



CITY OF COLONIAL HEIGHTS

P.O. Box 3401
COLONIAL HEIGHTS, VA 23834-9001
www.colonial-heights.com

Office of the City Manager

TO: The Honorable Mayor and Members of City Council
FR: Richard A. Anzolut, Jr., ~~City Manager~~
DATE: August 21, 2009
SUBJ: Amendment to Chapter 193 of the City Code Relating to the Location of
Massage Clinics

The City Manager has received a request from the Manager of Southpark Mall, Mr. Rich Pangratz, requesting that City Council consider an amendment to Chapter 193 of the City Code. As Council is generally aware, Chapter 193 regulates massage clinics and massage therapy in the City. The management (and ownership) of Southpark Mall is interested in an amendment to the definition of massage clinic as contained in the City Code. As currently written, a massage clinic is "a fixed place of business where a certified massage therapist gives a client a massage. A massage clinic shall either be freestanding or located within a health club, tanning salon, hotel or motel (but not in a guest room in a hotel or motel), beauty salon or barber shop." The mall is interested in an expansion, in effect, to this language to permit a massage clinic to be located in retail space in the mall. Apparently, the proliferation of massage clinics and day spas is such that they are beginning to appear in malls across the country. In response to this request, staff has drafted the attached ordinance amendment that would eliminate specific locations in which massage clinics could be located. Staff has taken this approach simply in response to the request. If massage is a retail service, then it could be located in most any form of establishment as opposed to the health club, tanning salon, hotel or motel, beauty salon or barber shop.

This matter is scheduled for initial discussion during the work session of August 25, 2009. The Mall Manager will be present to assist with the consideration of this request. It should be noted that Southpark Mall has a lease in progress with an acupressure clinic. At this point, acupressure is not defined in the State Code, so practitioners of acupressure are considered massage therapists, as far as we know.

The Honorable Mayor and Members of City Council

August 21, 2009

Page 2

If any questions arise on this matter prior to the work session, please do not hesitate to contact me.

Attachment

cc: Hugh P. Fisher, III, City Attorney
 William E. Johnson, Director of Finance

RECEIVED

AUG 10 2009

Southpark Mall

City Manager's Office

August 7, 2009

cc: Chip Fisher
Jeff Faries

For initial discussion
with City Council at 8/25
work session. *RAA*
8/11

Mr. Rick Anzolut
City Manager
City of Colonial Heights
201 James Avenue
Colonial Heights, VA 23834

Rick:

Thanks for speaking with me earlier this week to discuss City Ordinance 193-1 regarding permitted locations for a massage clinic.

As we discussed, the current ordinance does not include a shopping center, specifically Southpark Mall, as a permitted location for a legitimate operator to conduct business. We respectfully request that this be amended to allow this use here. As you know, we currently have a signed lease with a tenant and would like for the City to allow him to open, provided he adheres to all other guidelines set by the City for this use. We would also like to have the future ability to negotiate leases with other similar legitimate businesses knowing that the City will allow them to open if properly licensed.

I appreciate your offer to bring this before Council and hope that this issue can be resolved going forward.

Sincerely,

SOUTHPARK MALL



Richard J. Pangratz
General Manager

AN ORDINANCE NO. 09-____

To amend and reordain §193-1 of Chapter 193, Massage Clinics, of the Colonial Heights City Code, to change the definition of "Massage Clinic".

THE CITY OF COLONIAL HEIGHTS HEREBY ORDAINS:

1. That §193-1 of Chapter 193, Massage Clinics, of the Colonial Heights City Code, be and is hereby, amended and reordained as follows:

§ 193-1. Definitions.

For the purposes of this chapter, the following words and phrases shall have the following meanings:

BARBERSHOP -- An establishment which provides one or more of the following services in exchange for consideration: hair care, makeovers, facials, manicures, pedicures, or body waxing.

BEAUTY SALON -- An establishment which provides one or more of the following services in exchange for consideration: hair care, skin care, makeovers, facials, manicures, pedicures or body waxing.

CARE FACILITY -- A hospital, nursing home, convalescent care facility, assisted living facility, life care facility, or group care facility.

CERTIFIED MASSAGE THERAPIST -- Any person who administers a massage to another person, in exchange for consideration, and who has qualified as a certified massage therapist pursuant to the requirements of §§ 54.1-3000 and 54.1-3029 of the Code of Virginia (1950), as amended, including, but not limited to, a massage clinic operator.

CHIEF OF POLICE -- The City of Colonial Heights Police Chief or his designee.

CLIENT -- A person receiving a massage.

CONSIDERATION -- Anything of value given in exchange for services rendered, including, but not limited to, money, goods, services or advertising.

HEALTH CLUB -- An establishment which provides health and fitness equipment and programs for its client's use in exchange for any form of consideration. A health club may be located in a hotel or motel but not in a guest room in a hotel or motel.

Ordinance No. 09-____

MASSAGE -- The treatment of soft tissues for therapeutic purposes by the application of massage and body work techniques based on the manipulation or application of pressure to the muscular structure or soft tissues of the human body. Massage shall not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic therapy, physical therapy, occupational therapy, acupuncture or podiatry is required by law.

MASSAGE CLINIC -- A fixed place of business where a certified massage therapist gives a client a massage. ~~A massage clinic shall either be freestanding or located within a health club, tanning salon, hotel or motel (but not in a guest room in a hotel or motel), beauty salon or barbershop.~~

MASSAGE CLINIC OPERATOR -- The person who files and signs the application for a massage clinic permit and who is responsible for the day-to-day operation of the clinic. The massage clinic operator need not qualify as a certified massage therapist if he or she does not intend to administer massage.

PUBLIC GATHERING -- Any event occurring in the City that is open to the general public and involves more than 50 persons.

SEATED MASSAGE -- A massage of the upper body or feet when the massage client is fully clothed and seated in a chair.

TANNING SALON -- An establishment that has as its primary business the provision of tanning services in exchange for consideration.

2. That this Ordinance shall be in full force and effect upon its passage on second reading.

Approved:

Mayor

Attest:

City Clerk

I certify that the above ordinance was:

Adopted on its first reading on _____.

Ayes: _____. Nays: _____. Absent: _____. Abstain: _____.

The Honorable Milton E. Freeland, Jr., Councilman: _____.

The Honorable Kenneth B. Frenier, Councilman: _____.

The Honorable W. Joe Green, Jr., Councilman: _____.

The Honorable Elizabeth G. Luck, Vice Mayor: _____.

The Honorable John T. Wood, Councilman: _____.

The Honorable Diane H. Yates, Councilwoman: _____.

The Honorable C. Scott Davis, Mayor: _____.

Adopted on its second reading on _____.

Ayes: _____. Nays: _____. Absent: _____. Abstain: _____.

The Honorable Milton E. Freeland, Jr., Councilman: _____.

The Honorable Kenneth B. Frenier, Councilman: _____.

The Honorable W. Joe Green, Jr., Councilman: _____.

The Honorable Elizabeth G. Luck, Vice Mayor: _____.

The Honorable John T. Wood, Councilman: _____.

The Honorable Diane H. Yates, Councilwoman: _____.

The Honorable C. Scott Davis, Mayor: _____.

City Clerk

Approved as to form:

City Attorney

Ordinance No. 09-_____



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www.colonial-heights.com

Office of the City Manager

TO: The Honorable Mayor and Members of City Council

FR: Richard A. Anzolut, Jr., City Manager

DATE: August 21, 2009

SUBJ: Southbound I-95/Southpark Boulevard Interchange and West Roslyn Road

For the past four years or so, the City Manager and City Council have discussed the future redevelopment of West Roslyn Road from its current industrial zoning to commercial property that resembles the Southpark area. Some of the limitations to this redevelopment potential are the inadequate design of the southbound I-95/Southpark Boulevard interchange and the traffic handling capacity on West Roslyn Road. Members of Council are generally aware of a pending rezoning application for the property that formerly housed the International Bedding Corporation, also known as the Old Benjamin Moore Building. The former owners of the property, Orlando Associates, petitioned the City for a rezoning from its current ML industrial classification to a B-3 business classification. The property now has a sale contract pending and it appears the rezoning request will be withdrawn.

As part of the rezoning application, the State Code required Orlando Associates to conduct a "Chapter 527" traffic study. The study identified the installation of a traffic signal in the southbound I-95/Southpark – West Roslyn Road interchange. The Director of Public Works and Engineering considers this design inadequate because when the light is red, traffic will back-up onto the interstate. He and his staff have done some traffic projections and are offering a possible solution to the inadequate design of the interchange and the limited traffic handling capacity on West Roslyn Road.

A portion of the work session of August 25, 2009 has been scheduled for the Director of Public Works and Engineering to initially present this issue and a possible solution to City Council. Attached are exhibits prepared by the Director of Public Works and Engineering that would reconfigure the southbound I-95/Southpark interchange and relocate West Roslyn Road to the rear of the properties that currently front on West Roslyn Road. This configuration would solve both problems; namely the inadequate exit ramp design and the traffic capacity on W. Roslyn. The City Manager would like to get some initial feedback from City Council to use for future planning purposes.

The Honorable Mayor and Members of City Council
August 21, 2009
Page 2

As mentioned, the Director of Public Works and Engineering will have a full presentation on this matter during the work session. If any questions arise prior to the presentation, please do not hesitate to contact me.

Attachment

cc: Hugh P. Fisher, III, City Attorney
 William E. Johnson, Director of Finance
 William E. Henley, Director of Public Works & Engineering
 George W. Schanzenbacher, Director of Planning & Community Development



CITY OF COLONIAL HEIGHTS

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Department of Public Works Staff Report to Council

Date of Council Meeting: August 25, 2009

Date of Report: August 18, 2009

Item Title:

1. Review of Comprehensive Plan Goal for Redevelopment of the Roslyn Road Corridor
2. Review of the I-95/Roslyn Road Interchange and the Anticipated Traffic Impacts of Future Rezonings in the Roslyn Road Corridor
3. Recommendation for Mitigation Strategies to Reduce Congestion at the I-95 Southpark Interchange

Summary and Recommendation:

The City's Comprehensive Plan envisions the complete the transition of land uses from industrial to commercial in the Roslyn Road corridor between Conduit Road and I-95. In addition, the Comprehensive Plan recommends monitoring and improving the I-95/Southpark interchange as the need arises

Orlando Associates recently submitted a rezoning application for West Roslyn Road Commercial Park. See attached Exhibit A. Although now withdrawn, this proposal illustrates the transportation issues related to land use changes in this corridor. The applicant proposed to convert an 11.5 acre parcel of land in the Roslyn road corridor from industrial to high intensity mixed use commercial.

The applicant completed a traffic study of the proposed rezoning and development as required by the Department of Public Works and the Virginia Department of Transportation. The study findings indicate that the current level of traffic congestion at the intersection of Roslyn Road with the southbound exit and entrance ramps is unacceptably high. On a scale of A through F, these intersections receive a failing grade. Near gridlock conditions were forecast to exist on Roslyn Road, Southpark Boulevard and the northbound exit ramp of I-95 within six years of the opening of the development. With planned additional development in the Roslyn Road corridor, traffic growth will only increase and congestion will only get worse.

The Administration considers the I-95/Southpark interchange to be a major impediment to the commercial growth and development of not only the Roslyn Road corridor but also of the Southpark general commercial and business area. Consequently, the Department Public Works

recommends initiating mitigation strategies to achieve the goal of improving the interchange and its ability to support continued economic development of the surrounding commercial area.

Strategies to be considered include:

- Continued refinement, development and discussion of design concepts for mitigating congestion including widening and relocating segments of Roslyn Road. See attached Exhibits B and C.
- Inclusion of mitigation projects in the state and regional transportation improvement programs
- Formulation of a model development agreement that provides for in lieu of contributions from proposed developments in the Roslyn Road corridor based on proportionality of traffic impact

Background:

Comprehensive Plan Amendment

Ordinance No. 07-3 amended the Land Use and Transportation component of the City's Comprehensive Plan. It reads in part:

“ . . . The area west of I-95 along West Roslyn Road contains both industrial and commercial activities. The long-term goal for the area is to completely transition from industrial to commercial. New commercial development/redevelopment of this area should recognize and acknowledge that this area is transitional and should be designed to accommodate both types of uses. To accommodate any significant commercial development the existing West Roslyn Road will need to be upgraded to accommodate future traffic needs. The I-95 and Southpark Boulevard Interchange will need to be monitored and improved should the need arise. . .

In addition it reads in part *“ . . . The I-95 and Southpark Boulevard Interchange will need to be monitored and improved should the need arise.”*

I-95/Southpark Interchange

The I-95 Southpark interchange provides southerly access to the City's general commercial and shopping center area east of I-95, south of Temple Avenue and west of the Appomattox River. It also provides southerly access to the City's industrial area along the Roslyn Road corridor west of I-95. Access to and from I-95 is facilitated by a partial cloverleaf interchange with ramps in the southeast and northwest quadrants.

The southeast quadrant of the interchange contains the northbound exit and entrance ramps and the northwest quadrant contains the southbound exit and entrance ramps. Southpark Boulevard connects with the northbound ramps and Roslyn Road, which extends across I-95 to connect with the southbound ramps. The northbound ramps are signalized at their intersection with Southpark Boulevard and Roslyn Road (also known as Ivey Avenue). Roslyn Road extends north to connect with Conduit Road.

The southbound ramps are constrained by the limited right of way available in the northwest quadrant of the interchange. The southbound exit is free flowing onto Roslyn Road. Traffic northbound and southbound on Roslyn Road is required to stop at the southbound exit. This configuration creates a bottleneck that severely hinders access to I-95 southbound and the mobility of through movements on Roslyn Road in both directions.

The approximate extent of the I-95 limited access highway is shown on the attached Exhibit D.

Traffic Impact Analysis Requirements

The longstanding practice of the Department of Public Works is to require traffic impact statements for land use change proposals that would substantially impact city transportation facilities. These statements provide important findings and conclusions to assist the Department in assessing the effect that a particular development will have on the city transportation network and the measures needed to mitigate safety and congestion concerns.

In 2006, Chapter 527 of the Acts of the Assembly adopted enabling legislation to address certain issues with land use and transportation coordination. This Act requires localities to submit for VDOT review and comment proposals for land use changes that would substantially affect transportation on state-controlled highways. Subsequent regulations require traffic impact statements for any proposed land development that generates more than 100 vehicle-trips during peak hours and whose nearest property lines are within 3,000 feet (measured along the highway centerlines) of a connection to a state-controlled highway is subject to the requirement.

The purpose of the regulation is to allow Localities and VDOT the opportunity to evaluate the accuracy, assumptions, methodology and conclusions of the analysis related to proposed land use changes and their effect on state-controlled highways. Traffic impact reports and VDOT response comments are recorded and made available to the general public through the web-based LandTrak system. It is important to note that VDOT's comments are only advisory in nature and are merely intended to assist local officials in land use and transportation decisions.

Illustrative Rezoning Proposal

Although now withdrawn, West Roslyn Road Commercial Park (Z-08-1- 880) is a proposal that illustrates the potential for redevelopment in the Roslyn Road corridor and the resulting traffic impact. The applicant proposed to rezone and redevelop an 11.53 acre parcel that fronts on Roslyn Road between Conduit Road and the Southpark Interchange. The site is currently zoned M-L Limited Industrial and the applicant proposed to rezone it to high density General Business. This mixed use commercial development was anticipated to consist of two 123-room hotels, 20,800 square feet of retail space and 17,215 square feet of high turnover sit-down restaurant and to open in 2011.

This proposal would have significantly increased already high levels of traffic congestion to the point that near-gridlock conditions were anticipated to occur during peak travel hours of the day. The traffic impact in the year of opening would have more than doubled the traffic volume on Roslyn Road north of the southbound ramps. On the section of Roslyn road between Southpark Boulevard and I-95, traffic volumes would have increased by approximately 20%. Traffic backups on Roslyn Road were forecast to extend more than a half mile in each direction from the southbound exit and entrance ramps. See attached Exhibit E.

Policy Implications:

One long-term goal of the City's Comprehensive Plan is to complete the transition of land uses from industrial to commercial in the Roslyn Road corridor located between Conduit Road and I-95. Planning for the needs of economic development includes ensuring that adequate transportation facilities and infrastructure are considered along with any proposal that intensifies land use. For this reason, the Comprehensive Plan recommends monitoring and improving the I-95/Southpark interchange as the need arises.

City code regulations require that transportation (and other) strategies to accommodate economic development be implemented when the impacts of development occur. While this concurrency is not always possible or even desirable, a plan and a financial commitment should

exist to implement transportation strategies or improvements within a reasonable time period. Otherwise, if left unchecked the negative impact of excessive traffic can diminish the viability and attractiveness of an economic development opportunity area like the Roslyn Road corridor

Fiscal Impact:

To a rough order of magnitude, the Department estimates that the cost of developing and implementing the mitigation concepts shown on the attached exhibits is in the \$5 million to \$10 + million range (2009 dollars). A funding formula could be established to allocate the cost between the city and developers of properties in the corridor based on current capacity deficiencies and the relative traffic impact of each development. Deposit of funds in lieu of the construction of permanent improvements to Roslyn Road could be accumulated and minimal temporary road improvements required to safely accommodate the initial developments. The private contributions could be used to leverage and supplement funding from the state revenue sharing program. In addition, the City could seek inclusion of the mitigation projects in the state and regional transportation improvement programs.

Exhibit A – Roslyn Road Corridor with Proposed Rezoning for West Roslyn Road Commercial Park (Now Abandoned)

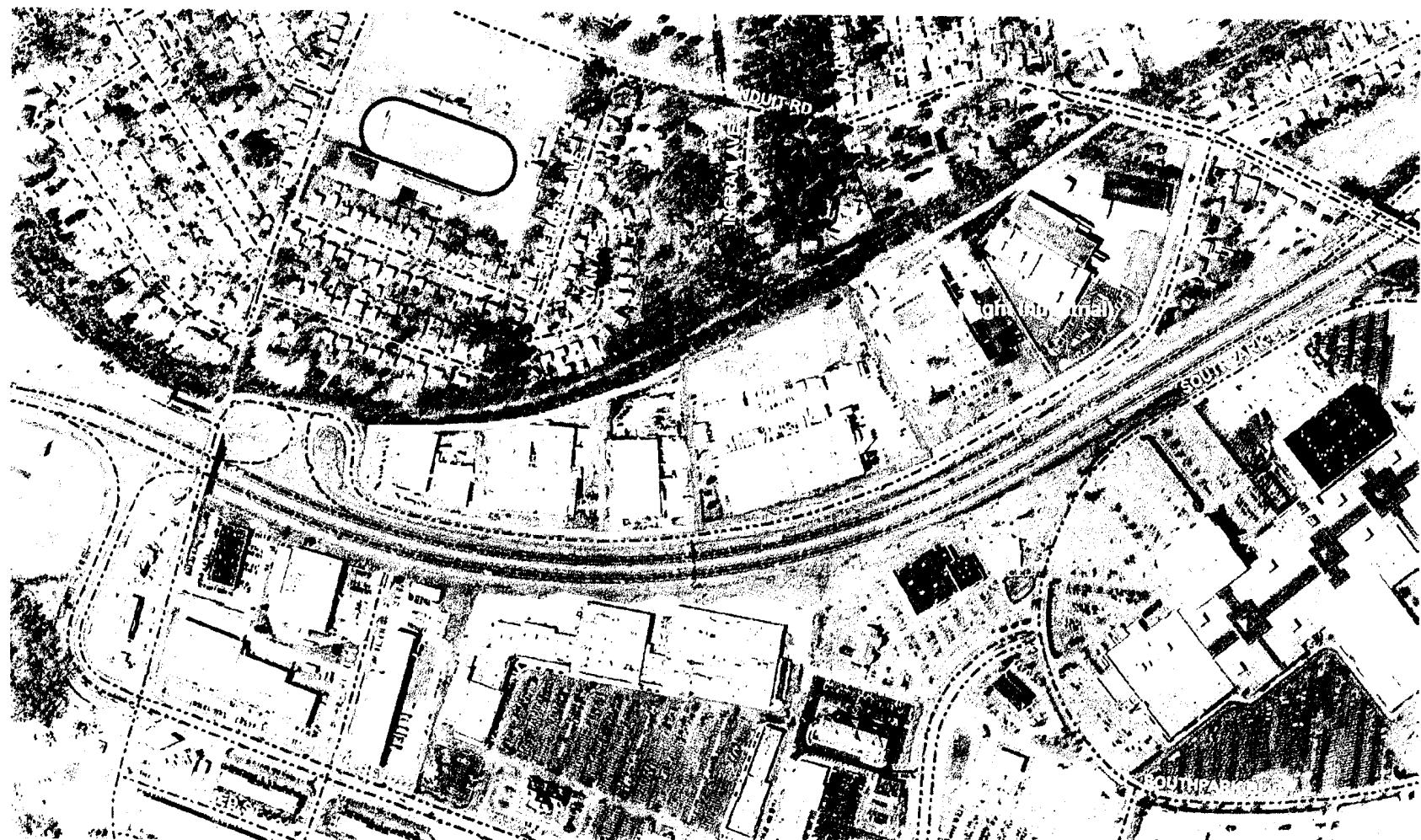


Exhibit B – Mitigation Concept to Widen Roslyn Road

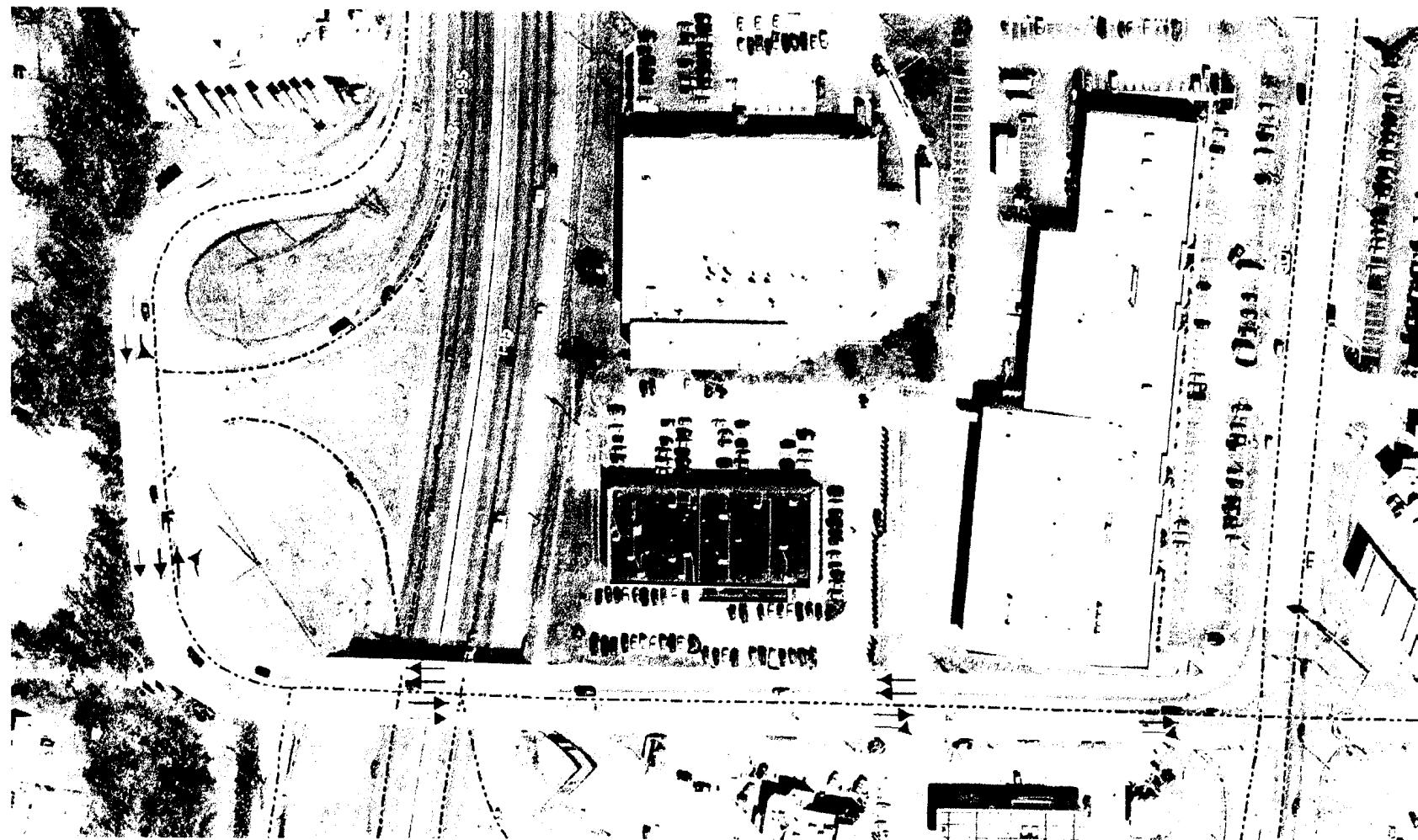


Exhibit C – Mitigation Concept to Relocate Roslyn Road

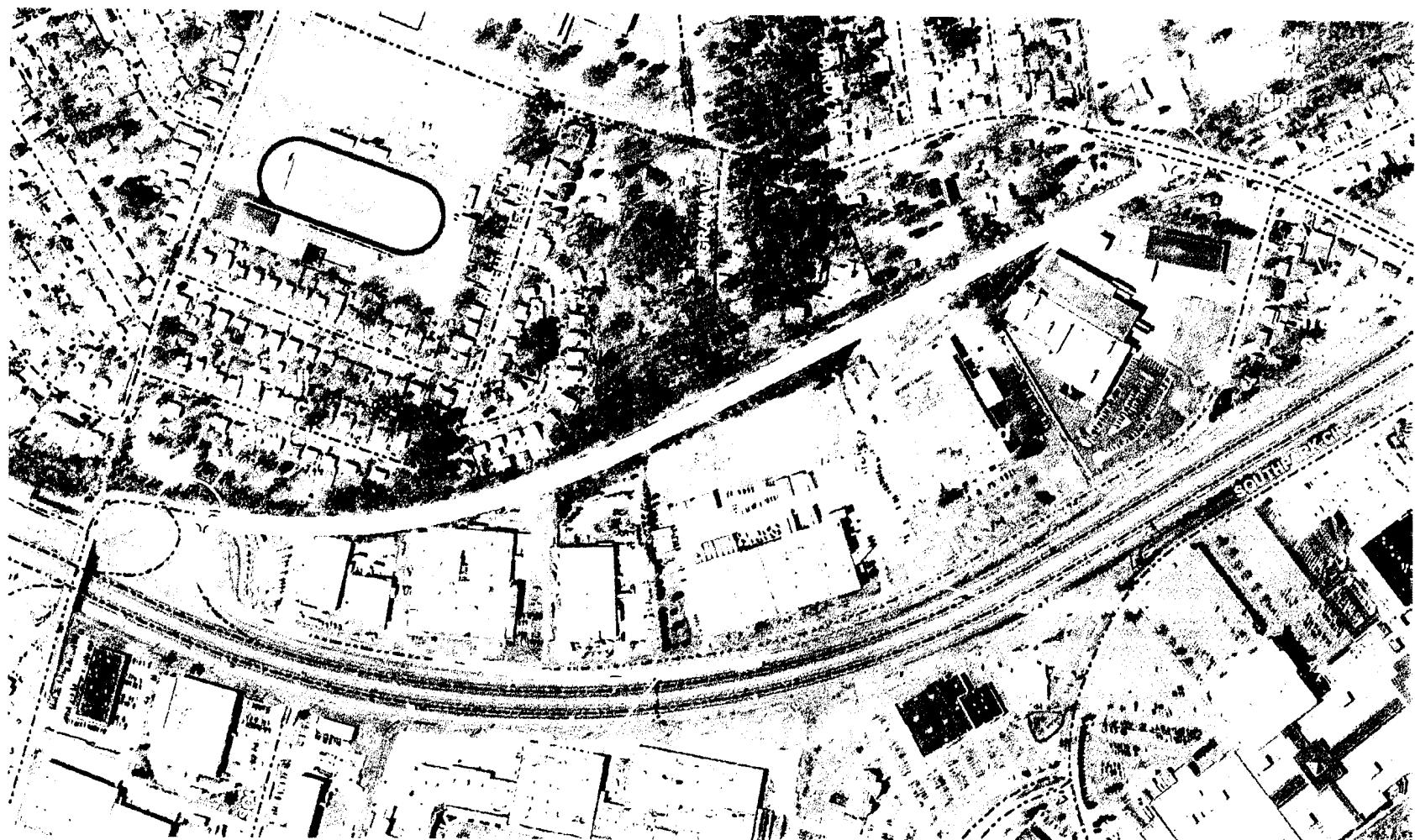


Exhibit D – Approximate Extent of Limited Access Right of Way (I-95)

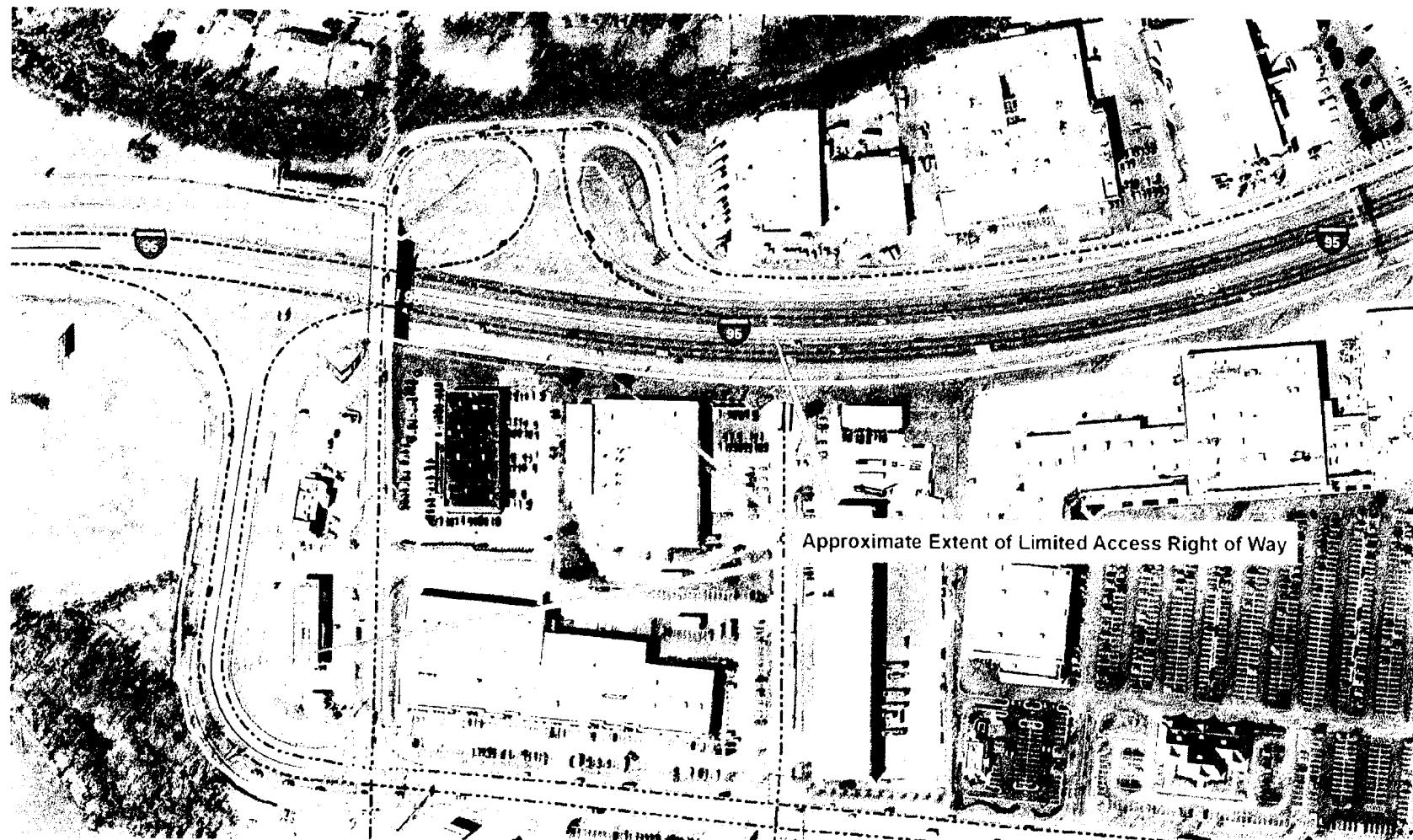
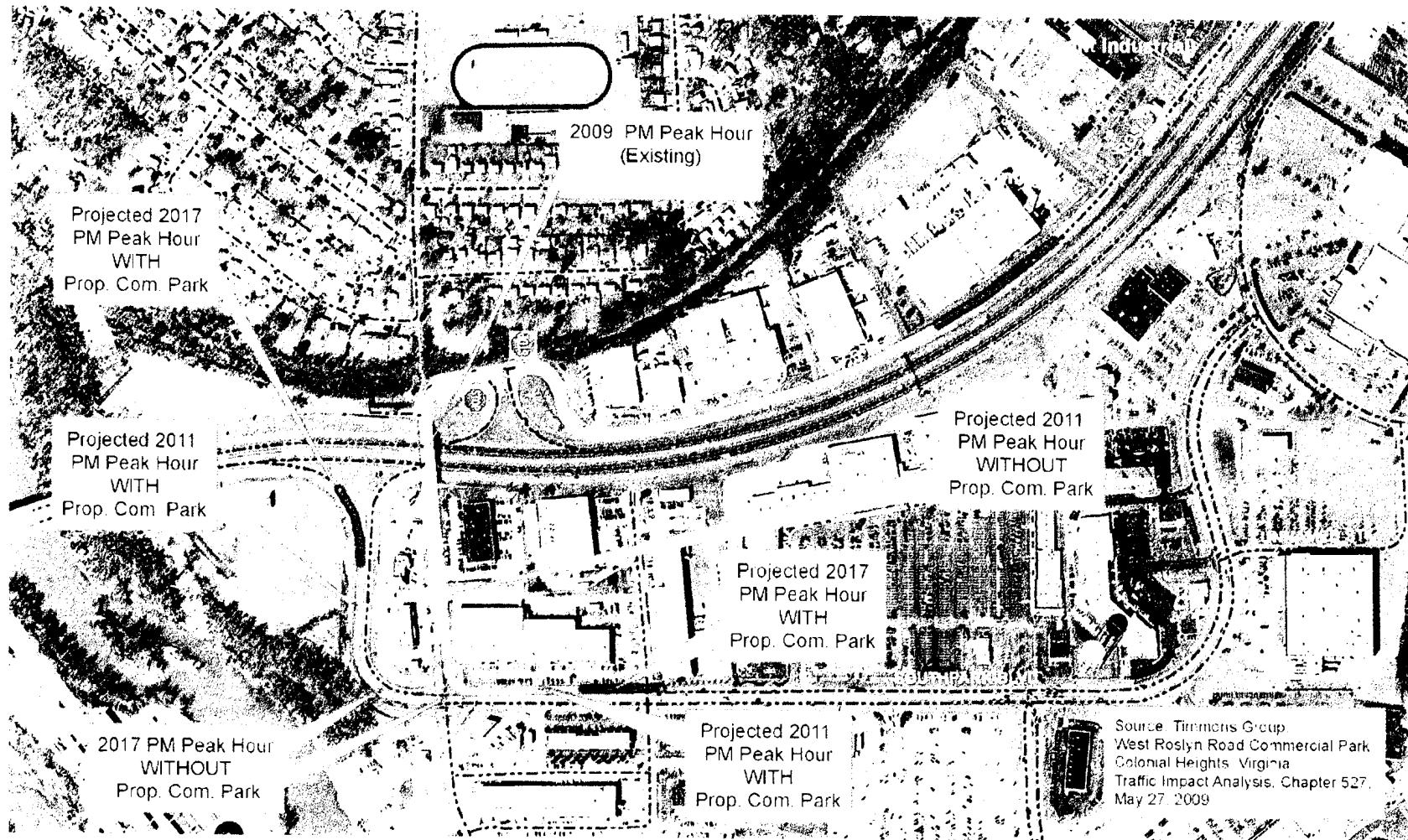


Exhibit D – Approximate Exent of Limited Access Right of Way (I-95)





CITY OF COLONIAL HEIGHTS

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Office of the City Manager

TO: The Honorable Mayor and Members of City Council

FR: Richard A. Anzolut, Jr. *(Handwritten signature)* City Manager

DATE: August 21, 2009

SUBJ: Public-Private Education Facilities and Infrastructure Act (PPEA)
Guidelines

The Colonial Heights Baptist Church Reuse Committee presented its final recommendations during the Council Meeting of July 14, 2009. As part of those recommendations, it was suggested that City Council pursue a design/build concept under the PPEA as a way to renovate the property at 231 Chesterfield Avenue into the City Courthouse. During the work session of July 21, 2009, staff presented some initial background information on the PPEA and the guidelines that must be adopted by a local governing body prior to pursuing a project under the PPEA. At the conclusion of the work session discussion, City Council expressed its consensus that staff draft initial PPEA guidelines for use by the City of Colonial Heights in the possible renovation of the property at 231 Chesterfield Avenue. The City Attorney has conducted some research and has prepared the attachment as an initial step toward the City adopting PPEA guidelines. This matter has been scheduled for continued discussion during the work session of August 25, 2009.

If staff can be of any assistance to Council on this matter prior to the work session, please do not hesitate to contact me.

Attachment

cc: Hugh P. Fisher, III, City Attorney
William E. Johnson, Director of Finance

DRAFT PPEA GUIDELINES

I. TERMS AND DEFINITIONS

"Affected jurisdiction" means any county, city, or town in which all or a portion of a qualifying project is located.

"Appropriating body" means the body responsible for appropriating or authorizing funding to pay for a qualifying project.

"Comprehensive agreement" means the comprehensive agreement between the private entity and the responsible public entity that is required prior to the development or operation of a qualifying project.

"Conceptual stage" means the initial phase of project evaluation when the public entity makes a determination whether the proposed project serves a public purpose, meets the criteria for a qualifying project, assesses the qualifications and experience of a private entity proposer, reviews the project for financial feasibility, and warrants further pursuit.

"Cost-benefit analysis" means an analysis that weighs expected costs against expected benefits in order to choose the best option. For example, a city manager may compare the costs and benefits of constructing a new office building to those of renovating and maintaining an existing structure in order to select the most financially advantageous option.

"Detailed stage" means the second phase of project evaluation where the public entity has completed the conceptual stage and accepted the proposal and may request additional information regarding a proposed project prior to entering into competitive negotiations with one or more private entities to develop an interim or comprehensive agreement.

"Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

"Interim agreement" means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

"Lease payment" means any form of payment, including a land lease, by a public entity to the private entity for the use of a qualifying project.

"Lifecycle cost analysis" means an analysis that calculates cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, and when applicable, salvaging the asset. Although one proposal may have a lower initial construction cost, it may not have the lowest lifecycle cost once maintenance, replacement, and salvage value is considered.

"Material default" means any default by the private entity in the performance of its duties that jeopardizes adequate service to the public from a qualifying project.

"Operate" means to finance, maintain, improve, equip, modify, repair, or operate.

"Opportunity cost" means the cost of passing up another choice when making a decision or the increase in costs due to delays in making a decision.

"Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

"Public entity" means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of the Commonwealth, any public body politic and corporate, or any regional entity that serves a public purpose.

"Qualifying project" means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land of a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility that meets a public purpose and is developed or operated by or for any public entity; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology infrastructure and services, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; (vii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; or (viii) any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

"Responsible public entity" means a public entity that has the power to develop or operate the applicable qualifying project.

"Revenues" means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project, including without limitation, money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such facility.

"Service contract" means a contract entered into between a public entity and the private entity pursuant to §56-575.5.

"Service payments" means payments to the private entity of a qualifying project pursuant to a service contract.

"State" means the Commonwealth of Virginia.

"User fees" mean the rates, fees, or other charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to the comprehensive agreement pursuant to §56-575.9.

II. GENERAL PROVISIONS

A. Proposal Submission

A proposal may be either solicited by the City or delivered by a private entity on an unsolicited basis. Proposers may be required to follow a two-part proposal submission process consisting of an initial conceptual phase and a detailed phase. The initial phase of the proposal should contain specified information on proposer qualifications and experience, project characteristics, project financing, anticipated public support or opposition, or both, and project benefit and compatibility. The detailed proposal should contain specified deliverables.

The PPEA allows private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. Such financing arrangements may include the issuance of debt instruments, equity or other securities or obligations, including, if applicable, the portion of the tax-exempt private activity bond limitation amount to be allocated annually to the Commonwealth of Virginia pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001 for the development of education facilities using public-private partnerships, and to provide for carryovers of any unused limitation amount. The PPEA is a flexible development tool that allows the use of innovative financing techniques. Depending on the City's authority and the circumstances of each transaction, financing options might include the use of special purpose entities, sale and lease back transactions, enhanced use leasing, property exchanges, development agreements, conduit financing and other methods allowed by law.

Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the City. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a scope of work and a financial plan for the project, containing enough detail to allow an analysis by the City of the financial feasibility of the proposed project. The cost analysis of a proposal should not be linked solely to the financing plan, as the City may determine to finance the project through other available means.

The City should establish clearly delineated criteria for (i) selecting among competing proposals and (ii) the use of accelerated documentation, review, and selection processes for proposals involving a qualifying project that the City deems a priority. In addition, to facilitate the flow of critical information, the City may establish criteria by which the proposer may provide clarification to a submitted proposal.

B. Affected Jurisdictions

Any private entity requesting approval from or submitting a conceptual or detailed proposal to the City must provide each affected jurisdiction with a copy of the private entity's request or proposal by certified mail, express delivery, or hand delivery. Affected jurisdictions that are not RPEs under the proposed qualifying project shall have 60 days from the receipt of the request or proposal to submit written comments to the City and to indicate whether the proposed qualifying project is compatible with the (i) local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital improvements budget or other government spending plan. Comments received within the 60-day period shall be given consideration by the City, and no negative inference shall be drawn from the absence of comment by an affected jurisdiction.

C. Proposal Review Fee

The City shall receive an analysis of the proposal from appropriate internal staff or outside advisors or consultants with relevant experience in determining whether to enter into an agreement with the private entity. The City may charge a fee to the private entity to cover the costs of processing, reviewing, and evaluating any unsolicited proposal or competing unsolicited proposal submitted under the PPEA, including a fee to cover the costs of outside attorneys, consultants, and financial advisors. Any fee charged for such review of a proposal should be reasonable in comparison to the level of expertise required to review the proposal and should not be greater than the direct costs associated with evaluating the proposed qualifying project. "Direct costs" may include (i) the cost of staff time required to process, evaluate, review and respond to the proposal and (ii) the out-of-pocket costs of attorneys, consultants, and financial advisors.

The proposal fee may cover all or part of the initial review process. For example, the City may require a proposal fee in an amount sufficient to cover all anticipated direct costs associated with evaluating the proposal, or the City may require a smaller initial processing fee with an additional proposal fee to be charged should the project proceed beyond the initial review.

The City may establish a fee schedule for the cost of the proposal review. The City shall set forth in the procedures it has established for the implementation of the PPEA the methodology used to calculate proposal fees. If the cost of reviewing the proposal exceeds the initially established proposal fee, the City may assess the proposer the additional costs deemed necessary to evaluate the proposal.

For rejected proposals, the City may establish a schedule for refunding any portion of fees paid in excess of its direct costs associated with evaluating the proposal. If the cost of reviewing the proposal is less than the initially established proposal fee, the City may refund to the proposer the excess fee. As noted in Section IV.A. 1 below, fees should be refunded entirely if the City decides not to proceed to publication and conceptual-phase review of an unsolicited proposal.

D. Freedom of Information Act

1. General applicability of disclosure provisions.

Proposal documents submitted by private entities are generally subject to the Virginia Freedom of Information Act ("FOIA") except that subdivision 11 of § 2.2-3705.6 exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and the City may elect to release some or all of documents except to the extent the documents are:

- (a) Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§59.1-336 et seq.);
- (b) Financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or
- (c) Other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement the financial interest or bargaining position of the public or private entity would be adversely affected.

Additionally, to the extent access to proposal documents submitted by private entities are compelled or protected from disclosure by a court order, the City must comply with the provisions of such order.

The City may contact the Freedom of Information Act Council (FOIAC) regarding the applicability of the access provisions of FOIA:

General Assembly Building, 2nd Floor Telephone: (804) 225-3056
910 Capitol Street Richmond, VA 23219 Toll-Free: 1-866-448-4100
E-mail: foiacouncil@leg.state.va.us Fax: (804) 371-8705

2. Protection from mandatory disclosure for certain documents submitted by a private entity.

Before a document of a private entity may be withheld from disclosure, the private entity must make a written request to the City at the time the documents are submitted designating with specificity the documents for which the protection is being sought and a clear statement of the reasons for invoking the protection with reference to one or more of three classes of records listed in Section I.D.1.

Upon the receipt of a written request for protection of documents, the City shall determine whether the documents contain (i) trade secrets, (ii) financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of the City or private entity in accordance with Section I.D.1. The City shall make a written determination of the nature and scope of the protection to be afforded by the City under this subdivision. If the written determination provides less protection than requested by the private entity, the private entity should be accorded an opportunity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be accorded protection from release although what may be protected must be limited to the categories of records identified in Section I.D.1.

Once a written determination has been made by the City, the documents afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of the City or any affected jurisdiction to which such documents are provided.

If a private entity fails to designate trade secrets, financial records, or other confidential or proprietary information for protection from disclosure, such information, records or documents shall be subject to disclosure under FOIA.

3. Protection from mandatory disclosure for certain documents produced by the City.

The City may withhold from disclosure memoranda, staff evaluations, or other records prepared by the City, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals where (i) if such records were made public prior to or after the execution of an interim or a comprehensive agreement, the financial interest or bargaining position of the City would be adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the City.

Cost estimates relating to a proposed procurement transaction prepared by or for the City shall not be open to public inspection.

4. The City may not withhold from public access:

- (a) procurement records other than those subject to the written determination of the City;
- (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the City and the private entity;
- (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or
- (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

However, to the extent that access to any procurement record or other document or information is compelled or protected by a court order, then the City must comply with such order.

E. Use of Public Funds

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any interim or comprehensive agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects.

F. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the City to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPEA.

III. SOLICITED PROPOSALS

The City may issue Requests for Proposals (RFPs) or Invitations for Bids (IFBs), inviting proposals from private entities to develop or operate qualifying projects. The City may not issue a RFP until it has adopted guidelines to govern the PPEA documentation, review, and selection process. The City may use a two-part proposal process consisting of an initial conceptual phase and a detailed phase. An RFP may invite proposers to submit proposals on individual projects identified by the City. In such a case the City should set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA. The City may establish suggested timelines for selecting proposals for the review and selection of solicited proposals.

The RFP should specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The RFP should be posted in such public areas as are normally used for posting of the City's notices, including the City's website. Notices should also be published in a newspaper or other publications of general circulation and advertised in *Virginia Business Opportunities* and posted on the Commonwealth's electronic procurement site. In addition, solicited proposals should be posted pursuant to Section III.B. The RFP should also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Pre-proposal conferences may be held as deemed appropriate by the City.

IV. UNSOLICITED PROPOSALS

The PPEA permits public entities to receive, evaluate and select for negotiations unsolicited proposals from private entities to develop or operate a qualifying project.

The City may publicize its needs and may encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the PPEA. When such proposals are received without issuance of an RFP, the proposal shall be treated as an unsolicited proposal. The City may establish suggested timelines for selecting proposals for the review and selection of unsolicited proposals.

A. Decision to Accept and Consider Unsolicited Proposal; Notice

1. Upon receipt of any unsolicited proposal or group of proposals and payment of any required fee by the proposer or proposers, the City should determine whether to accept the unsolicited proposal for the purpose of publication and conceptual-phase consideration. If the City determines not to accept the proposal and proceed to publication and conceptual-phase consideration, it should return the proposal, together

with all fees and accompanying documentation, to the proposer.

2. If the City chooses to accept an unsolicited proposal for publication and conceptual-phase consideration, it shall post a notice in a public area regularly used by the City for posting of public notices for a period of not less than 45 days. The City shall also publish the same notice for a period of not less than 45 days in one or more newspapers or periodicals of general circulation in the jurisdiction to notify any parties that may be interested in submitting competing unsolicited proposals. In addition, the notice should be advertised in *Virginia Business Opportunities* and on the Commonwealth's electronic procurement website. The notice shall state that the City (i) has received an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and (iv) will receive for simultaneous consideration any competing proposals that comply with the procedures adopted by the City and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations.

3. To ensure that sufficient information is available upon which to base the development of a serious competing proposal, representatives of the City familiar with the unsolicited proposal and the guidelines established by the City shall be made available to respond to inquiries and meet with private entities that are considering the submission of a competing proposal. The City shall conduct an analysis of the information pertaining to the proposal included in the notice to ensure that such information sufficiently encourages competing proposals. Further, the City shall establish criteria, including key decision points and approvals to ensure proper consideration of the extent of competition from available private entities prior to selection.

B. Posting Requirements

1. Conceptual proposals, whether solicited or unsolicited, shall be posted by the City within 10 working days after acceptance of such proposals in the following manner:

- (a) For RPEs that are state agencies, departments, and institutions, posting shall be on the Department of General Service's web-based electronic procurement program commonly known as "eVA"; and
- (b) For RPEs that are local public bodies, posting shall be on the entity's website or by publication, in a newspaper of general circulation in the area in which the contract is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Department of General Service's web-based electronic procurement program commonly known as "eVA," in the discretion of the local City.

2. Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the City so as to provide maximum notice to the public of the opportunity to inspect the proposals.

3. In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of §2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the City and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

C. Initial Review by the Responsible Public Entity at the Conceptual Stage

1. Only proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format should be considered by the City for further review at the conceptual stage. Formatting suggestions for proposals at the conceptual stage are found in Section I. V. A.

2. The City should determine at this initial stage of review whether it will proceed using:

- (a) Standard procurement procedures consistent with the VPPA; or
- (b) Guidelines developed by the City that are consistent with procurement of other than professional services through "competitive negotiation" as the term is defined in § 2.2-4301 of the Code of Virginia. The City may proceed using such guidelines only if it makes a written determination that doing so is likely to be advantageous to the City and the public based upon either (i) the probable scope, complexity or priority of need; (ii) the risk sharing including guaranteed cost or completion guarantees, added value or debt, or equity investments proposed by the private entity; or (iii) the increase in funding, dedicated revenue or other economic benefit that would otherwise not be available.

3. After reviewing the original proposal and any competing proposals submitted during the notice period, the City may determine:

- (a) not to proceed further with any proposal;
- (b) to proceed to the detailed phase of review with the original proposal;
- (c) to proceed to the detailed phase with a competing proposal;
- (d) to proceed to the detailed phase with multiple proposals; or
- (e) to request modifications or amendments to any proposals.

In the event that more than one proposal will be considered in the detailed phase of review, the City should consider whether the unsuccessful proposer should be reimbursed for costs incurred in the detailed phase of review, and such reasonable costs may be assessed to the successful proposer in the comprehensive agreement.

4. Discussions between RPEs and private entities about the need for infrastructure improvements shall not limit the ability of a City to later determine to use standard procurement procedures to meet its infrastructure needs. The City retains the right to reject any proposal at any time prior to the execution of an interim or comprehensive agreement.

V. PROPOSAL PREPARATION AND SUBMISSION

A. Format for Submissions at Conceptual Stage

The City may require that proposals at the conceptual stage contain information in the following areas: (i) qualifications and experience, (ii) project characteristics, (iii) project financing, (iv) anticipated public support or opposition, or both, (v) project benefit and compatibility and (vi) any additional information as the City may reasonably request to comply with the requirements of the PPEA. Suggestions for formatting information to be included in proposals at this stage include the items listed below, as well as any additional information or documents that City may request:

1. Qualification and Experience.
 - (a) Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.
 - (b) Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties.
 - (c) Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.
 - (d) Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent or greater.
 - (e) Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§2.2-3100 et seq.) of Title 2.2.
2. Project Characteristics.
 - (a) Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
 - (b) Identify and fully describe any work to be performed by the City.
 - (c) Include a list of all federal, state, and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
 - (d) Identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.
 - (e) Identify the projected positive social, economic, and environmental impacts of the project.
 - (f) Identify the proposed schedule for the work on the project, including the estimated time for completion.
 - (g) Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.

- (h) State assumptions related to ownership, legal liability, law enforcement, and operation of the project and the existence of any restrictions on the City's use of the project.
- (i) Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- (j) List any other assumptions relied on for the project to be successful.
- (k) List any contingencies that must occur for the project to be successful.

3. Project Financing.

- (a) Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
- (b) Submit a plan for the development, financing, and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports.
- (c) Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with financing given the recommended financing approach. In addition, complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.
- (d) Identify the proposed risk factors and methods for dealing with these factors.
- (e) Identify any local, state, or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of the City's credit or revenue.
- (f) Identify the amounts and the terms and conditions for any revenue sources.
- (g) Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.

4. Project Benefit and Compatibility.

- (a) Identify who will benefit from the project, how they will benefit, and how the project will benefit the overall community, region, or state.
- (b) Identify any anticipated public support or opposition, as well as any

anticipated government support or opposition, for the project.

- (c) Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- (d) Describe the anticipated significant benefits to the community, region or state, including anticipated benefits to the economic condition of the City and whether the project is critical to attracting or maintaining competitive industries and businesses to the City or the surrounding region.
- (e) Describe compatibility with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan.
- (f) Provide a statement setting forth participation efforts that are intended to be undertaken in connection with this project with regard to the following types of businesses: (i) minority-owned businesses, (ii) woman-owned businesses, and (iii) small businesses.

B. Format for Submissions at Detailed Stage

If the City decides to proceed to the detailed phase of review with one or more proposals, the following information should be provided by the private entity unless waived by the City:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
2. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings;
3. A statement and strategy setting out the plans for securing all necessary property;
4. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties;
5. A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility, and estimated annual operating expenses;
6. A detailed discussion of assumptions about user fees or rates, and usage of the project or projects;
7. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications;
8. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans;

9. Explanation of how the proposed project would impact local development plans of each affected jurisdiction;

10. Identification of the executive management and the officers and directors of the firm or firms submitting the proposal. In addition, identification of any known conflicts of interest or other disabilities that may impact the City's consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§2.2-3100 et seq.) of Title 2.2;

11. Additional material and information as the City may reasonably request.

VI. PROPOSAL EVALUATION AND SELECTION CRITERIA

There are several factors that the City may wish to consider when evaluating and selecting a proposal under the PPEA. The following are some of the factors that may be considered by the City in the evaluation and selection of PPEA proposals.

A. Qualifications and Experience

Factors to be considered in either phase of the City's review to determine whether the proposer possesses the requisite qualifications and experience include:

1. Experience with similar projects;
2. Demonstration of ability to perform work;
3. Leadership structure;
4. Project manager's experience;
5. Management approach;
6. Financial condition; and
7. Project ownership.

B. Project Characteristics

Factors to be considered in determining the project characteristics include:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology; technical feasibility;
5. Conformity to laws, regulations, and standards;
6. Environmental impacts;

7. Condemnation impacts;
8. State and local permits; and
9. Maintenance of the project.

C. Project Financing

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project include:

1. Cost and cost benefit to the City;
2. Financing and the impact on the debt burden of the City or appropriating body;
3. Financial plan, including the degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies;
4. Opportunity costs assessment;
5. Estimated cost;
6. Life-cycle cost analysis;
7. The identity, credit history, past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable; and
8. Such other items as the City deems appropriate.

In the event that any project is financed through the issuance of obligations that are deemed to be tax-supported debt of the City, or if financing such a project may impact the City's debt rating or financial position, the City may select its own finance team, source, and financing vehicle.

D. Project Benefit and Compatibility

Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans include:

1. Community benefits;
2. Community support or opposition, or both;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities; and

5. Compatibility with local, regional, and state economic development efforts.

E. Other Factors

Other factors that may be considered by the City in the evaluation and selection of PPEA proposals include:

1. The proposed cost of the qualifying project;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design of the qualifying project;
4. The eligibility of the project for accelerated documentation, review, and selection;
5. Local citizen and government comments;
6. Benefits to the public, including financial and nonfinancial;
7. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
8. The private entity's plans to employ local contractors and residents;
9. The recommendation of a committee of representatives of members of the City and the appropriating body which may be established to provide advisory oversight for the project; and
10. Other criteria that the City deems appropriate.

VII. ADDITIONAL REVIEW PROCEDURES

A. Public Private Partnership Oversight Advisory Committee

An RPE that is an agency or institution of the Commonwealth shall and all other RPEs may establish criteria to trigger establishment of an advisory committee consisting of representatives of the City and the appropriating body to review the terms of the proposed interim or comprehensive agreement. The criteria should include, but not be limited to, the scope, total cost and duration of the proposed project, and whether the project involves or impacts multiple public entities. Timelines for the work of the committee should be developed and made available to proposers.

B. Appropriating Body

If the RPE for appropriating or authorizing funding to pay for a qualifying project is different from the City reviewing or approving the project, then the RPE reviewing or approving the project should establish a mechanism for that appropriating body to review any proposed interim or comprehensive agreement prior to execution. When a school board is the RPE, review by the local governing body shall satisfy this requirement.

VIII. INTERIM AND COMPREHENSIVE AGREEMENTS

Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with the City. Prior to entering a comprehensive agreement, an interim agreement may be entered into that permits a private entity to perform compensable activities related to the project. The City may designate a working group to be responsible for negotiating any interim or comprehensive agreement. Any interim or comprehensive agreement shall define the rights and obligations of the City and the selected proposer with regard to the project.

A. Interim Agreement Terms

The scope of an interim agreement may include but is not limited to:

1. Project planning and development;
2. Design and engineering;
3. Environmental analysis and mitigation;
4. Survey;
5. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis;
6. Establishing a process and timing of the negotiation of the comprehensive agreement; and
7. Any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate prior to the execution of a comprehensive agreement.

B. Comprehensive Agreement Terms

The scope of the comprehensive agreement shall include but not be limited to:

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project;
2. The review of plans and specifications for the qualifying project by the City;
3. The rights of the City to inspect the qualifying project to ensure compliance with the comprehensive agreement;
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the private entity by the City to ensure proper maintenance;
6. The terms under which the private entity will reimburse the City for services provided;
7. The policy and procedures that will govern the rights and responsibilities of the City and the private entity in the event that the comprehensive agreement is

terminated or there is a material default by the private entity including the conditions governing assumption of the duties and responsibilities of the private entity by the City and the transfer or purchase of property or other interests of the private entity by the City;

8. The terms under which the private entity will file appropriate financial statements on a periodic basis;

9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that is the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project:

- (a) A copy of any service contract shall be filed with the City.
- (b) A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request.
- (c) Classifications according to reasonable categories for assessment of user fees may be made.

10. The terms and conditions under which the City may contribute financial resources, if any, for the qualifying project;

11. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;

12. The terms and conditions under which the City will be required to pay money to the private entity and the amount of any such payments for the project;

13. Other requirements of the PPEA or other applicable law; and

14. Such other terms and conditions as the City may deem appropriate.

Any changes in the terms of the interim or comprehensive agreement as may be agreed upon by the parties from time to time shall be added to the interim or comprehensive agreement by written amendment.

The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project.

C. Notice and Posting requirements

1. In addition to the posting requirements of Section III. B, 30 days prior to entering into an interim or comprehensive agreement, the City shall provide an opportunity for public comment on the proposals. Such public comment period may include a public hearing in the sole discretion of the City. After the end of the public comment period, no additional posting shall be required based on any public comment received.

2. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by the City, the City shall post the proposed agreement in the following manner:

- (a) For RPEs that are state agencies, departments, and institutions, posting shall be on the Department of General Service's web-based electronic procurement program commonly known as "eVA"; and
- (b) For RPEs that are local public bodies, posting shall be on the City's website or by publication, in a newspaper of general circulation in the area in which the contract work is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Department of General Service's web-based electronic procurement program commonly known as "eVA," in the discretion of the local City.
- (c) In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of §2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the City and the private entity.

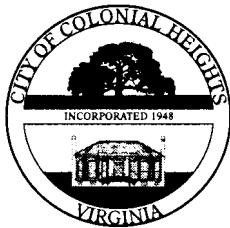
3. Once an interim agreement or a comprehensive agreement has been entered into, the City shall make procurement records available for public inspection, upon request.

- (a) Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have adverse affect on the financial interest or bargaining position of the City or private entity in accordance with Section II.D.3.
- (b) Such procurement records shall not include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

To the extent access to procurement records are compelled or protected by a court order, then the City must comply with such order.

IV. GOVERNING PROVISIONS

In the event of any conflict between these guidelines and the PPEA, the terms of the PPEA shall control.



CITY OF COLONIAL HEIGHTS

P.O. Box 3401
COLONIAL HEIGHTS, VA 23834-9001
www.colonial-heights.com

Office of the City Manager

TO: The Honorable Mayor and Members of City Council

FR: Richard A. Anzolut, Jr. *[Handwritten signature]* City Manager

DATE: August 21, 2009

SUBJ: City Code Correction – Transient Occupancy Tax

During the Council Meeting of July 14, 2009, the Colonial Heights Baptist Church Reuse Committee presented possible redevelopment options for the City Courthouse site. During the presentation, one of the options presented would propose the development of an extended stay hotel on the existing courthouse site. The extended stay concept has some limitations with respect to transient occupancy taxes. Hotel stays of excess of 30 days are not taxable in the transient occupancy category as regulated in the State Code. In other words, extended stays and extended stay hotels do not generate any transient occupancy tax revenue if the occupancy of the room by the traveler exceeds 30 days. Our City Code defines a transient as “any person who, for a period of not more than 90 consecutive days, either at his own expense or at the expense of another, obtains lodging at any hotel.” For some reason, the City Code is inaccurate in the definitions section.

Attached is a draft ordinance that would correct this oversight and realign the City Code directly with State Code authority. Fortunately, practice in the Office of the Commissioner of the Revenue has always been that stays in excess of 30 days were and are nontaxable. As a result, we do not have an operating problem, simply a housekeeping problem in the definition of transient as contained in the City Code. A brief portion of the work session of August 25, 2009 has been scheduled to present this matter and receive Council’s authorization to advance this correction to your regular agenda.

If any questions arise on this matter prior to the work session, please do not hesitate to contact me.

Attachment

cc: Hugh P. Fisher, III, City Attorney
William E. Johnson, Director of Finance

AN ORDINANCE NO. 09-20

To amend and reordain §258-52 of Chapter 258, Taxation, of the Colonial Heights City Code, to change the definition of "Transient".

THE CITY OF COLONIAL HEIGHTS HEREBY ORDAINS:

1. That §258-52 of Chapter 258, Taxation, of the Colonial Heights City Code, be and is hereby, amended and reordained as follows:

§ 258-52. Definitions.

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

COMMISSIONER -- The Commissioner of the Revenue of the City and any of his duly authorized deputies and agents.

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

LODGING -- Room or space furnished any transient.

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

TRANSIENT -- Any person who, for a period of not more than ~~90~~ **30** consecutive days, either at his own expense or at the expense of another, obtains lodging at any hotel.

TREASURER -- The Treasurer of the City and any of his duly authorized deputies and agents.

2. That this Ordinance shall be in full force and effect upon its passage on second reading.

Approved:

Mayor

Attest:

City Clerk

I certify that the above ordinance was:

Adopted on its first reading on _____.

Ayes: _____. Nays: _____. Absent: _____. Abstain: _____.

The Honorable Milton E. Freeland, Jr., Councilman: _____.

The Honorable Kenneth B. Frenier, Councilman: _____.

The Honorable W. Joe Green, Jr., Councilman: _____.

The Honorable Elizabeth G. Luck, Vice Mayor: _____.

The Honorable John T. Wood, Councilman: _____.

The Honorable Diane H. Yates, Councilwoman: _____.

The Honorable C. Scott Davis, Mayor: _____.

Adopted on its second reading on _____.

Ayes: _____. Nays: _____. Absent: _____. Abstain: _____.

The Honorable Milton E. Freeland, Jr., Councilman: _____.

The Honorable Kenneth B. Frenier, Councilman: _____.

The Honorable W. Joe Green, Jr., Councilman: _____.

The Honorable Elizabeth G. Luck, Vice Mayor: _____.

The Honorable John T. Wood, Councilman: _____.

The Honorable Diane H. Yates, Councilwoman: _____.

The Honorable C. Scott Davis, Mayor: _____.

City Clerk

Approved as to form:

Hugh P. Doster, III
City Attorney



CITY OF COLONIAL HEIGHTS

P.O. Box 3401
COLONIAL HEIGHTS, VA 23834-9001
www.colonial-heights.com

Office of the City Manager

TO: The Honorable Mayor and Members of City Council

FR: Richard A. Anzolut, Jr. *RMK* City Manager

DATE: August 21, 2009

SUBJ: Consideration of a Draft Graffiti Ordinance

Over the past year or so, staff has noticed some incidents of graffiti in the City of Colonial Heights. While acts of graffiti are not uncommon, it appears there have been more acts in the past year or so, and those acts have been on a grander scale. A few citizens have approached the City Manager about the City getting more involved in the abatement of graffiti. The State Code does give authority to local governments to require the abatement of graffiti in 15 days or less or the local government can enter upon private property for the purpose of obscuring or abating the graffiti. Based on the number of incidents and their size, the City Manager would like the opportunity to discuss consideration of a graffiti ordinance with City Council.

A portion of the work session of August 25, 2009 has been scheduled for Council to review a draft graffiti ordinance and determine if it should be advanced toward adoption. In short, the ordinance requires private property owners to abate graffiti within 15 days if it can be seen from the public right-of-way. If such is not performed, the City, after reasonable notice as outlined in the ordinance, can enter upon the private property without liability for the purpose of obscuring or abating said graffiti. The cost of the City's efforts can be chargeable to the private property owner. If the perpetrators of the graffiti are apprehended and convicted, they can be sentenced to community service in the form of graffiti abatement. While this is not practical in 15 days, the City may choose to simply obscure the graffiti, but the community service worker could possibly restore the exterior finish of the building to its condition prior to the graffiti. The City Manager and City Attorney will be prepared to discuss the needs and operational activities relating to this draft ordinance during the work session.

The Honorable Mayor and Members of City Council
August 21, 2009
Page 2

There is one generally accepted belief that could guide City Council in considering this matter. Prevention of graffiti is dependent upon the quick removal of graffiti. In other words, if graffiti artists find their work obscured or removed in a very short amount of time, they are less likely to graffiti in the same area again. It is believed and generally proven that artists want people to see their work – for a long time. If it disappears quickly, they will go somewhere else, or perhaps give up.

Council's review of this matter is appreciated. If any questions arise prior to the work session, please do not hesitate to contact me.

Attachment

cc: Hugh P. Fisher, III, City Attorney
William E. Johnson, Director of Finance

AN ORDINANCE NO. 09-____

To amend and reordain the Colonial Heights City Code by adding therein a new Chapter 129, Damage to or Defacement of Public or Private Property, consisting of §§ 129-____ through 129-____.

THE CITY OF COLONIAL HEIGHTS HEREBY ORDAINS:

1. That the Colonial Heights City Code be, and is hereby, amended and reordained by adding therein a new Chapter 129, Damage to or Defacement of Public or Private Property, consisting of §§ 129-____ through 129-____, as follows:

§129-__. Damage to or defacement of public or private property.

A. Purpose and intent.

It is the purpose and intent of this section to make unlawful the willful and malicious damage to or defacement of any public buildings, facilities, walls, fences, structures, or personal property, or of any private buildings, facilities, walls, fences, structures, or personal property, and to establish a procedure for the remediation of any damage or defacement, including graffiti, from public and private property, to provide for the recovery of costs of any cleaning, covering, repairing, replacing, removing without limitation and to provide a measure of rehabilitation, through community service, for those persons guilty of violations of this section.

B. Definitions.

Community Service Supervisor shall be the Director of Public Works or his designee who shall have the authority to supervise the court ordered community service program authorized by this section.

Defacement shall have the same meaning as graffiti.

Graffiti shall mean the unauthorized application by any means of any writing, painting, drawing, etching, scratching, or marking of an inscription, word, figure, or design of any type.

Remediate or Remediation shall mean the removing, repairing, covering, cleaning, or replacing the defacement or damage to property.

C. Damage or defacement of public or private property prohibited; criminal penalty.

(1) It shall be unlawful for any person to deface or damage any public buildings, facilities, walls, fences, structures, or personal property, or any private buildings, facilities, walls, fences, structures, or personal property.

(2) Any person convicted of a violation of subsection (1) shall be guilty of a Class 1 misdemeanor. The punishment for any such violation in which the defacement or damage is (i) more than 20 feet off the ground, (ii) on a railroad or highway overpass, or (iii) committed for the benefit of, at the direction of, or in association with any criminal street gang, as that term is defined by Virginia Code §18.2-46.1 (Definitions, Criminal

Street Gang Participation), shall include a mandatory minimum fine of \$500.

(3) Upon a finding of guilt under this section in any case tried before the court without a jury, in the event the violation constitutes a first offense that results in property damage or loss, the court, without entering a judgment of guilt, upon motion of the defendant, may defer further proceedings and place the defendant on probation pending completion of a plan of community service work. If the defendant fails or refuses to complete the community service as ordered by the court, the court may make final disposition of the case and proceed as otherwise provided. If the community service work is completed as the court prescribes, the court may discharge the defendant and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt, and is a conviction only for the purposes of applying the provisions of this section in subsequent proceedings.

(4) Community service work prescribed by the court under subsection (3) shall include, to the extent feasible, the remediation of any damage or defacement to property within the City, and may include clean-up, beautification, landscaping, or other appropriate community service within the City. Any remediation which is to be done on private property will require the property owner to release the City and its officers and employees from any liability that might arise during the course of performing community service activities on such property. Should the property owner not agree to such a release, the Community Services Supervisor shall report to the Court that the community service plan can not be fulfilled according to the orders prescribed by the Court.

(5) Community service work prescribed by the court under subsection (3) shall be performed under the supervision of the Community Services Supervisor, who shall report on such work to the court imposing the community service work requirement at such times and in such manner as the court may direct.

(6) At or before the time of sentencing under this section, the court shall receive and consider any plan for making restitution or performing community service submitted by the defendant, as well as the recommendations of the community service supervisor concerning the plan.

(7) The court may order any person convicted of unlawfully defacing property to pay full or partial restitution to the City of Colonial Heights for costs incurred by the City in remediating the defacement. An order of restitution pursuant to this subsection shall be docketed as provided in §8.01-446 when so ordered by the court or upon written request of the City of Colonial Heights and may be enforced by the City in the same manner as a judgment in a civil action.

(8) No person convicted of a violation of this section shall be placed on probation or have his sentence suspended unless such person shall make at least partial restitution for such property damage or is compelled to perform community services, or both.

(9) If the City seeks to remediate the damage or defacement, the City shall give notice to the owner and lessee, if any, of any private property that has been damaged or defaced that, within 15 days of receipt of such notice, if the owner or lessee does not remediate, or object to the remediation of the damage or defacement, the City may remediate the damage or defacement at the City's expense through its employees and/or agents. In exercising such duties, such agents or employees shall have any and all immunity normally provided to an employee of the City under Virginia Code §15.2-908 and any other immunity provided by law.

D. Parental liability for damages.

(1) In the event that damage to, or defacement or destruction of, public property
Ordinance No. 09-_____

is perpetrated by a minor who is living with either or both parents or a legal guardian, the City may institute an action to recover from the parents of the minor, or either of them, or from the legal guardian, the costs for damages suffered by reason of the willful destruction or defacement of, or damage to, public property by the minor. The action by the City shall be subject to any limitation on the amount of recovery set forth in Virginia Code §8.01-43 (Action against parent for damage to public property by minor) or other applicable state law.

(2) In the event that damage to, or defacement or destruction of, private property is perpetrated by a minor who is living with either or both parents or a legal guardian, the property owner may institute an action, and recover from the parents of the minor, or either of them, or from the legal guardian, the costs for damages suffered by reason of the willful destruction or defacement of, or damage to, private property by the minor. The action by the owner shall be subject to any limitation on the amount of recovery set forth in Virginia Code §8.01-44 (Action against parent for damage to private property by minor) or other applicable state law.

E. Remediation of damage to or defacement of buildings, facilities, walls, fences, structures, and personal property.

(1) The Director of Public Works or his designee is authorized to undertake or contract for the remediation of the damage to or defacement of any public property.

(2) The Director of Public Works or his designee is also authorized to undertake or contract for the remediation of the damage to or defacement of any private property visible from any public right-of-way, in accordance with the following procedures:

- (a) Prior to such remediation of any damage to or defacement of occupied private property that is visible from a public right-of-way, the Director of Public Works or his designee shall issue notice to the property owner and the lessee, if any, by posting in a conspicuous place on the offending premises and by regular mail, or service by a special conservator of the peace to the last known address of the owner and to the lessee. Such notice shall provide: the street address and legal description of the property; that the owner or lessee should take corrective action to remediate the damage or defacement within 15 days of receipt of the notice; and that if the damage or defacement is not remediated within the 15-day period, the City will begin remediation procedures.
- (b) If the defacement occurs on a private building, wall, fence, or other structure located on unoccupied property, and the City through its own agents or employees, remediates the defacement after complying with the notice provisions of this section, the actual cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the locality as taxes are collected. No lien shall be chargeable to the owners of such property unless the City has given a minimum of 15 days' notice to the property owner prior to the removal of the defacement.
- (c) Every charge authorized by subsection (b) above with which the owner of any such property has been assessed and that remains unpaid shall constitute a lien against such property, ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in Articles 3 and 4 of Title 58.1 of the Code of Virginia (§§58.1-3940 et seq.). The City may waive and release such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage

to the owner and who has no 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.

(d) Before entering upon private property for the purpose of remediating defaced property, the City shall attempt to obtain the consent of the property owner or lessee.

(3) Where property is owned by a public entity other than the City, the remediation of the damage or defacement by the City is authorized only after securing the consent of an authorized representative of the public entity having jurisdiction over the property.

F. Reimbursement of costs from property owner for remediation of damage or defacement.

If the City undertakes to remediate any damage or defacement from private property after complying with the notice provisions set forth above, the City may seek from the property owner recovery of the total cost for such remediation.

2. That this Ordinance shall be in full force and effect upon its passage on second reading.

Approved:

Mayor

Attest:

City Clerk

I certify that the above ordinance was:

Adopted on its first reading on _____.

Ayes: _____. Nays: _____. Absent: _____. Abstain: _____.

The Honorable Milton E. Freeland, Jr., Councilman: _____.

The Honorable Kenneth B. Frenier, Councilman: _____.

The Honorable W. Joe Green, Jr., Councilman: _____.

Ordinance No. 09-_____

The Honorable Elizabeth G. Luck, Vice Mayor: _____.

The Honorable John T. Wood, Councilman: _____.

The Honorable Diane H. Yates, Councilwoman: _____.

The Honorable C. Scott Davis, Mayor: _____.

Adopted on its second reading on _____.

Ayes: _____. Nays: _____. Absent: _____. Abstain: _____.

The Honorable Milton E. Freeland, Jr., Councilman: _____.

The Honorable Kenneth B. Frenier, Councilman: _____.

The Honorable W. Joe Green, Jr., Councilman: _____.

The Honorable Elizabeth G. Luck, Vice Mayor: _____.

The Honorable John T. Wood, Councilman: _____.

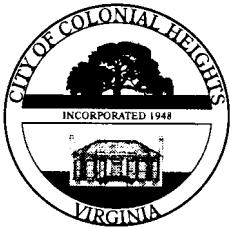
The Honorable Diane H. Yates, Councilwoman: _____.

The Honorable C. Scott Davis, Mayor: _____.

City Clerk

Approved as to form:

City Attorney



CITY OF COLONIAL HEIGHTS

P.O. Box 3401
COLONIAL HEIGHTS, VA 23834-9001
www.colonial-heights.com

Office of the City Manager

TO: The Honorable Mayor and Members of City Council

FR: Richard A. Anzolut, Jr. *(Handwritten signature)* City Manager

DATE: August 21, 2009

SUBJ: Transient and Itinerant Food Vendors

During the work sessions of May 26 and July 21, 2009, City Council discussed modifications to the City Code relating to transient merchants and itinerant vendors. The attached draft ordinance is the product of those discussions. When the matter was last discussed on July 21st, the question of the City's authority to charge more than \$50 on an itinerant food merchant was to be resolved by the City Attorney. The City Attorney has researched the matter and found that the City can charge up to \$500 for the itinerant food vendor (now proposed to be limited to 30 consecutive days per calendar year). To reiterate, we currently charge itinerant food vendors \$50 for a license to operate for the 365 day calendar year.

Discussion of this last issue in the modification to our regulations on transient merchants and itinerant vendors is scheduled for Council's discussion during the work session of August 25, 2009. At this point, staff has no reason to recommend a license figure for City Council's consideration. In short, the City Manager believes that if we are going to charge \$500 to a transient merchant selling retail goods for a 30 consecutive day period in a calendar year, we should charge \$500 for a food merchant, as well. Anything less could perpetuate their presence in the future. Council is reminded that this does not apply to vendors of farm goods.

Staff is prepared to implement City Council's direction in this regard. The City Manager would like to advance formal consideration of the attached draft ordinance beginning in September, if possible. It is desirable to adopt these amendments before January 1, 2010. If such is performed, the entire 2010 business license tax year will be under these new requirements for transient merchants and itinerant vendors.

The Honorable Mayor and Members of City Council
August 21, 2009
Page 2

If any questions arise on this matter prior to the work session, please do not hesitate to contact the City Attorney or myself, at your convenience.

Attachment

cc: Hugh P. Fisher, III, City Attorney
William E. Johnson, Director of Finance
Marjorie C. DeDanko, Commissioner of Revenue

AN ORDINANCE NO. 09-18

To amend and reordain §§187-3, 187-9, 286-2, 286-77, and 286-99 of the Colonial Heights City Code, to make _____.

THE CITY OF COLONIAL HEIGHTS HEREBY ORDAINS:

1. That §187-3 of Chapter 187, Licenses, of the Colonial Heights City Code, be and is hereby, amended and reordained as follows:

§ 187-3. License requirement.

A. Every person engaging in the City in any business, trade, profession, occupation or calling (collectively hereinafter, "a business") as defined in this article, unless otherwise exempted by law, shall apply for a license for each such business if:

- (1) Such person maintains a definite place of business in the city;
- (2) Such person does not maintain a definite office anywhere but does maintain an abode in the city, which abode for the purposes of this article shall be deemed a definite place of business; or
- (3) There is no definite place of business but such person operates amusement machines, is engaged as a peddler, or *an* itinerant merchant *as defined in §286-2 of this Code*, a carnival or circus as specified in the Code of Virginia, §58.1-3717, 3718 or 3728, respectively, or is a contractor subject to the Code of Virginia, §58.1-3715 or is a public service corporation subject to the Code of Virginia, §58.1-3731. *An itinerant merchant shall not be issued a license that is valid for more than 30 consecutive days, and each itinerant merchant shall comply with the standards specified in §§286-77 and 286-99 of this Code.*

2. That §187-9 of Chapter 187, Licenses, of the Colonial Heights City Code, be and is hereby, amended and reordained as follows:

§187-9. License fee and tax.

Every person or business subject to licensure under this section shall be assessed and required to pay annually:

A. A fee in the amount of \$30 for a person or business included in Subsection B(1), (2), (3) and (4) of this section, whose gross receipts are less than \$15,000 in a license year, for the issuance of such license; and

B. Except as may be otherwise provided in Virginia code §§ 58.1-3712, 58.1-3712.1 and 58.1-3713 and Subsection C of this section, every such person or business shall be assessed and required to pay annually a license tax on all the gross receipts of such persons includable as provided in this chapter at a rate set forth below for the class of enterprise listed:

- (1) For contractors and persons constructing for their own account for sale, \$0.15 per \$100 of gross receipts;
- (2) For retailers, \$0.20 per \$100 of gross receipts;
- (3) For financial, real estate and professional services, \$0.57 per \$100 of gross receipts;
- (4) For repair, personal and business services and all other businesses and occupations not specifically listed or exempted in this chapter or otherwise by law, \$0.35 per \$100 of gross receipts;
- (5) For wholesalers, \$0.05 per \$100 of purchases;
- (6) For carnivals, circuses and speedways, \$500 for each performance held in the city; except no license tax shall be imposed on any activity conducted or sponsored by a department of the City government or for charitable purposes;
- (7) For fortune tellers, clairvoyants and practitioners of palmistry, \$500 per year, subject to the provisions of §187-17 herein;
- (8) For itinerant merchants, \$500 per year, except as otherwise provided herein:
 - (a) No license tax shall be imposed on any itinerant merchant who sells or offers for sale in person or by his employees only the following items, or any of them, if such items were grown or produced by him or by his employees and were not purchased by them for sale: ice, wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables, fruits or other family supplies of a perishable nature or farm, domestic or nursery products.
 - (b) A license tax of \$50 for each location used during the tax year shall be imposed on any itinerant merchant who sells or offers for sale in person or by his

employees only the following items, or any of them, if such items were not grown or produced by him or his employees: wood, meats, milk, butter, eggs, poultry, fish, oysters, seafood, game, vegetables, fruits or other edible family supplies of a perishable nature.

(c) A license tax of \$50 for each location used during the tax year shall be imposed on any itinerant merchant who sells or offers for sale Christmas trees or Christmas greens not grown or produced by him.

(d) An itinerant merchant whose activities are conducted solely for charitable purposes and who is not paid for his services shall not be required to pay any license tax hereunder.

(e) No license tax shall be imposed on an itinerant merchant whose activities are conducted as part of an event conducted or sponsored by any department of the City government.

(9) For peddlers, \$500 per year, except as otherwise provided herein:

(a) Any person who sells or offers to sell goods, wares or merchandise to licensed dealers, other than at a definite place of business operated by the seller, and at the time of such sale or exposure for sale delivers or offers to deliver the goods, wares or merchandise to the buyer is a "peddler at wholesale." Any delivery on the day of sale shall be construed as a delivery at the time of sale. Each peddler at wholesale shall pay a license tax for the tax year. The license tax rate for each peddler at wholesale shall be the same as the license tax rate applicable to a wholesale merchant selling similar goods, wares or merchandise at one definite place of business.

(b) No license tax shall be imposed on any peddler who sells or offers for sale in person or by his employees only the following items, or any of them, if such items were grown or produced by him or by his employees and were not purchased by them for sale: ice, wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables, fruits or other family supplies of a perishable nature or farm, domestic or nursery products.

(c) A license tax of \$50 for the tax year shall be imposed on any peddler who sells or offers for sale in person or by his employees only the following items, or any of them, if such items were not grown or produced by him or his employees: wood, meats,

milk, butter, eggs, poultry, fish, oysters, seafood, game, vegetables, fruit or other edible family supplies of a perishable nature.

(d) A license tax of \$50 for the tax year shall be imposed on any peddler who sells or offers for sale Christmas trees or Christmas greens not grown or produced by him.

(e) A peddler whose activities are conducted solely for charitable purposes and who is not paid for his services shall not be required to pay any license tax hereunder.

(f) No license tax shall be imposed on any peddler whose activities are conducted or sponsored by a department of the City government.

(10) For direct sellers as defined in Virginia Code §58.1-3719.1 with total annual sales in excess of \$4,000, \$0.20 per \$100 of total annual retail sales or \$0.05 per \$100 of total annual wholesale sales, whichever is applicable.

C. No license tax imposed pursuant to the provisions of this section upon gross receipts shall be imposed on any person whose gross receipts from a business, profession or occupation subject to licensure are less than \$15,000 in a license year. This limitation shall not be applicable to license taxes on wholesalers, carnivals, circuses and speedways, fortune tellers, clairvoyants and practitioners of palmistry, itinerant merchants or peddlers and direct sellers.

3. That §286-2 of Chapter 286, Zoning, of the Colonial Heights City Code, be and is hereby, amended and reordained as follows:

§ 286-2 Definitions and word usage.

A. For the purpose of this chapter, certain words and terms are herein defined. Words used in the present tense include the future; the singular number includes the plural and the plural the singular; the word "building" shall include the word "structure"; the word "shall" is mandatory, not directory; "lot" includes the words "plot," "tract" and "parcel."

B. The following terms, unless a contrary meaning is required by the context or specifically otherwise prescribed, shall have the following meanings:

ACCESSORY BUILDING -- A detached subordinate building located on the same lot with the main building or use, the use of which is customarily incidental to that of the main building or to that of the use of the land. Where an accessory building is structurally

attached to the main building, such accessory building shall be counted as a part of the main building. A swimming pool shall be deemed an "accessory building."

ITINERANT MERCHANT – A merchant who transports an inventory of new merchandise to a building, vacant lot, or other location and who, at that location, displays, sells or offers to sell the new merchandise to the public. Itinerant merchant shall not include a merchant with an established store, regularly open to the public; a licensed merchant with a regularly serviced supply route or location; or a merchant who purchases merchandise directly from a manufacturer. An itinerant merchant is also known as a transient merchant.

4. That §286-77 of Chapter 286, Zoning, of the Colonial Heights City Code, be and is hereby, amended and reordained as follows:

§ 286-77 Permitted uses.

The following uses shall be permitted in any B-1 General Business District.

A. One-family dwellings.

Y. *Itinerant Merchants, subject to the following standards:*

- (1) ***The property owner shall grant written permission for the itinerant merchant to conduct business on his property;***
- (2) ***Only one itinerant merchant per property is allowed at any one time;***
- (3) ***The Commissioner of the Revenue shall issue each itinerant merchant only one business license per calendar year pursuant to §187-3 of this Code, and 30 consecutive days shall be the maximum time for each transient use per calendar year;***
- (4) ***Any time period for which a merchant receives a business license shall be counted in consecutive days;***
- (5) ***Temporary offices, trailers, tents, or trucks are permitted, provided they do not disrupt traffic flow on the property or interfere with***

visibility for vehicle access to the site or vehicle movements on the site;

- (6) *All business activities shall take place on private property;*
- (7) *Signage and lighting shall comply with the provisions of this Chapter;*
- (8) *A concept plan showing the location of all activities shall be submitted to and approved by the Zoning Administrator before a business license is issued; and*
- (9) *All fixtures, equipment or any other structural elements of the business shall be immediately removed from the site once the license expires.*

5. That §286-99 of Chapter 286, Zoning, of the Colonial Heights City Code, be and is hereby, amended and reordained as follows:

§ 286-99 Permitted uses.

The following uses shall be permitted in any B-3 General Business (High Density) District:

A. Antique shops; appliance stores; art shops; automobile parking lots, public or private; bakeries; banks or savings and/or building and loan associations; barbershops; baths, Turkish or massage clinics; beauty shops; bicycle sales and repairs; book or stationery stores; business and private schools, operated as a business enterprise; business or professional offices; cleaning collection or pickup stations; clothing stores; confectionery or dairy products stores; custom dressmaking, millinery or tailor shops; delicatessen stores; dental clinics; department stores; drapery shops; drugstores; dry goods, notion or variety stores; florist shops; fruit or vegetable stores; furniture and floor covering shops; gasoline supply stations; grocery stores or supermarkets; haberdashery stores; hardware stores; interior decorating shops; jewelry stores; job printing shops; launderettes and/or hand laundries; marine supplies, including pleasure craft sales; meat, seafood or poultry markets; medical clinics; newsstands; pet shops; photographic studios; restaurants, lunchrooms or cafes; drive-ins; small loan offices; shoe stores or shoe repair shops; tailor, clothing or wearing apparel shops; taxicab offices; telegraph offices; theaters; United States post offices; Virginia ABC package stores; accessory buildings and uses; and cleaning and pressing establishments.

J. *Itinerant Merchants, subject to the following standards:*

- (1) *The property owner shall grant written permission for the itinerant merchant to conduct business on his property;*
- (2) *Only one itinerant merchant per property is allowed at any one time;*
- (3) *The Commissioner of the Revenue shall issue each itinerant merchant only one business license per calendar year pursuant to §187-3 of this Code, and 30 consecutive days shall be the maximum time for each transient use per calendar year;*
- (4) *Any time period for which a merchant receives a business license shall be counted in consecutive days;*
- (5) *Temporary offices, trailers, tents, or trucks are permitted, provided they do not disrupt traffic flow on the property or interfere with visibility for vehicle access to the site or vehicle movements on the site;*
- (6) *All business activities shall take place on private property;*
- (7) *Signage and lighting shall comply with the provisions of this Chapter;*
- (8) *A concept plan showing the location of all activities shall be submitted to and approved by the Zoning Administrator before a business license is issued; and*
- (9) *All fixtures, equipment or any other structural elements of the business shall be immediately removed from the site once the license expires.*

6. That this Ordinance shall be in full force and effect upon its passage on second reading.

Approved:

Mayor

Attest:

City Clerk

I certify that the above ordinance was:

Adopted on its first reading on _____.

Ayes: _____. Nays: _____. Absent: _____. Abstain: _____.

The Honorable Milton E. Freeland, Jr., Councilman: _____.

The Honorable Kenneth B. Frenier, Councilman: _____.

The Honorable W. Joe Green, Jr., Councilman: _____.

The Honorable Elizabeth G. Luck, Vice Mayor: _____.

The Honorable John T. Wood, Councilman: _____.

The Honorable Diane H. Yates, Councilwoman: _____.

The Honorable C. Scott Davis, Mayor: _____.

Adopted on its second reading on _____.

Ayes: _____. Nays: _____. Absent: _____. Abstain: _____.

The Honorable Milton E. Freeland, Jr., Councilman: _____.

The Honorable Kenneth B. Frenier, Councilman: _____.

The Honorable W. Joe Green, Jr., Councilman: _____.

The Honorable Elizabeth G. Luck, Vice Mayor: _____.

The Honorable John T. Wood, Councilman: _____.

The Honorable Diane H. Yates, Councilwoman: _____.

The Honorable C. Scott Davis, Mayor: _____.

City Clerk

Approved as to form:

City Attorney



CITY OF COLONIAL HEIGHTS

P.O. Box 3401
COLONIAL HEIGHTS, VA 23834-9001
www.colonial-heights.com

Office of the City Manager

TO: The Honorable Mayor and Members of City Council

FR: Richard A. Anzolut, Jr. *RAJ* City Manager

DATE: August 21, 2009

SUBJ: Draft Real Estate Tax Abatement Ordinances

The City Manager has done some research and the City Attorney has done a fine job researching and preparing the attached draft ordinance to continue advancing our discussions of real estate tax abatement for new and renovated commercial property as part of an economic development incentive program. The City Manager will present the ordinance to Council during the work session of August 25, 2009. The ordinance would provide for a 5 year partial abatement based on the amount of money spent to renovate a commercial property in the Southpark Business Development Zone. The ordinance would also provide for a 5 year partial abatement of real estate taxes based on an increase to the assessed value of the property in the Boulevard Business Development Zone. In a number of work sessions we have discussed the merits of both concepts for each zone. It is hoped that the draft ordinance can advance our discussions.

As mentioned, the City Manager will present the draft ordinance during the work session. If any questions arise prior to the work session, please do not hesitate to contact me.

Attachment

cc: Hugh P. Fisher, III, City Attorney
William E. Johnson, Director of Finance

AN ORDINANCE NO. 09-____

That Article IIA of Chapter 258, Taxation, of the Colonial Heights City Code, be renamed, "Partial Real Estate Tax Exemption for Certain Substantially Rehabilitated, Renovated or Replaced Commercial Structures"; and to repeal and replace the provisions of such Article.

THE CITY OF COLONIAL HEIGHTS HEREBY ORDAINS:

1. That Article IIA of Chapter 258, Taxation, be and is hereby renamed and that the current provisions of such Article are hereby repealed and replaced by the following provisions:

ARTICLE IIA. PARTIAL REAL ESTATE TAX EXEMPTION FOR CERTAIN SUBSTANTIALLY REHABILITATED, RENOVATED OR REPLACED COMMERCIAL STRUCTURES.

§ 258-16.1. Definitions.

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

Assessor: *The City Assessor for Colonial Heights, Virginia.*

Base assessed value: *The assessed value of the structure as of January 1 of the year in which the rehabilitation, renovation or replacement of the structure begins.*

Commercial structure: *Any structure or other improvement that is lawfully being used or may be used for a commercial purpose. If any such structure is lawfully being used for both a commercial and a non-commercial use, it shall be deemed to be a commercial structure if more than fifty percent of its total square footage is used for commercial purposes.*

Rehabilitation, renovation, or replacement: *Expenditures associated with any internal or external, structural, mechanical, or electrical improvements necessary to rehabilitate, renovate, expand, or replace a commercial structure, and excavations, grading, paving, driveways, roads, sidewalks, landscaping, or other land improvements; including, but not limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning, and cleanup.*

Rehabilitation, renovation, or replacement shall not include:

- (1) *The cost of acquiring any real property or building;*
- (2) *The cost of furnishings; any expenditure associated with appraisal, architectural, engineering and interior design fees; loan fees, points, or capitalized interest; legal, accounting, realtor, sales and marketing, or other professional fees; bids, insurance, exterior signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; utility hook-up or access fees; or outbuildings; and*

(3) *The cost of rehabilitating, renovating, or replacing a structure damaged by explosion, fire, earthquake, tornado, hurricane, flood, or other acts of God.*

§ 258-16.2. *Partial exemption from taxation for certain rehabilitated, renovated, or replaced commercial structures.*

A. *The Boulevard District. There is hereby created a Boulevard Commercial Structure Tax Exemption District (the "Boulevard District"), which shall consist of all commercial structures fronting on the Boulevard (Route 1) within the Colonial Heights City limits or contained within the Boulevard Overlay District as provided in Chapter 286 of this Code. Any commercial structure at least twenty years old within the Boulevard District whose base assessed value is increased by at least twenty-five percent due to rehabilitation, renovation, or replacement shall be eligible for an exemption from real estate tax equal to the increase in assessed value attributable to the rehabilitation, renovation, or replacement. Such exemption shall commence on January 1 of the year following completion of the rehabilitation, renovation, or replacement, and shall run with the real estate for five years.*

B. *The Southpark District. There is hereby created a Southpark Commercial Structure Tax Exemption District (the "Southpark District"), which shall consist of all commercial structures within the geographic boundaries depicted on an exhibit maintained by the Assessor entitled "The Southpark Commercial Structure Tax Exemption District". Payment of the real estate tax attributable to any structure at least twenty years old within the Southpark District may be exempted by an amount up to fifty percent of the cost of the structure's rehabilitation, renovation, or replacement. Such exemption shall commence on January 1 of the year following completion of the rehabilitation, renovation, or replacement, and shall run with the real estate for five years.*

§ 258-16.3. *Application procedure and processing fee.*

A. *The owner of an eligible commercial structure within the Boulevard District or the Southpark District shall file an application for exemption with the Assessor on a form prescribed by the Assessor and provided for such purpose. A separate application shall be submitted for each commercial structure for which an exemption is requested.*

B. *All building or demolition permits shall be acquired prior to the filing of the application and the beginning of the rehabilitation, renovation or replacement.*

C. *The Assessor shall require the applicant to submit all documentation deemed necessary to establish eligibility for an exemption. All such requested documentation shall be furnished to the Assessor before an application will be considered complete and ready to be processed.*

D. *An owner shall pay a processing fee of fifty dollars (\$50) to the City with each application.*

E. *The exemption shall not automatically attach to any commercial structure. Exemptions shall be granted only after the requirements of this article have been met as determined by the Assessor.*

§ 258-16.4. *Inspections; notification to Assessor.*

A. *Upon receipt of a completed application for an exemption pursuant to this article and prior to commencement of the proposed rehabilitation, renovation or replacement, the Assessor shall physically inspect the structure for which an exemption is requested.*

B. An owner shall notify the Assessor in writing within thirty (30) days after the rehabilitation, renovation or replacement of the structure is complete.

C. During the period of time between the receipt of a completed application and completion of the rehabilitation, renovation or replacement, the structure shall be subject to taxation upon the full assessed value thereof.

D. No structure shall be eligible for an exemption if the Assessor has been denied access to any portion thereof, either before, during or after the rehabilitation, renovation or replacement for which an exemption is requested, provided that the requested access is for the purposes of assessing the structure and determining whether the requirements of this article have been met.

§ 258-16.5. Commencement of exemption; land books.

A. The exemption shall commence on January 1 of the year following completion of the rehabilitation, renovation, or replacement of the structure; inspection thereof by the Assessor; and verification by the Assessor that the rehabilitation, renovation, or replacement described in the application has been fully completed.

B. Nothing in this article shall be construed to permit the Assessor to list upon the land book any reduced assessed value due to the exemption created by this article.

§ 258-16.6. Miscellaneous.

A. In no event shall an exemption be granted for that portion of any increase in assessed value, or that portion of the cost of a structure's rehabilitation, renovation, or replacement, whichever is applicable, exceeding \$1,000,000.

B. An exemption shall not be permitted for any year if a structure's assessed value for such year falls below its base assessed value.

C. An exemption shall continue only while the rehabilitated, renovated, or replaced structure is a commercial structure.

D. No improvements upon vacant land shall be eligible for an exemption under this article.

E. The Assessor may promulgate written rules and regulations, consistent with this article, he deems necessary for effective administration hereof.

F. The Assessor, in his sole discretion, shall administer this article and make decisions pursuant to its provisions.

2. That this Ordinance shall be in full force and effect upon its passage on second reading.

Approved:

Mayor

Ordinance No. 09-____

Attest:

City Clerk

I certify that the above ordinance was:

Adopted on its first reading on _____.

Ayes: _____. Nays: _____. Absent: _____. Abstain: _____.

The Honorable Milton E. Freeland, Jr., Councilman: _____.

The Honorable Kenneth B. Frenier, Councilman: _____.

The Honorable W. Joe Green, Jr., Councilman: _____.

The Honorable Elizabeth G. Luck, Vice Mayor: _____.

The Honorable John T. Wood, Councilman: _____.

The Honorable Diane H. Yates, Councilwoman: _____.

The Honorable C. Scott Davis, Mayor: _____.

Adopted on its second reading on _____.

Ayes: _____. Nays: _____. Absent: _____. Abstain: _____.

The Honorable Milton E. Freeland, Jr., Councilman: _____.

The Honorable Kenneth B. Frenier, Councilman: _____.

The Honorable W. Joe Green, Jr., Councilman: _____.

The Honorable Elizabeth G. Luck, Vice Mayor: _____.

The Honorable John T. Wood, Councilman: _____.

The Honorable Diane H. Yates, Councilwoman: _____.

The Honorable C. Scott Davis, Mayor: _____.

City Clerk

Approved as to form:

Ordinance No. 09-____

City Attorney