Code 1961, § 36-70; Ord. No. 3111-83, § 1)

Sec. 38-149. Not to be granted if construction, maintenance or use would create nuisance or danger.

No permit required by this division shall be granted when, in the opinion of the director of engineering, the construction, maintenance or use of the vault involved would result in creating a nuisance or a menace to persons or property.

(Ord. No. 268, § 6; Code 1961, § 36-68; Ord. No. 3111-83, § 1)

Sec. 38-150. Not to be granted if vault interferes with or injures public works.

No permit shall be granted for the construction, maintenance or use of any vault which will interfere with or injure any water main, sewer main, gas main, fire hydrant, catch basin, manhole, underground conduit, police or fire alarm post or any other public works.

(Ord. No. 268, § 13; Code 1961, § 36-69)

Sec. 38-151. Approval of plans and specifications prerequisite to grant of construction permit.

No permit shall be granted for the construction of a vault until the plans and specifications provided for in section 38-147 have been approved by the codes compliance administrator, as making sufficient provision for the safety of the public and adjoining property, and by the director of engineering.

(Ord. No. 268, §§ 5, 8; Code 1961, § 36-67; Ord. No. 3111-83, § 1)

Sec. 38-152. Abutting owner's agreement prerequisite to grant of construction permit.

No permit shall be granted for the construction of any vault until the owner of the land abutting on the sidewalk under which such vault is to be constructed has, by means of a writing in the nature of a covenant running with such land and intended to bind all future owners thereof, duly executed and admitted to record, stipulated and agreed that the rights and privileges conferred by such permit shall be at all times subject to all and singular the terms, conditions and restrictions imposed by this article.

(Ord. No. 268, § 12; Code 1961, § 36-71)

Sec. 38-153. Bond or insurance prerequisite to grant of construction permit.

- (a) No permit shall be granted for the construction of any vault until a bond, with good and sufficient surety approved by the city manager, in the sum of one hundred thousand dollars (\$100,000.00) for injury to one (1) person and two hundred thousand dollars (\$200,000.00) maximum for injuries arising out of one (1) accident, the form of which bond shall be approved by the city attorney, and the surety on which shall be a

surety company authorized to do business in the state, has been filed with the city clerk, or until an insurance indemnity policy in like amounts, the form of which shall be approved by the city attorney, has been filed with the city clerk.

- (b) The bond or insurance policy filed pursuant to this section shall be with condition to indemnify the city against any and all loss, damage, injury, cost or expense that may be incurred by the city by reason of any defect in the vault to be constructed or the covering thereof or the sidewalk over or adjacent thereto, or of the construction, maintenance or use of such vault or any appurtenance or appliance thereof, or any fixture or machinery therein, or in closing such vault or removing any fixture or machinery therefrom, or in doing anything in or about such vault which should have been done by the owner or proprietor thereof, or by the applicant for the permit therefor. Such bond or policy shall be further conditioned that if any person shall be aggrieved by the fault, negligence, omissions or commissions of the owner, proprietor or occupant of the land adjoining such vault, with reference to the use, maintenance or operation thereof, and shall recover judgment against the owner, proprietor or occupant of such land, such person may, after the return unsatisfied, either in whole or in part, of any execution or fieri facias upon any judgment so recovered, maintain an action in such aggrieved person's own name, or in the name of the city for such person's use, upon the bond or insurance policy, in any court having jurisdiction for the amount then remaining due and unsatisfied upon such judgment, execution or fieri facias.
- (c) No bond or insurance policy shall be accepted under this section which is so drawn that the liability thereon is limited to such claim, loss, damage, cost or expense as may arise or be incurred during any specific period of time.

(Ord. No. 268, § 9; Code 1961, § 36-72)

Sec. 38-154. To be granted subject to provisions of article.

All permits for the construction, maintenance or use of any vault shall be granted subject to the terms, conditions and restrictions of this article.

(Ord. No. 268, § 10; Code 1961, § 36-78)

Sec. 38-155. Revocation—Grounds.

- (a) A permit for the construction, maintenance or use of a vault may be revoked by the director of engineering whenever it shall be shown that the proprietor of such vault, or the owner of the land abutting thereon, has failed to comply with any provisions of this article or other ordinances of the city in regard to vaults, or any condition of the permit for the same, or that such vault, or any part thereof, is required for any public work or that such vault is in a condition of nuisance or is a menace to persons or property.
- (b) A permit for the construction, maintenance or use of a vault may be revoked by the director of engineering whenever any bond or insurance policy required by section 38-153 shall, in the judgment of the city manager, cease to be in effect, or shall not furnish the necessary protection to the city.
- (c) The director of engineering may revoke any permit for the construction, maintenance or use of any vault whenever the director shall ascertain that the vault is not being or has not been constructed in accordance with plans and specifications approved by him.

(Ord. No. 268, §§ 5, 10, 14; Code 1961, §§ 36-73, 36-82, 36-97; Ord. No. 3111-83, § 1)

Sec. 38-156. Same—Procedure.

Whenever a permit for the construction, maintenance or use of a vault shall be revoked, notice of such revocation shall be given by the director of engineering, by registered mail addressed to the owner or proprietor of the land abutting on such vault at such owner's or proprietor's last known post office address. Such vault shall be closed within ten (10) days from the date such letter is mailed, and all fixtures, appliances and appurtenances therein or connected therewith shall be removed and the sidewalk over such vault shall be immediately restored to a safe and proper condition by such owner or proprietor and, in default thereof, such work may be done by order of the director of engineering at the risk and expense of such owner or proprietor.

(Ord. No. 268, § 10; Code 1961, § 36-80; Ord. No. 3111-83, § 1)

Secs. 38-157—38-166. Reserved.

ARTICLE VI. SIDEWALK BENCHES

DIVISION 1. GENERALLY

Sec. 38-167. Compliance with article.

No person shall place any bench on the sidewalk of the city, unless such person complies with the provisions of this article.

(Ord. No. 264, § 1; Code 1961, § 36-102)

Sec. 38-168. Location, size, etc.; rules and regulations of city manager governing use.

- (a) The city manager shall designate the location of benches placed on the sidewalks of the city pursuant to the provisions of this article, as well as the character, color, size and construction of such benches, and shall formulate reasonable rules and regulations governing the use thereof and providing for the public safety. All persons placing benches on the sidewalks shall comply with such rules and regulations.
- (b) The city manager may relocate any bench after the grant of a permit therefor pursuant to this article.

(Ord. No. 264, § 1; Code 1961, §§ 36-99, 36-102, 36-110)

Sec. 38-169. Fastening to sidewalk or wall of adjacent building.

The city manager may require that the benches placed on the sidewalks of the city pursuant to the provisions of this article be fastened to the sidewalk or to the wall of the adjacent building.

(Ord. No. 264, § 1; Code 1961, § 36-100)

Sec. 38-170. Advertising matter may be permitted.

The city manager may permit advertising matter to be painted or printed on benches placed on the sidewalks of the city pursuant to this article.

(Ord. No. 264, § 1; Code 1961, § 36-101)

Cross reference(s)—Advertising, Ch. 3.

Secs. 38-171—38-175. Reserved.

DIVISION 2. PERMIT

Sec. 38-176. Required.

No person shall place any bench on the sidewalks of the city, without first obtaining a permit so to do from the city manager.

(Ord. No. 264, § 1; Code 1961, § 36-104)

Sec. 38-177. Application.

Any person desiring a permit required by this division shall make application therefor to the city manager. Such application shall be in such form and contain such information as may be required by the city manager.

(Ord. No. 264, § 1; Code 1961, § 36-105)

Sec. 38-178. Applicant's bond or liability insurance.

No permit shall be granted under this division until the applicant therefor has deposited with the city manager a liability insurance policy approved by the city attorney, conditioned to indemnify the city against any and all loss, damage, injury, costs or expense that may be caused by any bench to be authorized by the permit, including injury to persons or property occasioned by the placing of such bench on the sidewalks, for which the city may be held liable.

(Ord. No. 264, § 1; Code 1961, § 36-107)

Sec. 38-179. Consent of owner or occupant of abutting property prerequisite to grant.

No permit required by this division shall be granted by the city manager unless the owner or occupant of the property abutting the sidewalk upon which the bench is to be placed shall consent, in writing, to the placing of the bench on such sidewalk.

(Ord. No. 264, § 1; Code 1961, § 36-108)

Sec. 38-180. Grant.

Upon the filing of an application for a permit under this division, and when sections 38-178 and 38-179 have been complied with, the city manager may grant the permit pursuant to which benches may be placed on the sidewalks at designated locations in the city, if in the interest of public safety and public welfare, subject to the provisions of this article.

(Ord. No. 264, § 1; Code 1961, § 36-106)

Sec. 38-181. Creates no vested right.

No permit granted under this division shall create any vested right.

(Ord. No. 264, § 2; Code 1961, § 36-109)

Sec. 38-182. Revocation.

- (a) The city manager shall have the right, in the interest of public safety and public welfare, to revoke any permit granted under the provisions of this division.
- (b) Any permit granted under the provisions of this division may at any time be revoked by resolution or ordinance of the city council.

(Ord. No. 264, §§ 1, 2; Code 1961, §§ 36-111, 36-112)

Secs. 38-183—38-192. Reserved.

**ARTICLE VII. INSTALLATION OR REPAIR OF UNDERGROUND UTILITIES PRIOR TO
STREET IMPROVEMENTS**

Sec. 38-193. Definitions.

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

Person. The word "person" shall also embrace public utility corporations, firms, associations, corporations, governmental agencies, political subdivisions and receivers and other fiduciaries; provided, however, that in the case of the Chesapeake & Potomac Telephone Company of Virginia, the word "person" shall mean the district plant engineer and the commercial manager of the Newport News branch.

Street. The word "street" shall also embrace alleys, avenues, boulevards, parks, public rights-of-way and all other public places or easements.

Structure. The word "structure" shall mean fixtures, wires, cables, vaults, culverts, manholes and other underground installations.

(Ord. No. 194, § 1; Code 1961, § 36-113)

Sec. 38-194. Notice of intention to improve street.

Whenever the city shall determine to pave or surface any street in the city, the director of engineering shall notify, in writing, at the time plans are completed and prior to advertisement for bids and award of contract, if the work is not performed by city forces, at least one hundred twenty (120) days in advance of actual construction, all utility companies, corporations, firms, associations, receivers and other fiduciaries, governmental agencies and political subdivisions of the state operating in the city of the intention of the city to pave or surface or otherwise to improve such street.

(Ord. No. 194, § 2; Code 1961, § 36-114, Ord. No. 3111-83, § 1)

Sec. 38-195. Installation of new pipes, wires, etc.

A person receiving the notice provided for in section 38-194 shall, within such period of one hundred twenty (120) days, at such person's own expense and cost, lay, install, construct and complete new underground pipes, mains, wires, conduits, equipment and utilities where none are then installed, including house services for each lot abutting a residential street, in advance of the street improvements contemplated by the city; provided, however, that this section is not intended to require utility companies and corporations to place existing overhead wires or cables underground, nor is it intended to hold a utility company in default where, pursuant to the terms of this article, house services have been installed, but the size of the services is found to be inadequate within the one-year period referred to in section 38-197.

(Ord. No. 194, § 2; Code 1961, § 36-115)

Sec. 38-196. Repair of existing pipes, wires, etc.

Where the mains, pipes, conduits, wires, equipment and utilities necessary to render adequate and proper service to the abutting property are already in the street at the time a person receives the notice provided for in section 38-194, such person shall examine the same carefully and repair or replace the same wherever needed, at such person's own expense and cost, in a proper and satisfactory order and condition and install the house service for each lot abutting on such street. All repairs, including the installation of the house service, shall be made and completed by the person so notified within one hundred twenty (120) days after receipt of such notice.

(Ord. No. 194, § 3; Code 1961, § 36-116)

Sec. 38-197. Subsequent street openings by persons failing to comply with section 38-195 or 38-196.

If any person shall fail to comply with the requirements of section 38-195 or 38-196 within the time specified, and subsequently, within one (1) year from the date of such notice, shall, without reasonable excuse satisfactory to the director of public works or in event of an emergency, install new underground pipes, mains, wires, conduits, equipment and utilities, including house services, and in so doing cuts into the street surface or in any manner disrupts the street pavement or hard surface, such person shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00). Each street opening shall constitute a separate offense, and, in addition thereto, such person shall restore the pavement or hard surface required under existing city ordinances at such person's own cost and expense.

(Ord. No. 194, § 4; Code 1961, § 36-117)

Sec. 38-198. Work by city.

When the city is confronted with monetary loss or damage caused by delay of any person receiving notice as provided in section 38-194, by the failure to install underground pipes, mains, wires, conduits, equipment and utilities, as provided for in this article, within the specified time, the city manager shall, when ordered by the city council, cause the work to be done and charge all the cost and expense thereof to the person in default, to be collected as any other debt due the city.

(Ord. No. 194, § 5; Code 1961, § 36-118)

Secs. 38-199—38-208. Reserved.

ARTICLE VIII. STREET NUMBERS FOR BUILDINGS

Sec. 38-209. Supervision of numbering.

All numbering of houses and other buildings in the city shall be under the direction and supervision of the city manager or the manager's authorized representative.

(Ord. No. 263, § 2; Code 1961, § 36-128)

Sec. 38-210. Determination and notice of number.

The city manager or the manager's authorized representative shall ascertain and determine the proper number for each house and other buildings in the city, in accord with the plan adopted by the council, and shall inform the owner, the owner's agent or the occupant of such house or building of such number.

(Ord. No. 263, § 1; Code 1961, § 36-129)

Sec. 38-211. Display and size of number.

Within thirty (30) days after the owner, the owner's agent or the occupant has received a designated street number for a structure, such person shall cause the number so designated to be securely inscribed and fixed conspicuously in or on the front of the house or building so that the number is easily observed and readable from the public right-of-way. All numbers shall be in arabic figures, which figures shall be at least three (3) inches (76 mm) high and one-half (½) inch (13 mm) wide.

(Ord. No. 263, § 2; Code 1961, § 36-130; Ord. No. 3924-89)

Secs. 38-212—38-214. Reserved.

ARTICLE IX. STREET NAMES

Sec. 38-215. Street names required; displayed.

All streets within the city, both public and private, shall be designated by street names, and said street names shall be prominently displayed on easily readable signs located at all street intersections.

(Ord. No. 4107-90, § 1)

Sec. 38-216. Naming of streets; approval.

Except as otherwise provided, it shall be the responsibility of the owner(s) of private streets to choose names therefor; and in the absence of such a request, a name shall be chosen by the city manager or his designee. Public streets shall hereafter be named by ordinance passed by city council, or by designation upon subdivision plats which have been approved and recorded in accordance with the City Code.

All street names within the city, both public and private, shall first be requested from and approved by the city manager or his designee. The criteria for approval or disapproval of a requested name shall be that such names shall not sound like, be spelled like or be easily confused with existing street names and that such names shall not contain more than ten (10) letters exclusive of such symbols as St., Ave., or other abbreviations. This section shall not apply to street names existing on the date of the adoption of the ordinance first setting forth this section for which signs had been previously erected displaying such names.

(Ord. No. 4107-90, § 1)

Sec. 38-217. Street identification signs; maintenance of street name signs.

- (a) Street identification signs shall be installed at each public or private street intersection at the expense of the owner. Such signs shall be provided by the city and the owner shall be charged the city's cost for producing the signs.
- (b) Street name signs shall be maintained to ensure that they are easily readable. Unless otherwise provided, maintenance of signs designating private street names shall be the responsibility of the owner(s) of the private street. Public street name signs and private street name signs at intersections with public streets will be maintained by the city.

(Ord. No. 4107-90, § 1)

Secs. 38-218—38-220. Reserved.

ARTICLE X. STREET AND SIDEWALK VENDORS⁷

Sec. 38-221. Definitions.

The following words and terms, when used in this article, shall have the meanings indicated below:

Cart. Any portable vending device, pushcart or other wheeled vehicle or device which may be moved without the assistance of a motor and which is not required to be licensed or registered by the department of motor vehicles, used for the displaying, storing or transporting of articles offered for sale by a vendor.

City manager. Where used in this article, the term "city manager" shall refer to the city manager or his designee.

Designated parking space. A space or series of spaces within the public right-of-way along the edge of a paved, vehicular roadway that is approved by the city manager pursuant to section 38-226, below, as a location where a food truck vendor is permitted to operate in accordance with a vendor permit or where a food vendor is permitted to park a vehicle while vending from a designated sidewalk space.

Designated sidewalk space. An area or series of areas within the public right-of-way outside of the paved, vehicular roadway that is approved by the city manager pursuant to section 38-226, below, as a location where a food vendor is permitted to operate in accordance with a vendor permit.

Food truck vendor. Any vendor who sells or offers for sale food, other than a vendor operating exclusively as an ice cream vendor as that term is defined pursuant to section 17-99 of this Code, from a

⁷Editor's note(s)—Ord. No. 7076-14, § 1, adopted July 8, 2014, effective September 1, 2014 amended the title of Ch. 38, Art. X to read as herein set out. Formerly said article was entitled Sidewalk Vendors.

motor vehicle or a trailer licensed to be operated on the highway by the Virginia Department of Motor Vehicles.

Food vendor. Any vendor who sells or offers for sale food from a cart, but not including a food truck vendor.

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

Street vendor district shall mean those areas in the city specifically designated for street and sidewalk vending.

Vendor shall mean any person engaged in the selling, or offering for sale, of food or beverage on public streets or sidewalks within the city.

(Ord. No. 4435-93; Ord. No. 7076-14, § 1; Ord. No. 7216-15, § 1)

Sec. 38-222. Vendor permit required.

- (a) It shall be unlawful to sell, or offer for sale, food or beverage on streets or sidewalks in the city without first obtaining a vendor permit.
- (b) Exceptions. The provisions of this article shall not apply to:
 - (1) A vendor operating outside of the public right-of-way and on property where the applicable zoning regulations permit such activity;
 - (2) Special events or festivals for which a permit has been issued by the city;
 - (3) The sale or distribution of newspapers or other publications from vending machines;
 - (4) Solicitors regulated by Chapter 36 of this Code.

(Ord. No. 4435-93; Ord. No. 7076-14, § 1)

Sec. 38-223. Street vendor districts; number of vendors.

- (a) The following areas of the city are hereby designated as street vendor districts:
 - (1) Downtown street vendor district: that area of the city bounded on the north by 50th Street, on the east by Huntington Avenue, on the south by 23rd Street, and on the west by the James River.
 - (2) Oakland Industrial Park street vendor district: that area of the City commonly known as Oakland Industrial Park, including Enterprise Drive and all streets that intersect Enterprise Drive west of Warwick Boulevard.
- (b) The city manager is authorized and directed to determine on an annual basis the maximum number of vendor permits to be issued for a street vendor district. This determination will be based upon demand for vendor services, available space, and public health and welfare considerations. If conditions so warrant, the number of vendor permits may be altered during the course of the year, so long as that alteration does not result in the revocation of an otherwise valid permit.

(Ord. No. 4435-93; Ord. No. 4504-93; Ord. No. 4945-96; Ord. No. 5886-03; Ord. No. 7076-14, § 1; Ord. No. 7149-15, § 1; 7216-15, § 1)

Sec. 38-224. Application for permit; permit issuance; annual fee.

- (a) All applications and renewal applications will be submitted in the format designated by the city manager. The application shall include the following information:
 - (1) The name, home and business address of the applicant;
 - (2) A description of the type of food or beverage to be sold;
 - (3) The names and addresses of all officers of a corporate applicant, and the names, addresses and percentage interest of each partner in a partnership applicant; and
 - (4) Such other information as the city manager may require in the application form.
- (b) Permit issuance.
 - (1) Permits will be issued in accordance with rules and regulations adopted by the city manager, which shall include, but not be limited to:
 - a. A time line and date for an annual permit issuance process;
 - b. Application deadlines;
 - (2) Permits shall be valid for a period of 12 months from the annual permit issuance date established by the city manager.
- (c) No vendor permit will be issued prior to the applicant securing a business license and submitting insurance that meets the requirements set forth in section 38-225.
- (d) Vendor permits will be issued for breakfast, lunch and dinner shifts, the timing of which shifts shall be established in rules and regulations adopted by the city manager. An annual permit fee of one hundred fifty dollars per shift (\$150.00) shall be paid in advance for the whole year or any part of the year, prior to a vendor permit being issued.
- (e) Vendor permits may not be leased, sold, or otherwise transferred without written authorization from the city manager.
- (f) A vendor desiring to relocate to a vacant designated vending location may apply to do so. Such relocations will be permitted on a first-come-first-served basis, subject to a one hundred dollar (\$100.00) administrative processing fee.

(Ord. No. 4435-93; Ord. No. 7076-14, § 1; Ord. No. 7216-15, § 1)

Sec. 38-225. Vendor regulations.

No vendor shall:

- (a) Leave any location without first picking up, removing and disposing of all trash or refuse attributable to his vending;
- (b) Solicit or conduct business with persons in a motor vehicle while such person's vehicle is on that portion of a public street intended for vehicular travel or parking.
- (c) Use any loudspeaker, public address system, radio, sound amplifier or other sound device to attract the attention of the public;
- (d) Vend without conspicuously displaying any business license, insurance certificate and health permit required by the city or the department of public health;

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- (e) Use any form of lighting to attract the attention of the public;
 - (f) Use any form of lighting for illumination purposes which is red, amber, yellow or green; or which projects into the traveled portion of the streets;
 - (g) Vend upon the sidewalks of the city without first procuring an insurance policy issued by an insurance company licensed to do business in the Commonwealth of Virginia in the amount of at least one million dollars (\$1,000,000.00) for injury to or death of any person or persons in any one incident and one hundred thousand dollars (\$100,000.00) for property damage in any one incident. Said policy must include an endorsement naming the city as an additional insured thereon and must be approved by the city attorney's office prior to conducting vending operations on the street or sidewalk;
 - (h) Load or unload vehicles while such vehicle is located on the portion of a public street intended for vehicular travel;
 - (i) Vend from any table, stand or cart, or any collection of the same, which exceeds in the aggregate four (4) feet in width (perpendicular to the street), twelve (12) feet in length (parallel to the street) or eight (8) feet in height;
 - (j) Leave his vending table, stand, cart or other vending equipment unattended on a sidewalk for longer than fifteen (15) minutes;
 - (k) Block or impede use of the sidewalk or ingress or egress to or from any building or gate or use of any trash receptacle, mail box, parking meter or other public facility on the sidewalk; or
 - (l) Vend upon the streets or sidewalks of the city from any place other than their assigned location as designated by the city manager pursuant to section 38-226.
 - (m) Vend upon the streets or sidewalks of the city outside of the hours of operation established by the city manager.

(Ord. No. 4435-93; Ord. No. 4504-93; Ord. No. 7076-14, § 1; Ord. No. 7216-15, § 1)

Sec. 38-225.1. Reserved.

Editor's note(s)—Ord. No. 7076-14, § 2, adopted July 8, 2014, effective September 1, 2014, repealed § 38-225.1 in its entirety. Formerly said section pertained vending prohibited and derived from Ord. No. 4559-94.

Sec. 38-226. Designation of vending locations within street vendor district.

- (a) The city manager is authorized to designate one or more designated parking spaces within the public right-of-way of any street vendor district where a food truck vendor may operate.
- (b) The city manager is authorized to designate one or more designated sidewalk locations where a food vendor may operate and to designate one or more designated parking spaces within the public right-of-way of any street vendor district where a food vendor may park a vehicle while vending from a designated sidewalk space.
- (c) The traffic engineer is hereby authorized and directed to locate and designate "food truck parking" spaces, not exceeding twenty-five (25) feet in length, at locations identified by the city manager as locations where a food truck vendor may operate. The traffic engineer is also authorized and directed to locate and designate "food vendor" parking spaces at locations identified by the city manager as locations where a food vendor may park a vehicle while vending from a designated sidewalk space. The traffic engineer may designate and mark such spaces as a "no parking" zone for the exclusive use of food trucks or food vendors.

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- (d) The city manager is authorized to adopt rules and regulations concerning the use of designated spaces, including but not limited to the assigning of spaces to vendors. The city manager is authorized to establish hours of operation for vendors which may vary depending upon the type of vendor and whether the vendor is operating in conjunction with a special event. The city manager is also authorized to adopt rules and regulations establishing minimum days of operation per week, month, or other longer period of time which may vary based upon the type of vendor.

(Ord. No. 4435-93; Ord. No. 7076-14, § 1; Ord. No. 7216-15, § 1)

Sec. 38-227. Additional food truck vendor regulations.

Vehicles designed to serve patrons within a street vendor district from the curbside of the vehicle may be utilized for that purpose, however the operator of such a vehicle shall:

- (1) Serve only from the curb side thereof.
- (2) Vend only from a space designated for food truck vendors and assigned to the vendor.
- (3) Be subject to all other laws applicable to any such parking space or area, specifically including, but not limited to, motor vehicle and zoning laws, rules and regulations.
- (4) Not place any table, stand, sign or item or device, apart from a trash receptacle, on any sidewalk or right-of-way.
- (5) Be subject to all other provisions of this article unless the context clearly indicates otherwise.

(Ord. No. 4435-93; Ord. No. 7076-14, § 1)

Sec. 38-228. Enforcement; penalties.

- (a) Any person convicted of a violation of any provisions of this article shall be guilty of a class 2 misdemeanor and be punished accordingly. Each day any violation of this article shall continue shall constitute a separate offense.
- (b) Any vendor operating with a vendor permit found to be in violation of any section of this article, any limitation of his license, or any rules or regulations authorized by or expressed in this article may have his license suspended or revoked. Any vendor aggrieved by such a suspension or revocation shall have the right to appeal to the city manager, in writing, within ten (10) business days of such suspension or revocation.

(Ord. No. 7076-14, § 1)

Sec. 38-229. Reserved.

ARTICLE XI. TRAINS CROSSING PUBLIC STREETS

Sec. 38-330. Locomotives to give signals at railroad crossings.

- (a) Every locomotive passing upon its road within the city shall sharply sound its whistle at least twice at a distance of not less than three hundred (300) yards nor more than six hundred (600) yards from the place where the railroad crosses upon the same level any public highway or crossing, and it shall ring its bell continuously from the time of giving such signal until the locomotive has reached such highway crossing.

(Supp. No. 67)

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- (b) Every officer or employee of any railway company whose duty it is to carry out the provisions of subsection a above and shall fail to do so, shall be punished by a fine not exceeding ten dollars (\$10.00) for each offense.

(Ord. No. 4561-94)

ARTICLE XII. SPECIAL EVENTS, PARADES, AND RACES⁸

Sec. 38-331. Purpose.

This article is adopted in order to ensure the free and safe passage of pedestrians and vehicles on the public rights-of-way, to ensure free and safe access to public areas, and to regulate and control the time, place, and manner of activities that would otherwise threaten the public health, safety, and welfare, while also encouraging and protecting the exercise of rights under the First Amendment of the United States Constitution.

(Ord. No. 6846-12, § 1; Ord. No. 7780-22, § 1)

Sec. 38-332. Definitions.

The following words and terms when used in this article, shall have the meanings indicated below:

- (1) *Block party* means an outdoor party for residents of a block or neighborhood usually held in a closed-off local city street.
- (2) *Director* means the director of the department of engineering or the director's designee.
- (3) *Labor, equipment and services (LES)* means the cost of city employees' total hours as well as any city equipment and resources provided in support of a special event. LES costs are separate from permit fees.
- (4) *Local street* means a vehicular traveled way that provides limited mobility and is the primary access to residential areas. Local streets are typically posted with 25 miles per hour speed limitations and represent the majority of streets within the city.
- (5) *Parade* means any march, walk, or procession consisting of people, animals, bicycles, vehicles, or a combination thereof, upon any street or sidewalk within the city and interferes with or is likely to interfere with the normal flow or regulation of pedestrian or vehicular traffic.
- (6) *Public assembly* means any meeting, demonstration, picket line, rally, or gathering of any kind that occupies any street or sidewalk within the city and interferes with or is likely to interfere with the normal flow or regulation of pedestrian or vehicular traffic.
- (7) *Race* means an organized competitive event consisting of people, bicycles, or other vehicular devices, or a combination thereof, upon any street within the city.
- (8) *Sidewalk* means any area in the city dedicated to the public use for purposes of pedestrian traffic.
- (9) *Special event* means a public assembly, parade, race or block party within a city right-of-way. Special events are further defined as limited or expanded.
 - a. *Limited event* means an event affecting not more than two (2) blocks of a local street, as classified in the department of engineering street classification index and/or uses a public venue

⁸Editor's note(s)—Ord. No. 6846-12, § 1, adopted Feb. 14, 2012, shall be in effect on and after March 1, 2012.

for, but not limited to, a block party, organization hosted event, neighborhood social, reunion, wedding ceremony, wedding reception, media event or photo shoot that requires minimal traffic control and/or does not impact the public right-of-way. (Minimal traffic control is generally defined as traffic control that is provided through delivery and retrieval of traffic control devices by city staff with devices to be installed by the applicant per instruction provided by city staff.)

- b. *Expanded event* means an event such as, but not limited to, a foot race/tour, parade, awareness march/walk, rally, demonstration, carnival, charity event/fundraiser, festival/fair or concert that requires the use of a traffic control plan, and some level of staff support in excess of a limited event. Expanded events are categorized in section 38-333(d).
- (10) *Spontaneous event* means a First Amendment expressive event that is occasioned by breaking news or affairs coming into public knowledge less than forty-eight (48) hours prior to the event.
- (11) *Street* means any public roadway or portions thereof in the city dedicated to the public use for purposes of vehicular traffic, including any shoulder, right-of-way, median strip, or footpath thereof.
- (12) *Traffic control plan* means a plan showing the method of providing traffic control through and around the special event venue showing the placement of all necessary temporary traffic and parking control devices and/or changes in traffic signal operations.

(Ord. No. 6846-12, § 1; Ord. No. 7780-22, § 1)

Sec. 38-333. Permit required.

- (a) Except as otherwise provided in subsection (b), it shall be unlawful for any person, group, or organization to conduct or participate in any special event on any street, shared use path, sidewalk, or city-owned or leased public parking lot in the city or in any other non-city park public venue, for which a permit has not been issued in accordance with the provisions of this article.
- (b) Exceptions. No permit shall be required for:
 - (1) Any special event consisting of no more than one hundred (100) persons and which takes place on any sidewalk or other public right-of-way that is not used for the movement of motor vehicle traffic, does not involve a city street closure, and does not create a public safety hazard;
 - (2) Spontaneous events;
 - (3) City park event: any special event conducted entirely in a city park or on the streets and sidewalks therein, or in an area under the control of the department of parks and recreation for a particular event or activity. The rules and regulations of the department of parks and recreation shall govern such conduct;
 - (4) Students going to and from school classes or participating in educational activities, provided that such conduct is under the immediate direction and supervision of school authorities;
 - (5) The United States military forces, and the military forces of the state acting in their official capacity;
 - (6) The police and fire departments of the state, city, and of any other locality rendering aid;
 - (7) Any governmental agency acting within the scope of its functions or in the course of a ceremonial function; and
 - (8) Wedding or funeral processions.
- (c) Notwithstanding the above exceptions, picketing before or about the residence or dwelling place of any individual is prohibited pursuant to section 28-32.

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- (d) Expanded events as defined in section 38-332, shall be further defined and permitted in the following categories:
- (1) *Category A.* An event that necessitates the use of a city pre-approved or previously approved traffic control plan and depending on the size and scale of the event, minimal to full support is required to facilitate the event.
 - (2) *Category B.* An event that necessitates the use of a new traffic control plan developed by a private certified traffic service, which must be reviewed and approved by the department of engineering. Depending on the size and scale of the event, a moderate to full level of support is required to facilitate the event. The applicant is responsible for implementation of the approved traffic control plan.

(Ord. No. 6846-12, § 1; Ord. No. 7780-22, § 1)

Sec. 38-334. Application fee; LES cost recovery.

- (a) There shall be paid by the applicant or sponsor at the time of application, a non-refundable fee of fifty dollars (\$50.00) for each limited event and one hundred dollars (\$100.00) for each expanded event to cover the administrative costs of processing the permit.
- (b) No application shall be considered complete until the required fee is paid.
- (c) Applicants are exempt from the application fee for parades and public assemblies the primary purpose of which is the exercise of expressive activity and free speech as guaranteed by the First Amendment of the Constitution of the United States. The director shall grant or deny the exemption under this subsection with the advice and consent of the city attorney. This exemption applies only to the application fee. Applicable LES costs shall be charged as assessed regardless of First Amendment determination.
- (d) LES costs are determined during the permit review process and are based upon the actual costs the city will incur in support of the event. An itemized list of labor, equipment and services (LES) charges are available for use through the department of engineering. The city will provide an estimate of LES costs to the applicant, and the applicant shall pay the cost estimate no later than seven (7) business days prior to the event. Once the event has concluded, the applicant shall pay any shortfall between the initial LES estimate and the actual LES costs incurred by the city (if greater than the estimate). Likewise, should the initial estimate exceed actual costs, the city shall refund the difference to the applicant.
- (e) A full refund of LES payment will be provided with written notification of event cancellation if received three (3) days in advance of the event date. Should an event be rescheduled due to inclement weather, any fees received will be credited to the rescheduled event.
- (f) Limited events are not subject to the payment of LES costs.

(Ord. No. 6846-12, § 1; Ord. No. 7780-22, § 1)

Sec. 38-335. Application for permit.

- (a) **Filing period.** An application for a permit for any special event in the right-of-way or public venue not considered a city park or public school facility shall be made to the director, accompanied by a non-refundable application fee as provided in section 38-334. The application shall be submitted not less than thirty (30) days prior to the scheduled event for limited events and not less than ninety (90) days for expanded events. No application shall be accepted more than one hundred eighty (180) days before the date on which the event will occur. However, the application for any activity the primary purpose of which is the exercise of expressive activity and free speech as guaranteed by the First Amendment shall be submitted not

less than three (3) business days nor more than one hundred eighty (180) days before the date on which the event will occur.

- (b) Any person, group, or organization desiring to conduct a special event, parade, or race shall make written application to include the following:
- (1) The name, address, telephone number, and e-mail address of the person requesting the permit;
 - (2) The name and address of any person, group, or organization the applicant is representing;
 - (3) The name, address, telephone number, and e-mail address of the person who will act as the special event chairperson and who will be responsible for the conduct of the event;
 - (4) A description of the activities planned during the event;
 - (5) The date and time (start and end) of the special event and rain date (if applicable);
 - (6) The specific assembly and dispersal locations, a sketch and description of the specific route, appropriate traffic control plan prepared by a private certified traffic service, if applicable, and the plans if any, for assembly and dispersal;
 - (7) The approximate number of people who, and animals and vehicles which, will constitute such special event, and the type of animals and a description of the vehicles (e.g., marching units, floats, etc.), including, but not limited to, vehicle size and weight;
 - (8) A statement as to whether the special event intends to occupy all or only a portion of the width of the streets or sidewalks proposed to be traversed or used;
 - (9) A description of any recording equipment, sound amplification equipment, banners, signs, or other attention-getting devices to be used in connection with the special event;
 - (10) The type and proposed location of any reviewing stands, temporary structures, and restroom facilities; and
 - (11) Such other information as the director may deem reasonably necessary in order to properly provide for traffic control, street and property maintenance, administrative arrangements, police and fire protection, and for the protection of public health, safety, and welfare.
 - (12) If utilizing a pre-approved traffic control plan/route for the proposed event, no changes to the plan will be permitted.

(Ord. No. 6846-12, § 1; Ord. No. 7780-22, § 1)

Sec. 38-336. Permit processing and approval process.

- (a) The director shall process applications for special event permits in the order in which they are received, and shall notify the applicant in writing at the address provided by the applicant, of the director's decision no later than fifteen (15) days (excluding city holidays) following the date the completed application is received for limited events and thirty (30) days for expanded events. First Amendment activities which require application for a permit not less than three (3) business days before the event shall be processed immediately, and the applicant notified of a decision forthwith.
- (b) The determination of whether a special event is limited or expanded will be made by city staff in accordance with the definitions of those terms.
- (c) If the application is denied, the applicant shall be apprised in writing of the reason. The director may deny an application, applying any of the following criteria and finding that:

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- (1) Due to the time, duration, route or size of the special event the proposed activity presents an unreasonable safety or health risk to participants, spectators, or the public; or
 - (2) Due to the condition of the street or sidewalk, including scheduled construction or maintenance, the proposed activity presents an unreasonable safety or health risk to participants, spectators, or the public; or
 - (3) Public safety resources to support the activity are not reasonably available; or
 - (4) The conduct of the activity will unduly interfere with the proper fire and police protection of, or ambulance service to, all or part of the city; or
 - (5) The activity will cause irreconcilable interference with a competing special event and/or the operation of local businesses in the immediate surrounding area; or
 - (6) Other special event permit requirements have not been met; or
 - (7) The application contains a material falsehood or misrepresentation; or
 - (8) The applicant or the person, group, or organization on whose behalf the application for permit was made has past due or unpaid balances of costs and/or fees from a prior event.
- (d) A denied permit application may be resubmitted for review. An additional application fee will not be required if resubmitted within thirty (30) days. A resubmitted permit application is subject to the same criteria as an original application and any changes submitted by the applicant are not grounds for automatic approval.
- (e) Permit conditions. The director may condition the issuance of a permit by imposing reasonable requirements or conditions as are necessary to protect the safety and rights of persons and property and control of traffic, provided that the applicant's rights under the First Amendment are not denied thereby. In order to accommodate the rights of abutting owners and the needs of the public to use the streets and sidewalks, and to protect the safety of the event participants, the conditions may include but are not limited to reasonable adjustments in the date, time, route, and location of the proposed event; designation of parking areas, and assembly and dispersal locations; accommodations for pedestrian and vehicular traffic using the streets and sidewalks; litter and debris clean-up requirements; limitations on the length and duration of the event; and the use of monitors, security personnel, or off-duty police officers. If emergency medical services and/or security services are desired, or required by the city, the applicant shall be responsible for obtaining and paying for those services.
- (f) The city's engineering department will not develop traffic control plans for non-city events. However, pre-approved traffic plans are available through the department of engineering.
- (g) Issuance of a special event permit does not obligate or require the city to provide services and/or equipment in support of the event. The applicant may choose to contract with a private contractor for any necessary services or equipment.
- (h) Insurance. The applicant shall provide evidence of general liability insurance for a special event in amounts of one million dollars (\$1,000,000.00) for bodily injury or death to any person or persons, and one million dollars (\$1,000,000.00) for damage to property. Such insurance policy shall include an endorsement naming the City of Newport News as an "additional insured." No such insurance shall be required for any special event the primary purpose of which is the exercise of expressive activity and free speech as guaranteed by the First Amendment of the Constitution of the United States, or for any special event or parade which does not include vehicles, or which does not require a full or partial street closure.
- (i) Review by city manager or designee. Upon request made in writing to the city manager, a denied applicant shall be entitled to an informal meeting with the city manager, or his designee, to review the decision of the director. The meeting shall occur within five (5) business days of the receipt of the request unless there is

mutual agreement to a different date. For denial of a permit involving First Amendment activities, the meeting shall occur no later than the end of the next business day. The city manager, or his designee, may affirm, reverse, or modify the director's decision.

- (j) Notice to various officials. Immediately upon the issuance of a permit under this section, the director shall send a copy thereof to the following:
 - (1) The chief of police;
 - (2) The fire chief;
 - (3) The director of public works; and
 - (4) Transportation division of the department of engineering.
- (k) Compliance with directions and standards. Every person to whom a permit is issued under this section shall comply with all permit terms and conditions and with all applicable regulations and laws. The special event, parade, or race chairman or other person responsible for leading the event shall carry the permit upon his person during the conduct of the event and show the permit when requested to do so. It shall be unlawful to violate any requirement or condition of the permit.
- (l) Public conduct.
 - (1) Interference. No person shall hamper, obstruct, impede, or interfere with any special event, or with any person, vehicle, or animal participating or used in such an event.
 - (2) Driving through special events. No driver of a vehicle shall drive through or between the vehicles, persons, or animals comprising a special event except when otherwise directed by a police officer. This shall not apply to authorized emergency vehicles.
 - (3) Parking on the parade or race route or the area of a special event. The director and the police department shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along the public streets or public rights-of-way constituting a part of the route of a parade or race or an area in which a special event will occur. The director may post signs to such effect. No person shall be in violation of this subsection for parking on an unposted street unless the person was personally notified by the director or the police department to move the vehicle.
- (m) It shall be a violation of this permit for participants in the permitted special event to:
 - (1) Engage in stunt riding of motorized vehicles; and
 - (2) Throw candy or other items into the crowd.
- (n) The granting of any permit under this article shall not eliminate any requirement for any other license or permit which may be prescribed by any other federal, state, or local statutes, ordinances, rules or regulations, or compliance therewith.

(Ord. No. 6846-12, § 1; Ord. No. 7780-22, § 1)

Sec. 38-337. Revocation.

- (a) A special event permit issued under this article shall be temporary, shall vest no permanent rights in the applicant, and may be immediately revoked by the director, or the chief of police or his representative, if:
 - (1) The applicant has made a material falsehood or misrepresentation in the information supplied;
 - (2) The applicant has failed to fulfill a requirement or condition of the permit in a timely manner;

- (3) The payment of the fee for a permit or for LES costs have not been made or such payment drawn on a financial institution has been declined;
 - (4) The applicant requests the cancellation of the permit or cancels the event;
 - (5) The activity endangers or threatens persons or property, or otherwise jeopardizes the health, safety or welfare of persons or property;
 - (6) The activity conducted is in violation of any of the requirements or conditions of the permit, or any statute, ordinance, rule or regulation; or
 - (7) An emergency or the consequences thereof, or a supervening occurrence requires the cancellation or termination of the event in order to protect the public health or safety.
- (b) Written or verbal notice of such revocation may be given before or during a special event to the applicant, chairperson, or leader of the activity, after which the special event shall immediately cease. If verbal notice is given, written notice shall also be given within two (2) business days of the verbal notice to the applicant, chairperson, or leader of the activity. All written revocation notices shall set forth the reason or reasons for such revocation and shall be hand-delivered to the applicant, chairperson, or leader of the activity, or sent by first-class mail to the applicant's address as set forth in the application.
- (c) Upon revocation, the applicant may appeal the determination of the director or the chief of police or representative within ten (10) business days of the date of the written notice to the applicant. Appeal should be made by filing a written notice of appeal to the city manager. The appeal shall be heard in accordance with section 38-336(i) of this article.
- (Ord. No. 6846-12, § 1; Ord. No. 7780-22, § 1)

Sec. 38-338. Violations.

Any persons convicted of a violation of any provision of this article shall be guilty of a Class 2 misdemeanor.
 (Ord. No. 6846-12, § 1; Ord. No. 7780-22, § 1)

Sec. 38-339. Retroactive application of ordinance.

Any permit issued by the city for a special event prior to the adoption of this ordinance and which has not yet occurred, and any applicant for such permit, or sponsor thereof, shall be subject to the provisions of sections 38-336, 38-337, and 38-338.
 (Ord. No. 6846-12, § 1; Ord. No. 7780-22, § 1)

Sec. 45-402. Summary of uses by district.

P = PERMITTED USE
 C = CONDITIONAL USE
 BLANK = NOT PERMITTED

SUMMARY OF USES BY DISTRICT*

ZONING DISTRICTS	
	R1 SINGLE R2 SINGLE R3 SINGLE R4 SINGLE R5 LOW R6 MEDIUM R7 MEDIUM R8 HIGH R9 M M1 P1 PA O1 C1 C2 C3 C4 C5 M1
PERMITTED USES A. AGRICULTURAL	

1. AGRICULTURE, FARM	C										P								
* ARTICLES XXVIII AND XXXI SHOULD BE CONSULTED FOR ANY MODIFICATION OR ADJUSTMENTS OF DISTRICT REGULATIONS OR ANY SPECIAL OVERLAY ZONING RE																			
PERMITTED USES B. RESIDENTIAL																			
1. SINGLE-FAMILY	P	P	P	P	P							P							
2. TWO-FAMILY					P		P	P										P	
2.1. SINGLE-FAMILY ATTACHED					P		P	P				C						P	
2.2. HOUSING FOR OLDER PERSONS - SINGLE-FAMILY ATTACHED					P		P	P	P			C			C			P	C
3. MULTIPLE-FAMILY					P		P	P	P			C						P	C
3.1. HOUSING FOR OLDER PERSONS - MULTIPLE FAMILY					P		P	P	P			C			C			P	C
4. HIGH RISE APARTMENT									P									P	p
5. MANUFACTURED HOME & MANFCT. HOME PARK							P												
6. PLANNED RESIDENTIAL DEVELOPMENT	P	P	P	P	P	P	P	P	P	P								P	
7. DORMITORY	C	C	C	C	C	C	C	C	C	C	C		P	C				P	
8. GROUP HOME	C	C	C	C	C		C	C	C			C	P		C	C	C		
9. HALFWAY HOUSE					C		C	C	C						C	C	C		
10. HOME OCCUPATION	P	P	P	P	P	P	P	P	P	P									
11. BED & BREAKFAST	C	C	C	C	C		C	C	C								P	P	P
12. BOARDING HOUSE							C	C										C	
13. ASSISTED LIVING FACILITY	P	P	P	P	P							P							
14. CUSTODIAN APARTMENT															P	P	P	P	P
15. SPECIAL RESIDENTIAL FACILITY	P	P	P	P	P														
16. CAMPUS MINISTRY HOUSE	C	C	C	C	C														
17. HOMELESS SHELTERS								C	C										
18. CONGREGATE HOUSING FOR CHILDREN	C	C	C	C	C		C	C	C						C	C			
19. TEMPORARY FAMILY HEALTH CARE STRUCTURE	P	P	P	P	P							P							
20. ADAPTIVE RE-USE	C	C	C	C	C										C	C			
21. RECOVERY HOME	C	C	C	C	C		C	C	C			C	P		C	C	C		
22. SHORT-TERM RENTAL	P	P	P	P	P		P	P	P			P						P	
PERMITTED USES C. HEALTH																			
1. HOSPICE													P		P	P			
2. MEDICAL CENTER COMPLEX													P		P	P			
3. HOSPITAL							C	C	C			P		P	P	P	P		
4. MEDICAL & DENTAL LABORATORY												P	P		P	P	P	P	P
5. NURSING HOME, CONVALESCENT HOME					C		P	P	P			P		P	P	P	C		
6. OPTICIAN									P		P	P	P	P	P	P	P	P	
7. OUTPATIENT CARE CLINIC							C	C	P			P	P	P	P	P	P	P	
8. PHARMACY/DRUG STORE									P			P		P	P	P	P		
9. PHYSICAL THERAPY							C	C	P			P	P	P	P	P	P	P	
10. PHYSICIAN, DENTIST OR OPTOMETRIST'S OFFICE							C	C	P			P	P	P	P	P	P	P	

11. VETERINARY FACILITY WITH OUTSIDE CAGES OR RUNS														C				C	C	C							
12. VETERINARY FACILITY WITHOUT OUTSIDE CAGES AND RUNS										P					P			P	P	P							
13. ADULT DAY CARE FACILITY										P					P	P		P	P	P	C						
14. FAMILY HOME ADULT DAY CARE FACILITY	P	P	P	P	P	P	P	P	P	P				P													
15. ASSISTED LIVING FACILITY, CONGREGATE						C			P	P	P			C	P			P	P	P	C						
PERMITTED USES D. UTILITIES																											
1. AMATEUR RADIO TOWER/ANT. 70 FT. OR UNDER IN HEIGHT	P	P	P	P	P	P	P	P	P	P																	
2. AMATEUR RADIO TOWER/ANT. OVER 70 FT. IN HEIGHT	C	C	C	C	C	C	C	C	C	C																	
3. COMMERCIAL RADIO OR TV STATION											C			P	P			P	P	P	P	P					C
4. ELECTRICAL GENERATING PLANT																											C
5. ELECTRICAL SUBSTATION	C	C	C	C	C	C	C	C	C	C	C			P	P		P	P	P	P	C	C					P
6. ELEVATED WATER STORAGE TANK	C	C	C	C	C	C	C	C	C	C	C	C		P	P		C	C	C	C	C	C	C	C	C	C	C
7. LOCAL UTILITIES	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
8. COMMUNICATION TOWER GREATER THAN 50 FEET IN HEIGHT												C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
9. COMMUNICATION TOWER NOT GREATER THAN 50 FEET IN HEIGHT														P	P	P	P	P	P	P	P	P	P	P	P	P	P
10. SANITARY LANDFILL														C													C
11. SEWAGE TREATMENT PLANT														C													C
12. SOLID WASTE TRANSFER STATION														C													C
13. TRANSMISSION LINES	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
14. WATER RESERVOIR			P											P													
15. WATER TREATMENT PLANT														C													C
16. ELECTRICAL GENERATION FROM LANDFILL GASES														C													
PERMITTED USES E. EDUCATIONAL SERVICES																											
1. CHILD CARE CENTER						C	C	C	C	P				C	P	C	P	P	P	P	P	P	P	P	P	P	C
2. COLLEGE, UNIVERSITY	C	C	C	C	C	C	C	C	C	P	P				P	P					P	P	C				
3. FAMILY HOME CHILD CARE FACILITY	P	P	P	P	P	P	P	P	P																		
4. OTHER EDUCATIONAL/GROUP INSTRUCTION											P				P	P		P	P	P	C	C					
5. PRE-SCHOOL OR DAY SCHOOL WITH OR WITHOUT CHILD CARE CENTER, PART OF A COMMUNITY FACILITY	C	C	C	C	C	C	C	C	C				C	P			P	P	P	P							
6. PUBLIC OR PRIVATE ELEMENTARY SCHOOL	P	P	P	P	P	P	P	P	P	P													P				
7. PUBLIC OR PRIVATE SECONDARY SCHOOL	P	P	P	P	P	P	P	P	P	P													P				
8. VOCATIONAL SCHOOL											P			C	P	C	P	P	P	C	P	P					P
9. BUSINESS SCHOOL											P			P	P	P	P	P	P	P	P	P	P	P	P	P	P
10. PUBLIC OR PRIVATE SCHOOL WITH LESS THAN 200 STUDENTS	P	P	P	P	P	P	P	P	P	P													P	C	C		
PERMITTED USES F. COMMUNITY FACILITIES																											
1. CEMETERY	C	C	C	C	C	C	C	C	C	C																	
2. CHURCH, SYNAGOGUE/OTHER PLACES OF WORSHIP	P	P	P	P	P	P	P	P	P	P	C	C	C	C	P	P	P	C	C	C	C						C

2.1 OFF-SITE CHURCH PARKING LOT	C	C	C	C	C					C									
3. COMMUNITY REC. CENTER (TENNIS, RACQUET BALL...)	C	C	C	C	P	P	P	P	P	P		P		P	P	P	C	C	C
4. CORRECTION FACILITIES										P						P			
5. FIRE STATION	C	C	C	C	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
6. FUNERAL HOME														P	P	P			C
7. LIBRARY	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P	P		
8. PRIVATE CLUB	C	C	C	C	C	C	C	C	C		C			P	P	P			
9. NEIGHBORHOOD SWIMMING POOL	C	C	C	C	P	P	P	P	P	P				P	P	P			
10. POLICE STATION					P	P	P	P	P		P	P	P	P	P	P	P	P	P
10.1. POLICE K9 TRAINING FACILITY										P									P
11. POST OFFICE/PARCEL PICK UP STATION									P		P	P	P	P	P	P	P	P	P
12. PUBLIC/PRIVATE GOLF COURSE	C	C	C	C	P	P	P	P	P	P		P		P	P	P			
13. PUBLIC/SEMI-PUBLIC MUSEUM OR ART GALLERY	C	C	C	C	C	C	C	C		P	C	C		P	P	P	P		
14. PUBLIC PARK	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
PERMITTED USES G. BUSINESS SERVICES																			
1. ADMIN. SUPPORT OFFICES INFORMATIONAL OFFICES										C		P	P	P	P	P	P	P	P
2. BANK, LOAN OFFICE OR CREDIT UNION										P		C	P	C	P	P	P	P	C
3. BUSINESS ADMIN. OFFICES										C		P	P	P	P	P	P	P	P
4. PARCEL DISTRIBUTION CENTER													C		C	C	P		P
5. PROFESSIONAL OFFICE										P		P	P	P	P	P	P	P	C
6. OFFICE AND TWO-FAMILY RESIDENTIAL USE WITHIN ONE BUILDING												P							
PERMITTED USES H. PERSONAL SERVICES																			
1. ARTIST OR PHOTOGRAPHY STUDIO										P		P			P	P	P	P	
2. BARBER/BEAUTY SHOP										P			P		P	P	P	P	
3. CARPET/UPHOLSTERY CLEANING															P	P	C	P	P
4. COIN-OPERATED COMMERCIAL LAUNDRY										P					P	P	P		
4.1. DAY SERVICES CENTER												C			C	C	C	C	
5. DIAPER SERVICE/LINEN SUPPLY															P	P	C	P	P
6. DRY CLEANING PICKUP										P					P	P	P	P	P
7. DRY CLEANING PLANT															P	P	P	C	P
8. RECORDING STUDIO										P		C			P	P	P	P	P
9. SHOE REPAIR										P					P	P	P	P	
10. TAILOR SHOP										P					P	P	P	P	
11. TRAVEL AGENCY												P	P		P	P	P	P	
12. TATTOO ESTABLISHMENT																C			
PERMITTED USES I. RECREATIONAL USES																			
1. AMUSEMENT PARK OR THEME PARK																		P	C
2. BILLIARD PARLOR										P						C	P	P	

3. BINGO PARLOR																C	P				
4. BOWLING ALLEY									P							C	P	P			
5. AMUSEMENT ESTABLISHMENT									C							C	P	P			
6. COUNTRY/YACHT CLUB	C	C	C	C	C	C	C	C	C	C		P				P		P	C		
7. GOLF DRIVING RANGE										P							P				C
8. HEALTH CLUB, FITNESS CENTER & GYMNASIUM									P			P	C	P	P	P	P	P	P	P	C
9. MINIATURE GOLF COURSE										C							P	P			
10. PUBLIC CAMPGROUND										C											
11. SKATEBOARD RAMP										P						C	C	C			C
12. SKATING RINK									P	P						C	P	P			
13. STADIUM, ARENA OR AMPHITHEATRE										C								P	C	C	C
14. THEATRE OR STAGE									P	P						P	P	P	C	C	
15. SHOOTING RANGE																					C
PERMITTED USES J. RETAIL SERVICES																					
1. ADULT USE																C	C	C			
2. APPLIANCE SALES									P							P	P	P			
3. APPLIANCES SERVICES									P							P	P	P			
4. BAKERY (RETAIL)									P							P	P	P	P	P	
5. BICYCLE SALES & SERVICE									P							P	P	P			
6. BOOK STORE									P							P	P	P	P	P	
7. BUILDING SUPPLY - RETAIL																C	C	C			P
8. CAMERA STORE									P							P	P	P	P	P	
9. CEMETERY MONUMENT SALES																P	P	P			
10. COMPUTER SALES & SERVICE									P			P				P	P	P	P	P	
11. CONCESSION STAND									P	P						P	P	P	C	C	
12. CONVENIENCE STORE WITHOUT GASOLINE									P							P	P	P	C	C	
13. CRAFT STORE																P	P	P	P		
14. DEPARTMENT STORE									P							P	P	P			
15. DUPLICATING STORE									P			P	C			P	P	P	P	P	
16. EXTENDED STAY MOTEL									P							P	P	P	C	C	
17. FLORIST, HORTICULTURAL & NURSERY									P			p				P	P	P	P		
18. FURNITURE & UPHOLSTERY STORE									P							P	P	P	P		
19. GARDEN SUPPLY STORE									P							P	P	P			
20. GOLF PRO SHOP/CLUBHOUSE									P	C						P	P	P	P		
21. GROCERY STORE									P							P	P	P			
22. HARDWARE STORE									P							P	P	P			
23. HOME ACCESSORY STORE									P							P	P	P			

24. ICE CREAM/CANDY STORE										P						P	P	P	P		
25. INTERIOR DECORATING STORE										P						P	P	P	P		
26. JEWELRY SALES, SERVICE & REPAIR										P						P	P	P	P		
27. KENNEL																C	C	C			
28. LIGHT EQUIPMENT RENTAL & LEASING																P	P	P	C	C	C
29. LIQUOR STORE										P						P	P	P	P		
30. MALL/MALL BUILDING (ENCLOSED)										P						P	P	P			
31. MEDICAL SUPPLY SALES																P	P	P	P	P	
32. MOTEL/HOTEL										P			C			P	P	P	C	C	
33. NEEDLEWORK & PIECE GOODS STORE										P						P	P	P	P		
33.1. NIGHTCLUB—TYPE 1																P	P	P	P		
33.2. NIGHTCLUB—TYPE 2																C	C	P	P		
34. NOVELTY & SOUVENIR STORE										P						P	P	P	P		
35. OFF-PREMISE SALE OF ALCOHOL IN AN ESTABLISHMENT OF LESS THAN 1,600 SQ.FT.										C						C	C	C	C		
36. PAWN SHOP																C	C	C			
37. PET CARE SERVICE WITHOUT OUTSIDE CAGES OR RUNS										P						P	P	P			
37a. PET CARE SERVICE WITH OUTSIDE CAGES AND RUNS																C	C	C			
38. PRINTING ENGRAVING, BLUEPRINTING & COPYING										C				C		P	P	P	P	P	
39. RESTAURANT/CAFETERIA/DELICATESSEN WITH DRIVE THROUGH SERVICE NOT ADJACENT TO RESIDENTIAL PROPERTY										P	C		P			P	P	P	P	P	C
40. RESTAURANT/CAFETERIA/DELICATESSEN WITHOUT DRIVE THROUGH SERVICE										P	C	P	P			P	P	P	P	P	C
40.1. RESTAURANT/CAFETERIA/DELICATESSEN WITH DRIVE-THROUGH SERVICE ADJACENT TO RESIDENTIAL PROPERTY										C	C		C			C	C	C	C	C	C
41. RETAIL SALES BY WHOLESALE OF SAME GOODS										C						P	P	P	P	P	P
41.1. SELF-SERVICE ICE VENDING UNIT																P	P				P
42. SPORTING GOODS										P						P	P	P	P		
43. STATIONERY STORE										P						P	P	P	P		
44. TENNIS PRO SHOP/CLUBHOUSE										P	C	P				P	P	P	P		
45. TOY OR HOBBY STORE										P						P	P	P			
46. USED MERCHANDISE SALES																P	P	P			
47. VARIETY STORE										P						P	P	P			
48. VIDEO RENTAL										P						P	P	P	P		
49. WEARING APPAREL/SHOE STORE										P						P	P	P	P		
51. BANQUET/FUNCTION HALL										C		C				C	C	C			C
52. ANIMAL SHELTER																					P
53. MICRO-DISTILLERY AND/OR MICRO-WINERY										P						P	P	P	P	P	P
53. MICRO/CRAFT BREWERY										P						P	P	P	P	P	P

54. FOOD TRUCK VENDORS ON PRIVATE PROPERTY												P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
PERMITTED USES K. AUTO & MARINE SERVICES																											
1. AUTO PARTS STORE (NO SERVICE)												P						P	P	P							
2. AUTOMOBILE FUEL & KEROSENE SALES (SUPPLEMENTAL)												C						C	C	C							
3. AUTOMOBILE GASOLINE SUPPLY STATION												C						C	C	C							
3.1. AUTOMOBILE GASOLINE SUPPLY STATION - UNMANNED																											C
4. AUTOMOBILE BODY & PAINT SHOP																			C	C							C
5. SMALL MOTOR VEHICLE REPAIR AND SERVICE FACILITY																			C	C							C
6. AUTOMOBILE SALES/NEW CAR DEALERSHIP																		C	C	P							P
7. AUTOMOBILE SALES, USED CAR DEALERSHIP																			C	C							
8. CAR WASH																		C	C	C							
9. AUTOMOBILE UPHOLSTERY																		C	C	P							
10. AUTOMOBILE, LIMOUSINE, VAN, MOTORCYCLE LEASING/RENTAL														C				C	C	C						P	P
11. BOAT & YACHT SALES												C						C	C	P							
12. BOAT BASIN	C	C	C	C	C	C	C	C	C	P	P			P			P	P	P								P
13. LARGE MOTOR VEHICLE SALES, REPAIR AND/OR SERVICE																			C								C
13.1. MANUFACTURED HOME SALES, SERVICE AND/OR LEASING																			C								C
14. MARINA												C						C	C	P							P
15. SMALL BOAT REPAIR																			C	P							
16. TOWING SERVICE																			C	C							C
PERMITTED USES L. TRANSPORTATION																											
1. AIRPORT																											P
2. BUS STOP, BUS SHELTER OR TAXI STAND	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
3. COMMERCIAL PARKING LOT—SMALL MOTOR VEHICLES																				P	P	C	C				
3.1. COMMERCIAL PARKING LOT—LARGE MOTOR OR RECREATIONAL VEHICLES																											C
3.2. TRUCK STOP																											
4. FREIGHT TERMINAL																											C
5. HELISTOP OR HELIPORT												C				C	C	C	C	C	C	C	C	C	C	C	P
6. OFF-SITE PARKING LOT OR GARAGE										C	C	P			C	P	C	P	P	P	C	C	C	C	C		P
7. SEAPORT																											P
8. TAXI DISPATCH OPERATIONS, MAINTENANCE OR STORAGE																											C
9. TRANSIT TERMINAL FOR BUS, RAIL BOAT, SHIP, OR OTHER MASS TRANSIT																			C	C	C	C	C	C	C	C	C
PERMITTED USES M. WHOLESALE & WAREHOUSE																											
1. BUILDING SUPPLIES WHOLESALE & DISTRIBUTION																											C
2. DISTRIBUTION CENTER FOR RETAIL GOODS, MAIL ORDER																											C
3. DISTRIBUTION WAREHOUSE																											C

4. DOCUMENT STORAGE WAREHOUSE																P		P	P				
5. FOOD PREPARATION, STORAGE & DISTRIBUTION																C	P		P	P			
6. HEATING OIL STORAGE & DISTRIBUTION																	P			C			
7. MINI-STORAGE WAREHOUSE																C	P		C	P			
7.1. MINI-STORAGE WAREHOUSE - SINGLE ENTRANCE INTERIOR STORAGE															C	C	P		C	P			
8. MOVING & STORAGE																	P		C	P			
9. PLUMBING SUPPLIES WHOLESALE & DISTRIBUTION																C	P		C	P			
10. PROPANE STORAGE & DISTRIBUTION																			C				
11. SEAFOOD WHOLESALE DISTRIBUTION & RECEIVING																C	P		P	P			
PERMITTED USES N. OFFICE/RESEARCH DEVELOP.																							
1. COMPUTER CENTERS																P	P		P	P	P	P	
2. LASER, MATERIAL SCIENCE, ELECTRONICS PROD. FIRMS																P	P		P	P	P	P	
3. LIBRARIES, AUDITORIUMS, LECTURE & CONFERENCE CNTR.																P	P		P	P	P	P	
4. NONPROFIT PROFESSIONAL OR TECH. EDUCATIONAL INSTITUTE																P	P		P	P	P	P	
5. PILOT PLANTS FOR PRODUCTION OF PROTOTYPES																	P		P	C	P	P	
6. RESEARCH LABORATORIES, OFFICES AND FACILITIES																P	P		P	P	P	P	
PERMITTED USES O. OPEN INDUSTRIAL																							
1. BRICK MFG./BRICKYARD LUMBER MILL																						C	
2. CONCRETE, BITUMINOUS MFG. & ASPHALT PLANT																						C	
3. HEAVY EQUIPMENT STORAGE																						C	
4. OUTSIDE COAL STORAGE																							
5. OUTSIDE COMPOST FACILITY																							
6. OUTSIDE STORAGE AS MAIN USE																							
7. SAND & GRAVEL PROCESSING OR STORAGE																						C	
8. SMALL REPAIR, SMALL CONSTRUCTION SHOP & SMALL CONTRACTORS OFFICE																	C	P	P		P	P	
9. TANK, FARM FOR STORAGE OF PETROLEUM PRODUCTS																							
PERMITTED USES P. LIMITED INDUSTRIAL																							
1. BOTTLING PLANT																					P	P	P
2. BUYBACK COLLECTION CENTER/GLASS, PAPER & ALUMINUM																C		P	C			C	
3. INDOOR MANUFACTURING AND ASSEMBLY																	P		P	C	P	P	
4. INDOOR COMPOST FACILITY																							
5. MACHINE SHOP																					P	P	P
6. BREWERY SHOP																							
PERMITTED USES Q. HEAVY INDUSTRIAL																							
1. AUTOMOBILE, AIRPLANE MANUFACTURE & ASSEMBLY																						P	P

2. CANNERY, FOOD PRODUCTS PACKING & PROCESSING																				
3. CHEMICAL MANUFACTURING																				
4. DISTILLERY																				
5. GLUE, FERTILIZER MANUFACTURING																				
6. INDOOR RECYCLING CENTER																				C
7. IRON, STEEL, COPPER, ALUMINUM, & OTHER METALWORK PLANT																				
8. PAPER PLANT																				
9. REFINERY																				
10. SEAFOOD PACKING & PROCESSING																				
11. SHIPBUILDING, SHIPYARD MANUFACTURE OR REPAIR																				
12. SLAUGHTERHOUSE, RENDERING PLANT ABATTOIR																				
13. TANNING OR CURING OF HIDES																				
* ARTICLES XXVIII AND XXXI SHOULD BE CONSULTED FOR ANY MODIFICATION OR ADJUSTMENTS OF DISTRICT REGULATIONS OR ANY SPECIAL OVERLAY ZONING R																				
** SIZE LIMITED TO 20,000 SQUARE FEET IN FLOOR AREA, UNLESS USE IS CONTAINED IN A MULTI-TENANT STRUCTURE.																				

(Ord. No. 5028-97, § 1; Ord. No. 5094-98, § 1; Ord. No. 5200-98, § 1; Ord. No. 5202-98, § 1; Ord. No. 5203-98, § 1; Ord. No. 5210-98, § 1; Ord. No. 5264-99, § 1; Ord. No. 5265-99, § 1; Ord. No. 5266-99, § 1; Ord. No. 5273-99, § 1; Ord. No. 5274-99, § 1; Ord. No. 5333-99, § 1; Ord. No. 5395-00, §§ 1—5; Ord. No. 5407-00, § 1; Ord. No. 5422-00, § 1; Ord. No. 5529-00, § 1; Ord. No. 5530-00, § 1; Ord. No. 5550-00, § 1; Ord. No. 5551-00, § 1; Ord. No. 5561-01, § 1; Ord. No. 5711-01, § 1; Ord. No. 5741-02, § 1; Ord. No. 5780-02, § 1; Ord. No. 5781-02, § 1; Ord. No. 5956-03, § 1; Ord. No. 5957-03, § 1; Ord. No. 5958-03, § 1; Ord. No. 5985-03, § 1; Ord. No. 5966-03, § 1; Ord. No. 6174-05, § 1; Ord. No. 6191-06, § 1; Ord. No. 6192-06, § 1; Ord. No. 6193-06, § 1; Ord. No. 6194-06, § 1; Ord. No. 6195-06, § 1; Ord. No. 6196-06, § 1; Ord. No. 6197-06, § 1; Ord. No. 6198-06, § 1; Ord. No. 6331-07, § 1; Ord. No. 6334-07, § 1; Ord. No. 6335-07, § 1; Ord. No. 6336-07, § 1; Ord. No. 6352-07, § 1; Ord. No. 6537-08, § 1; Ord. No. 6538-08, § 1; Ord. No. 6539-08, § 1; Ord. No. 6540-08, § 1; Ord. No. 6578-09, § 1; Ord. No. 6770-11, § 1; Ord. No. 6782-11, § 1; Ord. No. 6794-11, § 1; Ord. No. 6802-11, § 1; Ord. No. 6889-12, § 1; Ord. No. 6892-12, § 1; Ord. No. 6995-13, § 1; Ord. No. 7001-13, § 1; Ord. No. 7066-14, § 1; Ord. No. 7103-14, § 1; Ord. No. 7181-15, § 1; Ord. No. 7246-16, § II; Ord. No. 7248-16, § 1; Ord. No. 7255-16, § II; Ord. No. 7316-16, § 1; Ord. No. 7366-17, § 1; Ord. No. 7534-19, §§ 1—3; Ord. No. 7543-19, § 1; Ord. No. 7647-20, § 1; Ord. No. 7764-22, §§ 1—3; Ord. No. 7806-22, § 1)

Sec. 45-3139. Permitted uses.

(a) *Permitted uses.* In the Urban Core, buildings or premises may be used for any use normally permitted in the underlying zoning district regulations set forth in article IV, section 45-402. The real estate in the Urban Core is all subject to covenants and restrictions, and no use may be made of such real estate that is inconsistent with or violates those covenants or restrictions. In addition to those covenants and restrictions and those uses permitted in the underlying zoning district, the following uses shall also be permitted by right within the Urban Core (section 45-402 matrix listing shown in parenthesis):

- Amusement establishment (I.5)
- Bicycle sales and service (J.5)
- Billiard parlor (I.2)
- Bowling alley (I.4)
- Car wash (K.8); provided that the building housing the car wash use shall be located wholly within a parking garage

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- Coin-operated commercial laundry (H.4) as an accessory use to a multiple-family residential use
 - Commercial parking lot or garage (L.3)
 - Convenience store without gasoline (J.12); provided that the convenience store without gasoline use shall not be permitted in a separate freestanding building
 - Food preparation, storage and distribution (M.5); provided that such use shall occupy less than seven thousand five hundred (7,500) square feet
 - Garden supply store (J.19); provided that such use shall occupy less than fifteen thousand (15,000) square feet
 - Grocery store (J.21); provided that such use shall occupy less than ten thousand (10,000) square feet
 - Hardware store (J.22); provided that such use shall occupy less than ten thousand (10,000) square feet
 - Home accessory store (J.23)
 - Medical center complex (C.2)
 - Motel/hotel (J.32)
 - Multiple-family (B.3); provided that the building housing this use shall be a minimum of four (4) stories in height
 - Nightclub as defined in this chapter
 - Off-site parking lot or garage (L.6)
 - Off-premises sale of alcohol in an establishment of less than one thousand six hundred (1,600) square feet in size (J.35)
 - Other educational/group instruction (E.4)
 - Skating rink (I.12)
 - Theatre or stage (I.14)
 - Toy or hobby store (J.45)
 - Variety store (J.47)
- (b) *Accessory uses.* Any use customarily incidental or accessory to any permitted use is permitted in this district when clearly established as an accessory use to a permitted use.
 - (c) *Signs.* Signs permitted in the Urban Core shall be those set forth in City Code Chapter 33.01, section 33.01-4(e). Such signs shall be compatible with the Urban Core architecture and concept.
- (Ord. No. 5028-97, § 1; Ord. No. 5562-01; Ord. No. 7316-16, § 1)

Sec. 45-3166. Guidelines and development standards.

Purpose and intent: The following guidelines and development standards are intended to protect and enhance the visual experience from the established entrance corridors and to reduce incompatible and adverse impacts on scenic and historic sites.

- (a) *Guidelines.* The development of any site within the Lee Hall Corridor Overlay District shall be in accordance with an approved master plan or site plan. Design and architectural features shall be consistent with the following provisions:

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- (1) Large work area doors or open bays of mixed use, commercial and industrial buildings shall not open toward or face the corridors.
 - (2) Active building elevations shall face public streets. Blank walls or loading areas shall not face public streets.
 - (3) Mechanical equipment, whether ground level or roof top, shall be either screened from view or located so that such mechanical equipment is not visible from the corridors identified in section 45-3163 of the City Code or adjacent properties. Large trash receptacles, dumpsters, utility meters, aboveground tanks, satellite dishes, antennas, etc., shall be similarly treated. Mechanical equipment on rooftops shall, to the extent possible, be hidden by building elements designed for that purpose as an integral part of the building design.
 - (4) Loading spaces for commercial and industrial sites shall be located only at the rear of buildings and should be out of view of the corridors identified in section 45-3163 of the City Code. Views from adjacent properties or uses must be minimized through site design, architectural design, topography, landscaping, setbacks or other features.
 - (5) Required parking areas should be located to the rear or side of main buildings or developed areas.
 - (6) Fencing along the corridor right-of-way should be of decorative (ornamental) style and located behind the landscape strip as required by the city's site regulations.
 - (7) Blank, solid walls should be avoided.
 - (8) Stucco, natural wood siding, brick, or other materials with similar texture and appearance shall be compatible with the area's character. Materials and colors should be varied where appropriate to provide architectural interest.
 - (9) Color schemes should be kept simple in character and harmonious in keeping with the period architecture.
 - (10) No building facade (whether front, side or rear) should consist of architectural materials inferior in quality, appearance, or detail to any other facade of the same building. The intent of this requirement is not to preclude the use of different materials on different buildings' facades (which would be acceptable if representative of good architectural design), but rather to preclude the use of inferior materials on sides that face adjoining property and thus, might adversely impact existing or future development.
 - (11) No visible portion of a building wall shall be constructed of corrugated material, sheet metal, or barren and unfinished cinder block. Standing seam metal roofs are acceptable.
 - (12) New architecture should be compatible with the area's design traditions, forms and materials. Generic franchise design is strongly discouraged.
 - (13) Buildings on the same site should have a strong spatial and functional relationship to each other and shall be varied in size and mass.
- (b) *Development standards.* New subdivision, mixed-use, commercial and industrial development within this Lee Hall Overlay District should provide for visual compatibility and harmony with surrounding natural landforms and vegetation; be protective of views and vistas from the corridors identified in section 45-3163 of the City Code; and provide continuity of site design within the proposed development. These objectives include the following standards, in addition to the development standards specified for the underlying zones in the Zoning Ordinance:
- (1) *General.*

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- a. Structures should not dominate, by excessive or inappropriate height or mass, any general development, adjacent building, or natural landscape.
 - b. Natural amenities such as views, trees, water courses, and other natural features should be preserved and incorporated into the site design.
 - c. Impervious surface areas should be minimized and landscaped areas should be maximized.
 - d. The maximum height of all structures shall be as permitted by the development standards for the underlying zoning district.
 - e. Outdoor storage as an accessory use shall be as permitted, provided that all outdoor storage areas are visually screened from public rights-of-way, internal roadways, and adjacent property. Screening shall consist of either a masonry wall, dense evergreen plants, or such other materials as may be found compatible and approved by the director of planning. All such screening shall be of sufficient height to screen storage areas from public view and shall be appropriately landscaped in accordance with the standards set forth in section 45-512 of the City Code. All company owned and operated vehicles, with the exception of passenger vehicles, are subject to this provision.
 - f. Site development should include streetscape improvements. These improvements are considered as those architectural or functional facilities or structures that occur on site but are not part of the building and that encourage and facilitate human interaction with the built environment. Examples include, but are not limited to the following: decorative light fixtures, fountains, sculptures, benches and tables, planters, retaining walls, pedestrian and bicycle paths, bicycle parking structures, driveways and parking areas except in historic places where these materials are incompatible with the character of the historic place.
- (c) *Grading and drainage.*
- (1) Development activities should avoid excessive or unsightly grading, indiscriminate earth moving or clearing of property, and removal of trees and vegetation that could cause disruption of natural water courses or disfigure natural land forms.
 - (2) Grading for new development shall not adversely affect adjacent property.
 - (3) Grading should not occur within the dripline of any tree(s) being preserved.
 - (4) Drainage shall be designed so as not to interfere with pedestrian traffic.
- (d) *Parking and circulation.*
- (1) Parking lot, traffic areas, and loading and unloading area requirements shall be as established by City Code Chapter 33.02-52, Site Regulations. In addition, the following shall apply:
 - a. Vehicular movement and parking areas shall be paved with concrete, asphalt, exposed aggregate, or pavers. Vehicular movement and parking areas surfaced with gravel or other similar material are prohibited except in historic places where these materials are compatible with the character of the historic place. Concrete curb and gutter or other stormwater management structure as approved by the director of engineering shall be installed around the perimeter of all parking areas.
 - b. All vehicle parking areas shall, whenever practicable, be located to the side or rear of the primary structure and screened with landscaping to soften the view from any public right-of-way. When vehicle parking areas must be located in front of the principal structure, a continuous hedge or landscaped berm or decorative wall of at least three (3) feet in height must be constructed to screen the parking area from any public right-of-way.

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- c. On large commercial sites, parking areas between outparcel buildings and the adjacent street are discouraged.
- (e) *Lighting.*
- (1) The proper layout, height, fixture selection and lighting level shall be incorporated into the site design to create a safe and secure environment.
 - (2) Fixtures used to accent architectural features, landscaping or art shall be located, aimed or shielded to minimize light spill into the night sky.
 - (3) Architectural lighting shall be recessed under roof overhangs or generated from concealed source, low-level light fixtures. Roof lights, wall washes, lighted roof panels, and other methods of illuminating buildings are not allowed.
 - (4) Site lighting shall be of low-intensity from a concealed source, shall be of a clear white or amber light that does not distort colors, and shall not spill over onto adjoining properties, highways, or in any way interfere with the vision of on-coming motorists. Such lighting fixtures or devices shall be of a directional type capable of shielding the light source from direct view. The development plan or site plan must show the relationship of fixtures and the light patterns to each other, to the project site, to the unit development, and to the corridors identified in section 45-3163 of the City Code.
 - (5) Decorative, low-level intensity, non-concealed source lighting that defines vehicular and/or pedestrian ways is acceptable.
 - (6) The lighting plan shall not conflict with the landscape plan, and the two (2) shall be submitted simultaneously for review.
- (f) *Stormwater and BMP.* All new development shall be in conformance with City Code Chapter 37.1, Stormwater Management.
- (g) *Utilities.* All new utilities, including but not limited to all wires, cables, pipes, conduits and appurtenant equipment, carrying or used in connection with the furnishing of electric power, telephone, telegraph, cable television, petroleum, gas steam, water or sewer systems, shall, after adoption of this division be placed below the surface of the ground; provided that:
- (1) Equipment such as electric distribution transformers, switchgear, meter pedestals and telephone pedestals, which are normally installed above ground may be so installed.
 - (2) Meters, service connections and similar equipment normally attached to the outside wall of the premises they serve are acceptable.
 - (3) All equipment that is permitted to be installed above ground shall be screened with landscaping and/or fencing. Consideration should be given to placement of such equipment in order to minimize the view from the corridor.
- (h) *Landscaping requirements and tree protection.*
- (1) *Purpose and intent.* The purpose and intent of such landscaping requirements are to reduce the visibility of paved areas from adjacent properties and streets; moderate climatic effects; minimize noise and glare; and, to enhance public safety by defining spaces so as to influence traffic movement. Landscaping will also reduce the amount of storm water runoff, provide transition between neighboring properties, and frame and soften structures. Every effort shall be made through the design, layout, and construction of development projects to incorporate and preserve as many trees as possible.
 - (2) *General.* Landscaping and green area requirements shall be as established by City Code Chapter 33.02-51, Site Regulations. In addition, the following requirements shall apply to all landscape plans:

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- a. A landscaping plan shall be submitted in conjunction with the development or site plan submittal.
 - b. Such landscaping plan shall be drawn to scale, include dimensions and distances, and clearly delineate all existing and proposed vehicular movement and parking, and the location, size and description of all landscaping materials. All easements, transitional buffer areas and setback areas shall be labeled and dimensioned.
 - c. All plant materials shall be maintained in perpetuity in a healthy condition. The property owner or designated agent shall be responsible for the maintenance, repair and replacement of all landscaping materials as may be required by the provisions of this subsection. All plant material and landscaped bed areas shall be tended and maintained in a healthy growing condition, free from refuse, debris and weeds at all times.
- (3) *Parking area landscaping.* In addition to the requirements of section 33.02-51(12) of the City Code, the following shall apply:
- a. Masonry walls, fences, hedges or berms three (3) to four (4) feet in height in combination with required landscaping are required to screen parking areas with ten (10) spaces or more.
 - b. Pedestrian walkways between sites, parking areas and buildings are required to promote and enhance safe pedestrian circulation.
- (4) *Buffers and screening.* Transitional buffer areas shall be provided as required by section 45-2802(e) of the City Code. Screening shall include a wall or fence designed to block visual and noise impacts to ensure compatibility between adjacent uses.
- (5) *Requirements for landscape plans.* Outdoor furniture and fixtures for commercial and mixed-use development are elements of building and landscape design, and shall be identified on the landscape plan.
- (6) *Tree protection.*
- a. No person shall cut down, destroy, move, or remove or cause to be cut down, destroyed, moved or removed any living, disease-free tree of any species having a trunk six (6) inches in caliper or larger, measured four and one-half (4½) feet from the base, in conjunction with any development of land governed by this division until such activity has been approved under the provisions of this division.
 - b. No land shall be cleared or altered prior to approval of a development or site plan.
 - c. A survey of all trees six (6) inches in caliper or larger within the development area shall be made and submitted in conjunction with the development plan. All trees proposed for removal shall be clearly noted. The tree survey shall be certified either by a licensed land surveyor, registered engineer, or landscape architect.
 - d. When preliminary site evaluation by the applicant reveals the ability to accomplish the proposed project without removal of any trees six (6) inches in caliper or larger, the applicant shall submit a written statement that no trees will be removed and the development plan or site plan will indicate "No Large Caliper Tree Removal" as a condition thereof.
 - e. Those trees designated for preservation in accordance with the provisions of this Ordinance as shown on the approved landscaping plan shall be protected in accordance with section 33.02-51.(c) of the City Code.

(Ord. No. 6294-06)