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: July 17, 2009

SUBJ: Consideration of a Taxi Cab Ordinance

A couple of months ago, the Police Department and then the City Manager were approached by the proprietor of Star Taxi Service, Mr. Randall Goodine. Mr. Goodine opened Star Taxi Service in 2009 and located in the City. To the best of our research, he has obtained all the necessary licenses and permits from the Commonwealth and the City to operate his cab service. He is requesting that the City adopt an ordinance regulating taxi cab services so he can obtain a Certificate of Public Convenience and Necessity from the City so that he can operate on Fort Lee. In short, Fort Lee has established its own on-base regulation of taxi cabs. A cab or cab company cannot qualify to operate on Fort Lee without being inspected by Fort Lee personnel. The base will not inspect or permit the general operation of a taxi on the base that cannot present a Certificate of Public Convenience and Necessity (or a local taxi permit/license) issued by a locality.

The State Code provides for local regulation of taxi services should a locality choose to adopt an ordinance. General authorities within the ordinance include background checks, vehicle inspections, insurance, limitations on the number of cabs and other miscellaneous administrative tasks. When a cab company met the locality's requirements, a Certificate of Public Convenience and Necessity was issued by the Chief Executive Officer or the Chief of Police. However, the City Attorney cannot find that the State Code still provides for the issuance of this certificate. Over the years, local regulation of taxi services has been changed by the General Assembly. In addition, the City of Colonial Heights did regulate taxi services until 1989. The City Council repealed the City's Taxi Ordinance on May 9, 1989. Since that time, the taxi cabs operating in our region have not had any issues with the lack of regulation by the City of Colonial Heights.

The City Manager has been trying extensively to resolve this issue without the necessity for local regulation of taxi services. The City Manager has petitioned Garrison Command at Fort Lee to reconsider their position on requiring a Certificate of Public Convenience and Necessity prior to access to their inspection function and operation on Fort Lee. The matter is currently being reviewed by Garrison Command and could be resolved in the next 30-60 days. Conversations with the Deputy to the Garrison Commander indicate that Fort Lee may permit taxis to access their inspection function without a certificate. As mentioned, the City Attorney can no longer find authority for the issuance of certificates by localities in the State Code. Unfortunately, our neighbors in Petersburg, Hopewell and Prince George County all continue to operate with what appear to be outdated ordinances and they also continue to issue certificates to taxi operators based in their locality. At present, 235 taxi cabs operate on Fort Lee according to the Garrison Commander's Office.

Star Taxi Service, through its owner Mr. Goodine, continues to request City Council action on this matter. As a result, a portion of the work session of July 21, 2009 has been scheduled for Council to consider this matter and offer some guidance to staff and Mr. Goodine. The City Manager will continue to press the matter with the Garrison Commander's Office so Star Taxi Service can operate on Fort Lee without the City being directly involved. In addition, it is expected that the City Attorney may have additional comments to offer as well. As a way of information, our repealed ordinance is attached for Council's review along with Hopewell's Ordinance and State Code material on the regulation of taxi services.

The City Manager and City Attorney will lead Council through this question and try to assist 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

Colonial Heights Ordinance - Repealed May 1989

CHAPTER 21.2

TAXICABS AND OTHER VEHICLES FOR HIRE.

Article I. In General.

Article II. Certificates of Public Convenience and Necessity.

Article III. Drivers' Licenses.

Article I. In General.

For charter provisions as to authority of city to regulate the service to be rendered and rates charged by cabs and other vehicles carrying passengers and baggage for hire, see Char., § 2.3, subsec. (i).
For state law as to taxicabs generally, see Code of Va., § 56-291.1 et seq.

Sec. 21-1. Definitions.

Unless it appears from the context that a different meaning is intended, for the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Certificate. The certificate of public convenience and necessity granted by the city manager to persons in the business of operating public vehicles, taxicabs or for-hire cars as provided in this chapter.

Driver. Any person in charge of or operating any public vehicle, taxicab or for-hire car.

For-hire car. Any motor-driven vehicle used for the transportation, for hire or reward, of passengers upon the streets of the city, whether operated continuously as a taxicab or occasionally upon the streets of the city; except, busses being operated under franchise and over fixed routes and between fixed termini.

Owner. Any person having control of the operation or maintenance of public vehicles, taxicabs and for-hire cars, including any person having control of the collection of revenue derived from the operation of public vehicles, taxicabs and for-hire cars, and including the purchaser of any public vehicle, taxicab or for-hire car under a conditional sales contract or other title reserving agreement.

Public vehicle. Any taxicab, whether equipped with a taximeter or not, and for-hire cars as defined in this section.

Taxicab. Any motor-driven vehicle used for the transportation, for hire or reward, of passengers upon the streets of the city, except busses being operated under franchise and over fixed routes and between fixed termini. (Code 1959, § 21-1; Ord. No. 66-42, § 1.)

As to definitions applicable throughout this Code, see § 1-2 of this Code.

Sec. 21-2. Operation subject to chapter; compliance with chapter generally.

The operation of public vehicles, taxicabs and for-hire cars within the city shall be subject to the conditions, regulations and restrictions set forth in this chapter, and it shall be unlawful to operate, or cause to be operated, within the city any public vehicle, taxicab or for-hire car unless a certificate of public convenience and necessity and a license therefor have been issued to the owner thereof and unless the conditions, regulations and restrictions set forth and prescribed in this chapter have been complied with by such owner. (Code 1959, § 21-2.)

Sec. 21-3. Applicability of traffic laws.

Every public vehicle, taxicab or for-hire car operating on the streets of the city shall be subject to all laws and ordinances regulating traffic applicable to other vehicles. (Code 1959, § 21-15.)

Sec. 21-4. Capacity of vehicles.

The capacity of any public vehicle, taxicab or for-hire car shall be the seating capacity of such vehicle, the driver included, plus two additional passengers. (Code 1959, § 21-16.)

Sec. 21-5. Lettering of vehicles.

There shall be painted or printed on every public vehicle, taxicab or for-hire car lettering clearly showing the name of the owner thereof and indicating that such vehicle is a public vehicle, taxicab or for-hire car. The size, content and character of such lettering, and the position thereof on each such vehicle, shall be specified by the city manager, and the failure of any owner to comply with such specifications within ten days after being notified to do so by the city manager shall constitute a violation of this chapter. (Code 1959, § 21-18; Ord. No. 66-42, § 1.)

Sec. 21-6. Inspection of vehicles; operation of defective or unclean vehicles prohibited.

Every public vehicle, taxicab or for-hire car operating within the city shall be inspected by the chief of police or some member of the police department

designated by him at regular intervals of approximately six months, and at such other times as the chief of police may, in his discretion, determine. If such vehicle shall be found to be in an unsafe, unfit or unclean condition, the owner thereof shall be notified by the chief of police at once, and such vehicle shall not be operated thereafter until such defective or unclean condition has been remedied. (Code 1959, § 21-3.)

Sec. 21-7. Insurance.

No owner shall be permitted to operate for-hire any public vehicle, taxicab or for-hire car within the city unless and until such owner shall have secured and deposited with the city manager a policy of insurance against public liability and property damage for each such vehicle so operated within the city, issued by some solvent insurance company licensed and duly authorized to execute such policy within the state and to carry on business within the state. Such policy of insurance shall be issued to such owner on each public vehicle, taxicab or for-hire car owned or operated by such owner within the city, and shall provide for the payment of any final judgment not exceeding the sum of twenty-five thousand dollars for injury or death to any one person and not exceeding the sum of fifty thousand dollars for injury or death to more than one person and not exceeding the sum of five thousand dollars for property damage in any accident, which may be rendered against such insured for or on account of damage to property for which such owner may be liable while operating or permitting to be operated such public vehicle, taxicab or for-hire car within the city, or by reason of or growing out of the careless or negligent operation of such vehicle by such insured, or his agents or employees, within the city. Such policy of insurance shall contain a clause obligating the company issuing the same to give ten days' written notice to the city manager before cancellation thereof. (Code 1959, § 21-21; Ord. No. 66-42, § 1.)

For state Motor Vehicle Safety Responsibility Act, see Code of Va., § 46.1-388 et seq.

Sec. 21-8. Proof of financial ability in lieu of insurance.

Any owner referred to in section 21-7, whose net assets shall be not less than fifty thousand dollars, may be permitted to carry his own liability insurance against damages to persons or to property; provided, such owner can reasonably satisfy the city manager as to his permanent and financial standing. Any such owner desiring to exempt himself from the requirements of such section shall make application to the city manager for such exemption. The city manager, upon being satisfied of the financial condition of such owner to pay such damages as would be covered by the policy of insurance provided for in section 21-7 may, by written order, make such exemption, and may issue a certificate thereof to such owner and deliver a duplicate copy thereof to the chief of police. The city manager may, from time to time, require further statements of the financial ability of such owner and if, at any time, in the opinion of the city manager, such owner shall appear no longer to be able to

pay such damages, the city manager shall revoke the order granting exemption and notify the owner thereof, as well as the chief of police. Thereupon, the city manager shall suspend the certificate of public convenience and necessity issued to such owner to operate such public vehicles, taxicabs or for-hire cars within the city, until such owner shall have complied with the provisions of section 21-7.

The provisions of this section and section 21-7 shall apply to the owners and operators of all public vehicles, taxicabs and for-hire cars operated within the city, regardless of whether such owners shall have obtained licenses for the business of operating such public vehicles, taxicabs or for-hire cars or permits from the chief of police of the city, under any law prior to the passing of this chapter.

No license for the business of operating public vehicles, taxicabs or for-hire cars, and no certificate of public convenience and necessity, shall be issued by the city manager unless and until the owner operating or proposing to operate such public vehicles, taxicabs or for-hire cars within the city shall have complied with the provisions of this section and section 21-7. (Code 1959, § 21-22; Ord. No. 66-42, § 1.)

For state law as to proof of financial responsibility, see Code of Va., § 46.1-467 et seq.

Sec. 21-9. Rates.

(a) No public vehicle, taxicab or for-hire car shall be operated on the steets of the city in which there is not displayed at some conspicuous point inside of such vehicle, in full view of the passenger or person hiring such vehicle, the rates established for the use of any such vehicle. Such rates shall be established by the city council and shall be uniform, and it shall be unlawful for the owner or operator of any such vehicle to charge a rate in excess of the rate so established or the rate posted or displayed as herein required.

(b) The city council, before establishing taxicab rates, and before making any change in established rates, shall give not less than ten days notice of its intention so to do to each holder of a certificate of convenience under this chapter, which may be served by mail or in any other manner authorized by law; and the city council shall also give not less than ten days notice to the public of its intention by publication in a newspaper of general circulation within the city; each notice to contain a statement as to the time and place at which the city council will hold a public hearing on the subject of taxicab rates within the city. Upon the date and at the place stated in such notices, the city council shall hear each holder of a certificate of convenience and shall hear members of the public who desire to be heard on the subject of taxicab rates.

(c) All taxicab rates established or changed pursuant to this section shall be stated in an appropriate schedule of rates which shall be maintained on file in the office of the city clerk.

(d) Until taxicab rates are established pursuant to this section, the rates in force on the effective date of this Code shall continue in force until changed by the city council pursuant to this section. (Code 1959, § 21-6; Ord. No. 66-42, § 1.)

Sec. 21-10. Collecting fares and changing money.

No driver of a public vehicle, taxicab or for-hire car shall collect fares or change money except prior to the starting of such vehicle or after it has been brought to a full stop. (Code 1959, § 21-10.)

Sec. 21-11. Refusal of passengers to pay fare.

Any passenger refusing to pay the fare charged by the driver of any public vehicle, taxicab or for-hire car shall be brought to the police station, and the officer there on duty shall decide the correct fare to be paid. In case the passenger is leaving the city, the nearest available police officer shall make the decision. Should the passenger still refuse to pay, he shall be arrested and tried, and, on conviction of having refused to pay the proper fare, shall be punished in accordance with section 1-7. If any such passenger shall fail or refuse to accompany the driver to the police station, or to the nearest available police officer, a warrant for his arrest may be issued upon proper complaint, and upon conviction of having refused to pay the proper fare, he shall be punished in accordance with section 1-7. (Code 1959, § 21-11.)

Sec. 21-12. Drivers to remain with vehicles; exception.

The driver of any public vehicle, taxicab or for-hire car shall remain in his vehicle or within five feet thereof at all times which such car is on the streets while under hire; except while engaged in loading or unloading the baggage or other property of passengers hiring the vehicle. (Code 1959, § 21-13.)

Sec. 21-13. Receiving and discharging passengers.

Every public vehicle, taxicab and for-hire car shall receive and discharge passengers only at the right-hand curb of the street and only when at a full stop; provided, that upon a one-way street passengers may be received and discharged at either the right-hand curb or the left-hand curb. (Code 1959, § 21-12.)

Sec. 21-14. Nonpaying passengers.

No nonpaying passenger shall be transported with a paying passenger in any public vehicle, taxicab or for-hire car, except bona fide officers or em-

ployees of the owner or a police officer engaged in the performance of his duty and unable to obtain other adequate means of transportation. (Code 1959, § 21-8.)

Sec. 21-15. Carrying of more than one passenger.

Not more than one passenger shall be transported at one time in any public vehicle, taxicab or for-hire car without the consent of the person first engaging the vehicle. (Code 1959, § 21-7.)

Sec. 21-16. Refusal of drivers to make trips.

No owner of any public vehicle, taxicab or for-hire car shall refuse to transport any passenger to any part of the city; however, no driver shall be required to drive the vehicle operated by him to any place which might be detrimental to such vehicle or which would endanger any of the occupants thereof. (Code 1959, § 21-9.)

Sec. 21-17. Sounding of horns, etc.

No person shall sound the horn or other warning device of any public vehicle, taxicab or for-hire car, except as a danger signal or in compliance with the requirements of a state law or city ordinance. (Code 1959, § 21-17.)

Sec. 21-18. Record of calls.

Every owner shall keep a clear, neat record of the origin and destination of all calls, and it shall be the duty of all drivers and employees of the owner to report such calls. Such records shall be open at all times to inspection by any member of the police department and shall be preserved for a period of not less than ninety days. No person shall knowingly make a record of a fictitious call or use any fictitious name in reporting a bona fide call, nor shall a fictitious or false address of the point of origin or destination be knowingly reported or recorded. (Code 1959, § 21-19.)

Sec. 21-19. Accident reports.

Every accident in which any public vehicle, taxicab or for-hire car is involved shall be immediately reported to the police department, however slight the accident may be. (Code 1959, § 21-20.)

Sec. 21-20. Lost and found property.

Any property left or found in public vehicles, taxicabs or for-hire cars shall be turned over to the chief of police, and if unclaimed, it must be returned to the owner of such public vehicle, taxicab or for-hire car in which such property is found, at the expiration of ninety days. (Code 1959, § 21-14.)

Sec. 21-21. Compliance with chapter by persons using certain terms in advertising, holding themselves out as operators or drivers, etc.

No person shall use the term "public vehicle," "taxi," "taxicab," "cab," "for-hire car" or any term of similar meaning, in advertising, nor shall any person place on any motor vehicles any such language or any lights similar to those commonly used to identify public vehicles, taxicabs or for-hire cars, nor shall any person, by any means, hold himself out as the operator or driver of a public vehicle, taxicab or for-hire car unless he shall have complied with the provisions of this chapter insofar as they shall be applicable. (Code 1959, § 21-23.)

Article II. Certificates of Public Convenience and Necessity.

As to city licenses and permits being denied to delinquent debtors to the city, see § 1-11 of this Code.

Sec. 21-22. Required; issuance to be to bona fide owners of vehicles only.

No permit or license for the operation of a public vehicle, taxicab or for-hire car, or a fleet of public vehicles, taxicabs or for-hire cars, upon the streets of the city, shall be issued to any person unless and until there has been granted to him a certificate that the public convenience and necessity requires the operation thereof, and no such certificate shall be granted to any person unless he is the bona fide owner of the vehicles proposed to be operated. (Code 1959, § 21-24.)

Sec. 21-23. Application.

Any person desiring to operate public vehicles, taxicabs or for-hire cars shall make application to the city manager for a certificate of public convenience and necessity, and in the application, which shall be filed in duplicate, shall set forth the name and address of the applicant, the trade name under which the applicant does, or proposes to do, business, the number of vehicles the applicant desires to operate, the class, seating capacity and color scheme of such vehicles, and the lettering and marks to be used thereon, and whether it is desired to operate such public vehicles as taxicabs or as for-hire cars, together with any other information required by the city manager, and which may be relevant and pertinent to the matter of the issuance of such certificate. (Code 1959, § 21-25; Ord. No. 66-42, § 1.)

Sec. 21-24. Hearings; issuance or denial; petitions to circuit court.

The city manager shall, at such time and place as he shall designate, hold public hearings during the months of March and September of each year

upon such applications as have theretofore been filed with him for a certificate of public convenience and necessity, but no such hearings shall be held if no application shall be pending before the city manager on the first day of either of such months, or if the number of public vehicles, taxicabs or for-hire cars for which certificates of public convenience and necessity have been issued equals or exceeds one for each five hundred residents of the city according to the last preceding census. The city manager may, in his discretion, conduct a public hearing at any time upon any pending application. Before conducting a hearing under the provisions of this section, the city manager shall give ten days' notice thereof, in writing, to all applicants whose applications are pending and to the holders of all such certificates as are then outstanding, and, after such hearing, shall determine whether or not the public convenience and necessity requires the operation of public vehicles, taxicabs or for-hire cars for which an application has been filed, or any number thereof. In making such determination the city manager shall consider: (a) The adequacy of existing taxicabs and for-hire car service and other forms of transportation for passengers already in existence in the city; (b) the probable permanence and the quality of the service offered by the applicant; and (c) the number and character of vehicles proposed to be used by the applicant. No such certificates of public convenience and necessity shall be issued by the city manager to the applicant until he has determined the matters set forth in subsections (a), (b) and (c) of this section. In the event that the city manager shall find, upon such investigation and after such hearing, that the public convenience and necessity requires the operation of additional public vehicles, taxicabs or for-hire cars within the city, the city manager may either require the persons then engaged in such business in the city and holding such certificates, or any one or more of them, to provide such additional service within a reasonable time, not more than thirty days, or if he be satisfied of the suitability, the character and the qualifications of the applicant to conduct such a business, or, in the case of a corporation, if he shall be satisfied of the fitness of the officers, directors and stockholders of such corporation to conduct such business, and further satisfied as to the financial responsibility of the applicant and as to the experience of the applicant in the transportation of passengers for hire in public vehicles, taxicabs or for-hire cars, and as to the ability of the applicant to properly conduct such business, he may grant the certificate applied for. In the event that the city manager shall refuse to issue such certificate to the applicant therefor, upon the ground that public convenience and necessity does not require the operation of additional public vehicles, taxicabs or for-hire cars in the city, or because he shall have required the persons then engaged in such business in the city and holding such certificates, or any one or more of them, to provide such additional service, or because he is not satisfied of the suitability, character and qualifications of the applicant to conduct such business, or of the financial responsibility of the applicant, or of the applicant's experience or his ability to conduct such business, the applicant may, within ten days from the date of such refusal, file with the circuit court of the city a petition, in writing, to review the findings of the city manager and his action with respect to such certificate. A copy of such petition, in which shall be stated the time and place at which it will be presented to the court, shall be served on the city manager. Any person who may be required by the city

manager to provide such additional service may, within ten days from the date of any such order, file with the circuit court of the city a petition, in writing, to review the findings of the city manager and his action with respect thereto. A copy of such petition, in which shall be stated the time and place at which it will be presented to the court, shall be served on the city manager. (Code 1959, § 21-26; Ord. No. 66-42, § 1.)

Sec. 21-25. Authority of city manager to order holders of certificates to operate additional vehicles when no applications received.

If the city manager shall determine, after investigation, although no application may have been made to him for any certificate of public convenience and necessity, that public convenience and necessity requires the operation of additional public vehicles, taxicabs or for-hire cars within the city, the city manager shall give notice that applications for additional certificates of convenience and necessity will be received. Should no such applications be received, the city manager may require the holders of the outstanding certificates, or any one or more of them, to provide and to operate additional public vehicles, taxicabs or for-hire cars within the city. In the event that the holder of any such certificate shall fail so to do, the city manager may revoke the certificate of such holder theretofore issued. In the event of such revocation, the holder of any such certificate shall have the same right to file with the circuit court of the city a petition to review the action of the city manager as is provided in section 21-24. (Code 1959, § 21-27; Ord. No. 66-42, § 1.)

Sec. 21-26. Certificates not transferable.

Certificates of public convenience and necessity, when issued, shall not be transferable. (Code 1959, § 21-28.)

Sec. 21-27. Substitution of vehicles or equipment.

The holders of certificates of public convenience and necessity may substitute new or other vehicles in place of vehicles that have become worn out or obsolete, and the number of vehicles shall not exceed the number provided for in the certificates already issued and outstanding to the holders thereof. No equipment shall be substituted for that described in the certificate of public convenience and necessity unless and until it has been inspected and approved by the chief of police and the substitution has been endorsed on the certificate by the chief of police. (Code 1959, § 21-29.)

Sec. 21-28. Renewal of certificates of veterans of armed forces.

In the case of any person inducted into the armed forces of the United States under the provisions of the Federal Selective Service and Training Act, who, at the time of his induction, held a certificate of public convenience and necessity issued to him under this article, the city manager shall, upon the application of such person filed after his discharge from the armed forces,

issue to such person a certificate of public convenience and necessity for the operation of such number of public vehicles, taxicabs or for-hire cars as he had in operation at the time of his induction into the armed forces, and in such case the provisions of section 21-23 shall not be applicable. (Code 1959, § 21-30; Ord. No. 66-42, § 1.)

Sec. 21-29. Duration.

Certificates of public convenience and necessity for the operation of public vehicles, taxicabs and for-hire cars shall be effective for a period of one year, beginning with April fifteenth of each year. (Code 1959, § 21-31.)

Sec. 21-30. Revocation or suspension by city manager--Grounds.

Any certificate of public convenience and necessity issued under this article may be revoked or suspended by the city manager for the following causes:

(a) Failure to operate the public vehicles, taxicabs and for-hire cars specified in the certificates, or other vehicle properly substituted therefor, in such manner as to serve the public adequately.

(b) Failure to maintain such public vehicles, taxicabs or for-hire cars in good order and repair.

(c) Failure to comply with sections 21-7 and 21-8.

(d) Repeated and persistent violation of the traffic and safety laws or ordinances by drivers.

(e) Failure to report any accident, however slight, as required in this chapter.

(f) Wilful or continued failure to comply with the provisions of this article or any other law or ordinance regulating the operation of public vehicles, taxicabs and for-hire cars within the city.

(g) Failure of any operator to operate regularly the number of public vehicles, taxicabs or for-hire cars authorized by his certificate of public convenience and necessity shall constitute a ground upon which the city manager may revoke such certificate of public convenience and necessity to the extent that such certificate authorized the operation of a number of public vehicles, taxicabs or for-hire cars in excess of the number regularly operated by such operator. (Code 1959, § 21-32; Ord. No. 66-42, § 1.)

Sec. 21-31. Same--Procedure; petitions to circuit court; term of suspension; reissuance of revoked certificate.

No certificate of public convenience and necessity shall be revoked or suspended by the city manager unless or until the owner has had at least five

days' notice by registered or certified mail to the address shown in his certificate of the specific charges against him and of the time and place of a hearing thereon. The hearing shall be held by the city manager, the owner having the right to present his own case or have counsel. After the hearing, and within a reasonable time, the city manager shall render a decision revoking the certificate, suspending it or dismissing the charges. In the event that the city manager shall revoke or suspend any such certificate, the holder thereof may, within ten days from the date of such action, file with the circuit court of the city a petition, in writing, to review the action of the city manager in so doing, and a copy of the petition, in which shall be stated the time and place at which the same will be presented, shall be served on the city manager.

Any certificate of public convenience and necessity suspended shall not be suspended for less than ten days nor more than thirty days. Any certificate revoked shall not be reissued to the same person under any circumstances for a term of at least one year after such revocation. (Code 1959, § 21-33; Ord. No. 66-42, § 1.)

Article III. Drivers' Licenses.

For state law as to authority of city to license persons to drive taxicabs, etc., see Code of Va., § 46.1-353.
As to city licenses and permits being denied to delinquent debtors to the city, see § 1-11 of this Code.

Sec. 21-32. Required.

No person shall drive or operate a public vehicle, taxicab or for-hire car within the city unless he shall have obtained a special license, to be known as a "public vehicle driver's license," which shall be in addition to any other license required of such person. (Code 1959, § 21-34.)

Sec. 21-33. Application.

Application for a public vehicle driver's license shall be made in writing to the chief of police and shall show the following:

(a) Full name of applicant.

(b) Present address.

(c) Age and place of birth.

(d) Places of previous address and employment for the past five years.

(e) Height, weight, color, color of eyes, color of hair and sex.

(f) Whether or not the applicant is in good physical condition.

(g) Whether or not the applicant has good hearing and good eyesight.

(h) Whether or not the applicant is, or has been within the period of two years last past, addicted to the use of intoxicating liquors, drugs or other forms of narcotics and, if so, to what extent.

(i) Whether or not the applicant has ever been convicted of, or pleaded guilty or nolo contendere to, the violation of any city, state, federal or other criminal law involving moral turpitude and, if so, such other information as may be required by the chief of police.

(j) The record of the applicant with respect to offenses connected with the operation of motor vehicles and other offenses affecting the suitability of the applicant as a person who should be permitted to operate a public vehicle, including assault and battery and other offenses against the person and larceny and robbery.

(k) Whether or not the applicant has previously been employed or licensed as a driver or chauffeur and, if so, whether or not his license or permit has ever been revoked or suspended for any reason.

(l) What experience, if any, the applicant has had in the operation of cars.

Each applicant shall apply for his license in person and have his fingerprints taken, which fingerprints shall constitute a part of his application, and each applicant shall file with his application two recent photographs of himself, of a size designated by the chief of police, one of which shall be attached to, and shall become a part of, the application and the other of which shall be attached to the license, if issued, in such a manner that no other photograph may be substituted therefor without probability of detection. (Code 1959, § 21-35.)

Sec. 21-34. Investigation by chief of police; issuance or denial; contents; display; petition to circuit court on denial.

The chief of police of the city, upon the filing of an application as set forth in section 21-33, and after notice to the applicant and opportunity afforded the applicant to be heard, shall promptly make an investigation of the matters stated therein, and if he shall find, upon such investigation, that the applicant possesses the necessary qualifications on the basis of the information furnished in the application and his investigation thereof, he shall issue to him a license card, which shall bear a number and which shall contain the name, home address, business address and a photograph of the applicant, and the name of his employer, and the license card shall be posted in a conspicuous place in any public vehicle, taxicab or for-hire car which is being operated or is in charge of the applicant. If the chief of police is not satisfied that the applicant possesses the necessary qualifications on the basis of the information

furnished in the application and his investigation thereof, he shall refuse to issue such license. In the event that the chief of police shall refuse to issue any such license to the applicant therefor, the applicant may, within ten days from the date of such refusal, file with the circuit court of the city a petition, in writing, to review the findings of the chief of police and his actions with respect to such license. A copy of the petition, in which shall be stated the time and place at which it will be presented to the court, shall be served on the chief of police. (Code 1959, § 21-36.)

Sec. 21-35. Surrender, revocation or suspension; petition to circuit court.

The public vehicle driver's license of any driver shall immediately become void and shall be immediately surrendered by him upon his conviction of or plea of guilty or nolo contendere to the violation of any city law or ordinance or state, federal or other criminal law involving moral turpitude.

The chief of police of the city, upon ten days' notice to any driver licensed under this article, shall have the power to revoke or suspend the license of such driver for any of the following causes:

(a) Repeated violations of traffic and safety laws and ordinances.

(b) Failure to report any accident in which such driver is involved, however slight.

(c) Conviction of reckless driving twice in any calendar year.

(d) Violation of any substantial provisions of this article.

In the event that the chief of police shall revoke or suspend the license of any such driver, for any of the causes mentioned above, such driver may, within ten days from the date of such revocation or suspension of such license, file with the circuit court of the city a petition, in writing, to review the action of the chief of police. A copy of the petition, in which shall be stated the time and place at which it will be presented to the court, shall be served upon the chief of police. (Code 1959, § 21-37.)

Current Hopewell Ordinance

Instructions to Applicants for Certificate of Public Convenience and Necessity to Operate a Taxicab Business in the City of Hopewell, Virginia

Dear Applicant:

Attached you will find the forms and City Code sections concerning the operation of a taxicab business in the City of Hopewell, Virginia. In order to initiate the process, the prospective owner of the taxicab business must complete the attached application for a Certificate of Public Convenience and Necessity to operate a taxicab service in the City. Upon completion of the application, it must be submitted to the City Manager. The form will then be routed to the relevant City departments for processing. During this review, the following must be established:

1. The proposed business location must be an authorized location under the City's Zoning Ordinance;

2. The owner of the taxicab business must undergo a criminal history background check as part of the application process;

3. The owner must secure all necessary permits or licenses from the State Corporation Commission, if any;

4. Upon the issuance of a Certificate of Public Convenience and Necessity, adequate insurance or bonds must be submitted to the City Manager, in accordance with Hopewell City Code § 36-40;

5. Prior to the operation of a taxicab business, the owner must obtain a business license from the Commissioner of the Revenue's office; and

6. Each driver of a taxi must obtain a separate permit through the Hopewell Bureau of Police prior to operating a taxi. The permitting requirements for individual taxicab operators are separate from the process of obtaining a Certificate of Public Convenience and Necessity.

Please complete the attached forms and submit them to the City Manager for further processing of your application. You may keep the sections of the Hopewell City Code governing the operation of taxicabs in the City for informational and reference purposes. You are advised that you must comply with all requirements contained in these code sections. You will be advised when the City Manager will conduct the required hearing on your application for a Certificate of Public Convenience and Necessity to operate a taxicab business. Please contact the City Manager's office at 541-2243 if you have any questions.

ENW/jbs

Attachments

H:\Taxi Cab\Taxicab Applicant Instructions ltr.doc

City of Hopewell

Certificate of Public Convenience and Necessity

The undersigned, City Manager for the City of Hopewell, hereby certifies that the public convenience and necessity requires the operation by _____ doing business as _____ for _____ public vehicles which are to be operated as taxicabs or for hire cars on the streets of the City of Hopewell, subject to revocation or suspension as provided by ordinances of the City of Hopewell.

Given under my hand this _____ day of _____, _____.

CITY OF HOPEWELL, VIRGINIA

_____
City Manager

CITY OF HOPEWELL

No _____

Issue Date _____

Taxicab Driver Permit

Expiration Date _____

Name

Address

Company

PHOTO

Height | Weight | Eyes

Hair | Comp. | Build

Thumb - R-L

This permit must be displayed in the taxicab where it can always be seen by the passenger. Issued subject to ordinance, rules, and regulations.

Bureau of Police

City Manager

PD-22 Revised

DIVISION 1. GENERALLY

Sec. 36-36. Definitions.

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

Certificate. The word "certificate" shall mean a certificate of public convenience and necessity granted by the city manager to persons in the business of operating taxicabs as provided in this article.

Driver. The word "driver" shall mean any person in charge of, or driving, any taxicab.

Owner. The word "owner" shall mean any person having control of the operation or maintenance of taxicabs, ncluding any person having control of the collection of revenue derived from the operation of taxicabs and including he purchaser of any taxicab under conditional sales contracts or other title reserving agreements.

Street. The word "street" shall mean any street, alley, avenue, lane, public place or highway within the city.

Taxicab. The word "taxicab" shall mean any motor vehicle used for the transportation, for hire or reward, of passengers upon the streets of the city, other than buses being operated under franchise and over fixed routes between fixed termini, and rental cars.

(Code 1963, § 37-1)

Sec. 36-37. Purpose of article.

This article is adopted under the general police power granted to the city by its Charter. It is not intended hereby to grant or offer any franchise, but it is intended to regulate taxicab passenger transportation in the city.

(Code 1963, § 37-2)

Sec. 36-38. Enforcement of article.

The inspecting and sealing of taximeters, should taximeters come into use in the city, the examining of applicants for permits to drive taxicabs, the granting of permits to drivers and the enforcement of this article generally shall be under the control and jurisdiction of the city manager. The city manager may designate, from the personnel of he police department, such persons to act as inspectors as may be necessary to carry out the provisions of this section.

(Code 1963, § 37-3)

Sec. 36-39. Unauthorized use of term "taxi," "taxicab" or "for-hire car".

No person shall use the term "taxi," "taxicab" or "for-hire car" in advertising signs, trade names or otherwise in he city, unless such person shall have previously complied with the provisions of this article authorizing the operation of a taxicab.

(Code 1963, § 37-19)

Sec. 36-40. Insurance or bond.

(a) Each holder of a certificate of public convenience and necessity issued under the provisions of this article shall, before operating a taxicab in the city, procure and file with the city manager, for each vehicle to be operated, a policy of liability insurance issued by a company authorized to do business in the state, approved

by the city attorney, indemnifying such certificate holder in the sum of at least thirty-five thousand dollars ($35,000.00) for injury to one person, and seventy thousand dollars ($70,000.00) for injury to more than one person, for the same accident, for which the owner, operator, driver or chauffeur of such taxicab may be held liable, and ten thousand dollars ($10,000.00) for property damage. Such policy shall contain a clause obligating the insurance company to give twenty (20) days' written notice to the city manager before cancellation of such policy.

(b) Inasmuch as the statutes of the state require the original of such policy of insurance to be filed with the state corporation commission, such certificate holder may file a duplicate policy with the city manager in lieu of the original.

(c) In lieu of the insurance policy required by subsection (a) of this section, the certificate holder may deposit a bond of a surety company authorized to do business in the state, approved by the city attorney, running to the city, indemnifying persons who may be injured or whose property may be damaged by the operation of such taxicabs, in the same amounts required for liability insurance set forth in subsection (a) of this section, and conditioned that action may be brought thereon by any person so damagedagainst such surety company for the amounts of such damage up to the amounts named in such bond. The bond shall contain a clause obligating the issuing company to give twenty (20) days' written notice to the city manager before any cancellation thereof.

(d) A certificate granted under this article and a license for the operation of any taxicab shall be revoked upon the lapse, cancellation or termination of the policy or bond required by this section, subject to reinstatement upon compliance with the provisions contained in this section. Any such cancellation shall not relieve the insurance or guaranty company of liability for any injury happening before cancellation becomes effective.

(Code 1963, §§ 37-40--37-43)

Sec. 36-41. To be operated by owner or owner's employee or agent.

It shall be unlawful for any person to operate any motor vehicle as a taxicab, unless such person is the owner of such motor vehicle, or the employee of such owner, or the agent of such owner for the operation of such vehicle.

(Code 1963, § 37-21)

Sec. 36-42. Leasing vehicle for use as taxicab.

It shall be unlawful for any person to rent or lease to any person any vehicle to be used by such person in the business of transporting passengers for hire in the city in taxicab service.

(Code 1963, § 37-21)

Sec. 36-43. Adequate and efficient service required.

An adequate and efficient public service shall at all times be maintained by any person operating taxicabs under the provisions of this article.

(Code 1963, § 37-8)

Sec. 36-44. Maintenance of vehicles and equipment.

(a) All taxicabs and the equipment used in connection therewith, operated under this article, shall, at all times, be kept in proper physical condition to the satisfaction of the chief of police or his duly authorized representative, so as to render safe, adequate and proper public service and so as not to be a menace to the safety of the occupants or of the general public.

(b) Any person operating taxicabs under the provisions of this article shall at all times keep such taxicabs clean, sufficiently ventilated and efficiently lighted at night.

Code 1963, §§ 37-9, 37-10)

Sec. 36-45. Display of driver's identification and photo card.

Every taxicab shall have displayed therein; in full view of passengers, a card, not less than three (3) inches in width by nine (9) inches in length on which shall be printed the name, business address, photograph and description of the driver and the telephone number of the owner.

Code 1963, § 37-18)

Sec. 36-46. Display of rates of fare; charging excessive fare.

No taxicab shall be operated on the streets of the city in which there is not displayed, at some conspicuous point inside of such vehicle, in full view of the passenger hiring such vehicle, the rate fixed, prescribed or established by the city council for the hauling of passengers and the carrying of parcels or packages, which are actually delivered to the door of a residence by the driver of the taxicab. It shall be unlawful for the owner of any taxicab to charge a rate in excess of the established rate posted or displayed as herein required.

Code 1963, § 37-12; Ord. No. 80-1, 1-22-80)

Sec. 36-46.1. Rate increases.

No taxicab rate increase shall be authorized by the city council until after a public hearing following public notice in a newspaper having general circulation in the city, as selected by the city attorney, such notice to be paid for by the person or firm applying for such rate increase.

Ord. No. 80-1, 1-22-80)

Sec. 36-47. Failure to pay fare.

No person who is a passenger in a taxicab shall fail to pay the legal fare or charge, when requested to do so by the operator, owner or person lawfully in charge of the vehicle.

(Code 1963, § 37-13)

Sec. 36-48. Taxicab stands--Generally.

(a) The city manager or his duly authorized representative, may designate and assign to the owner or operator of taxicabs, stands for such vehicles at such places within the city as in his judgment will best serve the convenience of the public. The city manager or his duly authorized representative, may erect signs prohibiting the parking in such stands of vehicles other than taxicabs, to which signs the provisions of section 22-7 shall apply. Any such owner or operator of taxicabs desiring to have such stand assigned to him shall make application therefor in writing to the city manager or his duly authorized representative, stating in such application the location of the stand desired by him, and the number of such vehicles as he desires to occupy such stand. He shall file with such application the written consent of the owner or person in control of property abutting such stand. No such application shall be granted unless the consent of the owner or person in control of the abutting property is filed by the applicant. Any such consent may be revoked by the owner or person in control upon giving ten (10) days' notice to the owner or operator of such vehicle and filing a copy thereof with the city manager.

(b) This section shall not be construed to prevent the driver of any vehicle from temporarily stopping at any convenient place for the purpose of receiving or discharging passengers.

(Code 1963, § 37-5)

Sec. 36-49. Same--Required use.

(a) No person shall solicit patronage for any taxicab, by word, signal or otherwise, on any public street or public property in the city, other than at the regular stands for such taxicabs.

(b) It shall be unlawful for the owner or driver of any taxicab to permit such taxicab to stand waiting employment or to solicit employment at any place other than at a stand designated as provided in section 36-48.

Code 1963, § 37-7)

Cross references: Manner of using taxicab stands, § 22-46.

Sec. 36-50. Cruising.

No driver of a taxicab shall cruise in such vehicle seeking employment.

Code 1963, § 37-15)

Sec. 36-51. Unlawful solicitation, acceptance, etc., of passengers; presumption that transportation is for hire.

(a) It shall be unlawful for the driver of any taxicab, not duly authorized to operate under the provisions of this article, to solicit, pick up or accept passengers in the city. It shall be no defense to a prosecution under this section that such vehicle may be responding to a call to pick up a passenger or may have come into the city to deliver a passenger.

(b) The transportation of passengers from any point within the city to another within the city, or from a point in the city to a point outside the city, or from a point outside the city to a point within the city shall be presumed to be for hire.

(Code 1963, §§ 37-16, 37-17)

Cross references: Prohibition against noise by taxicab drivers soliciting business, § 23-6.

Sec. 36-52. Interfering with taxicab service.

(a) No person shall, in any way or manner, hinder, retard or interfere with, or cause to be hindered, retarded or interfered with, the furnishing of transportation by any properly licensed taxicab in the city.

(b) Improper, misleading, false or unauthorized calls for taxicab service shall be prima facie evidence of the intention to hinder, retard or interfere with the proper operation of taxicabs and the furnishing of transportation by licensed taxicabs.

(Code 1963, § 37-20)

Sec. 36-53. Disposition of property left in taxicabs.

Any property left or found in taxicabs shall be turned over to the desk sergeant at police headquarters. If unclaimed, it must be returned to the operator at the expiration of ninety (90) days.

(Code 1963, § 37-11)

Secs. 36-54--36-64. Reserved.

)IVISION 2. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Sec. 36-65. Required.

No person shall engage in the business of operating taxicabs upon the streets of the city, until such person has a current certificate of public convenience and necessity issued under this division. No license for the operation of a axicab upon the streets of the city shall be issued to any person, unless he has such certificate.

Code 1963, §§ 37-22, 37-23)

Sec. 36-66. Filing and contents of application.

Any person desiring a certificate required by this division shall make application therefor to the city manager. Such application shall be filed in duplicate and shall set forth the name and address of the applicant, the trade name under which the applicant does or proposes to do business, the number of vehicles the applicant desires to operate, he class, seating capacity and color scheme of such vehicles and the lettering and marks to be used thereon, ogether with any other information required by the city manager which he may deem relevant and pertinent to the ssuance of the certificate.

(Code 1963, § 37-24)

Sec. 36-67. Applicant must be owner of vehicles.

No certificate required under this division shall be granted to any applicant, unless he is the bona fide owner of he vehicles proposed to be operated pursuant to such certificate.

(Code 1963, § 37-27)

Sec. 36-68. Hearing on application.

Upon the filing of an application for a certificate under this division, the city manager shall conduct a public hearing upon such application, after giving ten (10) days' notice thereof, in writing, to the applicant and to the holders of all other then-current certificates issued under this division.

(Code 1963, § 37-25)

Sec. 36-69. Determination of as to public convenience and necessity.

(a) After the hearing provided for in section 36-68, the city manager shall determine whether or not public convenience and necessity require the operation of the taxicabs for which the application in question has been filed. In making such determination, the city manager shall consider:

(1) The adequacy of existing taxicab service and other forms of passenger transportation already in existence in the city;

(2) The probable permanence and the quality of the service offered by the applicant; and

(3) The number and character of vehicles proposed to be used by the applicant.

(b) No determination as to public convenience and necessity shall be made by the city manager until he has considered the matters set forth in this section.

(Code 1963, §§ 37-25, 37-26)

Sec. 36-70. Authority of city manager to issue certificate or order additional service by current certificate holders.

In the event that the city manager shall find, upon investigation and after hearing, as required by sections 36-68 and 36-69, that public convenience and necessity require the operation of additional taxicabs within the city, the city manager may either require the persons then engaged in such business in the city and holding certificates, or any one or more of them, to provide such additional service within not more than thirty (30) days, or if he is satisfied as to the suitability, character and qualifications of the applicant to conduct such a business, or, in the case of a corporation, if he is satisfied as to the fitness of the officers, directors and stockholders of such corporation to conduct such business, and further satisfied as to the financial responsibility of the applicant and as to the experience of the applicant in the transportation of passengers for hire in public vehicles, taxicabs or for-hire cars, and as to the ability of the applicant to properly conduct such business, he may grant the certificate applied for under this division.

(Code 1963, § 37-28)

Sec. 36-71. Appeals from decisions under section 36-70.

(a) In the event that the city manager shall refuse to issue the certificate, under the provisions of section 36-70, to the applicant therefor, upon the ground that public convenience and necessity do not require the operation of additional public vehicles, taxicabs or for-hire cars in the city, or because he shall have required the persons then engaged in such business in the city and holding such certificates, or any one or more of them, to provide such additional service, or because he is not satisfied of the suitability, character and qualifications of the applicant to conduct such business, or of the financial responsibility of the applicant, or the applicant's experience of his ability to conduct such business, then the applicant may, within ten (10) days file with the circuit court of the city a petition, in writing, to review the findings of the city manager and his action with respect to such certificate. A copy of such petition, in which shall be stated the time and place at which the same will be presented to the court, shall be served on the city manager.

(b) Any person who may be required by the city manager to provide additional service, pursuant to section 36-70, may, within ten (10) days from the date of the order in question, file with the circuit court of the city a petition in writing, to review the findings of the city manager and his action with respect thereto. A copy of such petition, in which shall be stated the time and place at which the same will be presented to the court, shall be served on the city manager.

(Code 1963, §§ 37-29, 37-30)

Sec. 36-72. Transfer; substitution of vehicles.

Certificates issued under this division shall not be transferable without the written consent of the city manager. The holders of such certificates may substitute new or other vehicles in place of vehicles operating as taxicabs under such certificates; provided that, the total number of vehicles operating as taxicabs under such certificates shall not exceed the number provided for in the certificates already issued and outstanding to the holders thereof.

(Code 1963, § 37-32)

Sec. 36-73. Revocation or suspension.

(a) Any certificate issued under this division may be revoked or suspended by the city manager upon any of the following grounds:

(1) Failure to operate the taxicabs specified in the certificate in such manner as to serve the public adequately.

(2) Failure to maintain such taxicabs in good order and repair.

(3) Repeated and persistent violations of traffic and safety ordinances by drivers.

(4) Willful or continued failure to comply with the provisions of this article or any other law or ordinance regulating the operation of taxicabs within the city.

(b) No certificate issued under this division shall be revoked or suspended by the city manager, unless the owner has had at least five (5) days' notice, by registered mail to the address shown in his certificate, of the specific charges against him and of the time and place of a hearing thereon. The hearing shall be held by the city manager and it shall be the duty of the city attorney to present the case against the owner, the owner having the right to present his own case or have counsel. After the hearing,and within a reasonable time, the city manager shall render a decision either revoking the certificate, suspending it or dismissing the charges. Any certificate suspended shall not be suspended for less than ten (10) days nor more than thirty (30) days.

(c) Any certificate revoked under the provisions of this section shall not be reissued to the same person under any circumstances for at least one year after such revocation.

(d) In the event the city manager shall revoke or suspend any certificate under this section, the holder thereof may, within ten (10) days from the date of such action, file with the circuit court of the city a petition, in writing, to review the action of the city manager in so doing. A copy of such petition, in which shall be stated the time and place at which the same will be presented, shall be served on the city manager.

Code 1963, §§ 37-33--37-36)

Sec. 36-74. Request for additional service by certificate holders; procedure on refusal.

If the city manager shall determine, after investigation, although no application may have been made to him for a certificate under this division, that public convenience and necessity require the operation of additional taxicabs within the city, the city manager shall give notice to the holders of all certificates of the need for additional taxicabs within the city, and request them to provide such additional taxicabs as may be needed. Should the holders of such certificates fail or refuse to provide suchadditional service within such reasonable times as may be required, the city manager shall give notice that applications for additional certificates of public convenience and necessity will be received.

(Code 1963, § 37-31)

Secs. 36-75--36-85. Reserved.

)IVISION 3. DRIVER'S PERMIT

Sec. 36-86. Required.

(a) It shall be unlawful for any person to drive a taxicab within the city, unless he has a current permit so to do issued by the chief of police.

(b) It shall be unlawful for the owner of a taxicab to allow or permit any person to operate such taxicab in the city, unless such person has a current taxicab driver's permit, as required by this section.

Code 1963, § 37-37)

State law references: Authority of city to license taxicab drivers, Code of Virginia, § 46.1-353.

Sec. 36-87. Application.

Application for a permit required by this division shall be filed in the office of the chief of police on forms provided for that purpose.

Sec. 36-88. Qualifications of applicant.

No permit applied for under this division shall be issued by the chief of police, unless the applicant:

(1) Is at least eighteen (18) years of age and a person of good moral character and of good reputation in the community;

(2) Possesses a current and appropriate driver's license issued by the state pursuant to title 46.1 of the Code of Virginia;

(3) Is the owner of taxicab to be driven or the agent of such owner for the operation of such vehicle.

(Code 1963, §§ 37-37, 37-39)

Sec. 36-89. Fee.

The fee for a permit required by this division shall be three dollars ($3.00), which fee shall be paid prior to the ssuance or renewal of such permit.

(Code 1963, § 37-37)

Sec. 36-90. Issuance.

If the chief of police is satisfied that the applicant for a permit under this division meets the qualifications prescribed by section 36-88 and has paid the fee fixed in section 36-89, he shall issue the permit.

(Code 1963, § 37-37)

Sec. 36-91. Term; renewal.

A permit issued under this division shall be good for a period of two (2) years from the date of issuance, unless sooner suspended or revoked, and must be renewed every two (2) years thereafter.

(Code 1963, § 37-37)

Sec. 36-92. Suspension or revocation.

The city manager is hereby expressly authorized, in his discretion, upon the recommendation of the chief of police, to suspend or revoke any permit issued under this division, for failure to conform to the schedule of rates required to be posted in each taxicab, for incompetence or for any action on the part of the permit holder which would ndicate that he is not a person of good moral character.

Code 1963, § 37-38)

§ 46.2-2059. Permit required for taxicab service.

It shall be unlawful for any taxicab or other motor vehicle performing a taxicab service to operate on an intrastate basis on any public highway in the Commonwealth outside the corporate limits of incorporated cities or towns without first obtaining from the Department a permit in accordance with the provisions of this chapter.

(2001, c. 596.)

---

prev | next

§ 46.2-2060. Limitations on advertising.

Within the jurisdictions of Planning District Number Eight, no person shall use the term "taxi" or "taxicab" in any advertisement, sign, or trade name, or hold himself out by means of advertising, signs, trade names, or otherwise as an operator of a taxicab or other motor vehicle performing a taxicab service as defined by § 46.2-2000, unless he complies with the requirements of § 46.2-2059 and any county, city, or town ordinance adopted pursuant to § 46.2-2062. This statute, however, shall not preempt, supersede, or affect in any way the authority of the governing body of any county, city, or town to issue local ordinances under §§ 46.2-2062 through 46.2-2067.

(2001, c. 596.)

---

prev | next | new search | table of contents | home

§ 46.2-2061. Article does not make taxicab operators common carriers.

Nothing in this article shall be construed to make or constitute operators of taxicabs or other motor vehicles performing a taxicab service common carriers.

(2001, c. 596.)

---

prev | next

§ 46.2-2062. Regulation of taxicab service by localities; rates and charges.

A. The governing body of any county, city or town in the Commonwealth may by ordinance regulate the rates or charges of any motor vehicles used for the transportation of passengers for a consideration on any highway, street, road, lane or alley in such county, city or town, and may prescribe such reasonable regulations as to filing of schedules of rates, charges and the general operation of such vehicles; provided that, notwithstanding anything contained in this chapter to the contrary, such ordinances and regulations shall not prescribe the wages or compensation to be paid to any driver or lessor of any such motor vehicle by the owner or lessee thereof.

B. In considering rates or charges pursuant to this section, or financial responsibility as provided by this chapter, the governing body may require the owner or operator to submit such supporting financial data as may be necessary, including federal or state income tax returns for the two years preceding, provided that the governing body shall not require any owner or operator to submit any audit more extensive than that conducted by such owner or operator in the normal course of business. Such financial data shall be used only for consideration of rates or charges, or to determine financial responsibility, and shall be kept confidential by the governing body to which it has been submitted. Nothing in this subsection shall make confidential any certificate of insurance, bond, letter of credit, or other certification that the owner or operator has met the requirements of this chapter or of any local ordinance with regard to financial responsibility.

(2001, c. 596; 2007, c. 238.)

---

prev | next | new search | table of contents | home

prev | next

§ 46.2-2063. Locality license and payment of locality license tax may be required.

The governing body of any county, city, or town may require a license for and impose upon and collect a license tax from every person, firm, association, or corporation that operates or intends to operate in such county, city, or town any taxicab or other motor vehicle for the transportation of passengers for a consideration. The tax may be upon each such motor vehicle so operated. The governing body of the county, city, or town may by ordinance provide for levying and collecting the tax and may impose penalties for violations of the ordinance and for operating any such vehicle without obtaining the required license. Any person accepting a license issued under authority of this section and operating a taxicab business based in a county, city or town shall be subject to the provision that any complaint relating to taxicab service in the Commonwealth shall be resolved under the license regulations of the county, city, or town from which that person obtained a taxicab license.

(2001, c. 596.)

---

prev | next | new search | table of contents | home

prev | next

§ 46.2-2064. When local license may not be required.

No such county, city or town shall require a license or impose a license tax for the operation of any such motor vehicle for which a similar license is imposed or tax levied by the county, city or town of which the owner or operator of the motor vehicle is a resident, except that such license may be required and such license tax imposed by any such county, city, or town for the operation of any such motor vehicle if the owner, lessee, or operator thereof maintains a taxicab stand or otherwise solicits business within such county, city, or town; nor, except as herein expressly authorized, shall more than one county, city or town impose any such license fee or tax on the same vehicle. This article shall not be construed to apply to common carriers of persons operating as public carriers by authority of the Department of Motor Vehicles or under a franchise granted by any county, city, or town.

(2001, c. 596.)

---

prev | next | new search | table of contents | home

§ 46.2-2065. Local regulation of qualifications of operators; stands.

The governing body of any county, city, or town may prescribe such reasonable regulations as to the character and qualifications of operators of any such vehicle as they deem proper and may provide for the designation and allocation, by the sheriff or chief of police, of stands for such vehicles and the persons who may use the same.

(2001, c. 596.)

---

§ 46.2-2066. Penalty for violation of provisions of article or regulations.

Every owner or operator of a motor vehicle used as a vehicle for the transportation of persons for a consideration on any highway, street, road, lane or alley in any county, city or town who violates any of the provisions of this article or regulations of a governing body made pursuant to this chapter shall be guilty of a misdemeanor and upon conviction thereof be fined not more than $100 for the first offense and not more than $500 for each subsequent offense.

(2001, c. 596.)

---

§ 46.2-2067. Local regulation of number of taxicabs.

A. It is the policy of this Commonwealth, based on the public health, safety and welfare, to assure safe and reliable privately operated taxicab service for the riding public in this Commonwealth; and in furtherance of this policy, it is recognized that it is essential that counties, cities and towns be granted the authority to reasonably regulate such taxicab service as to the number of operators and the number of vehicles that shall provide such service and regulations as to the rates or charges for such taxicab service, even though such regulations may have an anti-competitive effect on such service by limiting the number of operators and vehicles within a particular jurisdiction.

B. The governing body of any county, city, or town in the Commonwealth may regulate by ordinance and limit the number of taxicab operators and the number of taxicabs within its jurisdiction in order to provide safe and reliable privately operated taxicab service on any highway, street, road, lane or alley in such county, city, or town. The governing body may promulgate such reasonable regulations to further the provisions of this section including, but not limited to, minimum liability insurance requirements. However, such ordinances and regulations shall not prescribe the wages or compensation to be paid to any driver or lessor of any such motor vehicle by the owner or lessee thereof. Further, such ordinances and regulations shall not impose (i) regulatory requirements concerning claims settlement practices beyond those imposed by § 46.2-2056 or (ii) financial requirements to qualify as a self-insurer beyond those imposed by § 46.2-2053 on any taxicab operator who, in lieu of filing an insurance policy or surety bond, has qualified as a self-insurer pursuant to § 46.2-2053 by depositing with the State Treasurer state, federal or municipal bonds or has filed an unconditional letter of credit issued by a bank. Nothing herein shall be construed to affect or control the authority of counties, cities or towns to set the amount, if any, of locally established liability insurance requirements that may be met by a program of self-insurance.

(2001, c. 596.)

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: July 17, 2009

SUBJ: Continued Discussion of Economic Development Incentives, Specifically Tax Abatement Ordinances

To continue our ongoing discussion of an appropriate level of economic development incentives, a portion of the work session of July 21, 2009 has been scheduled to continue discussing Council's preferences for an ordinance or ordinances providing for the abatement of real estate taxes on development projects. To-date, Council has reviewed this subject in concept. Council has also generally expressed its preference that any form of tax abatement not exceed a 5 year timeframe. The City Manager would like the opportunity to discuss the nature of the abatement itself, during the work session.

When Council last discussed this subject during the work session of May 26, 2009, you reviewed an exhibit outlining State Code authority for real estate tax abatement. The City Manager is seeking guidance on what, in effect, is a partial staff recommendation. As Council will recall, localities are permitted to abate taxes in two forms; an abatement based on the increase in assessed value from the project or an abatement based on money spent for the renovation. In most cases, based on preliminary research, localities in the Commonwealth base their real estate tax abatements on increases to assessed value. In most cases, the area affected by the abatement ordinance has had declining assessed values due to vacancy, limited reuse options for the properties, and general dilapidation. As a result, economic development projects increase assessed values measurably and the locality bases its abatement on a portion of the assessed value increase. That is what Colonial Heights did in its previous Tax Abatement Ordinance. The other method for abatement is to base the level of tax abatement on the money spent for the project or renovation. In short, State Code gives the authority to abate up to 50% of the money spent on the project. Of course, the development agreement provides mechanisms to verify these private sector expenditures.

It is the City Manager's observation that many vacant commercial/retail properties in the City, especially in the Southpark area, have not experienced measurably declining assessments based on the condition of the building. As a result, any new project in a vacant building is not likely to increase the assessed value enough to provide a measurable incentive to the prospective client. The City Manager would recommend that the Southpark area, including West Roslyn Road, have an ordinance specific to that area that abates taxes based on money spent for the project, rather than increases in assessed value. Some examples will be presented in the work session.

When it comes to the Boulevard corridor (or zone), the opposite could be true. In many cases, complete building replacement seems to be what national tenants are looking to construct. In addition, some smaller tenant projects have also provided for new construction. In the case of the Boulevard, it would be recommended that a separate ordinance be created that applies to that zone based on increases to assessed value. That type of ordinance would cover both renovations and new construction on the Boulevard. With that approach, we feel we can offer the best incentive possible for both renovation of buildings that may have lower assessed values and also provide for building replacement through new construction that also increases assessed value. We can also discuss examples during the work session.

Another item would be scheduled for general discussion. In the case of ordinances that increase assessed value, Council has the authority to establish an amount or level of assessed value increase that must occur for the project to qualify for the tax abatement. As Council may recall, our previous ordinance required a 40% increase in assessed value for the project to qualify. We have heard some characterization as this level as being too restrictive for many projects to qualify. In fact, the City Assessor reports that only 6 projects ever qualified for the program (only two were commercial, Nichols and Bank of McKenney). It does appear that the bar may have been set too high, or the program may not have been as well promoted at the time. In order to encourage a more aggressive transformation of older, lower assessed properties on the Boulevard, we may want to explore a percentage assessed value increase at something lower than 40%. At this point, an assessment increase of 25% could be a more aggressive approach, depending on Council's preference. The City Manager would also like the opportunity to have a brief discussion on this.

This brief portion of the work session is scheduled to provide some general guidance so that staff can begin drafting ordinances that meet Council's general consensus. If any questions arise on these matters prior to the work session of July 21, 2009, please do not hesitate to contact me.

Attachment

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

Sec. 36-177. Exemption of real estate taxes for certain rehabilitated or renovated residential and commercial and industrial real estate.

Sec. 36-177. Exemption of real estate taxes for certain rehabilitated or renovated residential and commercial and industrial real estate.

(a) Definitions. For the purpose of this section, the following words and phrases shall have the meaning respectively ascribed to them by this subsection unless another meaning shall clearly appear from the text:

(1) Substantially rehabilitated or renovated residential/multifamily (6 units or more) real estate: Real estate upon which there is an existing residential or multifamily structure, which is no less than fifty (50) years of age, and which has been so improved as to increase the assessed value of the structure by no less than forty (40) per cent. An addition to an existing residential or multifamily structure shall not qualify as substantial rehabilitation or replacement unless there is also simultaneous rehabilitation or renovation of the existing structure. In order for an addition to an existing structure to qualify as substantial rehabilitation or renovation, the addition must be for improvements to the living areas of the structure, such as bathrooms, kitchens, bedrooms and similar facilities. Additions for such things as garages, swimming pools, patios and similar facilities that are not used as living areas for the structure shall not be eligible for a tax exemption.

(2) Substantially rehabilitated or renovated commercial or industrial real estate: Any real estate upon which there is an existing commercial or industrial structure which is no less than twenty-five (25) years of age, and which has been so improved as to increase the assessed value of the structure by no less than sixty (60) per cent.

(3) Base value: The assessed value of any structure covered by this section prior to the commencement of rehabilitation or renovation work, as determined by the city assessor upon receipt of an eligible application for rehabilitated or renovated real estate tax exemption and after a physical inspection of the property by an appraiser from the city assessor's office.

(4) Rehabilitated or renovated real estate tax exemption: An amount equal to the increase in assessed value resulting from the substantial rehabilitation or renovation of a structure as determined by the city assessor and this amount only should be applicable to subsequent tax exemption.

(5) Taxable year: For the purpose of this section, the fiscal year from July 1 through June 30 for which such real estate tax is imposed for the exemption claimed.

(6) Owner: The person or entity in whose name the structure is titled or a lessee who is legally obligated to pay real estate taxes assessed against the structure.

(b) Rehabilitated or renovated real estate tax exemptions. It is hereby declared to be the purpose of this section to authorize a rehabilitated or renovated real estate tax exemption for substantially rehabilitated or renovated residential, multifamily, commercial or industrial real estate located anywhere within the City of Lynchburg. For each residential and multifamily property that qualifies, the rehabilitated or renovated real estate tax exemption shall be effective for a period of fifteen (15) years commencing on July 1 for any work completed during the preceding fiscal year. For each commercial or industrial property that qualifies, the rehabilitated or renovated real estate tax exemption shall be effective for a period of five (5) years commencing on July 1 for any work completed during the preceding fiscal year.

(c) Usual and customary methods of assessing. In determining the base value and the increased value resulting from substantial rehabilitation or renovation of residential, multifamily, commercial or industrial real estate, the city assessor shall employ usual and customary methods of assessing real estate.

(d) Eligibility requirements:

(1) An application to qualify a structure as a substantially rehabilitated or renovated residential, multifamily, commercial or industrial structure must be filed with the city assessor's office before work is started. Applications may be obtained from the city assessor's office.

(2) Upon receipt of an application for rehabilitated or renovated real estate tax exemption, an appraiser from the city assessor's office shall make a physical inspection of the structure and determine the assessed base value of the structure. If work has been started prior to the first inspection; the base value will include any work started and will reflect the market value of the structure as of the date of the first inspection.

(3) The application to qualify shall be effective for a period of two (2) years from the date of filing. No extensions of this time period will be granted.

(4) Upon completion of the rehabilitation or renovation, the owner of the property shall notify the city assessor in writing, and an appraiser from the city assessor's office shall physically inspect the property and perform an after rehabilitation or renovation appraisal to determine if it then qualifies for the rehabilitated or renovated real estate tax exemption.

(5) Upon determination that the property has been substantially rehabilitated or renovated pursuant to the terms of this section, the rehabilitated or renovated real estate tax exemption shall become effective for a period as provided in paragraph (b) hereof.

(6) Prior to a determination that the property has been substantially rehabilitated or renovated, the owner of the property shall continue to be subject to taxation upon the full value of the property, as otherwise authorized by this code.

(7) No improvements made upon vacant land nor total replacement of residential, multifamily, commercial or industrial structures shall be eligible for rehabilitated or renovated real estate tax exemption as provided by this section. Tax exemptions for improvements to vacant land and for the replacement or repair of damaged or destroyed structures within the city's redevelopment or conservation areas or rehabilitation districts are regulated by Section 36-177.1 of the city code.

(8) No property shall be eligible for such exemption unless the appropriate building permits have been acquired and the city assessor has verified that the rehabilitation or renovation indicated on the application has been completed.

(9) Multifamily residential structures after rehabilitation or renovation is completed shall remain as such or may be used as single-family residences for the remainder of the exemption period.

(10) There shall be a non-refundable fee of one hundred twenty-five dollars ($125.00) for processing each residential application and two hundred fifty dollars ($250.00) for processing each multi-family, commercial or industrial application under this section.

(11) The property must at all times be in compliance with all Lynchburg city codes including, without limitation, the building code, the rental housing code, the zoning ordinance and all other codes that relate to real estate within the City of Lynchburg. Failure to correct the violation within the required time, as provided by the building inspector, will void the remainder of the exemption. If a structure is damaged or destroyed and found to be uninhabitable, the exemption will be terminated.

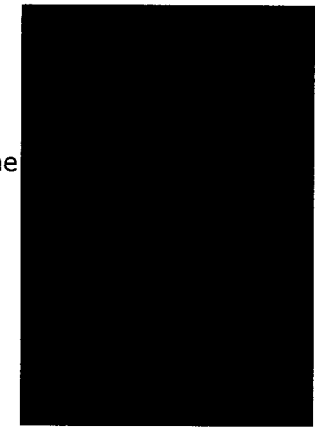
(12) No exemption shall be granted if access to the entire property is denied to the city assessor's office or the inspections division.

(13) All taxes must be paid and current to be eligible for an exemption. If the city assessor is notified by the billing and collections department that the property is more than thirty (30) days delinquent on taxes, then the remainder of the exemption will be void.

(14) Only one rehabilitation or renovation exemption may be active for a parcel at any given time.

(e) Exemption to run with the land. The rehabilitated or renovated real estate tax exemption shall run with the land, and the owner of such property during each of the years of exemption shall be entitled to the amount of partial exemption. (Ord. No. O-82-252, § 1, 12-14-82; Ord. No. O-84-274, § 1, 11-27-84, eff. 7-1-84; Ord. No. O-88-277, § 1, 10-11-88; Ord. No. O-93-331, 12-14-93; Ord. No. O-03-040, 2-25-03, eff. 4-1-03; Ord. No. O-08-075, 5-27-08)

Last updated date: 6/2/2008 3:14:59 PM



notice of ordinance violations, shall be granted thirty (30) days in which to correct said violations or to establish, to the satisfaction of the director of codes compliance, that the citation is in error. If after thirty (30) days have elapsed and the ordinance violation has not been corrected to the satisfaction of the director of codes compliance, the city assessor shall be given written notification to revoke any tax abatement approved under this division.

(c) The city assessor's determination of eligible properties as applies to this program shall be final and not subject to appeal.

(d) All taxes and assessments due the City of Hampton must be current prior to approval of exemption.

(e) If, after investigation, the city assessor determines that the real estate for which the exemption is claimed qualifies under this division, he shall so certify to the city treasurer, who shall deduct the amount of the exemption from the applicant's real estate tax liability.

(Code 1964, §§ 39-93, 39-94; Ord. No. 644, 12-12-79; Ord. No. 681, 2-25-81; Ord. No. 1290, 1-10-01; Ord. No. 1488, 9-12-07)

Sec. 37-85. Amount of exemption.

The exemption authorized by this division shall be an amount equal to the increase in assessed value resulting from the rehabilitation of the residential structure, as determined by the city assessor, and this amount only shall be applicable to any subsequent assessment or reassessment.

(Code 1964, § 39-92; Ord. No. 644, 12-12-79; Ord. No. 1290, 1-10-01; Ord. No. 1488, 9-12-07)

Sec. 37-86. Duration of exemption.

An exemption granted under this division shall commence on July first of the taxable year following completion of the rehabilitation and shall run with the real estate for a period of three (3) years initially, at the amount designated in section 37-85; and then for the next three (3) years at a rate of fifty (50) percent of the amount in section 37-85. This exemption, in whole or in part, shall not exceed six (6) years upon qualifying.

(Code 1964, § 39-92; Ord. No. 644, 12-12-79; Ord. No. 1290, 1-10-01; Ord. No. 1488, 9-12-07)

Sec. 37-87. Reduced value not to be listed in land book.

Nothing in this division shall be construed so as to permit the real estate assessor to list upon the land book any reduced value due to the exemption provided in this division.

(Code 1964, § 39-92; Ord. No. 644, 12-12-79; Ord. No. 1488, 9-12-07)

Secs. 37-88--37-95. Reserved.

DIVISION 5. EXEMPTION FOR REHABILITATED COMMERCIAL OR INDUSTRIAL REAL ESTATE*

***State law references:** Authority of city to adopt ordinance similar to this division, Code of Virginia, § 58.1-3221.

Sec. 37-96. Authorized.

There is hereby provided an exemption from taxation of real estate, which has been substantially rehabilitated for commercial or industrial use. For the purposes of this section, any real estate shall be deemed to have been substantially rehabilitated when a structure, which is no less than twenty-five (25) years of age or fifteen (15) years of age if located in the city's designated enterprise zones, has been so improved as to increase the assessed value of the structure by no less than sixty (60) percent without increasing the total square footage of the structure by more than twenty-five (25) percent.

(Code 1964, § 39-95; Ord. No. 644, 12-12-79; Ord. No. 1289, 1-10-01; Ord. No. 1488, 9-12-07)

Sec. 37-97. Building permits required.

No property shall be eligible for the exemption provided by this division, unless the appropriate building permits have been issued prior to the beginning of the new alterations.

(Code 1964, § 39-97; Ord. No. 644, 12-12-79; Ord. No. 681, 2-25-81; Ord. No. 1488, 9-12-07)

Sec. 37-98. Application.

(a) A person claiming an exemption pursuant to the provisions of this division shall file an application with the city assessor on such form as the assessor shall prescribe. Such application must be filed within five (5) working days after the building permits referred to in section 37-97 have been issued and prior to any renovations being started; however, for good cause shown, the assessor may extend the filing date and fee for a maximum of twenty-four (24) months.

(b) The owner under oath shall sign the application for tax abatement.

(c) Only one (1) application per commercial or industrial structure for inclusion in this program shall be approved.

(d) All renovations must be completed within twenty-four (24) months from being approved in order to qualify for the exemption.

(e) There shall be a non-refundable fee of one hundred dollars ($100.00) for processing each application under this section.

(Code 1964, §§ 39-97, 39-98; Ord. No. 644, 12-12-79; Ord. No. 681, 2-25-81; Ord. No. 1289, 1-10-01; Ord. No. 1331, 5-8-02; Ord. No. 1470, 3-28-07; Ord. No. 1488, 9-12-07)

Sec. 37-99. Verification and certification of rehabilitation.

(a) When renovations are completed, the property owner, or his agent, must notify the assessor. When notified of the completion, the city assessor shall verify that the rehabilitation

indicated on the application filed under this division meets all requirements for the exemption, or that the requirements have not been met.

(b) The property must at all times be in full compliance with all Hampton City Codes including, without limitation, the Building Code, the Housing Code, the Zoning Ordinance of the City of Hampton, and all other rules and regulations which affect or control the occupancy, use and management of the property. Should the director of codes compliance determine that the property is substantially out of compliance with applicable city ordinances, the director of codes compliance shall thereupon give notice to the owner. The owner, having received written notice of ordinance violations, shall be granted thirty (30) days in which to correct said violations or to establish, to the satisfaction of the director of codes compliance, that the citation is in error. If after thirty (30) days have elapsed and the ordinance violation has not been corrected to the satisfaction of the director of codes compliance, the city assessor shall be given written notification to revoke any tax abatement approved under this division.

(c) The city assessor's determination of eligible properties as applies to this program shall be final and not subject to appeal.

(d) All taxes and assessments due the City of Hampton must be current prior to approval of exemption.

(e) If, after investigation, the city assessor determines that the real estate for which an exemption under this division is claimed qualifies, he shall so certify to the city treasurer, who shall deduct the amount of the exemption from the applicant's real estate tax liability.

(Code 1964, §§ 39-97, 39-98; Ord. No. 644, 12-12-79; Ord. No. 681, 2-25-81; Ord. No. 1289, 1-10-01; Ord. No. 1488, 9-12-07)

Sec. 37-100. Amount of exemption.

The exemption authorized by this division shall be an amount equal to the increase in assessed value resulting from the rehabilitation of the commercial or industrial structure, as determined by the city assessor, and this amount only shall be applicable to any subsequent assessment or reassessment.

(Code 1964, § 39-96; Ord. No. 644, 12-12-79; Ord. No. 1289, 1-10-01; Ord. No. 1488, 9-12-07)

Sec. 37-101. Duration of exemption.

An exemption granted under this division shall commence on July first of the taxable year following completion of the rehabilitation or replacement and shall run with the real estate for a period of three (3) years initially, at the amount designated in section 37-100; and then for the next three (3) years at a rate of fifty (50) percent of the amount in section 37-100. This exemption, in whole or in part, shall not exceed six (6) years upon qualifying.

(Code 1964, § 39-96; Ord. No. 644, 12-12-79; Ord. No. 1289, 1-10-01; Ord. No. 1488, 9-12-07)

Sec. 37-102. Reduced value not to be listed in land book.

Nothing in this division shall be construed so as to permit the real estate assessor to list upon the landbook any reduced value due to the exemption provided in this division.

(Code 1964, § 39-96; Ord. No. 644, 12-12-79; Ord. No. 1488, 9-12-07)

period will be granted.

(Ord. No. 95-7.4, 7-6-95; Ord. No. 2004-05.08, 5-6-04; Ord. No. 2006-06.06, §§ 3, 4, 6-6-06; Ord. No. 2008-04.09, 4-1-08)

Sec. 37-171. Commercial or industrial structures.

(a) A partial exemption from taxation of real estate on which any structure or other improvement has undergone substantial rehabilitation or renovation for commercial, residential, industrial, or a mixed use of the preceding uses shall be granted, subject to the following conditions:

(1) The existing structure or other improvement must be no less than fifty (50) years old and located within the Downtown, Tobacco Warehouse, Mill, North Danville, or Historic Districts. The applicant will have the responsibility of providing the Real Estate Assessor with evidence sufficient for Real Estate Assessor to make an appropriate determination of the age of the structure.

(2) The structure or other improvement must have been substantially rehabilitated sufficiently to increase the base value by twenty-five (25) percent. The base value shall be the fair market value, as determined and assessed by the Real Estate Assessor, prior to any rehabilitation.

(3) The qualifying rehabilitation to the structure shall not increase the overall original square footage by more than fifteen (15) percent. The original square footage shall be used to determine the base value of the real property.

(4) Commercial, industrial, or mixed use structures, after rehabilitation is completed, shall remain as such for the remainder of the exemption period in order to continue to qualify for the exemption.

(b) The partial exemption granted by this section shall be an amount equal to the increase in assessed value resulting from the rehabilitation or renovation of the structure as determined by the Real Estate Assessor. The exemption shall commence on July 1 of the tax year following completion of the rehabilitation or renovation and shall run with the real estate for a period of no longer than five (5) years at a descending abatement rate over the five-year term as follows:

Year 1: 100%

Year 2: 80%

Year 3: 60%

Year 4: 40%

Year 5: 20%

Year 6: 0%

(c) There shall not be listed upon the land book any reduced value due to the exemption provided in subsection (b).

(d) No property shall be eligible for such exemption unless the appropriate building permits have been acquired and the Real Estate Assessor has verified that the rehabilitation, renovation or replacement indicated on the application has been completed.

(e) A fee of fifty dollars ($50.00) shall be paid to the City for the processing of each application for exemption. The fee in the form of cash, check or money order shall be due

upon submission of the application. All checks and money orders should be made payable to the City of Danville, Virginia. Such fees shall be nonrefundable.

(f) The qualifying rehabilitation or renovation must occur within two (2) years of the application for exemption or the exemption will not be granted. No extension of this time period will be granted.

(Ord. No. 95-7.4, 7-6-95; Ord. No. 2004-05.08, 5-6-04; Ord. No. 2006-06.06, §§ 5, 6, 6-6-06; Ord. No. 2008-04.09, 4-1-08)

Real Property Tax Abatement

City of Hopewell

From March Altman


Rehab Ordinance 2007 - DRAFT.doc


Rehab Ordinance 2009 - EZ Area Only -

Currently on City of Hopewell web site:

Real Property Investment Grant

Qualified businesses investing in qualifying real property investments** may receive a cash grant in an amount equal to 30 percent of depreciable real property improvements for the calendar year the property is placed in service in a zone. For companies investing $2,000,000 or less in real property investments, the maximum grant is $125,000. For companies investing over $2,000,000, the maximum grant is $250,000. Total grant awards may not exceed the maximums specified above within a five-year period for a specific building or facility. Investment in rehabilitation/expansion projects must equal $50,000. New construction projects must invest at least $250,000 in qualified improvements.

**Qualified real property investments include expenditures associated with (a) any exterior, interior, structural, mechanical or electrical improvements necessary to construct, expand or rehabilitate a building for commercial, industrial or mixed use; (b) excavations; (c) grading and paving; (d) installing driveways; and (e) landscaping or land improvements. Qualified real property investments shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup. Qualified real property investment shall not include: (a) The cost of acquiring any real property or building; (b) Other acquisition costs including: (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.

Currently on Chesterfield County Web site:

Chesterfield County Enterprise Zone Incentives

1. A five-year, 100% tax credit on the increased assessed real property value* resulting from rehabilitation work on commercial and industrial property, 15 years and older, located within the zone. (* Improvements must result in an increased property value of 15% or greater, as determined by the Real Estate Assessor.)
2. A full (100%) or partial exemption of BPOL fees is available from the Commissioner of the Revenue for a five-year period. Full exemption only applies to companies new to Chesterfield County;

however, existing companies relocating to the Enterprise Zone or Sub-zone are eligible for a partial exemption, as determined by the Commissioner of the Revenue

3. A one-time rebate* of Business Tangible Personal Property Tax is available for new businesses locating from outside of the County into one of the Enterprise **Sub-zones**. (**Rebate will be 100% of the taxes paid on BTPP, up to a maximum of $100,000 during the first full year of operation, as long as the new business makes a total capital investment of at least $3 million in the Sub-zone.*) Existing Chesterfield businesses relocating to a **Sub-zone** may also be eligible for the rebate, as long as qualifying capital investment requirements are met.
4. Chesterfield County will incur some of the cost of connecting commercial and industrial businesses to the public water and wastewater systems. The connection fee credit will cover the capital cost recovery fee equivalent to a 5/8 inch meter charge.
5. Chesterfield County will waive the cost of site plan review fees, land disturbance permit fees, sign fees, and building permit fees (including mechanical, electrical, plumbing, gas, fire suppression, alarm, and well permits).
6. A full (100%) or partial rebate of Machinery and tools (M&T) Tax is available from the Commissioner of the Revenue for a five-year period, for businesses locating or expanding in an Enterprise Zone or Sub-zone after January 1, 2006. (*This rebate is available to new companies classified as manufacturers, for taxes paid on machinery and equipment that is purchased or leased; or, for existing manufacturing companies, for taxes paid on machinery and equipment that is purchased or leased in conjunction with a qualfiying plant expansion or renovation.*)
7. Chesterfield County will waive the fee for rezoning of any office, commercial, or industrial use within the enterprise zones that is in compliance with the Jefferson Davis Highway Corridor Plan and the Chesterfield County Comprehensive Plan.

Incentive Programs

In addition to the **incentives** offered in the county's two **Enterprise Zones** and through the **Workforce Services** program, Chesterfield has other incentives for businesses interested in locating here.

Tax Incentives Available to All Businesses

Manufacturing companies can greatly benefit from Chesterfield's low machinery and tools (M&T) tax. Specifically, at an effective rate of 25 cents per $100 of assessed value, Chesterfield offers the **lowest machinery and tools tax** of any urban/suburban locality in Virginia, providing for significant savings in operating costs to manufacturers. For example, a $20 million equipment investment would generate an annual M&T tax bill of $50,000 in Chesterfield County. Compared to taxes of $200,000 per year in similar jurisdictions, with the more common effective rate of $1.00/$100, Chesterfield's low machinery and tools rate would mean an annual savings of $150,000.

In addition, there is **no tax on intangible property** (financial assets, trademarks, patents) and **no tax on inventory**. (View all local tax rates.)

Virginia's sales tax is only 4.5 percent, **one of the nation's lowest**. The following are **exempt** from state sales tax:

- Manufacturer's purchases used in production including machinery, tools, spare parts, fuels, and raw materials.
- Items purchased for resale by distributors.
- Pollution control equipment and facilities
- Custom computer software
- Purchases used for research and development
- Services (e.g. - legal, accounting, advertising, consulting)

A corporate **income tax credit** is available to manufacturers for the purchase of certified machinery and equipment for processing **recyclable materials**. The credit is equal to 10 percent of the original total capitalized cost of the equipment.

Companies may claim an **income tax credit** equal to 25 percent of all expenditures incurred in the construction, renovation, planning or acquisition of facilities for the purpose of providing **day care for children** of company employees. Maximum credit $25, 000.

An **income tax credit** is available for the purchase of clean fuel vehicles and investment in related **refueling facilities**. The credit is equal to 10% of the IRS allowed deduction.

Companies may receive an **income tax credit** equal to 30% of all expenditures made by the company for eligible **worker retraining**.

Companies making **donations to neighborhood organizations** conducting approved community assistance programs for impoverished people may get a **tax credit** for 45% of the total donation. Activities include emergency assistance, housing assistance, crime prevention programs, job training, and education assistance.

Financial Incentives for Qualified Projects

For qualifying projects, Chesterfield County may be willing to consider financial incentives on a case-by-case basis. The value of these **incentives will be dependent upon the total investment** (land, building, equipment) and employment numbers estimated for the project, pending direct discussions with the prospective company.

When justified by the project scope, Chesterfield County will also pursue available **funding assistance from the Commonwealth of Virginia** to further assist the company in areas such as workforce training, land acquisition, construction of industrial roads, or railroad access.

Financing may be available through Chesterfield County Industrial Development Authority with **tax-exempt Industrial Revenue Bonds** (IRBs) for manufacturing facilities.

Virginia will assist in constructing roads to sites not currently served by roads through the **Industrial Access Road Funds** program. And the state will assist in constructing rail lines to sites not currently served by rail through the **Industrial Rail Access Funds** program.

The **Governor's Opportunity Fund** supports economic development projects that create new jobs and investment in accordance with established guidelines. Chesterfield may request a grant, to be paid to the company and matched by the county dollar for dollar.

The **Business Expansion Incentive Fund (BEIF)** was established for the purpose of securing job-creating economic development opportunities through the preservation and expansion of existing business in Chesterfield County. BEIF assistance may be in the form of a low-interest loan or a grant. Applications are made to the Chesterfield County Economic Development Department.

Fast-Track Permitting

Chesterfield County can also offer fast-track permitting of both site and building plans review should a project need to be expedited. Our proven success with this process has been demonstrated with a number of development projects throughout Chesterfield and can be further outlined upon request.

Code of VA

VA Code 58.1 - Real Estate Tax Abatemer

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: July 17, 2009

SUBJ: Continued Discussion of Transient Merchants and Itinerant Vendors

During the work session of May 26, 2009, staff presented options on the modification to the City Code regarding the permitting of transient merchants and itinerant vendors. During that briefing, Council expressed interest in additional regulation of these businesses. Specifically, the time limitation on their operation and a requirement to remove any physical structures that house these operations received Council consensus. The City Attorney has prepared the attached materials to advance this discussion. A portion of the work session of July 21, 2009 has been scheduled to obtain Council's consensus approval on the basics of a draft ordinance and get authorization to proceed toward formal consideration.

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

§ 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.

.

.

.

§ 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) 30 consecutive days shall be the maximum time for each transient use;

(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.

.

.

.

§ 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) 30 consecutive days shall be the maximum time for each transient use;

(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.

§ 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 Section 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.***

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: July 17, 2009

SUBJ: Continued Discussion of Modifications to Chapter 98 of the City Code, Animals

During the work session of May 26, 2009, the City Attorney presented extensive modifications to Chapter 98 of the City Code as it relates to Animals and Animal Control. As initially covered in the work session, the City Attorney reported a number of State Code changes relating to Animals and Animal Control, including recodification of the State Code and different approaches to aspects of our Animal Control enforcement. During that discussion, Council reviewed a total rewrite of Chapter 98 as prepared by the City Attorney. A number of items were mentioned and discussed during that work session. The City Attorney has worked diligently to address matters discussed during the work session. His report and subsequent modifications are attached for Council's review. A portion of the work session of July 21, 2009 has been scheduled for Council's further guidance on finalizing a revised draft ordinance and amendment to Chapter 98 of the City Code.

Once again, staff is seeking guidance on final modifications so this matter can be advanced for formal consideration. This will greatly assist the Police Department and our Animal Control functions. If any questions arise on this matter prior to the work session, questions are best directed to the City Attorney. If the City Manager or Police Department staff can be of any assistance, please do not hesitate to contact me.

Attachment

cc: Hugh P. Fisher, III, City Attorney
William E. Johnson, Director of Finance
Jeffrey W. Faries, Chief of Police

AN ORDINANCE NO. _____

To repeal and replace the current provisions of Chapter 98, Animals, of the Colonial Heights City Code.

THE CITY OF COLONIAL HEIGHTS HEREBY ORDAINS:

1. That the current provisions of Chapter 98, Animals, of the Colonial Heights City Code are hereby repealed and are replaced by the following provisions:

Chapter 98. ANIMALS

Article I. General

Article II. Dogs

Article III. Licenses

ARTICLE I. GENERAL

§98-1. Definitions.

For the purposes of this chapter, the following words shall have the meaning given herein.

Abandon. To desert, forsake, or to absolutely give up an animal without having secured another owner or custodian or failing to provide the following basic elements of care for a period of five consecutive days: adequate feed, water, shelter, exercise, space in the primary enclosure for the particular type of animal depending on its age, size and weight; care, treatment, and transportation; and veterinary care when needed to prevent suffering or disease transmission.

Adequate care or care. The responsible practice of good animal husbandry, handling, production, management, confinement, feeding, watering, protection, shelter, transportation, treatment, and, when necessary, euthanasia appropriate for the age, species, condition, size and type of the animal, and the provision of veterinary care when needed to prevent suffering or impairment of health.

Adequate exercise. The opportunity for the animal to move sufficiently to maintain normal muscle tone and mass for the age, species, size and condition of the animal.

Adequate feed. The access to and the provision of food which is of sufficient quantity and nutritive value to maintain each animal in good health; is accessible to each animal; is prepared so as to permit ease of consumption for the age, species, condition, size and type of each animal; is provided in a clean and sanitary manner; is placed so as to minimize contamination by excrement and pests; and is provided at suitable intervals for the species, age and condition of the animal, but at least once daily, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species.

Adequate shelter. The provision of and access to shelter that is suitable for the species, age, condition, size and type of each animal; provides adequate space for each animal, is safe and protects each animal from injury, rain, sleet, snow, hail, direct sunlight, the adverse effects of heat or cold, physical suffering and impairment of health; is properly lighted; is properly cleaned; enables each animal to be clean and dry except when detrimental to the species; and, for dogs and cats, provides a solid surface, resting platform, pad, floor mat or similar device that is large enough for the animal to lie on in a normal manner and can be maintained in a sanitary manner. Under this chapter, shelters whose wire, grid or slat floors (i) permit the animals' feet to pass through the openings, (ii) sag under the animals' weight or (iii) otherwise do not protect the animals' feet or toes from injury are not adequate shelter.

Adequate space. Inside: sufficient space in a crate or cage means to allow each animal to (i) easily stand, sit, lie, turn about and make all other normal body movements in a comfortable, normal position for the animal and (ii) interact safely with other animals in the enclosure. Outdoors: Confinement in an area of at least 100 square feet in an area which allows for sufficient movement by the animal. When an animal is tethered, "adequate space" means a tether that permits the above actions and is appropriate to the age and size of the animal; is attached to the animal by a properly applied collar, halter or harness configured so as to protect the animal from injury and prevent the animal or tether from becoming entangled with other objects or animals, or from extending over an object or edge that could result in the strangulation or injury of the animal; and is at least 10 feet. When freedom of movement would endanger the animal, temporarily and appropriately restricting movement of the animal according to professionally accepted standards for the species is considered provision of adequate space.

Adequate water. Provision of and access to clean, fresh, potable water of a drinkable temperature which is provided in a suitable manner, in sufficient volume and at suitable intervals, appropriate for weather and temperature, to maintain normal hydration for the age, species, condition, size and type of each animal, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species; and is provided in clean, durable receptacles which are accessible to each animal and are placed so as to minimize contamination of the water by excrement and pests or an alternative source of hydration consistent with generally accepted husbandry practices.

Adoption. The transfer of ownership of a dog or cat or any other companion animal from a releasing agency to an individual.

Agricultural animals. Livestock and poultry.

Animal. Any nonhuman vertebrate species except fish. For the purposes of Article V, "animal" means any animal susceptible to rabies. For the purposes of §98-9, "animal" means any nonhuman vertebrate species including fish except those fish captured and killed or disposed of in a reasonable. and customary manner.

*Animal Control Officer. A person appointed by the City Manager or his designee as an Animal Control Officer or ~~Deputy Animal Control~~ **Police** Officer.*

Animal shelter. A facility, other than a private residential dwelling and its surrounding grounds, that is used to house or contain animals and that is owned, operated or maintained by a nongovernmental entity including, but not limited to, a humane society, animal welfare organization, society for the

prevention of cruelty to animals, or any other organization operating for the purpose of finding permanent adoptive homes for animals.

Boarding establishment. A place or establishment other than a pound or animal shelter where companion animals not owned by the proprietor are sheltered, fed and watered in exchange for a fee.

Clearly visible sign. A sign that is (i) unobstructed from view, (ii) contains legible writing, and (iii) may be read by an ordinary person without assistance while standing ten feet away from the sign.

Companion animal. Any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal, any animal under the care, custody, or ownership of a person, or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purposes of this chapter.

Direct and immediate threat. Any clear and imminent danger to an animal's health, safety or life.

Dump. Knowingly desert, forsake, or absolutely give up without having secured another owner or custodian any dog, cat, or other companion animal in any public place including the right-of-way of any public highway, road or street or on the property of another.

Emergency veterinary treatment. Veterinary treatment to stabilize a life-threatening condition, alleviate suffering, prevent further disease transmission, or prevent further disease progression.

Enclosure. A structure used to house or restrict animals from running at large.

Euthanasia. The humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death or by a method that involves anesthesia produced by an agent which causes painless loss of consciousness and death during unconsciousness.

Foster care provider. An individual who provides care or rehabilitation for companion animals through an affiliation with a pound, animal shelter, or other releasing agency.

Kennel. Any establishment in which five or more canines, felines, or hybrids of either are kept for the purpose of breeding, hunting, training, renting, buying, boarding, selling, or showing.

Livestock. Includes all domestic or domesticated: bovine animals; equine animals; ovine animals; porcine animals; cervidae animals; capradae animals; animals of the genus Lama; ratites; fish or shellfish in aquaculture facilities, as defined in §3.2-2600 of the Code of Virginia; enclosed domesticated rabbits or hares raised for human food or fiber; or any other individual animal specifically raised for food or fiber; or any other individual animal specifically raised for food or fiber, except companion animals.
Owner. Any person who:

(1) Has a property right in an animal;

(2) Keeps or harbors an animal;

(3) Has an animal in his care; or

(4) Acts as a custodian of an animal.

Person. Any individual, partnership, firm, joint stock company, corporation, association, trust, estate or other legal entity.

Poultry. Includes all domestic fowl and game birds raised in captivity.

Pound. A facility operated by the Commonwealth or City for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals or a facility operated for the same purpose under a contract with any county, city, town or incorporated society for the prevention of cruelty to animals.

Primary enclosure. Any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, cage, or compartment. For tethered animals, this term includes the shelter and the area within reach of the tether.

Properly cleaned. Carcasses, debris, food waste and excrement are removed from the primary enclosure with sufficient frequency to minimize the animals' contact with the above-mentioned contaminants; and the primary enclosure is sanitized with sufficient frequency to minimize odors and the hazards of disease.

Releasing agency. A pound, animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to animals, or other similar entity or home-based rescue, that releases companion animals for adoption.

Sterilize or sterilization. A surgical or chemical procedure performed by a licensed veterinarian that renders an animal permanently incapable of reproducing.

Treatment or adequate treatment. The responsible handling or transportation of animals in the person's ownership, custody or charge, appropriate for the age, species, condition, size and type of the animal.

Veterinary treatment. Treatment by or on the order of a duly licensed veterinarian.

***State law references**-Similar provisions, Code of Va., §3.2-5900; §3.2-6500.*

§98-2. Enforcement of animal laws.

*Enforcement of this chapter is vested in Animal Control Officers or ~~Deputy Animal Control~~ **Police** Officers appointed by the City Manager or his designee. When in uniform or upon displaying a badge or other credentials of office, such officers shall have the power to issue a **criminal** summons **or a civil penalty violation notice** to any person found ~~in the act of~~ violating this chapter.*

***State law reference**-Position of Animal Control Officer created, Code of Va., §3.2-6555.*

§98-3. Dogs and cats deemed personal property.

A. All dogs and cats shall be deemed personal property and may be the subject of larceny and malicious or unlawful trespass. Owners may maintain any action for the killing of any such animal, or injury thereto, or unlawful detention or use thereof as in the case of other personal property. The owner of any dog or cat which is injured or killed contrary to the provisions of this chapter by any person shall be entitled to recover the value thereof or the damage done thereto in an appropriate action at law from such person.

*B. An Animal Control Officer or ~~other officer~~ **Police Officer** finding a stolen dog or cat, or a dog or cat held or detained contrary to law, shall have authority to seize and hold such animal pending action before a General District Court or other Court. If no such action is instituted within seven days, the Animal Control Officer or ~~other officer~~ **Police Officer** shall deliver the dog or cat to its owner.*

*C. The presence of a dog or cat on the premises of a person other than its legal owner shall raise no presumption of theft against the owner and the Animal Control Officer **or Police Officer** may take such animal in charge and notify its legal owner to remove it. The legal owner of the animal shall pay the actual cost of keeping such animal while the animal is in the possession of the Animal Control Officer **or Police Officer**.*

***State law reference**-Similar provisions, Code of Va., §3.2-6585.*

§98-4. Wild animals not to be brought into or kept within the City.

It shall be unlawful for any person to bring or keep any wild animals within the City; provided, however, that wild animals shall be permitted to be brought into and kept within the City for purposes of exhibit or as a part of a permanent animal show when the wild animals are located within a thematic park situated in the City. As used in this section, "wild animals" means any animal which by nature or disposition is untamed.

***State law reference**- Powers of Cities and Towns Chapter 11 of Title 15.2 of the Code of Va.; Regulation of keeping of animals and fowl, Code of Va. §3.2-6544.*

§98-5. Exotic or poisonous animals prohibited from running at large.

A. Exotic or poisonous animals shall not run at large in the City. For purposes of this section, "at large" shall mean roaming, running, or self-hunting off the premises of the owner or custodian and not under the immediate control of the owner or his agent.

*B. Any exotic or poisonous animal observed or captured while unlawfully running at large shall be disposed of in accordance with §§98-26 ~~through 98-31~~ **and 98-27**.*

*C. For any exotic or poisonous animal identified as to ownership, if such exotic or poisonous animal is captured and confined by an Animal Control Officer or ~~other officer~~ **Police Officer** appointed under the provisions of this chapter, the owner shall be charged with the City's actual expenses incurred in locating, capturing, and impounding or otherwise disposing of the animal.*

***State code reference**-Similar provision, Code of Va., §3.2-6544.*

§98-6. Nuisances.

*A. All animal owners shall exercise proper care and control of their animals to prevent them from becoming a public nuisance. Molesting passersby, biting or attacking any person without provocation on one or more occasions, chasing vehicles, habitually attacking other domestic animals, trespassing upon school grounds, or trespassing upon private property in such manner as to damage property shall be deemed a nuisance. Repeated running at large after citation of the owner by any Animal Control Officer **or Police Officer** shall also be deemed a nuisance.*

B. Any person owning any animal constituting a nuisance may be summoned

before the General District Court to show cause why such animal should not be confined, destroyed, removed, or the nuisance otherwise abated; and upon proof that the animal constitutes a public nuisance, the animal in question shall, by order of the General District Court, either be confined, destroyed, removed or the nuisance otherwise be abated as such Court shall order. The Court may also impose a fine up to $100.00 to be paid by the owner or custodian of such animal. It shall be unlawful and shall constitute contempt of court for any person to harbor or conceal any animal which has been ordered destroyed or removed by the General District Court or to fail to confine or restrain an animal when such an order has been entered by the Court.

C. If any Animal Control Officer or ~~his duly authorized agent~~ ***Police Officer*** *has reason to believe that any animal has, without provocation, attacked or bitten any person, such animal may be taken into custody and confined by the Animal Control Officer* ***or Police Officer*** *pending the Court's determination pursuant to this section.*

D. Any person who owns any dog, cat or other animal that has been adjudged a nuisance pursuant to this section by the General District Court and who appeals that decision to the Circuit Court shall be responsible for the fees connected with the impounding of the animal by the Animal Control Officer ***or Police Officer****. The Animal Control Officer,* ***Police Officer****, or owner shall confine such dog, cat or other animal during pendency of the appeal to prevent a reoccurrence of the nuisance. If on appeal the Circuit Court determines that the dog, cat or other animal is not a nuisance, no such fees for the impounding of the animal shall be imposed.*

State law reference*- Powers of Cities and Towns, Chapter 11 of Title 15.2 of the Code of Va.*

§98-7. Disposal of dead animals.

A. Companion animals. The owner of any companion animal which has died from disease or other cause shall forthwith cremate, bury, or sanitarily dispose of the same. If, after notice, any owner fails to do so, an Animal Control Officer or ~~other officer~~ ***Police Officer*** *shall bury or cremate the companion animal, and he may recover on behalf of the City from the owner his cost for this service.*

B. Other animals. When the owner of any animal or grown fowl other than a companion animal which has died knows of such death, such owner shall forthwith have its body cremated or buried; and if he fails to do so, any judge of a General District Court, after notice to the owner if he can be ascertained, shall cause any such dead animal or fowl to be cremated or buried by an officer or other person designated for the purpose. Such officer or other person shall be entitled to recover of the owner of every such animal so cremated or buried the

actual cost of the cremation or burial, not to exceed $75.00, and of the owner of every such fowl so cremated or buried the actual cost of the cremation or burial, not to exceed $5.00, to be recovered in the same manner as officers' fees are recovered. Nothing in this subsection shall be deemed to require the burial or cremation of the whole or portions of any animal or fowl which is to be used for food or in any commercial manner.

C. Penalty. Any person violating the provisions of this section shall be guilty of a Class 4 misdemeanor.

***State law references**-Disposal of dead companion animals, Code of Va., §3.2-6554; burial or cremation of animals or fowl which have died, Code of Va., §18.2-510.*

§98-8. Dangerous and vicious animals.

A. As used in this section:

"Dangerous dog" shall mean: A canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person or companion animal that is a dog or cat, or killed a companion animal that is a dog or cat. However, when a dog attacks or bites a companion animal that is a dog or cat, the attacking or biting dog shall not be deemed dangerous (i) if no serious physical injury as determined by a licensed veterinarian has occurred to the dog or cat as a result of the attack or bite, (ii) if both animals are owned by the same person, (iii) if such attack occurs on the property of the attacking or biting dog's owner or custodian, or (iv) for other good cause as determined by the Court. No dog shall be found to be a dangerous dog as a result of biting, attacking, or inflicting injury on a dog or cat while engaged with an owner or custodian as part of lawful hunting or participation in an organized, lawful dog handling event.

"Vicious dog" shall mean: A canine or canine crossbreed that has (i) killed a person; (ii) inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or serious impairment of a bodily function; or (iii) continued to exhibit the behavior that resulted in a previous finding by a Court.

*B. Any ~~Law Enforcement Officer~~ **Police Officer** or Animal Control Officer who has reason to believe that a canine or canine crossbreed within the City is a dangerous dog or vicious dog shall apply to a magistrate of the City for the issuance of a summons requiring the owner or custodian, if known, to appear before a General District Court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. If a ~~Law Enforcement Officer~~ **Police Officer** successfully makes an application for the issuance of a summons, he shall contact an Animal Control Officer and inform*

him of the location of the dog and the relevant facts pertaining to his belief that the dog is dangerous or vicious. The ***Police Officer or*** *Animal Control Officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. If the* ***Police Officer or*** *Animal Control Officer determines that the owner or custodian can confine the animal in a manner that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a verdict rendered. The Court, through its contempt powers, may compel the owner, custodian or harborer of the animal to produce the animal. If, after hearing the evidence, the Court finds that the animal is a dangerous dog, the Court shall order the animal's owner to comply with the provisions of this section. If, after hearing the evidence, the Court finds that the animal is a vicious dog, the Court shall order the animal euthanized in accordance with the provisions of §98-26. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Article 4 (§19.2-260 et seq.) of Chapter 15 of Title 19.2 of the Code of Virginia. The Commonwealth shall be required to prove its case beyond a reasonable doubt.*

C. No canine or canine crossbreed shall be found to be a dangerous dog or vicious dog solely because it is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed prohibited. No animal shall be found to be a dangerous dog or vicious dog if the threat, injury or damage was sustained by a person who was (i) committing, at the time, a crime upon the premises occupied by the animal's owner or custodian, (ii) committing, at the time, a willful trespass upon the premises occupied by the animal's owner or custodian, or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. No police dog that was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog or a vicious dog. No animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, shall be found to be a dangerous dog or a vicious dog.

D. If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this section.

E. The owner of any animal found to be a dangerous dog shall, within 10 days of such finding, obtain a dangerous dog registration certificate from a local Animal Control Officer for a fee of $50, in addition to other fees that may be authorized by law. The Animal Control Officer shall also provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times. All certificates obtained pursuant to this subsection shall be renewed annually for the same fee and in the same manner as the initial

certificate was obtained. The Animal Control Officer shall provide a copy of the dangerous dog registration certificate and verification of compliance to the State Veterinarian.

F. All dangerous dog registration certificates or renewals thereof required to be obtained under this section shall only be issued to persons 18 years of age or older who present satisfactory evidence (i) of the animal's current rabies vaccination, if applicable, (ii) that the animal has been neutered or spayed, and (iii) that the animal is and will be confined in a proper enclosure or is and will be confined inside the owner's residence or is and will be muzzled and confined in the owner's fenced-in yard until the proper enclosure is constructed. ***For the purposes of this subsection, "fenced-in yard" shall mean a yard completely enclosed by a physical fence rather than an electronic fence.*** *In addition, owners who apply for certificates or renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence that (i) their residence is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property and (ii) the animal has been permanently identified by means of a tattoo on the inside thigh or by electronic implantation. All certificates or renewals thereof required to be obtained under this section shall only be issued to persons who present satisfactory evidence that the owner has liability insurance coverage, to the value of at least $100,000 that covers animal bites. The owner may obtain and maintain a bond in surety, in lieu of liability insurance, to the value of at least $100,000.*

G. While on the property of its owner, an animal found to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults, or other animals. The structure shall be designed to provide the animal with shelter from the elements of nature. When off its owner's property, an animal found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal.

H. The owner of any dog found to be dangerous shall register the animal with the Commonwealth of Virginia Dangerous Dog Registry, as established under §3.2-6542 of the Code of Virginia, within 45 days of such a finding by a Court of competent jurisdiction. The owner shall also cause a local Animal Control Officer to be promptly notified of (i) the names, addresses, and telephone numbers of all owners; (ii) all of the means necessary to locate the owner and the dog at any time; (iii) any complaints or incidents of attack by the dog upon any person or cat or dog; (iv) any claims made or lawsuits brought as a result of any attack; (v) tattoo or chip identification information or both; (vi) proof of insurance or surety bond; and (vii) the death of the dog.

I. After an animal has been found to be a dangerous dog, the animal's owner shall immediately, upon learning of same, cause the local animal control authority to be notified if the animal (i) is loose or unconfined; or (ii) bites a person or attacks another animal; or (iii) is sold, given away, or dies. Any owner of a dangerous dog who relocates to a new address shall, within 10 days of relocating, provide written notice to the appropriate local animal control authority for the old address from which the animal has moved and the new address to which the animal has been moved.

J. Any owner or custodian of a canine or canine crossbreed or other animal is guilty of a:

(1) Class 2 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, attacks and injures or kills a cat or dog that is a companion animal belonging to another person;

(2) Class 1 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, bites a human being or attacks a human being causing bodily injury; or

(3) Class 6 felony if any owner or custodian whose willful act or omission in the care, control, or containment of a canine, canine crossbreed, or other animal is so gross, wanton, and culpable as to show a reckless disregard for human life, and is the proximate cause of such dog or other animal attacking and causing serious bodily injury to any person.

The provisions of this subsection shall not apply to any animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, or when the animal is a police dog that is engaged in the performance of its duties at the time of the attack.

K. The owner of any animal that has been found to be a dangerous dog who willfully fails to comply with the requirements of this section is guilty of a Class 1 misdemeanor.

L. All fees collected pursuant to this section, less the costs incurred by the animal control authority in producing and distributing the certificates and tags required by this section, shall be paid into a special dedicated fund in the treasury of the City for the purpose of paying the expenses of any training course required pursuant to §3.2-6556 of the Code of Virginia.

***State law reference**-Control of dangerous or vicious dogs; penalties, Code of Va., §3.2-6540.*

§98-9. Cruelty to animals.

A. Any person who (i) overrides, overdrives, overloads, tortures, ill-treats, abandons, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation, or cruelly or unnecessarily beats, maims, mutilates or kills any animal, whether belonging to himself or another; (ii) deprives any animal of necessary food, drink, shelter, or emergency veterinary treatment; (iii) leaves an animal in an automobile without adequate ventilation or in unsafe weather conditions; (iv) sores any equine for any purpose or administers drugs or medications to alter or mask such soring for the purposes of sale, show, or exhibition of any kind, unless such administration of drugs or medications is within the context of veterinary client-patient relationship and solely for therapeutic purposes; (v) willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal; (vi) carries or causes to be carried in or upon any vehicle, vessel or otherwise any animal in a cruel, brutal, or inhumane manner so as to produce torture or unnecessary suffering; or (vii) causes any of the above things, or being the owner of such animal permits such acts to be done by another, shall be guilty of a Class 1 misdemeanor.

B. Any person who (i) tortures, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation, or cruelly and unnecessarily beats, maims, mutilates or kills any animal whether belonging to himself or another; (ii) sores any equine for any purpose or administers drugs or medications to alter or mask such soring for the purpose of sale, show, or exhibit of any kind, unless such administration of drugs or medications is under the supervision of a licensed veterinarian and solely for therapeutic purposes; (iii) maliciously deprives any companion animal of necessary food, drink, shelter or emergency veterinary treatment; (iv) instigates, engages in, or in any way furthers any act of cruelty to any animal set forth in clauses (i) through (iv); or (v) causes any of the actions described in clauses (i) through (iv), or being the owner of such animal permits such acts to be done by another; and has been within five years convicted of a violation of this subsection or subsection A, shall be guilty of a Class 6 felony if the current violation or any previous violation of this subsection or subsection A resulted in the death of an animal or the euthanasia of an animal based on the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal; and such condition was a direct result of a violation of this subsection or subsection A.

C. Nothing in this section shall be construed to prohibit the dehorning of cattle.

D. For purposes of this section, the word "animal" shall be construed to include birds and fowl.

E. This section shall not prohibit authorized wildlife management activities or hunting, fishing or trapping as regulated under other titles of the City Code or the Code of Virginia, or to farming activities as provided by the City Code or the Code of Virginia.

F. In addition to the penalties provided in subsection A, the Court may, in its discretion, require any person convicted of a violation of subsection A to attend an anger management or other appropriate treatment program or obtain psychiatric or psychological counseling. The Court may impose the costs of such a program or counseling upon the person convicted.

G. It is unlawful for any person to kill a domestic dog or cat for the purpose of obtaining the hide, fur or pelt of the dog or cat. A violation of this subsection shall constitute a Class 1 misdemeanor. A second or subsequent violation of this subsection shall constitute a Class 6 felony.

H. Any person who (i) tortures, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation or cruelly and unnecessarily beats, maims or mutilates any dog or cat that is a companion animal whether belonging to him or another and (ii) as a direct result causes the death of such dog or cat that is a companion animal, or the euthanasia of such animal on the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal, shall be guilty of a Class 6 felony. If a dog or cat is attacked on its owner's property by a dog so as to cause injury or death, the owner of the injured dog or cat may use all reasonable and necessary force against the dog at the time of the attack to protect his dog or cat. Such owner may be presumed to have taken necessary and appropriate action to defend his dog or cat and shall therefore be presumed not to have violated this subsection. The provisions of this subsection shall not overrule §98-8 or §98-13.

I. Any person convicted of violating this section may be prohibited by the Court from possession or ownership of companion animals.

***State law references**-Cruelty to animals; penalties, Code of Va., §3.2-6570.*

§98-10. Number of companion animals per residence limited.

A. Except as otherwise provided herein, it shall be unlawful for any person to own, house, keep, board or have more than four companion animals at any one residence within the City unless permission to do so shall have first been obtained from City Council or unless there shall be at such residence a structure

or other means reasonably suited for the provision of permanent shelter to the extent required in §98-42 herein; any such required structure or other means being more than 300 feet from any other residence. The City Council shall consider the grant of such permission in those cases where the keeping of such animals does not create a health hazard. When it is proposed to keep more than four companion animals at any one residence within the City, application shall be made by the owner to the City Council, setting forth the number of such companion animals, the location of a kennel or other structure, if any, and the plans for its construction; and if, in the opinion of the City Council it is proper so to do so permission may be granted for the construction of such kennel or other structure in accordance with the plans submitted and for the keeping of the companion animals, under such reasonable conditions as the City Council deems proper. The kennel or other structure shall be subject to inspection by an Animal Control Officer to ascertain compliance with the permit at any hour during the daytime, and the permit so granted by the City Council shall be revocable at any time when, in the sole discretion of the City Council, it is proper to do so in the protection of the public health.

B. For the purposes of this section, if any companion animal at any one residence gives birth to a litter, then an animal in that litter will not be considered as a companion animal at that residence until the animal in the litter exceeds the age of three months.

C. If City Council grants permission, then it shall be unlawful for any person to own, house, keep, board or have more companion animals at any one residence than Council has agreed to allow.

§98-11. Penalties.

A. Unless otherwise specified, any violation of a provision of this chapter shall constitute a Class 4 misdemeanor, punishable by a fine of up to $250.00.

B. Payment of the annual dog and cat license tax required by this chapter subsequent to a summons to appear before a Court for failure to pay such fee within the time specified in §98-24 shall not operate to relieve the owner from the penalties provided.

C. Civil penalties:

(1) A civil penalty in the amount listed on the schedule below shall be assessed for a violation of the respective offense:

a. Not displaying a current City dog license:

[1] First offense ..... $ 20.00

[2] Second offense..... $ 30.00
[3] Third and subsequent offenses..... $ 40.00

b. No current rabies vaccination:

[1] First offense ..... $ 20.00
[2] Second offense..... $ 45.00
[3] Third and subsequent offenses..... $ 60.00

c. Barking or howling dog:

[1] First offense ..... $ 50.00
[2] Second offense..... $ 100.00
[3] Third and subsequent offenses..... $ 150.00

(2) The assessment of any civil penalty for a violation shall be in lieu of criminal prosecutions for that violation.

***State law references**-Payment of license tax, subsequent to summons, Code of Va., §3.2-6436; Governing body of any locality may adopt certain ordinances, Code of Va., §3.2-6543.*

ARTICLE II. DOGS

§98-12. Running at large prohibited.

A. Dogs shall not run at large in the City. For purposes of this section, "at large" shall mean roaming, running or self-hunting off the premises of the owner or custodian and not on a leash or under the immediate control of the owner or his agent. However, a dog shall not be considered at large if during the hunting season it is on a bona fide hunt in the company of a licensed hunter or during field trials or training periods when accompanied by its owner.

B. Any dog observed or captured while unlawfully running at large shall be disposed of in accordance with §98-26 through §98-31.

*C. For any dog identified as to ownership, if such dog is captured and confined by an Animal Control Officer or ~~other officer~~ **Police Officer,** ~~appointed under the provisions of this chapter~~, the owner shall be charged with the actual expenses incurred in keeping the animal impounded. Owners of dogs not impounded shall be issued a summons for violation of this provision. Each day thereafter that this section is not complied with shall be a separate offense.*

***State law references**-Governing body of any locality may prohibit dogs from running at large, Code of Va., §3.2-6538; county or city pounds, confinement and disposition of animals, Code of Va., §3.2-6546.*

§98-13. Dog injuring or killing other companion animals.

The owner of any companion animal that is injured or killed by a dog shall be entitled to recover damages consistent with the provisions of §98-3 from the owner of such dog in an appropriate action at law if (i) the injury occurred on the premises of the companion animal's owner, and (ii) the owner of the offending dog did not have the permission of the companion animal's owner for the dog to be on the premises at the time of the attack.

***State law reference**-Similar provisions, Code of Va. §3.2-6586.*

§98-14. Barking or howling dogs.

The harboring or keeping of any dog which, by loud, frequent or habitual barking or howling, shall cause annoyance and disturb the peace and quiet of another person shall be considered a violation of this chapter; and any such dog may, after due notice has been given to the owner or keeper, if known, be impounded and confined in the City pound by the Animal Control Officer or any Police Officer.

§98-15. Removal of defecated material left by any dog on public or private property.

The owner or person in control of any dog shall immediately remove defecated material left by the dog on any public or private property in the City, other than the owner's property, and dispose of it in a safe and sanitary manner.

ARTICLE III. LICENSES

§98-16. Unlicensed dogs and cats prohibited.

It shall be unlawful for any person to own a dog or cat four months old or older in the City unless the dog or cat is licensed, as required by the provisions of this article.

***State law references**-Unlicensed dogs prohibited, Code of Va., §3.2-6524.*

§98-17. Dog and cat licenses.

A. Required; application. Every owner of a dog or cat over the age of four months owned, possessed, or kept in the City shall obtain a license by making an oral or written application with the City Treasurer or his designee.

B. License tax and rabies vaccination certificate. Each application shall be accompanied by the amount of the license tax and current certificate of rabies vaccination as required by this chapter or satisfactory evidence that such certificate has been obtained.

C. Authority of Treasurer, issuance of license receipt. The Treasurer, or his designee, shall only have authority to license dogs and cats of resident owners who reside within the boundary limits of the City and may require information to this effect from any applicant. Upon receipt of proper application and rabies vaccination certificate, the Treasurer or his designee shall issue a license receipt on which he shall record the name and address of the owner, the date of payment, the amount of payment, the year for which issued, the serial number of the tag, whether male or female, whether spayed or neutered, whether a kennel; and he shall deliver the metal license tags or plates provided for herein. Each tag shall be stamped or otherwise permanently marked to show the name of the City and bear a serial number or other identifying information.

D. Retention of information; Treasurer to destroy unsold tags. The information thus received shall be retained by the Treasurer, open to public inspection during the period for which such license is valid. All unsold tags shall be recorded and the unissued tags destroyed by the Treasurer at the end of each calendar year.

E. False statements. It shall be unlawful for any person to make a false statement verbally or on an application in order to secure a dog or cat license to which he is not entitled.

***State law references**-Unlicensed dogs prohibited, Code of Va., §3.2-6524; How to obtain licenses, Code of Va., §3.2-6527; what dog or cat licenses shall consist of, Code of Va., §3.2-6526.*

§98-18. Disposition of funds.

A. The City Treasurer shall keep all money collected for dog and cat license taxes pursuant to §98-17 in a separate account from all other funds collected by him. The City shall use the dog and cat license funds for the following purposes:

(1) The salary and expenses of one or more Animal Control Officers and necessary staff;

(2) The care and maintenance of a pound;

(3) The maintenance of a rabies control program;

(4) Efforts to promote sterilization of dogs and cats.

***State law references**-Disposition of funds, Code of Va., §3.2-6534; supplemental funds, Code of Va., §3.2-6535.*

§98-19. Veterinarians to provide Treasurer with rabies certificate information; civil penalty.

Each veterinarian who vaccinates a dog against rabies or directs a veterinary technician in his employ to vaccinate a dog against rabies shall provide the owner a copy of the rabies vaccination certificate. The veterinarian shall forward within 45 days a copy of the rabies vaccination certificate or the information contained in such certificate to the Treasurer of the locality in which the vaccination occurs.

The rabies vaccination certificate shall include at a minimum the signature of the veterinarian, the animal owner's name and address, the species of the animal, the sex, the age, the color, the primary breed, the secondary breed, whether or not the animal is spayed or neutered, the vaccination number, and expiration date. The rabies vaccination certificate shall indicate the locality in which the animal resides.

It shall be the responsibility of the owner of each vaccinated animal that is not already licensed to apply for a license for the vaccinated dog. If the Treasurer determines, from review of the rabies vaccination information provided by veterinarians, that the owner of an unlicensed dog has failed to apply for a license within 90 days of the date of vaccination, the Treasurer shall transmit an application to the owner and request the owner to submit a completed application and pay the appropriate fee. Upon receipt of the completed application and payment of the license fee, the Treasurer or other agent charged with the duty of issuing the dog licenses shall issue a license receipt and a permanent tag.

The Treasurer shall remit any rabies vaccination certificate received for any animal owned by an individual residing in another locality to the local Treasurer for the appropriate locality.

Any veterinarian that willfully fails to provide the Treasurer with a copy of the rabies vaccination certificate or the information contained in such certificate shall be subject to a civil penalty of $10.00 per certificate. Monies raised pursuant to this subsection shall be placed in the City's general fund for the purpose of animal control activities, including but not limited to spay or neuter programs.

***State law reference**-Similar provision, Code of Va., §3.2-6529.*

§98-20. Evidence showing inoculation for rabies prerequisite to obtaining dog or cat license.

No license tag shall be issued for any dog or cat unless there is presented to the Treasurer or his designee satisfactory evidence that such dog or cat has been inoculated or vaccinated against rabies by a currently licensed veterinarian or currently licensed veterinary technician who was under the immediate and direct supervision of a licensed veterinarian on the premises.

***State law reference**-Rabies inoculation of dogs and domesticated cats, Code of Va., §3.2-6521.*

§98-21. Display of license and receipt.

*Dog and cat license receipts shall be carefully preserved by licensees and exhibited promptly upon request for inspection by an Animal Control Officer or ~~duly appointed~~ **Police** Officer. ~~of the City~~. The Animal Control Officer **or Police Officer** ~~or other duly appointed officer~~ may check such receipts door-to-door at any time during the license year. Dog license tags shall be securely fastened to a substantial collar by the owner or custodian and worn by such dog. It shall be unlawful for the owner to permit any licensed dog four months old or older to run or roam at large at any time without a license tag. The owner of the dog may remove the collar and license tag required by this section when (i) the dog is engaged in lawful hunting, (ii) the dog is competing in a dog show, (iii) the dog has a skin condition which would be exacerbated by the wearing of a collar, (iv) the dog is confined; or (v) the dog is under the immediate control of its owner.*

***State law reference**-Similar provision, Code of Va., §3.2-6531.*

§98-22. Duplicate license tags.

If a dog or cat license tag is lost, destroyed or stolen, the owner or custodian shall at once apply to the City Treasurer, or his designee, for a duplicate license tag, presenting the original license receipt. Upon affidavit of the owner before the City Treasurer, or his designee, that the original license tag has been lost, destroyed, or stolen, the Treasurer shall issue a duplicate license tag which shall be immediately affixed to the collar of the dog by its owner. The Treasurer, or his designee, shall endorse the number of the duplicate license tag and the date of issuance on the face of the original license receipt. The fee for a duplicate tag for any dog or cat shall be $1.00.

***State law reference**-Similar provisions, Code of Va., §3.2-6532.*

§98-23. Annual tax imposed on dogs, cats, and kennels.

It shall be unlawful for any person to own a dog or cat four (4) months old or older in the City, unless such dog or cat is licensed under the provisions of this Section. The owner of any such dog or cat shall obtain a current license for the dog or cat and pay the license tax imposed herein. The license shall be valid for a period of 1 or 3 years, depending upon the license tax paid, provided that the period covered by the license does not exceed the period of time covered by the certificate of rabies vaccination.

~~There is hereby imposed an annual~~ ***The*** *license tax upon all dog kennels and all dogs and cats over the age of four months which are owned, possessed or kept in the City shall be as follows:*

	1 year	***3 years***
Unneutered or unspayed pedigree dog or cat	*10.00*	***30.00***
Unneutered or unspayed non-pedigree dog or cat .	*15.00*	***45.00***
Neutered or spayed dog or cat	*2.00*	***6.00***
Kennel for up to ten dogs	*50.00*	***150.00***
Two or more blocks of kennels, each consisting of 10 dogs or less	*100.00*	***300.00***
Duplicate for lost, destroyed or stolen tag	*1.00*	***3.00***

State law references*-Amount of license tax, Code of Va., §3.2-6528; duplicate license tags, Code of Va., §3.2-6532.*

§98-24. ~~Dog, cat, and kennel~~ When license tax due; exemption for certain dogs.

A. The license tax as prescribed in this chapter is due not later than 30 days after a dog or cat has reached the age of four months, or not later than 30 days after an owner acquires a dog or cat four months of age or older, and ~~each year thereafter.~~ ***annually or tri-annually thereafter, depending on the owner's payment selection.***

B. Any kennel license tax prescribed pursuant to this chapter shall be due ***annually or tri-annually*** *on January 1 and not later than January 31 of ~~each year~~* ***the applicable year****. If any person shall fail to remit to the City Treasurer the applicable license tax for a dog, cat, or kennel when due, a penalty of 25% shall be added to such tax.*

C. No license tax shall be levied on any dog that is trained and serves as a guide dog for a blind person, that is trained and serves as a hearing dog for a deaf or hearing impaired person or that is trained and serves as a service dog for

a mobility-impaired person.

As used in this section, "hearing dog" means a dog trained to alert its owner by touch to sounds of danger and sounds to which the owner should respond and "service dog" means a dog trained to accompany its owner for the purpose of carrying items, retrieving objects, pulling a wheelchair or other such activities of service or support.

***State law references**-Amount of license tax, Code of Va., §3.2-6528; when license tax payable, Code of Va., §3.2-6530.*

§98-25. Presumption for dog or cat not wearing collar.

Any dog or cat not wearing a collar bearing a valid license tag shall prima facie be deemed to be unlicensed, and in any proceedings under this chapter the burden of proof of the fact that such dog or cat has been licensed, or is otherwise not required to bear a tag at the time, shall be on the owner of the dog or cat.

***State law reference**-Effect of dog or cat not wearing a license tag as evidence, Code of Va., §3.2-6533.*

ARTICLE IV. IMPOUNDMENT

§98-26. Impoundment generally.

*A. Any ~~Humane Investigator,~~ ~~Law Enforcement Officer~~, **Police Officer** or Animal Control Officer may lawfully seize and impound any animal that has been abandoned, has been cruelly treated, or is suffering from an apparent violation of this chapter that has rendered the animal in such a condition as to constitute a direct and immediate threat to its life, safety, or health. Before seizing or impounding any agricultural animal, such ~~Humane Investigator, Law Enforcement Officer~~, **Police Officer** or Animal Control Officer shall contact the State Veterinarian or a State Veterinarian's representative, who shall recommend to such person the most appropriate action for the disposition of the agricultural animal; provided, however, that the seizure or impoundment of an equine resulting from a violation of subdivision (A) (iii) or subdivision (B) (ii) of §98-9 may be undertaken only by the State Veterinarian or State Veterinarian's representative who has received training in the examination and detection of sore horses equivalent to that required by 9 C.F.R. Part 11.7 and that is approved by the State Veterinarian. The ~~Humane Investigator~~, ~~Law Enforcement Officer~~, **Police Officer** or Animal Control Officer shall notify the owner of the agricultural animal and the local Attorney for the Commonwealth of the recommendation. The ~~Humane Investigator,~~ ~~Law Enforcement Officer~~, **Police Officer** or Animal Control Officer may impound the agricultural animal on the land where the*

agricultural animal is located if:

(1) The owner or tenant of the land where the agricultural animal is located gives written permission;

(2) A General District Court so orders; or

(3) The owner or tenant of the land where the agricultural animal is located cannot be immediately located, and it is in the best interest of the agricultural animal to be impounded on the land where it is located until the written permission of the owner or tenant of the land can be obtained.

*If there is a direct and immediate threat to an agricultural animal, the ~~Humane Investigator~~, ~~Law Enforcement Officer~~, **Police Officer** or Animal Control Officer may seize the animal, in which case he shall file, within five business days on a form approved by the State Veterinarian, a report on the condition of the animal at the time of the seizure, the disposition of the animal, and any other information required by the State Veterinarian.*

*Upon seizing or impounding an animal, the ~~Humane Investigator~~, ~~Law Enforcement Officer~~, **Police Officer** or Animal Control Officer shall petition the General District Court for a hearing. The hearing shall be not more than ten business days from the date of the seizure of the animal. The hearing shall be to determine whether the animal has been abandoned, has been cruelly treated, or has not been provided adequate care.*

*B. The ~~Humane Investigator~~, ~~Law Enforcement Officer~~, **Police Officer** or Animal Control Officer shall cause to be served upon the person with a right of property in the animal or the custodian of the animal notice of the hearing. If such person or the custodian is known and residing within the jurisdiction wherein the animal is seized, written notice shall be given at least five days prior to the hearing of the time and place of the hearing. If such person or the custodian is known but residing out of the jurisdiction where such animal is seized, written notice by any method or service of process as is provided by the Code of Virginia shall be given. If such person or the custodian is not known, the ~~Humane Investigator~~, ~~Law Enforcement Officer~~, **Police Officer** or Animal Control Officer shall cause to be published in a newspaper of general circulation in the jurisdiction wherein such animal is seized notice of the hearing at least one time prior to the hearing and shall further cause notice of the hearing to be posted at least five days prior to the hearing at the place provided for public notices at the City Courthouse wherein such hearing shall be held.*

C. The procedure for appeal and trial shall be the same as provided by law for misdemeanors; if requested by either party on appeal to the Circuit Court, trial by jury shall be as provided in Article 4 of Chapter 15 of Title 19.2 of the Code of

Virginia; and the Commonwealth shall be required to prove its case beyond a reasonable doubt.

*D. The ~~Humane Investigator~~, ~~Law Enforcement Officer~~, **Police Officer** or Animal Control Officer, shall provide for such animal until the Court has concluded the hearing. The owner of any animal held pursuant to this section for more than 30 days shall post a bond in surety with the City for the amount of the cost of boarding the animal for a period of nine months. Such bond shall not prevent the animal's custodian from disposing of such animal at the end of the nine month period covered by the bond unless the person claiming an interest posts an additional bond in surety with the ~~county~~ **City** to secure payment of the costs of caring for the animal for an additional nine months and does so prior to the expiration of the previous nine month period. At the conclusion of the case, the bond shall be forfeited to the City unless there is a finding that the owner is able to adequately provide for the animal and is a fit person to own the animal. If the animal is returned to the owner or other individual despite a violation of this section, the person posting the bond will be entitled to a return of the bond less the incurred expenses of boarding, medical care and impounding the animal.*

If the Court determines that the animal has been neither abandoned, cruelly treated, nor deprived of adequate care, the animal shall be returned to the owner. If the Court determines that the animal has been abandoned, cruelly treated, deprived of adequate care as defined in §98-1, or raised as a dog that has been, is, or is intended to be used, in dog fighting in violation of §3.2-6571 of the Code of Virginia, then the Court shall order that the animal be: (i) sold by the City; (ii) humanely destroyed, or disposed of by sale or gift to a federal agency, state-supported institution, agency of the Commonwealth, agency of another state, or a licensed federal dealer having its principal place of business located within the Commonwealth; (iii) delivered to any local humane society or shelter, or to any person who is a resident of the county or city where the animal is seized or an adjacent county or city in the Commonwealth and who will pay the required license fee, if any, on such animal; or (iv) delivered to the person with a right of property in the animal.

E. In no case shall the owner be allowed to purchase, adopt, or otherwise obtain the animal if the Court determines that the animal has been abandoned, cruelly treated, or deprived of adequate care; however, the Court shall direct that the animal be delivered to the person with a right of property in the animal, upon his request, if the Court finds that the abandonment, cruel treatment, or deprivation of adequate care is not attributable to the actions or inactions of such person.

F. The Court shall order the owner of any animal determined to have been abandoned, cruelly treated, or deprived of adequate care to pay all reasonable expenses incurred in caring and providing for such animal from the time the animal is seized until such time that the animal is disposed of in accordance with

the provisions of this section, to the provider of such care.

G. The Court may prohibit the possession or ownership of other companion animals by the owner of any companion animal found to have been abandoned, cruelly treated, or deprived of adequate care. In making a determination to prohibit the possession or ownership of companion animals, the Court may take into consideration the owner's past record of convictions under this chapter or other laws prohibiting cruelty to animals or pertaining to the care or treatment of animals and the owner's mental and physical condition.

H. If the Court finds that an agricultural animal has been abandoned or cruelly treated, the Court may prohibit the possession or ownership of any other agricultural animal by the owner of the agricultural animal if the owner has exhibited a pattern of abandoning or cruelly treating agricultural animals as evidenced by previous convictions. In making a determination to prohibit the possession or ownership of agricultural animals, the Court may take into consideration the owner's mental and physical condition.

I. Any person who is prohibited from owning or possessing animals pursuant to subsection (g) or (h) may petition the Court to repeal the prohibition after two years have elapsed from the date of entry of the Court's order. The Court may, in its discretion, repeal the prohibition if the person can prove to the satisfaction of the Court that the cause for the prohibition has ceased to exist.

J. When a sale occurs, the proceeds shall first be applied to the costs of the sale, then next to the unreimbursed expenses for the care and provision of the animal, and the remaining proceeds, if any, shall be paid over to the owner of the animal. If the owner of the animal cannot be found, the proceeds remaining shall be paid into the Literary Fund of the State treasury.

*K. Nothing in this section shall be construed to prohibit the humane destruction of a critically injured or ill animal for humane purposes by the impounding ~~Humane Investigator~~, ~~Law Enforcement Officer~~, **Police Officer** Animal Control Officer, or licensed veterinarian.*

L. The pound shall assess the owner a $10 fee for any dog or cat older than four months of age, which has not had a rabies vaccination, that the owner voluntarily and permanently surrenders to the pound. The pound shall assess the owner a $30 fee for each litter of dogs or cats under the age of four months, unless the owner provides proof that the mother of the litter has been sterilized.

***State law reference**-Similar provisions, Code of Va., §3.2-6569.*

§98-27. Impoundment and disposition of certain dogs.

A. Dogs found running at large without the tag required by §98-21 or dogs found in violation of §98-12 shall be confined in the City pound. Nothing in this section shall be construed to prohibit confinement of other companion animals in such pound.

*B. An animal confined pursuant to this section shall be kept for a period of not less than ~~seven~~ **five** days, such period to commence on the day immediately following the day the animal is initially confined in the facility, unless sooner claimed by the rightful owner thereof.*

*The operator or custodian of the pound shall make a reasonable effort to ascertain whether the animal has a collar, tag, license, tattoo, or other form of identification. **If such identification is found on the animal, the animal shall be held for an additional five days, unless sooner claimed by the rightful owner.** If the rightful owner of the animal can be readily identified, the operator or custodian of the pound shall make a reasonable effort to notify the owner of the animal's confinement within the next 48 hours following its confinement.*

If any animal confined pursuant to this section is claimed by its rightful owner, such owner may be charged an impoundment fee of $20.00 for the animal's first 24 hours; and thereafter, $5.00 per day for its subsistence and care during its impoundment period.

C. If an animal confined pursuant to this section has not been claimed upon expiration of the appropriate holding period as provided by subsection (B), it shall be deemed abandoned and become the property of the pound.

Such animal may be humanely destroyed or disposed of by the methods set forth in subsections (1) through (5). No pound shall release more than two animals or a family of animals during any 30-day period to any one person under subsections (2), (3), or (4).

(1) Release to any humane society, animal shelter, or other releasing agency within the Commonwealth, provided that each humane society, animal shelter, or other releasing agency obtains a signed statement from each of its directors, operators, staff, or animal caregivers specifying that each individual has never been convicted of animal cruelty, neglect, or abandonment and updates such statements as changes occur;

(2) Adoption by a City resident who will pay the required license fee, if any, on such animal, provided that such resident has read and signed a statement specifying that he has never been convicted of

animal cruelty, neglect, or abandonment;

(3) Adoption by a resident of an adjacent political subdivision of the Commonwealth, provided that such resident has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment;

(4) Adoption by any other person, provided that such person has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment, and provided that no animal may be adopted by any person who is not a City resident, or a citizen of an adjacent political subdivision, unless the animal is first sterilized; and the pound may require that the sterilization be done at the expense of the person adopting the animal; or

(5) Release for the purposes of adoption or euthanasia only, to an animal shelter, or any other releasing agency located in and lawfully operating under the laws of another state, provided that such animal shelter, or other releasing agency: (i) maintains records that would comply with §3.2-6557 of the Code of Virginia; (ii) requires that adopted dogs and cats be sterilized; (iii) obtains a signed statement from each of its directors, operators, staff, and animal caregivers specifying that each individual has never been convicted of animal cruelty, neglect, or abandonment, and updates such statement as changes occur; and (iv) has provided to the pound a statement signed by an authorized representative specifying the entity's compliance with clauses (i) through (iii), and the provisions of adequate care and performance of humane euthanasia, as necessary in accordance with the provisions of this chapter.

For purposes of recordkeeping, release of an animal by a pound to a pound, animal shelter or other releasing agency shall be considered a transfer and not an adoption. If the animal is not first sterilized, the responsibility for sterilizing the animal transfers to the receiving entity.

D. Nothing in this section shall prohibit the immediate euthanasia of a critically injured, critically ill, or unweaned animal for humane purposes. Any animal euthanized pursuant to the provisions of this chapter shall be euthanized by one of the methods prescribed or approved by the State Veterinarian.

E. Nothing in this section shall prohibit the immediate euthanasia or disposal by the methods listed in subsections (1) through (5) of subsection (C) of an animal that has been released to a pound, animal shelter, other releasing agency, or Animal Control Officer by the animal's rightful owner after the rightful

owner has read and signed a statement (i) surrendering all property rights in such animal, (ii) stating that no other person has a right of property in the animal, and (iii) acknowledging that the animal may be immediately euthanized or disposed of in accordance with subsections (1) through (5) of subsection (C).

F. Nothing in this section shall prohibit any feral dog or feral cat not bearing a collar, tag, tattoo, or other form of identification which, based on the written statement of a disinterested person, exhibits behavior that poses a risk of physical injury to any person confining the animal, from being euthanized after being kept for a period of not less than three days, at least one of which shall be a full business day; such period to commence on the day the animal is initially confined in the facility, unless sooner claimed by the rightful owner. The statement of the disinterested person shall be kept with the animal as required by §3.2-6557 of the Code of Virginia. For purposes of this subsection, a disinterested person shall not include a person releasing or reporting the animal.

G. The pound shall not place a companion animal in a foster home with a foster care provider unless the foster care provider has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment; and each pound shall update such statement as changes occur. The pound shall maintain the original statement and any updates to such statement in accordance with this chapter and for at least so long as the pound has an affiliation with the foster care provider.

H. Before the pound places a companion animal in a foster home with a foster care provider, it shall ensure that the foster care provider complies with §3.2-6503 of the Code of Virginia.

I. For purposes of this section:

"Animal" shall not include agricultural animals.

"Rightful owner" means a person with a right of property in the animal.

***State law reference**-County or city pounds, confinement and disposition of animals, Code of Va., §3.2-6546.*

§98-28. Animal pound established.

A. There shall be an animal pound, operated by the City and located in such place within or beyond the corporate limits of the City as the City Council may designate, for the purpose of impounding or harboring seized, stray, homeless or abandoned animals, where impoundment is found necessary or advisable by an Animal Control Officer ***or Police Officer*** *in the performance of his duties pursuant to this chapter. Such pound shall provide, to the extent required by law*

and authorized by Council, the following:

(1) Adequate feed and water;
(2) Adequate bedding and shelter, including but not limited to shelter against moisture, wind, and sun; and
(3) Adequate space and humane treatment.

B. Such pound shall also be for the purpose of impounding any unwanted animal owned by a resident of the City and brought to the pound by its owner. Upon such impoundment, unwanted animals shall be provided for and disposed of as otherwise provided in this chapter.

C. The pound operated by the City pursuant to this section shall be opened to public access under the supervision of an Animal Control Officer or his designee a minimum of 20 hours per week and shall also be available to public access by publicly listed telephone, which shall be manned on a continuous basis or which shall, by means of recording, instruct the public as to the means of continuous access.

§98-29. Revenues applied to animal control expenses.

All revenues accruing to the City from fees and fines imposed pursuant to this chapter shall, in each fiscal year, be applied to the payment of expenses incurred by the City as a result of animal control and to other expenses related to the duties and responsibilities of the Animal Control Office. To this purpose, the revenues shall be segregated from all other City funds; and proper records and accounts shall be kept therefor separate from all other municipal records and accounts, to the extent permissible by law. In the event that the total revenue from such fiscal year is not expended or encumbered for such purposes, the fund balance shall not lapse but shall remain segregated from all other City funds for application to such purposes in future fiscal years.

§98-30. Breaking into City pound unlawful.

It shall be unlawful for any person to break open, aid, counsel, or advise the breaking open of the City pound to take or let out, or attempt to take or let out, any animal placed therein pursuant to this chapter unless such act is done by an officer duly authorized by law; and it shall also be unlawful to hinder or oppose any officer in taking up any dog or other animal, in accordance with provisions of this chapter.

§98-31. Disposition of animals other than those in the City pound.

A. No animal bearing a tag, license or tattooed identification shall be used or accepted by any person for the purpose of medical research or experimentation,

unless the individual who owns such animal consents in writing.

B. No person who acquires an animal from an animal shelter in the City shall sell such animal within a period of six months from the time the animal is acquired from the shelter. Violation of this section shall constitute a Class 4 misdemeanor.

***State law references**-Acceptance of animals for research or experimentation; prohibition, Code of Va., §3.2-6547; Regulation of sale of animals procured from animal shelters, Code of Va. §3.2-6545.*

ARTICLE V. RABIES CONTROL

§98-32. Report of existence of rabid animal.

Every person having knowledge of the existence of an animal apparently afflicted with rabies shall report immediately to the Health Department the existence of such animal, the place where seen, the owner's name, if known, and the symptoms suggesting rabies.

***State law reference**-Similar provision, Code of Va., §3.2-6522.*

§98-33. Vaccination of dogs and cats.

*A. Vaccination required; exception. The owner or custodian of all dogs and domesticated cats four months of age and older shall have them currently vaccinated for rabies by a licensed veterinarian or licensed veterinary technician who is under the immediate and direct supervision of a licensed veterinarian on the premises. The supervising veterinarian on the premises shall provide the owner of the dog or the custodian of the domesticated cat with a certificate of vaccination. The owner of the dog or the custodian of the domesticated cat shall furnish within a reasonable period of time, upon the request of an Animal Control Officer, ~~Humane Investigator~~, ~~Law Enforcement Officer~~, **Police Officer** State Veterinarian's representative, or official of the Department of Health, the certificate of vaccination for such dog or cat. The vaccine used shall be licensed by the United States Department of Agriculture for use in that species.*

B. Application to persons transporting dogs/cats into City. Any person transporting a dog or domesticated cat into the City from some other jurisdiction shall comply with the requirements of subsection A of this section within 30 days subsequent to bringing such animal into the City.

C. Issuance of certificate. A veterinarian vaccinating a dog or domesticated cat as required by this section shall issue to the owner of the animal a rabies

vaccination certificate showing:

(1) Date of vaccination;

(2) Expiration date of vaccination;

(3) Sex and breed of the animal;

(4) The animal's weight, color and marks;

(5) Name of the owner;

(6) Amount and kind of vaccine injection;

(7) Method of injection; and

(8) The signature of the licensed veterinarian.

*D. Preservation and exhibition of certificate. Rabies vaccination certificates shall be carefully preserved by owners of dogs and domesticated cats and exhibited promptly upon request for inspection by an Animal Control Officer or ~~other City officer~~ **Police Officer**. An Animal Control Officer or ~~other duly appointed officer~~ **Police Officer** may check such certificates door-to-door at any time during the year.*

E. Inoculation of adopted dogs/cats by animal technicians. Dogs and domesticated cats being adopted from an animal shelter during the period an emergency ordinance is in force, as provided in §98-34, may be inoculated for rabies by a certified animal technician at such shelter, if the certified animal technician is under the immediate and direct supervision of a licensed veterinarian.

***State law references**-Rabies inoculation of dogs and domesticated cats, Code of Va., §3.2-6521; inoculation for rabies at animal shelters, Code of Va., §3.2-6523; regulations to prevent spread of rabies, Code of Va., §3.2-6525.*

§98-34. Emergency ordinance requiring confinement or restraint of dogs and cats when rabid animal at large.

When there is sufficient reason to believe that a rabid animal is at large, the City Council shall have the power to pass an emergency ordinance, which shall become effective immediately upon passage, requiring owners of all dogs and cats in the City to keep dogs and cats confined on their premises unless leashed under restraint of the owner in such a manner that persons or animals will not be subject to the danger of being bitten by the rabid animal. Any emergency

ordinance enacted pursuant to the provisions of this section shall be operative for a period not to exceed 30 days unless City Council renews it.

***State law reference**-Rabid animals, Code of Va., §3.2-6522.*

§98-35. Running at large without current rabies vaccination prohibited.

A. Dogs or cats shall not run at large in the City without a valid rabies vaccination as required by this chapter.

B. For purposes of this section, "at large" shall mean roaming, running, or self-hunting off the premises of the owner or custodian and not under the immediate control of the owner or his agent.

*C. For any dog or cat identified as to ownership, if such dog or cat is captured and confined by an Animal Control Officer or ~~other officer~~ **Police Officer** appointed under the provisions of this chapter, the owner shall be charged with the actual expenses incurred in keeping the animal impounded.*

*D. A violation of this section shall constitute a Class ~~3~~ **4** misdemeanor. ~~for the first violation and a Class 1 misdemeanor for a second or a subsequent violation.~~*

***State law reference**-Rabid animals, Code of Va., §3.2-6522.*

§98-36. Confinement or destruction of dogs or cats showing signs of or suspected of having rabies.

At the discretion of the local Health Director, dogs or cats showing active signs of rabies or suspected of having rabies shall be confined under competent observation for such a time as may be necessary to determine a diagnosis. The local Health Director shall determine the location and conditions of confinement for such animal. If confinement is impossible or impracticable, such dog or cat shall be euthanized by one of the methods prescribed or approved by the state veterinarian.

***State law reference**-Rabid animals, Code of Va., §3.2-6522.*

§98-37. Destruction or confinement of dog or cat bitten by rabid animal.

Any dog or cat for which no proof of current rabies vaccination is available and which is exposed to rabies through a bite or through saliva or central nervous system tissue in a fresh open wound or mucous membrane by an animal

believed to be afflicted with rabies shall be confined in a pound, kennel or enclosure approved by the Health Department for a period not to exceed six months at the expense of the owner; however, if this is not feasible, the dog or cat shall be euthanized as provided in §98-26 of this chapter. A rabies vaccination shall be administered prior to release. Inactivated rabies vaccine may be administered at the beginning of confinement. Any dog or cat so bitten or exposed to rabies through saliva or central nervous system tissue in a fresh open wound or mucous membrane with proof of a valid rabies vaccination shall be revaccinated immediately following the bite and shall be confined to the premises of the owner or other site as may be approved by the Health Department, for a period of 45 days.

***State law reference**-Rabid animals, Code of Va., §3.2-6522.*

§98-38. Confinement or destruction of animal which has bitten a person or been exposed to rabies.

A. At the discretion of the Director of Health, any animal which has bitten a person shall be confined under competent observation for at least ten days, unless the animal develops active symptoms of rabies or expires before that time. A seriously injured or sick animal may be humanely euthanized as provided in §98-26 of this chapter and its head sent to the Division of Consolidated Laboratory Services of the Department of General Services, or the local Health Department, for evaluation. The Director of Health shall determine the location and conditions of confinement for such animal.

B. When any potentially rabid animal, other than a dog or cat, exposes or may have exposed a person to rabies through a bite, or through saliva or central nervous system tissue, in a fresh open wound or mucous membrane, that animal shall be confined at the discretion of a local Health Director in a manner approved by the Health Department or humanely euthanized as provided in §98-26 of this chapter and its head sent to the Division of Consolidated Laboratory Services of the Department of General Services or the local Health Department for evaluation.

C. When any animal, other than a dog or cat, is exposed to rabies through a bite, or through saliva or central nervous system tissue, in a fresh open wound or mucous membrane, by an animal believed to be afflicted with rabies, that newly exposed animal shall be confined at the discretion of a local Health Director in a manner approved by the Health Department or humanely euthanized pursuant to §98-26 of this chapter.

***State law reference**-Rabid animals, Code of Va., §3.2-6522.*

ARTICLE VI. STERILIZATION.

§98-39. Sterilization of adopted dogs and cats; enforcement; sterilization agreements; civil penalties.

A. Every new owner of a dog or cat adopted from a releasing agency shall cause to be sterilized the dog or cat pursuant to the agreement required by subsection (b)(2) of this section.

B. A dog or cat shall not be released for adoption from a releasing agency unless:

(1) The animal has already been sterilized; or

(2) The individual adopting the animal signs an agreement to have the animal sterilized by a licensed veterinarian (i) within 30 days of the adoption, if the animal is sexually mature, or (ii) within 30 days after the animal reaches 6 months of age, if the animal is not sexually mature at the time of adoption.

C. A releasing agency may extend for 30 days the date by which a dog or cat must be sterilized on presentation of a written report from a veterinarian stating that the life or health of the adopted animal may be jeopardized by sterilization. In cases involving extenuating circumstances, the veterinarian and the releasing agency may negotiate the terms of an extension of the date by which the animal must be sterilized.

D. Any agreement used by a releasing agency under this section shall contain:

(1) The date of the agreement;
(2) The names, addresses, and signatures of the releasing agency and the new owner;

(3) A description of the dog or cat to be adopted;

(4) The date by which the dog or cat is to be sterilized; and

(5) A statement printed in conspicuous, bold print, that sterilization of the dog or cat is required under this section; that a person who violates this section is subject to a civil penalty; and that the new owner may be compelled to comply with the provisions of this section.

E. Each new owner who signs a sterilization agreement shall, within seven days of the sterilization, cause to be delivered or mailed to the

releasing agency written confirmation signed by the veterinarian who performed the sterilization. The confirmation shall briefly describe the dog or cat; include the new owner's name and address; certify that the sterilization was performed; and specify the date of the procedure. Any person who violates this subsection shall be subject to a civil penalty not to exceed $150.

F. If an adopted dog or cat is lost, stolen or dies before the animal is sterilized and before the date by which the dog or cat is required to be sterilized, the new owner shall, within seven days of the animal's disappearance or death, notify the releasing agency of the animal's disappearance or death. Any person who violates this subsection shall be subject to a civil penalty not to exceed $25.00.

G. This section shall not apply to:

(1) An owner reclaiming his dog or cat from a releasing agency; and

(2) The City pound for animals disposed of by sale or gift to a federal agency, state-supported institution, agency of the Commonwealth, agency of another state, or licensed federal dealer having its principal place of business located within the Commonwealth.

H. A releasing agency may charge and collect from the new owner a deposit before releasing a dog or cat for adoption to ensure sterilization. The deposit charged by the City pound shall be $40.00 per dog and $25.00 per cat. The deposit shall be refunded upon proof that the adopted dog or cat has been sterilized.

I. Nothing in this section shall preclude the sterilization of a sexually immature dog or cat upon the written agreement of the veterinarian, the releasing agency, and the new owner.

J. Upon the petition of an Animal Control Officer, the State Veterinarian or State Veterinarian's representative to the City's district court, the court may order the new owner to take any steps necessary to comply with the requirements of this section. This remedy shall be exclusive of and in addition to any civil penalty which may be imposed under this section.

K. Any person who violates subsection (a), (b), or (d) of this section shall be subject to a civil penalty not to exceed $50.00.

L. Any Animal Control Officer, the State Veterinarian, or State Veterinarian's representative shall be entitled to bring a civil action for any

violation of this section which is subject to a civil penalty. Any civil penalty assessed pursuant to this section shall be paid into the Treasury of the City and used for the purpose of defraying the costs of local animal control, including efforts to promote sterilization of cats and dogs.

~~ARTICLE VI.~~ ARTICLE VII. HOGS, POULTRY, BIRDS; MISCELLANEOUS ITEMS.

§98-~~39.~~ 40. Hogs; stock pens.

Except as provided in §98-40, it shall be unlawful for any person to keep any live hog or pig within the City except for immediate shipment, nor shall any person maintain any stock pen or similar place within 100 yards of any dwelling within the city.

§98-~~40.~~ 41. ~~Permit~~ Permission required for keeping certain animals.

It shall be unlawful for any person to keep any potbellied pig weighing more than 150 pounds, horse, mule, pony, cow, bull, goat or sheep within the City, unless permission to do so is first obtained from City Council. The City Council shall consider whether the keeping of such animals is likely to create a health hazard. When it is proposed to keep one or more horses, mules, ponies or cows within the City, the owner shall submit an application to the City Council setting forth the number of such animals, the location of the stable or barn, and the plans for its construction. If in the opinion of the City Council it is proper to do so, permission may be granted for the construction of such barn or stable in accordance with the plans submitted and for the keeping of such horses, mules, ponies or cows in such barn, subject to any conditions that the Council prescribes. The barn or stable shall be subject to inspection by the Director of the local Health Department or his designee at any hour during the daytime; and the permission granted by the City Council shall be revocable at any time when, in the sole discretion of the City, it is proper to do so.

§98-~~41.~~ 42. Keeping poultry or fowl.

A. It shall be unlawful for any person to own, operate or engage in the business of raising, feeding, keeping and selling any chickens over 15 days old, hens, poultry or fowl of any kind for commercial purposes or to keep more than a total of three of all such poultry or fowl at any house, yard or pen, for any purpose in the City, unless the City Council grants permission to engage in such a commercial business or keep more than three such poultry or fowl. The City Council may impose, as a part of such permission, conditions as to the location, construction and maintenance of pens, yards, or houses where such poultry or fowl are kept and as to the maximum number of poultry and fowl to be kept.

B. This section shall not be construed in any way to define, for the purposes of Chapter 286, Zoning, of this Code, the keeping of poultry and fowl as a permitted primary or accessory use in any district; for which purpose of definition, the only applicable provisions of this Code shall be those contained within Chapter 286, Zoning.

C. It shall be unlawful for any person to permit chickens or other fowl to run at large in the City.

§98-~~42~~. 43. Maintenance of stables, pens and coops.

Each stable, pen, coop or other place within the City where any animal or fowl is kept shall be maintained by the keeper at all times in a clean and sanitary condition and free of offensive odors and solid and liquid waste matter. No enclosure intended primarily for the keeping of any animal or fowl shall be constructed, maintained, or substantially reconstructed on or after December 9, 1987, within 10 feet of any lot line. Any place where an animal or fowl is kept which is found to be in violation of this section shall be deemed to be a public nuisance, subject to abatement by the City at the expense of the person responsible therefor or the owner of the property whereon it exists.

§98-~~43~~. 44. City-designated bird sanctuary; exceptions.

The territory within the corporate limits of the City is hereby designated a bird sanctuary; and it shall be unlawful for any person to kill, trap, hunt, shoot or attempt to shoot or molest in any manner bird or wild fowl or to rob bird or wild fowl nests of their eggs within the City, provided that:

A. If starlings or similar birds are found to be congregating in such numbers in a particular locality within the City that they constitute a nuisance or menace to health or property in the opinion of the proper health authorities of the City, such health authorities shall meet with representatives of the bird club, garden club or humane society, or as many of such clubs as exist in the City, after having given at least three days' actual notice of the time and place of the meeting to the representatives of such clubs.

B. If, as a result of the meeting, no satisfactory alternative is found to abate such nuisance, such birds may be disposed of in such numbers and in such manner as is deemed advisable by an Animal Control Officer.

§98-~~44~~. 45. Control of wild animals.

A. In the control of wild animals, an Animal Control Officer shall use the destruction thereof, or means which may reasonably be expected to result in their destruction, whether by hunting, trapping or otherwise, only as techniques of

last resort; and except in the case of an emergency presenting an imminent threat to the public health, safety and welfare, he shall not do so without the specific prior authorization of the City Manager in each instance.

B. The City Manager shall promulgate, pursuant to this section and in accordance with its standards, a list of approved (humane) techniques and a procedure for response to emergencies.

C. For the purposes of this section, the term "humane techniques" shall not be taken to include the use of steel-jaw leghold traps or chemicals which reasonably can be expected to result in any instance in a slow, painful death.

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

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: July 17, 2009

SUBJ: Final Design and Phasing for the Vo-Tech Center Sports Complex

Council is generally familiar with the three year history of our development planning to improve the 34 acres of City-owned property east of the Vocational-Technical Center. To summarize, the City explored the clearing of the property and the construction of soccer and baseball fields to further expand our recreational offerings. A committee of City Council and School Board Members met numerous times to advance this project. Councilman Freeland and former Councilman Kochuba represented the City. Councilman Green and School Board Member Shortlidge represented the School Division. The City Manager, Director of Recreation and Parks and Superintendent of Schools staffed the project. At one point, a preliminary design for the entire facility had been developed and about $680,000 had been reserved from undesignated fund balance toward initial construction. The committee identified phasing for the construction of the project since its overall price tag probably exceeded $3 million for all of the fields. Unfortunately, declining economic conditions and commitments to the Bruce Avenue Regional Drainage Project and the Boulevard Modernization Project reduced the City's ability to use debt to complete those two projects. We had to transfer the funds reserved for the Sports Complex to meet local obligations on the other two higher priority projects.

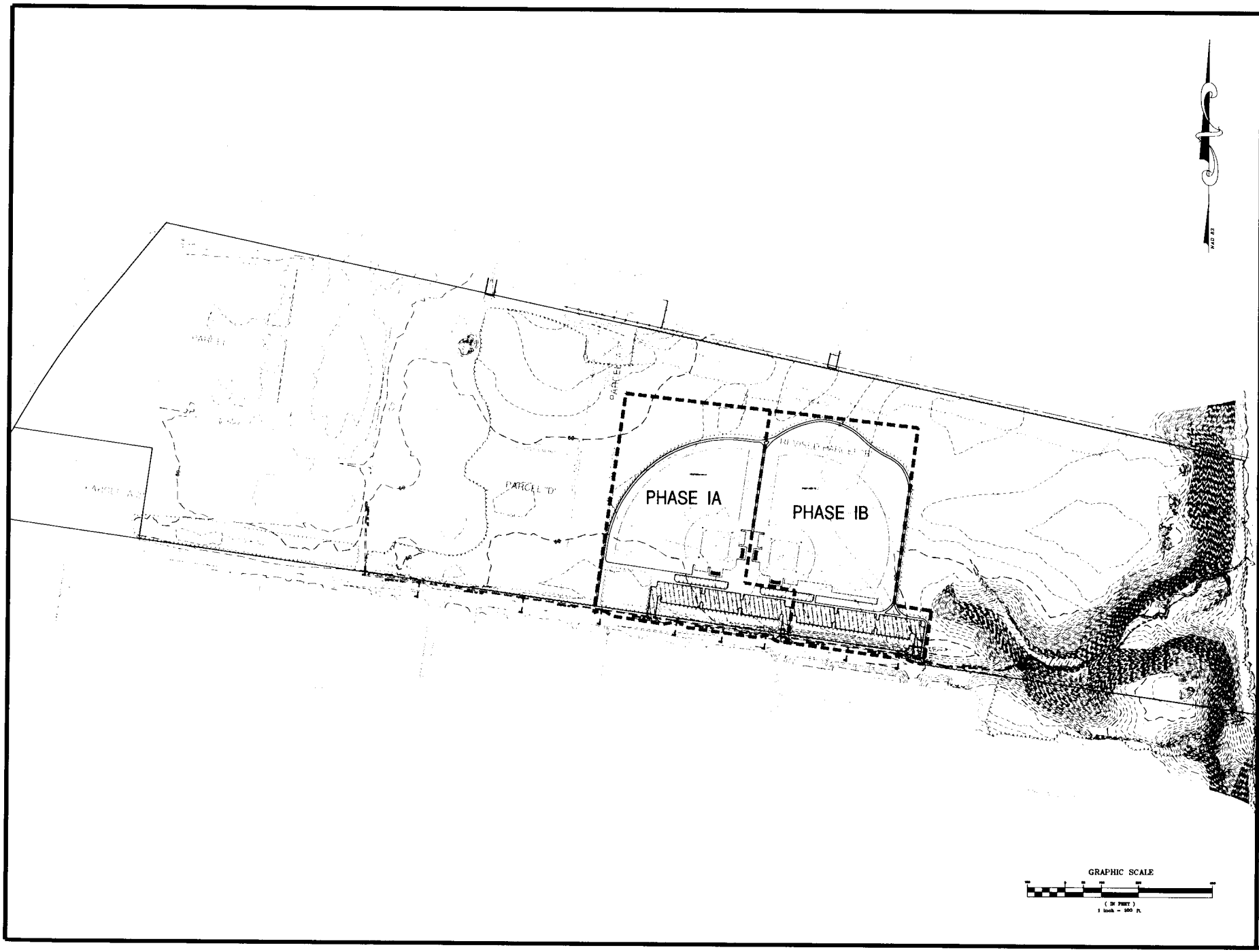
Even after the funds transfer, staff reserved a small amount of money to formalize the design concepts and the phases of construction. We contracted with Townes Engineering for the initial survey and topographic work. We then described the phases of construction to the engineers so they could prepare exhibits. A brief portion of the work session of July 21, 2009, has been scheduled to present the exhibits on the construction phasing and seek City Council's approval. We are simply looking for City Council to endorse the phased development of the property as originally recommended by the committee. Once this act is completed, staff will put these exhibits "on the shelf" for use in the future. Perhaps economic conditions will improve and the City can then begin to look toward local funding commitments. These exhibits will also assist private fund raising efforts should they be initiated in the future. All of the efforts to-date by staff and the committee will not be lost due to the loss of funding options. Once these projects are restarted in the future, staff will have exhibits to show the public and any future interested parties on the City's final plans for the development of this property.

The Director of Recreation and Parks and the City Manager will offer an initial overview of the attached exhibits. It is expected that Councilman Freeland and Councilman Green will also offer their comments. Staff would just like a work session endorsement of this concept so that in the future, we can say this is the City's plan.

If any questions arise prior to the work session of July 21st, please do not hesitate to contact me.

Attachment

cc: Hugh P. Fisher, III, City Attorney
William E. Johnson, Director of Finance
Sean E. Gleason, Director of Recreation & Parks
William E. Henley, Director of Public Works & Engineering



towres
consulting engineers, land planners, and land surveyors
2453 boulevard
colonial heights, va 23834
telephone: 804.520.9015
facsimile: 804.520.9016
email: cstownes@townespc.com

CHARLES C. TOWNES, II
Lic. No.39518
11/17/2008
PROFESSIONAL ENGINEER

CITY OF COLONIAL HEIGHTS SPORTS COMPLEX

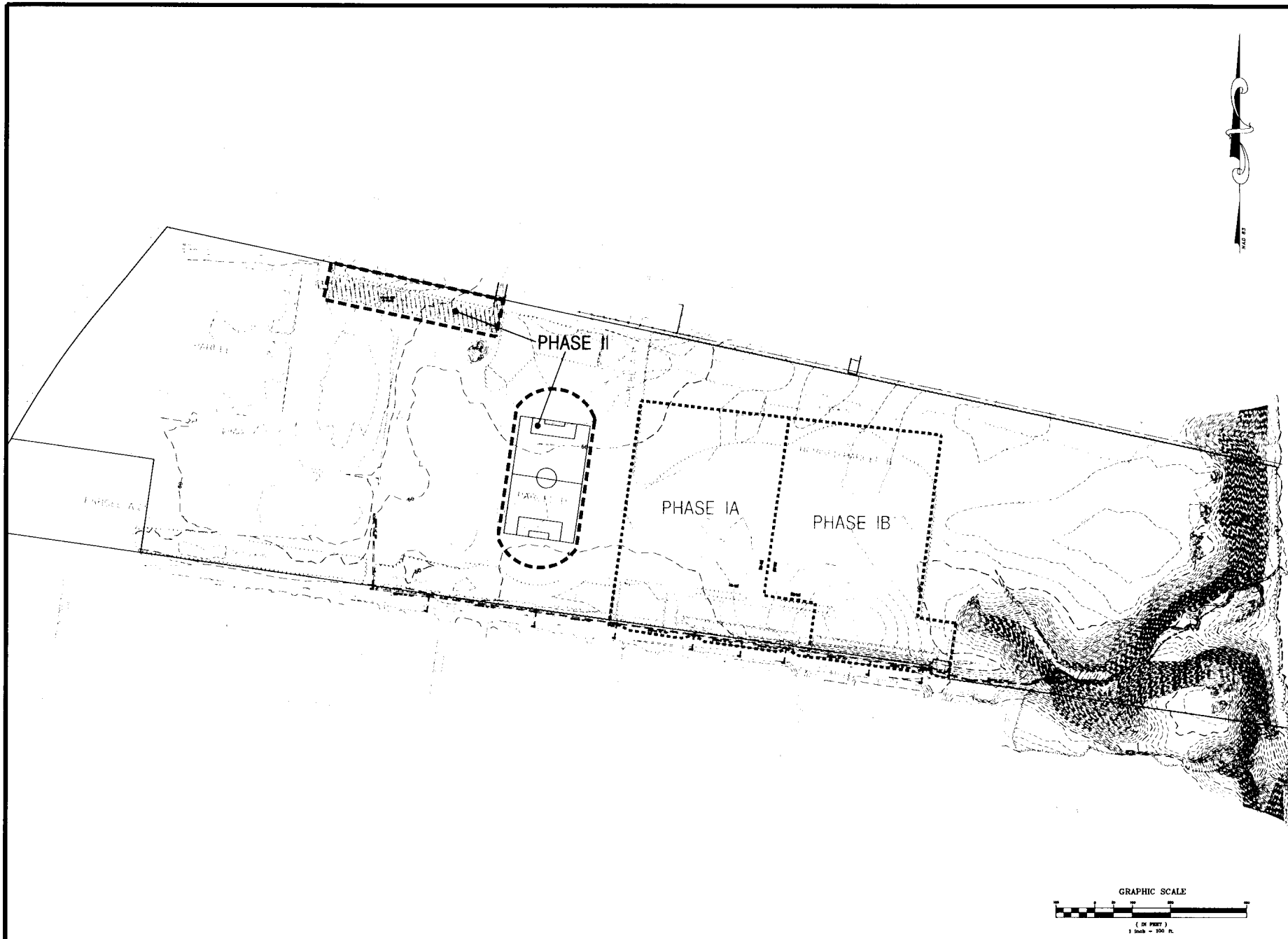
COLONIAL HEIGHTS, VIRGINIA

PHASE 1 LAYOUT

DATE:
SEPTEMBER 14, 2008
SCALE:
1" = 100'
PROJECT NUMBER:
2008027
DESIGN TEAM:
CHARLES C. TOWNES, II, P.E., L.S.
PROJECT MANAGER
W.P.L.L.
DRAWN BY:
CHECKED BY:
REVISIONS:

REV.	DATE	ITEM

SHEET
1 OF 1



towne s
consulting engineers, land planners, and land surveyors
2463 boulevard
colonial heights, va 23834
telephone: 804.520.9515
facsimile: 804.520.9595
email: cottownes@townespc.com

COMMONWEALTH OF VIRGINIA
CHARLES C. TOWNES, III
Lic. No.39518
11/17/2008
PROFESSIONAL ENGINEER

CITY OF COLONIAL HEIGHTS SPORTS COMPLEX

COLONIAL HEIGHTS, VIRGINIA

PHASE II LAYOUT

DATE:
SEPTEMBER 1st, 2008

SCALE:
1" = 100'

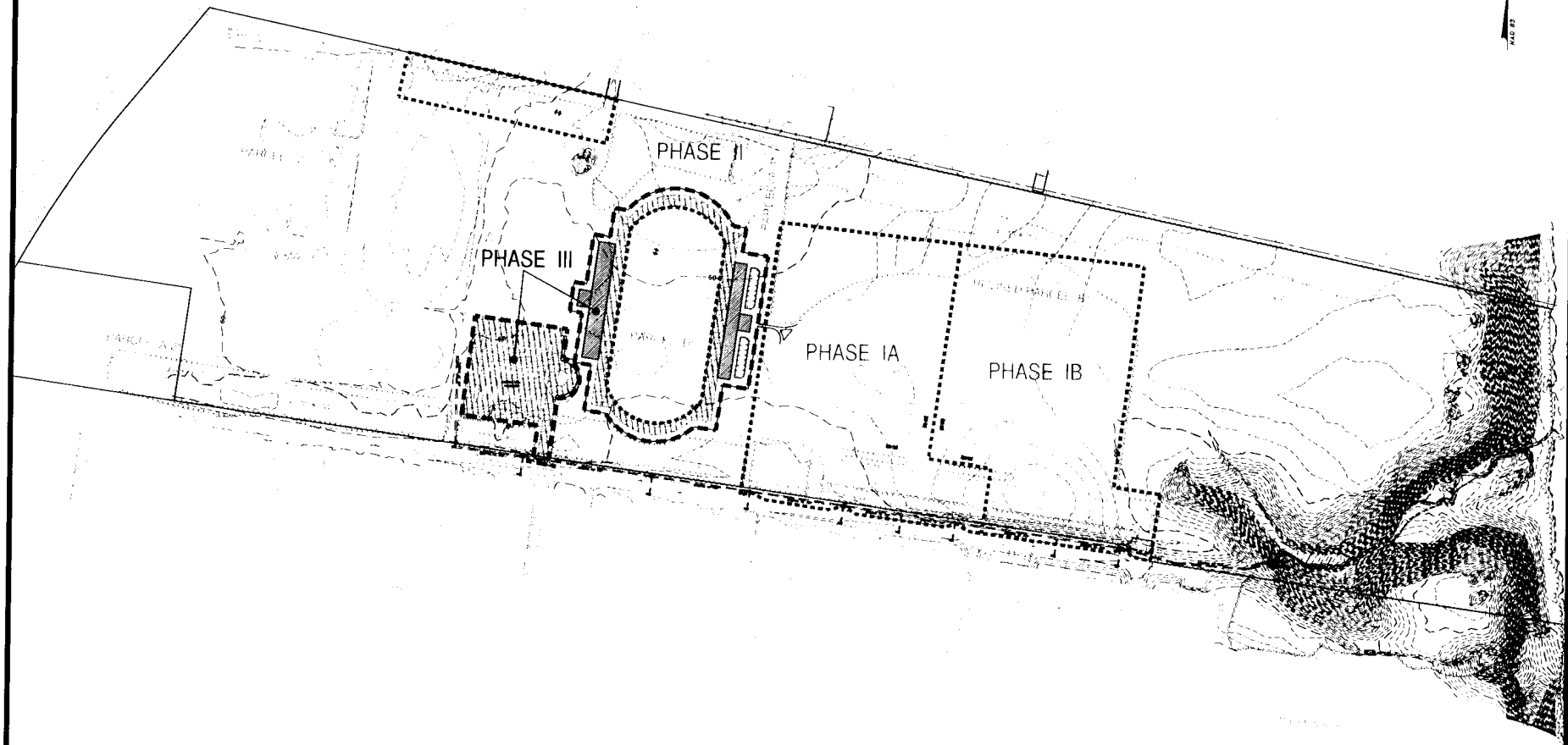
PROJECT NUMBER:
2008027

DESIGN TEAM:
CHARLES C. TOWNES, III, P.E., L.S.
PROJECT MANAGER
W.R.L.
DRAWN BY:
CHECKED BY:

REVISIONS:

REV.	DATE	ITEM

SHEET
1 OF 1



GRAPHIC SCALE

(IN FEET)

1 inch = 100 ft.

townes
consulting engineers, land planners, and land surveyors
2463 boulevard
colonial heights, va 23834
telephone: 804.520.9015
facsimile: 804.520.9016
email: cctownes@townespc.com

COMMONWEALTH OF VIRGINIA
CHARLES C. TOWNES, II
Lic. No.39516
11/17/2008
PROFESSIONAL ENGINEER

CITY OF COLONIAL HEIGHTS SPORTS COMPLEX

COLONIAL HEIGHTS, VIRGINIA

PHASE III LAYOUT

DATE: SEPTEMBER 14, 2008

SCALE: 1" = 100'

PROJECT NUMBER: 2008027

DESIGN TEAM:

CHARLES C. TOWNES II P.E., L.S.
PROJECT MANAGER

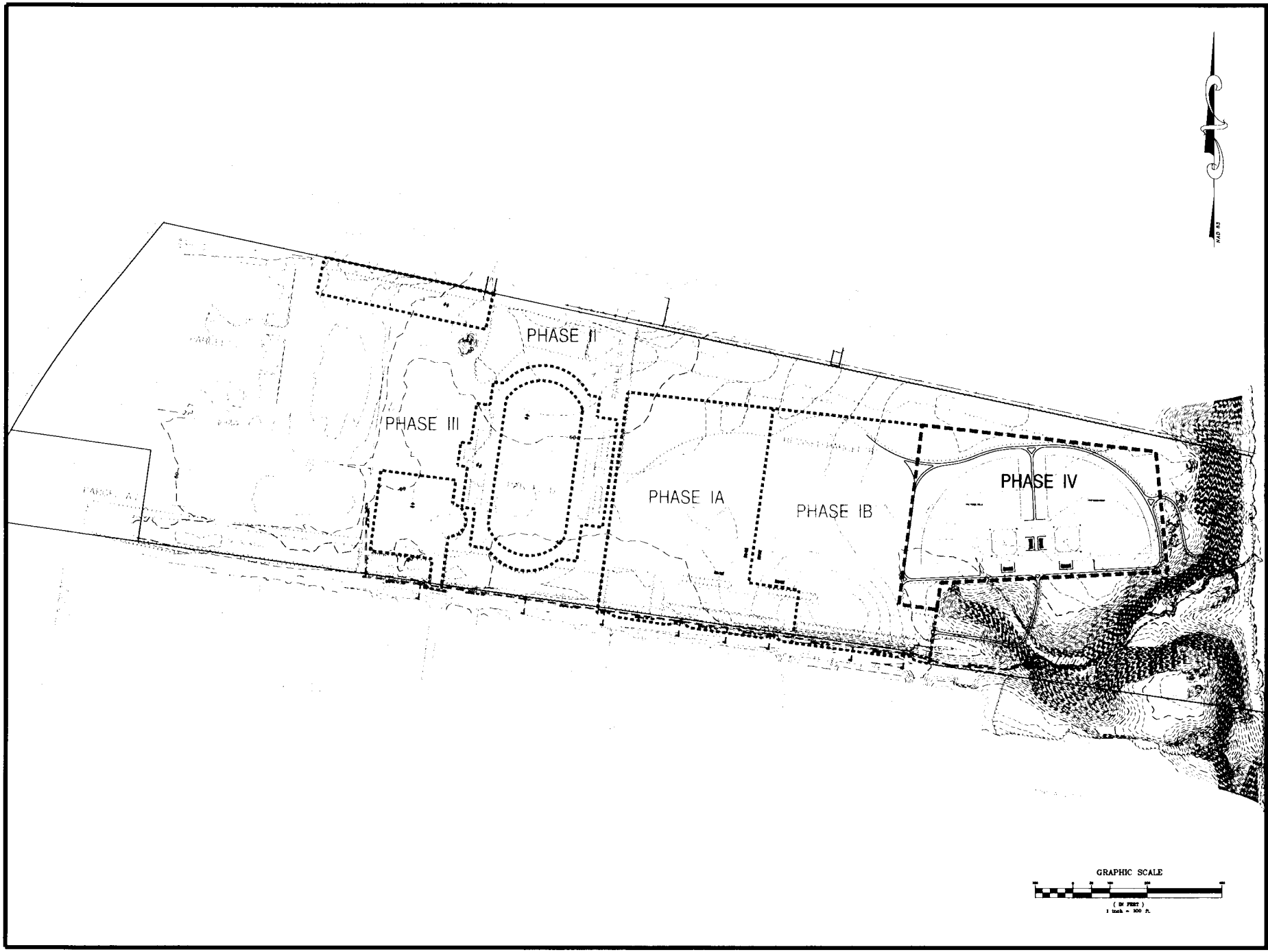
W.R.L.
DRAWN BY:

CHECKED BY:

REVISIONS:

REV	DATE	ITEM

SHEET
1 OF 1



2453 boulevard
colonial heights, va 23834
telephone: 804.520.9295
facsimile: 804.520.9515
email: cotownes@townespc.com
townes
consulting engineers, land planners, and land surveyors

COMMONWEALTH OF VIRGINIA
CHARLES C. TOWNES, II
Lic. No.39518
11/17/2008
PROFESSIONAL ENGINEER

CITY OF COLONIAL HEIGHTS SPORTS COMPLEX

COLONIAL HEIGHTS, VIRGINIA

PHASE IV LAYOUT

DATE:
SEPTEMBER 1st, 2008

SCALE:
1" = 100'

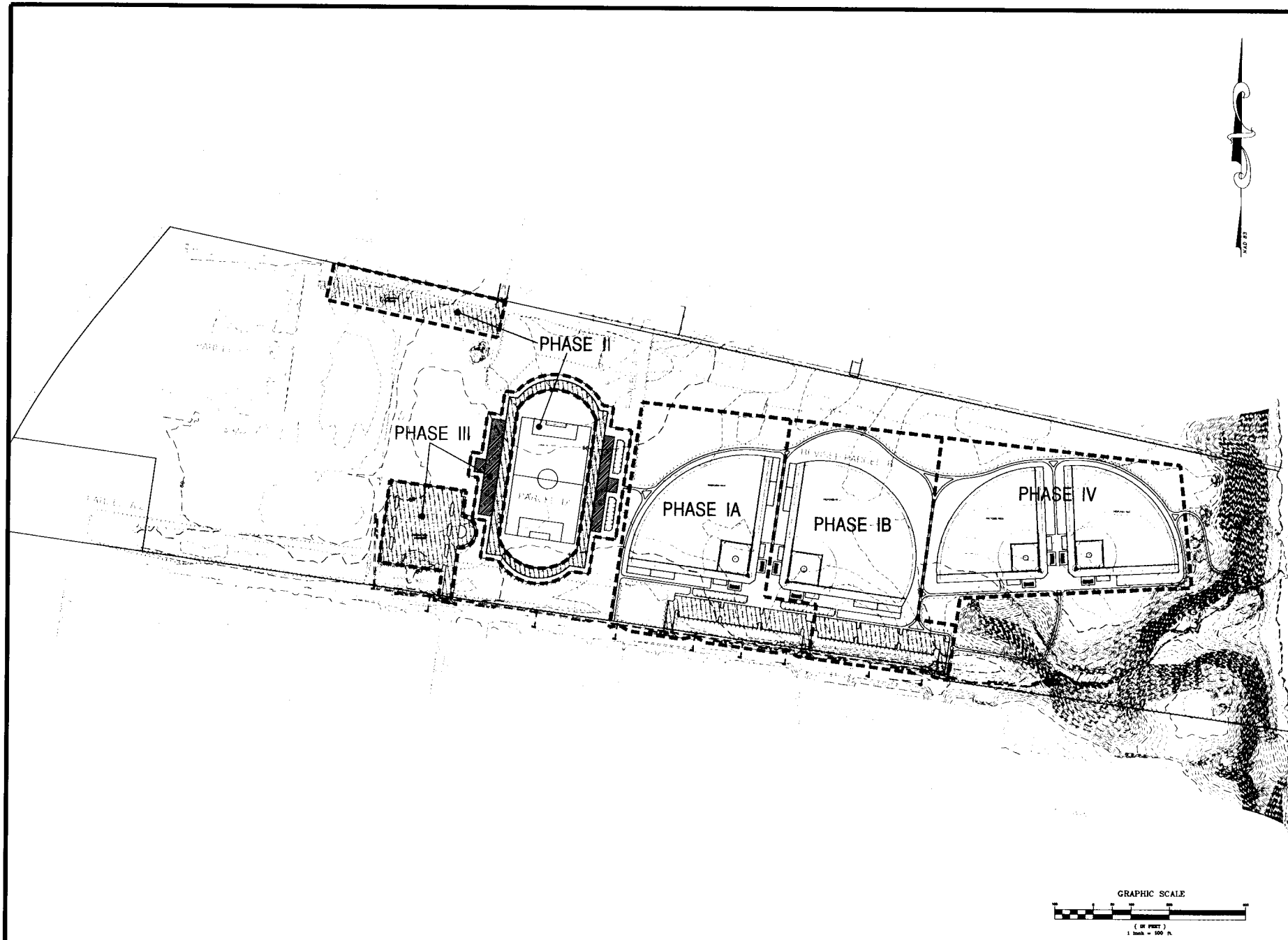
PROJECT NUMBER:
7080021

DESIGN TEAM:
CHARLES C. TOWNES, II P.E., L.S.
PROJECT MANAGER
W.R.L.
DRAWN BY:
CHECKED BY:

REVISIONS:

REV	DATE	ITEM

SHEET
1 OF 1



2463 boulevard
colonial heights, va 23834
telephone: 804.520.9015
facsimile: 804.520.9016
email: cctowns@townespc.com
townes
consulting engineers, land planners, and land surveyors

COMMONWEALTH OF VIRGINIA
CHARLES C. TOWNES, II
Lic. No.39518
11/17/2008
PROFESSIONAL ENGINEER

CITY OF COLONIAL HEIGHTS SPORTS COMPLEX

COLONIAL HEIGHTS, VIRGINIA

MASTER PLAN

DATE:
SEPTEMBER 14, 2008

SCALE:
1" = 100'

PROJECT NUMBER:
2008027

DESIGN TEAM:
CHARLES C. TOWNES II, P.E., L.S.
PROJECT MANAGER
W.P.S.
DRAWN BY:
CHECKED BY:

REVISIONS:

REV.	DATE	ITEM

SHEET
1 OF 1

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: July 17, 2009

SUBJ: Driveway Construction Waiver Process

During the Council Meeting of June 9, 2009, Councilwoman Luck asked staff to consider a waiver process for the construction, or reconstruction, of driveways – specifically driveway entrances, in residential areas. Council is generally aware that the City adopts VDOT's standards for streets and driveway entrances. One of these standards is classified as a CG9-D which is a seamless driveway entrance from the right-of-way line through the gutter pan. If any work is required in the public right-of-way, our standards require the installation of a CG9-D. On concrete driveways, this is not an issue. The seamless driveway entrance matches nicely with the rest of the concrete. However, in decorative or aggregate driveways, brick driveways and even asphalt driveways, the installation of this seamless driveway entrance and gutter pan looks different from the rest of the driveway. Mrs. Luck requested that staff look into this and see if there were any options.

The attached report from the Director of Public Works and Engineering outlines an administrative waiver process that will address Mrs. Luck's concerns. In effect, as long as the driveway replacement does not get into the curb cut replacement or gutter pan, a simple administrative waiver by the Department of Public Works can be issued to the applicant. That way, any decorative type driveway can extend beyond the private property line through the right-of-way, but would end at the curb line. The CG9-D assures a seamless standard specification in the right-of-way. It is the best thing if the City were to look to maintain everything in the right-of-way. However, most homeowners do not realize that the City owns a slice of their front yard including the property on which the end of their driveway is located. Therefore, homeowners do not look to the City to maintain that portion of their driveway that crosses the City right-of-way, but not the curb line. The waiver process would simply show that the homeowner is responsible for this maintenance, which is what most people expect anyway. In so doing, any decorative concrete or brick along with asphalt would not need to replace the driveway entrance with the CG9-D.

The City Manager endorses the process as outlined by the Director of Public Works and Engineering. A brief discussion of this is scheduled for the work session of July 21, 2009. If City Council agrees, a simple endorsement motion on the record will suffice for staff implementation. 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
William E. Henley, Director of Public Works & Engineering

CITY OF COLONIAL HEIGHTS

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

Department of Public Works
Staff Report to Council

Date of Council Meeting: July 21, 2009

Date of Report: July 16, 2009

Item Title: Review of Proposed Revisions to Rules, Regulations and Standards Governing the Construction or Reconstruction of Driveway Entrances

---

Summary:

The Engineering Division of the Department of Public Works (Division) administers requests for work in the public right of way including driveway construction or reconstruction through a permit process. City Code enables the Division to promulgate rules and regulations regarding disturbances in the public right-of-way and to promulgate mandatory standards for performance of the work therein.

The Division proposes to implement revisions to administrative rules, regulations and street standards governing the administration, design and construction of driveway connections to the city street system. It is anticipated that the revisions will be included in future promulgation of access management regulations to reflect recent and upcoming changes in state law and regulations. The revisions include the following:

- Establishing and formalizing cost responsibilities for construction and reconstruction of private driveway entrances;
- Updating the geometric standards for driveway entrances to meet the requirements of the Americans with Disabilities Act and the Virginia Department of Transportation (VDOT);
- Adding provisions to allow replacement-in-kind of existing residential driveways without sidewalks; and
- Establishing procedures for exceptions or variances in the design and construction of private (residential) driveways to provide limited flexibility based on the individual preferences of property owners.

Background:

Section 247.22 of the City Code (Code) requires any person wishing to disturb (excavate, move or remove materials) in the public right-of-way to first obtain a permit.

Section 247.23A of the Code authorizes the City Engineer to administer an application process for issuance of right-of-way permits and to implement procedures to ensure that construction conforms to standards and specifications.

Section 247.23B of the Code enables the Administration to promulgate rules and regulations regarding disturbances in the public right-of-way and to promulgate mandatory standards for performance of the work.

Section 250.34 of the Code stipulates that the construction of streets, alleys, curb and gutters, sidewalks, etc. and other related improvements required in subdivisions shall conform to the Virginia Department of Highway standards and specifications.

Section 286-16.11 of the Code provides that construction work materials and methods contained in all plan of development cases shall conform to the City Design and Construction Standards and Specifications as promulgated by the City Engineer.

Adoption and implementation by localities of comprehensive DOT standards fosters efficiencies, uniformity and consistency in the administration of improvements in the public right-of-way. Accordingly, the Engineering Division has promulgated the latest editions of VDOT standards and specifications as the City Design Standards and Specifications. Revisions to the standards and specifications are incorporated when published by VDOT.

Driveway entrances are that portion of a driveway between the edge of the existing pavement or curb and the right-of-way line or private property line. VDOT standards are limited to two main driveway entrance configurations, one for private (residential) driveway entrances and one for commercial (business and multi-family) driveways.

Existing private driveway entrances in the City, especially in older subdivisions, take many different forms reflecting different standards in use at different times in the past. See Figures 1 and 2 on page 4 for photographs of a typical private driveway entrance before and after reconstruction. Some property owners have made application to replace their paved driveways "in-kind", construct non-standard configurations or to install different types of surface finishes.

The Engineering Division issues permits for the construction or reconstruction of 20-30 private driveway entrances annually.

Policy Implications:

Private driveway entrances are used for the exclusive benefit of the occupants of abutting properties. Therefore, it is customary for property owners to be solely responsible for the installation and maintenance of driveway entrances including the costs thereof. Property owners are required to obtain a permit for construction or the reconstruction of a driveway entrance and to install or cause to be installed the private entrance in accordance with City policies and engineering standards.

The Division's policies and standards stipulate mandatory cost and performance responsibilities of property owners including:

- Installation of the standard concrete entrance gutter, unless an exception or variance is approved;
- For curbed streets without paved sidewalks, installation of curb and/or gutter and a paved surface from the back of curb to the right-of-way line;
- For curbed streets with paved sidewalks, installation of curb and/or gutter, paved sidewalk meeting ADA requirements and standard concrete entrance gutter;

- For uncurbed streets, grading and installation of a driveway culvert on ditch sections of roads and streets and installation of a paved driveway surface from the edge of the pavement to the right-of-way line; and
- Maintenance of the driveway entrance from the edge of pavement or back of curb to the right-of-way line.

Cost and performance responsibilities of property owners for approved exceptions or variances include:

- Replacement in-kind of paved driveway entrances without paved sidewalks from the edge of pavement or back of curb (outermost vertical surface) to the right-of-way line; and
- Installation of aggregate or stamped surface finishes of the paved surface from the edge of pavement or back of curb (outermost vertical surface) to the right of way line.

Fiscal Impact:

The cost of installing or replacing a standard private concrete driveway entrance is often included in the cost of replacing an entire driveway. However, using data from capital improvement projects, the average cost of a standard single concrete driveway entrance is less than $1,000 per installation.

Replacement in-kind of paved driveways mitigates the cost of driveway construction while installation of aggregate or stamped surface finishes can increase the cost somewhat.

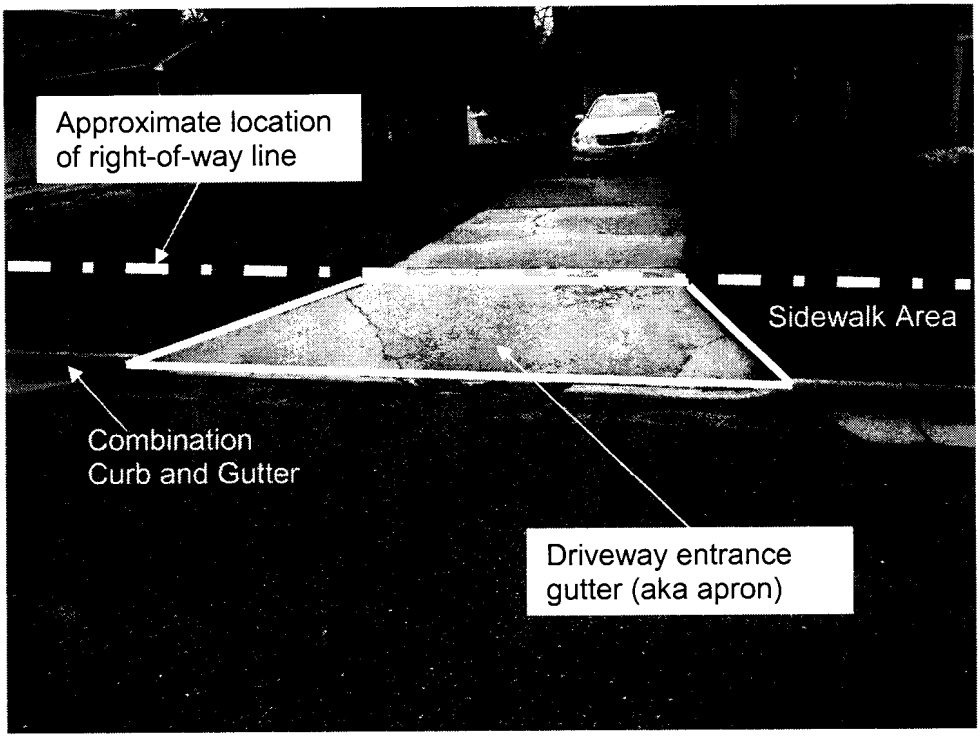


Figure 1 - Before reconstruction of private driveway without paved sidewalks

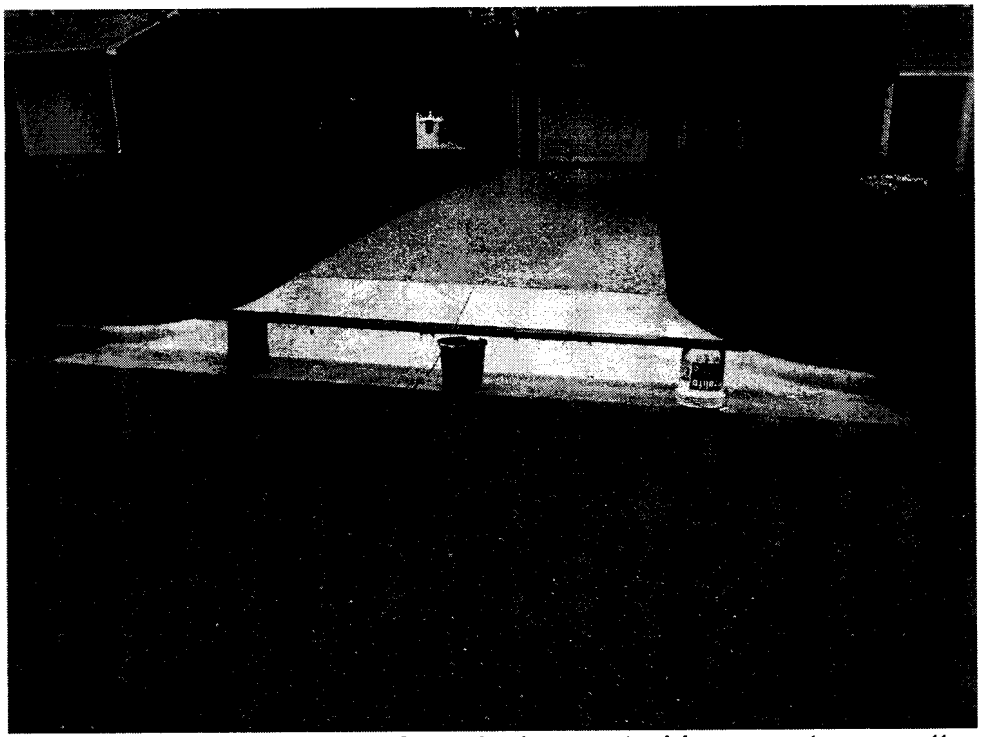


Figure 2 - After construction of standard concrete driveway entrance gutter

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: July 17, 2009

SUBJ: Initial Discussion of Design/Build and the Public-Private Educational Facilities and Infrastructure Act (PPEA) and the Property at 231 Chesterfield Avenue

During the Council Meeting of July 14, 2009, City Council heard the final presentation from the Reuse Committee on the property at 231 Chesterfield Avenue, the former location of the Colonial Heights Baptist Church. Although City Council has a great deal of additional discussion on the final report and its recommendations, Council has scheduled initial discussion of two recommendations from the Committee for its work session of July 21, 2009. The Committee has recommended a design/build approach to the conversion of the former church into the City Courthouse. In summary, design/build is a procurement process where the client specifies what it wants in a building and the contractors propose a solution to the client's needs, including its design. In effect, architects and general contractors partner to propose a solution based on the specified needs.

In addition, the Public-Private Educational Facilities and Infrastructure Act (PPEA) provides local governments, and other extensions of the Commonwealth, authority to accept both solicited and unsolicited proposals to identify solutions to public facilities needs. In a process that is extensively defined in the State Code, a design/build approach is also used. In effect, contractors make proposals to provide a needed facility based on what is specified by a locality. This is different from a traditional procurement and building approach where the project goes through an extensive design phase and then the design plans are publicly bid for construction. The PPEA is reported to save time and expense when it comes to the construction of public facilities.

Council has scheduled an initial discussion of design/build and the PPEA for its work session of July 21, 2009. Staff has attached some informational materials gathered on these subjects to assist Council in preparation for this discussion. The City Attorney, City Manager, and City Engineer will also be prepared to assist Council with this discussion.

If any questions arise prior to the work session discussion, 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

Public-private partnerships: Virginia's alternative procurement tool

How Winchester saved time and money on a new parking garage

By KATHY MOORE

ACROSS VIRGINIA, local governments are being challenged to operate more efficiently and cost-effectively. Public needs are rising, while local revenues continue to slide or remain stagnant. Powerful economic and social forces are influencing the way business is done, and as a result, procurement practices have evolved to reflect new economic realities.

Gov. Tim Kaine encourages the private sector and local governments to think strategically about how they can serve citizens better. Public-private partnerships (PPP) are one way in which private sector expertise can be brought to bear on public projects. PPP is simply an additional tool in the procurement toolbox; it is not a panacea for local governments. However, it is increasingly clear that given the right qualifying project and an experienced, committed partner – PPP can yield compelling results.

What is a public-private partnership (PPP)?

In 2002, Virginia formally enacted the Public-Private Education Facilities and Infrastructure Act (PPEA.) The statute creates a way for the public and private sector to work together as partners to meet the needs of both parties. Technically, the act grants responsible public entities the authority to create public-private partnerships for the development of needed projects. The public entity must determine that private involvement may provide the project to the public in a timely or cost-effective fashion. For qualifying projects, PPEA allows private entities to "acquire, design, construct, improve, renovate, expand, equip, maintain or operate" public facilities.

Interestingly, Virginia is one of just a handful of states that offer public-private partnership model procedures. This non-traditional procurement method has multiple names: PPEA, PPP and P3 are most common.

How does it work?

The advantages of the public-private partnership arrangement over traditional procurement methods are that PPEA provides more financing flexibility, project costs may be lower, projects may be faster to implement, and PPEA's design/build option may offer a more collaborative process.

Essentially, the private sector can submit unsolicited proposals to any agency, institution, or locality in the Commonwealth. Prior to soliciting or accepting an unsolicited PPEA proposal, the public reviewing agency must adopt local policy guidelines. It is up to the public entity to determine if there is a demonstrated need for the project, whether the public-private partnership offers an effective way to put the project in place, and whether to reject the proposal or accept it for further review and consideration. To reduce frivolous unsolicited proposals, the public agency charges a hefty review fee (a minimum of $5,000 up to a maximum of $50,000.)

Proposers follow a two-step process. In the initial phase, called the Conceptual Phase, the public entity reviews proposals for:

- Qualifications and experience;
- project characteristics;
- project financing;
- anticipated public support or opposition;
- project benefit and compatibility;
- any additional relevant information.

If a proposal is approved for further consideration, the public entity requests the proposer to provide a more detailed proposal, called the Detailed Phase. The same six categories are reviewed but in much greater detail, in order to select one or more proposers to move up to a Comprehensive Agreement.

George Washington Autopark project team

The City of Winchester's Parking Authority partnered with Shockey-WPA, LLC, whose member company is Howard Shockey & Sons, Inc., one of Virginia's largest and oldest building contractors. Shockey specializes in construction management, preconstruction services, design build, public-private partnerships, and general contracting. Other team members included Shockey Precast, Design Concepts, Inc. and Blue Ridge Design.

Which projects qualify?

Most types of public ventures can qualify. The statute states that "any facility or land improvement that meets a public purpose and is developed or operated by or for any public entity." The majority of Virginia's PPEA projects fall into the following categories:

- Education facilities (public school and higher education);

• infrastructure improvements;
• public safety buildings;
• utility, telecommunications, and information technology;
• recreational facilities.

It's important to keep in mind that there must be a genuine need for the project. The public body must determine that this method is "likely to be advantageous" because of the "probable scope, complexity or urgency of the project" or "risk sharing, added value, an increase in funding or economic benefit from the project that would not otherwise be available."

Win-win relationship

The public and private sectors were quick to recognize the win-win potential of a PPP project. The statute provides mutual benefits for all parties. Not only does it streamline procurement (by removing the lengthy public bidding process,) but public facilities can often be designed, developed and placed in service more efficiently – much as they would be in the private sector.

It comes as no surprise that communities around the state are turning to public-private partnerships to help address their local infrastructure needs. Here is Winchester's story.

Case study: Winchester's new parking garage

The 530-space George Washington Autopark is a fully automated parking deck located in the newly revitalized Kent corridor area. It is the city's fourth parking garage, and its first to be built using the PPEA process.

The Winchester Parking Authority recently completed this seven-story parking structure through a public-private partnership or PPEA agreement with Shockey-WPA, LLC (whose member company is Howard Shockey & Sons, Inc. one of the state's oldest and largest general contractors.)

Background and timeline

Shockey submitted an unsolicited PPEA proposal to Winchester's Parking Authority to build a parking deck in 2005. In 2007, the parking authority selected Howard Shockey & Sons to enter into a Comprehensive Agreement for design/build services. In 2008, construction began.

"We were certainly interested when we received Shockey's proposal," said Jim Deskins, Winchester's director of economic redevelopment. "With a traditional procurement process, there is an upfront design cost. For us to go out and hire a team, it can really get time consuming and costly."

Deskins recalled that prior to receipt of Shockey's unsolicited proposal, Winchester had authorized a $9 million bond issue to pay for a future parking structure, with the goal of providing at least 450 additional parking spaces. "We planned to

The 530-space, fully automated George Washington Autopark deck in Winchester was built using a public-private partnership. Photo by Eric Taylor Photography.

budget $9 million, but there are so many variables with the traditional procurement method, that we don't know what the final price would have been," Deskins said.

With the PPEA, Shockey offered a guaranteed price with no possibility of change orders. Unlike with a traditional design-bid-build, the city could take advantage of a design/build arrangement. The design/build process is inherently efficient as it reduces the delivery schedule by overlapping the design phase and construction phase. It also fosters a more collaborative process; contractor Howard Shockey & Sons could offer insight into innovative construction techniques very early on. Ned Cleland, president of Blue Ridge Design (the structural engineer on the project) recalled, "There was a lot of interaction between the city, the stakeholders and the building team. As partners, we all understood project goals and objectives and we pledged to deliver the best result for the best value."

Was it a success? The numbers speak for themselves. By using a PPEA agreement instead of a traditional procurement method, Winchester was able to put the project on a fast track, build more spaces, and reduce costs. Although $9 million had been budgeted, Shockey delivered the project for just $7.68 million, with 80 extra parking spaces.

WINCHESTER STAR

Use of a PPEA agreement put the project on a fast track and saved the city money.

Project statistics

The 530-space garage has five main parking levels, with additional parking on the basement and roof level. It is located on city-owned land between the Frederick County Office Building and the recently rehabilitated George Washington Hotel. At least 90 spaces are reserved for county government employees, who walk across a sky bridge from the fourth level of the parking deck to the county government building.

Approximately 20 spaces are reserved for The George Washington Hotel. The remainder of the space is for daily users.

The garage is fully automated with two pay stations, and there is no attendant. The city hopes to recoup the construction cost of the garage over the next 30 years, using revenue produced by the garage itself. The building also provides 1,000 square feet of office space on street level for three city departments: the Old Town Development Board, the Parking Authority and the Office of Economic Redevelopment.

PPP encourages innovative construction techniques

"We were always looking for creative solutions," said Jeff Boehm, vice president of Howard Shockey & Sons, Inc. "Our design and construction team worked collaboratively with the city to deliver a great value. We all recognized this was a pivotal project, one that could serve as a further catalyst for the area's revitalization."

The PPP arrangement allowed Shockey to come to the table as a partner rather than as a bidder (when it is usually too late to recommend improvements.)

"PPEA gave us the flexibility to better meet Winchester's needs through frank discussion of innovative construction solutions," Boehm said.

For example, Howard Shockey utilized a precast construction technique to embed the façade. Concrete was poured into a fiberglass form liner that was already lined with thin set bricks. In this way, the cladding for the façade went up as the precast panels were erected. Two colors of precast were used to respond to Winchester's architectural context; a buff color mimics mortar bonds between bricks, and on the lower floors a limestone color was used to produce the appearance of a stone faced foundation. This approach provided a cost effective way for the

Examples of recent PPP projects around the state

City of Winchester – new parking deck

City of Fredericksburg – wastewater treatment facility improvements

Town of Christiansburg – new aquatic center

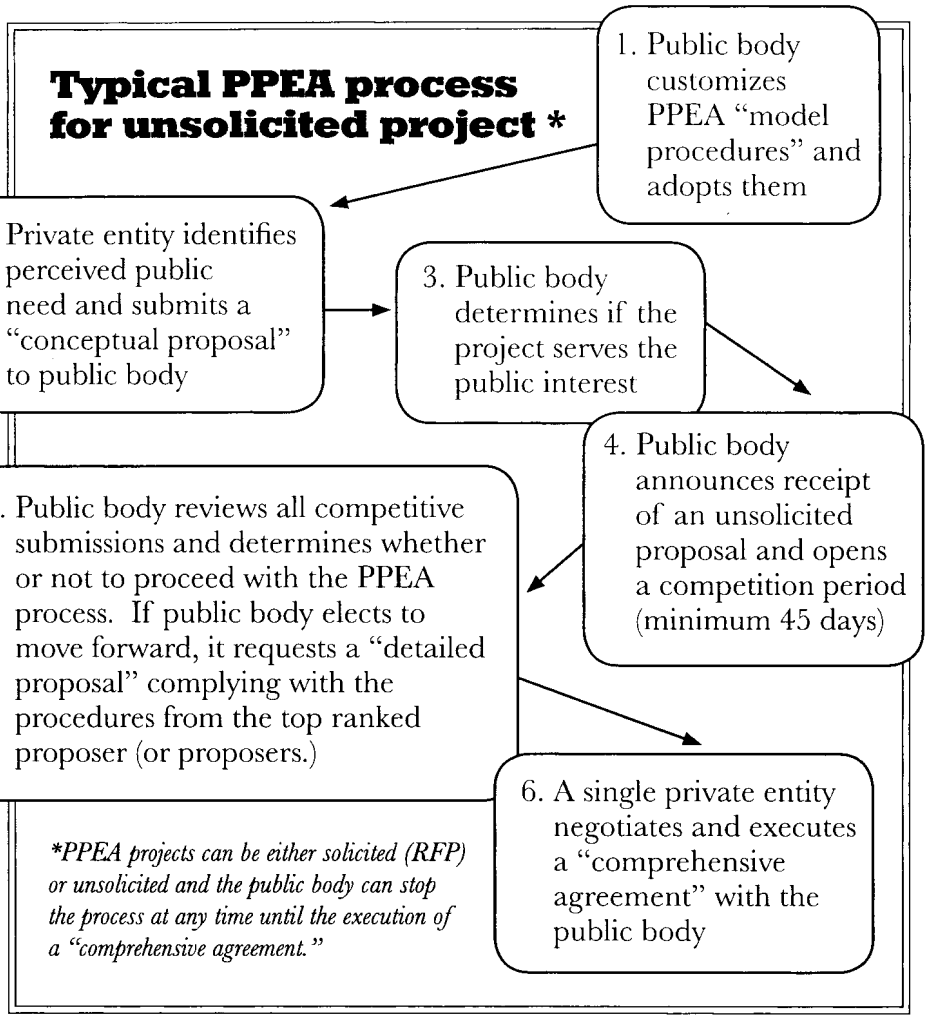
City of Manassas Park – new parks and recreation facility

City of Richmond – Richmond Performing Arts Center

City of Roanoke – new police academy

City of Chesapeake – new community services board building

City of Falls Church Public Schools – new middle school



garage's exterior appearance to echo the architectural aesthetic of Winchester's historic district. "Preserving and extending the integrity of the historic downtown district had been a goal since day one," Boehm said.

A second innovative construction process involved the placement of carbon fiber directly into the precast decking units. Just as carbon fiber is used to lighten aircraft frames, it was used to lighten the concrete frame of the parking deck. Because the carbon fiber is relatively flexible, it was placed in the concrete by machine, saving labor cost and effort.

Over time, Winchester's garage should require less maintenance than other parking garages because Shockey made sure the floor of the parking deck is composed of parts that do not rust. While the bulk of the reinforcing is made up of carbon fiber, any metal not fully embedded in the concrete is stainless steel. Both the carbon fiber and the stainless steel are non-corrosive, thus eliminating what is often a parking garage owner's biggest maintenance headache – problems relating to corrosion.

"Backing up to a macro level, Winchester's new garage does something even more significant," Cleland said. "It doesn't look like a conventional parking structure filled with horizontal beams and vertical columns. Instead, this parking deck was designed to look like an old industrial building, with walls and punched openings for windows." Via the partnership between the city and the design/build team, project members worked together to achieve this effect. "We were all in together; our motivation wasn't to provide the lowest bid – our motivation was to deliver the best project possible for the best value. And that's what we did," Cleland said.

Lessons learned: Pick your partner carefully

If a locality elects to move forward with a PPP project, it's important to remember that it is entering a long-term relationship. It is critical to select a partner wisely. The public entity must verify the proposer's experience, longevity and financial capacity. A reviewing agency must be very comfortable with the proposer's reputation for product and delivery.

As for his partner of choice, Jim Deskins knew exactly what he was getting. "Shockey has been in business since 1896, they have a great reputation, and they are very familiar with PPEA projects," he said. The Shockey Companies' long track record with parking garage construction (they've been involved in more than 100 parking facilities) also helped.

"I think it boils down to experience, good communication and trust," said Deskins when asked about choosing a partner.

Conclusion

By adopting PPEA legislation at the local level (as the Winchester Parking Authority did back in 2003) communities can proactively take a step towards expanding their procurement toolkit.

"Via our partnership with Howard Shockey & Sons, Winchester was able to accomplish more than if we were acting alone," Deskins said. "Not only did we get our fourth downtown garage built ahead of schedule, we also realized valuable cost savings."

The PPEA legislation is still fairly new. There is no formal tracking system, though experts suggest that upwards of 100 projects across the state have already been financed using PPEA or PPP model guidelines. While the trend towards public-private partnerships seems to be getting hotter, it is still not a good fit for every project. "PPEA is not *the* answer, but *an* answer," said some of the people most familiar with the process.

It's probably a safe bet, given the success of recent PPP projects such as Winchester's new garage, that Virginia may be heading toward a new era of public-private cooperative agreements.

About the author
Kathy Moore writes about economic development, design and revitalization in Virginia's historic communities.

Public-Private Education Facilities and Infrastructure Act of 2002, as Amended

Commonwealth of Virginia

Guidelines and Procedures

Revised October 1, 2006

Table of Contents

I. INTRODUCTION

The Public-Private Education Facilities and Infrastructure Act of 2002, as amended[1] (the Act, or PPEA) is the legislative framework enabling departments, agencies and institutions of the Commonwealth of Virginia, as well as local governments and certain other public bodies, to enter agreements authorizing private entities (sometimes referred to herein as "Private Partner" or "Contractor") to develop and/or operate qualifying projects as defined in the Act. The guidelines and procedures presented in this document were developed pursuant to the requirements of Virginia Code § 56-575.3:1 and 56-575.16. These guidelines and procedures are to be followed by departments, agencies and institutions of the Commonwealth (all sometimes referred to herein as "Agency") in considering and developing projects under the Act. The guidelines and procedures will also guide private entities who wish to partner with Agencies in undertaking projects pursuant to the Act.

The Act grants responsible public entities authority to create public-private partnerships for development of a wide range of projects for public use if the public entities determine there is a need for such projects and that private involvement may provide the project in a more timely or cost-effective fashion, considering, among other things, the probable scope, complexity or priority of the project; risk sharing including guaranteed cost or completion guarantees; added value or debt or equity investments proposed by the private entity; or an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available.

Virginia Code §56-575.16.2, provides, in part: "When the responsible public entity determines to proceed according to the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state agency is the responsible public entity, the approval of the responsible Governor's Secretary, or the Governor, shall be required before the responsible public entity may enter into a comprehensive agreement pursuant to this subdivision." Agencies may enter an interim agreement or a comprehensive agreement under the Act, if they are so advised, only after the Governor or responsible Cabinet Secretary has approved proceeding to the Detailed Stage (Part 2) of the PPEA process. With such approval, the head of the Agency, or the Agency's Board if applicable, may approve entering the interim and/or comprehensive agreement.

In order for a project to come under the PPEA, it must meet the definition of a "qualifying project." The PPEA contains a broad definition of "qualifying project" that includes public buildings and facilities of all types, such as:

[1] Va. Code §§56-575.1 through 56-575.17

(i) An education facility, including, but not limited to, a school building, any functionally-related and subordinate facility (a stadium, for example), land appurtenant to a school building, 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) A building or facility that meets a public purpose and is developed or operated by or for any public entity;

(iii) 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, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services, or

(vii) Any improvements necessary or desirable to any unimproved locally or state-owned real estate.

Because the PPEA is intended to encourage innovative partnerships between responsible public entities and private entities, Agencies are encouraged to maintain an open dialogue with private entities to discuss the need for infrastructure improvements.

Although guidance with regard to the application of the PPEA is provided in this document, it is incumbent upon all entities, both public and private, to comply with the provisions of the PPEA and other applicable laws. The complete text of the PPEA (current through 2006) is included in the Appendix to this document.

II. GENERAL PROVISIONS

A. Proposal Submission

Proposals may be invited through solicitation or they may be considered when delivered by a private entity on an unsolicited basis. In either case, proposers must follow a two-part submission process

consisting of an initial Conceptual Stage (Part 1) and, after approval of the conceptual stage, a Detailed Stage (Part 2). The initial stage of the proposal should provide specified information on proposer qualifications and experience, project characteristics, project financing, anticipated public support or opposition, or both, and project benefit and compatibility. The Part 2 detailed proposal must provide detailed scope and budget estimates and identify deliverables.

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. Benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals should include a comprehensive scope of work and a financial plan for the project that contains enough detail to allow analysis of the proposed project's financial feasibility. The PPEA is a flexible development tool that allows use of innovative financing techniques. Depending on the Agency'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. However, the cost analysis of a proposal should not be linked solely to the financing plan as the Commonwealth may determine to finance the project through other available means such as through the Virginia Public Building Authority.

The PPEA is intended to encourage proposals from the private sector that offer the assumption of commensurate risk by the private partner through innovative approaches to project financing, development and/or use. However, while substantial private sector involvement is encouraged, qualifying facilities must be devoted primarily to *public* use, typically involving facilities critical to public health, safety and welfare. Accordingly, Agencies shall continue to exercise full and proper due diligence in the evaluation and selection of private entities to carry-out the proposals. In this regard, the qualifications, capabilities, resources and other attributes of a prospective private partner and its entire team must be carefully examined for every project. Private entities proposing projects shall be held strictly accountable for representations regarding their qualifications, experience and any other content of their proposals, including all aspects of work to be performed.

B. Affected Local Jurisdictions

Va. Code § 56-575.6 requires that any private entity requesting approval from or submitting a proposal to the Commonwealth must provide each affected unit of local government a copy of the private entity's request or proposal. The private entity is responsible for documenting delivery of the request or proposal.

Affected local jurisdictions must have 60 days from the receipt of the request or proposal to submit written comments to the responsible Agency. Comments received by the affected Agency within the 60-day period shall be considered in evaluating the request or proposal; however, no negative inference shall be drawn from the absence of comment by a local jurisdiction.

In providing the request or proposal to the affected local jurisdiction, the private entity may withhold information that the Agency has deemed to be confidential and not subject to release under the Freedom of Information Act.

C. Proposal Review Fee

No fee will be charged by Agencies to process, review or evaluate any solicited proposal submitted under the PPEA.

For unsolicited proposals and competing proposals, Agencies shall charge a fee of one-half of one percent (0.5%) of the estimated cost of implementing the proposal. The minimum fee shall be $5,000 and the maximum fee shall be $50,000. For purposes of initial processing of the proposal, the Agency may accept the $5,000 minimum fee with the balance to be due and payable prior to proceeding beyond the initial review stage. Such sums shall be paid with certified funds and shall be deposited in the State Treasury on the books of the Comptroller in a special statewide fund known as the PPEA Fund.

- If the cost of reviewing the proposal is less than the established proposal fee, the Agency may refund the excess to the proposer.
- If during the initial review the Agency decides not to proceed to conceptual-stage review of an unsolicited proposal, the proposal fee, less any direct costs of the initial review, shall be refunded to the private entity.
- If the Agency chooses to proceed with evaluation of proposal(s) under the PPEA, it shall not do so until the entire, non-refundable proposal fee has been paid to the Commonwealth in full.

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 § 2.2-3705.6 (11) exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and a

responsible public body 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.

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 responsible public entity at the time the documents are submitted earmarking[2] 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 D.1.

Upon the receipt of a written request for protection of documents, the responsible public entity 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 responsible public entity or private entity in accordance with Section D.1. The responsible public entity shall make a written determination of the nature and scope of the protection to be afforded by the responsible public entity 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 D.1.

Once a written determination has been made by the responsible public entity, the documents afforded protection under this subdivision shall continue to be protected from disclosure when

[2] "Earmarking" denotes the process of identifying trade secrets and other proprietary records for which protection is sought.

in the possession of the responsible public entity or any affected local jurisdiction to which such documents are provided.

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

3. Protection from mandatory disclosure for certain documents produced by the responsible public entity.

   Memoranda, staff evaluations, or other records prepared by or for the responsible public entity for the evaluation and negotiation of proposals may be withheld from disclosure if the disclosure of such records required by the PPEA would adversely affect the financial interest or bargaining position of the responsible public entity or private entity and the basis for the determination of adverse affect is documented in writing by the responsible public entity.

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

4. If a private entity fails to earmark confidential or proprietary information, records or documents for protection from disclosure, such information, records or documents shall be subject to disclosure under FOIA.

5. A responsible public entity may not withhold from public access:

   (a) procurement records other than those subject to the written determination of the responsible public entity;

   (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind executed by the responsible public entity 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 project.

E. Applicability of Other Laws

Once an interim or comprehensive agreement has been executed, Agencies shall make available, upon request, procurement records in accordance with Va. Code §2.2-4342.

In soliciting or entertaining proposals under the PPEA, Agencies shall comply with all applicable federal, , state and local laws not in conflict with the PPEA. Likewise, in submitting proposals and in developing, executing or operating facilities under the PPEA, Contractors shall comply with all applicable federal, , state and local laws. Such laws may include, but not necessarily be limited to, contractual obligations which require Workers Compensation insurance coverage, performance bonds or payment bonds from approved sureties, compliance with the Virginia Prompt Payment Act, compliance with the Ethics in Public Contracting Act and compliance with environmental laws, workplace safety laws, and state or local laws governing contractor or trade licensing, building codes and building permit requirements.

Departments, agencies and institutions of the Commonwealth of Virginia are constitutionally prohibited from expending funds that are not appropriated by the Virginia General Assembly. Therefore, expenditure of state funds in support of an interim or comprehensive agreement requires and must be conditioned upon such appropriation of funds.

Proposals should avoid the creation of state-supported debt; however, should a proposal include such debt, procedures to secure specific approval by the Governor, General Assembly, the Department of Planning and Budget, the Department of the Treasury, and any other appropriate entities must be included in the proposal.. In addition, a clear and detailed alternative if such approval is not achieved must be provided.

Any Agency considering construction of facilities through solicited or unsolicited proposals shall be responsible for ensuring compliance with the provisions of § 10.1-1188 of the Code of Virginia as it regards environmental issues and the need for an Environmental Impact Report .

In accordance with existing state law, or pursuant to directive from the Governor's Office, other Agencies may also have a right and/or responsibility with respect to the project and the Contractor's compliance with the terms of the comprehensive agreement.

While procedures incorporated in these guidelines are consistent with those of Virginia Code §§ 2.2-4301, under § 56-573.1 the selection process for solicited or unsolicited project proposals is not subject to the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

III. SOLICITED PROPOSALS

With the written authorization of the head of the Agency, a Request for Proposals (RFP) may be issued inviting proposals from private entities to develop and/or operate qualifying projects. The Agency shall use a two-part proposal process consisting of an initial conceptual stage (Part 1) and a detailed stage (Part 2). The RFP shall invite qualified parties to submit proposals on individual projects identified by the Agency . In such case, the Agency shall set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA.

The RFP must specify any information and documents required by the Agency and the factors that will be used in evaluating proposals. The RFP also should contain or incorporate by reference applicable Virginia standard terms and conditions, and should specify any unique capabilities or qualifications that will be required of the private entities. Pre-proposal conferences may be held as deemed appropriate by the Agency.

The RFP shall be posted on the Commonwealth's electronic procurement website (http://www.eva.state.va.us/). Notices shall also be published in a newspaper or other publications of general circulation and advertised on the *Virginia Business Opportunities Newsletter* website.

IV. UNSOLICITED PROPOSALS

The PPEA permits Agencies to consider unsolicited proposals received from private entities for development and/or operation of qualifying projects.

Agencies may publicize their needs and 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 under the Act. Unsolicited proposals should be submitted to the head of the affected Agency, and the delivery should be confirmed for the submitter by written receipt. If a proposal clearly affects multiple Agencies, or if it is uncertain as to which Agency is best suited to receive a proposal, it should be submitted to the Secretary of Administration.

A. Decision to Accept and Consider Unsolicited Proposal; Notice

1. The Commonwealth reserves the right to reject any and all proposals at any time.

2. Upon receipt of any unsolicited proposal, or group of proposals, and payment of the required fee by the proposer or proposers, the agency or institution should determine whether to accept the unsolicited proposal for publication and conceptual stage consideration. If the Agency determines not to accept the proposal, it shall return the proposal, together with all fees and accompanying documentation, to the proposer.

3. a. If an Agency chooses to accept an unsolicited proposal for conceptual-stage consideration, it shall invite competing proposals by posting notices on the Commonwealth's electronic procurement website eVA at http://www.eva.state.va.us/, and in such other public area(s) as may be regularly used for posting of public notices. The notices shall be posted for such period as the Agency deems necessary and reasonable, but in no event less than 45 days. The Agency may also should publish, at least once, the same notice in one or more newspapers or periodicals of general circulation in the affected jurisdiction(s), providing notice of pending or potential action in not less than 45 days. The Agency shall provide for more than 45 days in situations where the scope or complexity of the original proposal warrants additional time for potential competitors to prepare proposals.

b. The notice shall state that the Agency (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 accept for simultaneous consideration any competing proposals that comply with the procedures adopted by the Commonwealth and the provisions of the PPEA. The notice will summarize the proposed qualifying project or projects, and identify their proposed locations. Copies of unsolicited proposals shall be available upon request, subject to the provisions of FOIA and § 56-575.4 G of the PPEA. Representatives of the agency or institution are encouraged to answer questions from private entities that are contemplating submission of a competing unsolicited proposal.

c. Prior to posting of the notices provided for in this subsection, the Agency shall receive from the initial proposer(s) the balance due, if any, of the required project proposal review fee.

B. Posting Requirements

1. Conceptual proposals, whether solicited or unsolicited, shall be posted by the responsible public entity within 10 working days after acceptance of such proposals on the

Department of General Service's web-based electronic procurement program commonly known as "eVA;".

2. Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the responsible public entity 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 responsible public entity 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 Commonwealth at the Conceptual Stage (Part 1)

After reviewing the original proposal and any competing proposals submitted during the notice period, the Agency may recommend to the responsible Cabinet Secretary, or the Governor:

(i) not to proceed further with any proposal,

(ii) to proceed to the detailed (Part 2) stage of review with the original proposal,

(iii) to proceed to the detailed (Part 2) stage with a competing proposal, or

(iv) to proceed to the detailed (Part 2) stage with multiple proposals.

The responsible Cabinet Secretary, or the Governor (if there is not a responsible Cabinet Secretary), shall approve, in writing, in advance, the course of action to be implemented by the agency or institution, after considering the comments of Secretaries of Finance and Administration.

In the event that more than one proposal will be considered in the detailed (Part 2) stage of review, the Agency shall determine whether the unsuccessful private entity, or entities, shall be reimbursed, in whole or in part, for costs incurred in the detailed stage of review. In such case, reasonable costs may be assessed to the successful proposer as part of any ensuing interim or comprehensive agreement.

Discussions between the Agency and a private entity about the need for infrastructure improvements shall not inhibit the Agency's ability to employ other procurement procedures to meet such needs. The Commonwealth retains the right to reject any proposal at any time, without penalty, prior to the execution of an interim or comprehensive agreement.

V. REVIEW OF SOLICITED AND UNSOLICITED PROPOSALS

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 will be considered by the Agency for further review at the conceptual stage. Formatting suggestions for proposals at the conceptual stage are found at Section VI A.

2. The Agency will determine at the initial review stage whether it will proceed using:

a. Standard procurement procedures consistent with the Virginia Public Procurement Act[3]; or

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

When an Agency elects to use competitive negotiations, its written determination should consider factors such as risk sharing, added value and/or economic benefits from the project that would not be available without competitive negotiation. In addition, the written determination should explain how the scope, complexity, and/or urgency of the project are such that competitive negotiation is determined necessary.

VI. PROPOSAL PREPARATION AND SUBMISSION

[3] Va. Code § 2.2-4300 et seq.

A. Format for Submissions at Conceptual Stage (Part 1)

Proposals at the conceptual stage must 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) such additional information as may seem prudent which is not inconsistent with the requirements of the PPEA. Suggestions for presenting information to be included in proposals at the Conceptual Stage include:

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 ($1 million or more) in the structure fits into the overall team. All members of the offeror's team, including major subcontractors known to the proposer must be identified at the time a proposal is submitted for the Conceptual Stage. Include the status of the Virginia license of each partner, proposer, contractor, and major subcontractor. Identified team members, including major subcontractors (over $5 million), may not be substituted or replaced once a project is approved and comprehensive agreement executed without the written approval of the responsible Agency.

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. Describe the past safety performance record and current safety capabilities of the firm or consortium of firms. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims, 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. For each firm or major subcontractor ($1 million or more) that will be utilized in the project, provide a statement listing all of the firm's prior projects and clients for the past 3 years with contact information for such clients (names/addresses /telephone numbers).

If a firm has worked on more than ten (10) projects during this period, it may limit its prior project list to ten (10), but shall first include all projects similar in scope and size to the proposed project and, second, it shall include as many of its most recent projects as possible. Each firm or major subcontractor shall be required to submit all performance evaluation reports or other documents in its possession evaluating the firm's performance during the preceding three years in terms of cost, quality, schedule, safety and other matters relevant to the successful project development, operation, and completion.

d. Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.

e. 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.

f. 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.

g. Identify proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.

h. Provide information on any training programs, including but not limited to apprenticeship programs registered with the U.S. Department of Labor or a State Apprenticeship Council, in place for employees of the firm and employees of any member of a consortium of firms.

i. Provide information on the level of commitment by the firm or consortium of firms to use Department of Minority Business Enterprise certified firms in developing and implementing the project.

j. For each firm or major subcontractor that will perform construction and/or design activities, provide the following information:

(1) A sworn certification by an authorized representative of the firm attesting to the fact that the firm is not currently debarred or suspended by any federal, state or local government entity.

(2) A completed qualification statement on a form developed by the Commonwealth that reviews all relevant information regarding technical qualifications and capabilities, firm resources and business integrity of the firm, including but not limited to, bonding capacities, insurance coverage and firm equipment. This statement shall also include a mandatory disclosure by the firm for the past three years any of the following conduct:

(A) bankruptcy filings
(B) liquidated damages
(C) fines, assessments or penalties
(D) judgments or awards in contract disputes
(E) contract defaults, contract terminations
(F) license revocations, suspensions, other disciplinary actions
(G) prior debarments or suspensions by a governmental entity
(H) denials of prequalification, findings of non-responsibility
(I) safety past performance data, including fatality incidents, "Experience Modification Rating," "Total Recordable Injury Rate" and "Total Lost Workday Incidence Rate"
(J) violations of any federal, state or local criminal or civil law
(K) criminal indictments or investigations
(L) legal claims filed by or against the firm

k. Worker Safety Programs: Describe worker safety training programs, job-site safety programs, accident prevention programs, written safety and health plans, including incident investigation and reporting procedures.

l. Virginia Code 22.1-296.1C provides: "Prior to awarding a contract for the provision of services that require the contractor or his employees to have direct contact with students, the school board shall require the contractor and, when relevant, any employee who will have direct contact with students, to provide certification that (i) he has not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; and (ii) whether he has been convicted of a crime of moral turpitude." Identify the proposed plan for complying with the intent of Va. Code §22.1-296.1C (whether or not the statute applies to the client Agency) if the contractor or its employees or subcontractors, will have direct contact with students.

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 public entity.

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. Indicate if environmental and archaeological assessments have been completed.

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. Identify contingency plans for addressing public needs in the event that all or some of the project is not completed according to projected schedule.

h. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.

i. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the public entity's use of the project.

j. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.

k. List any other assumptions relied on for the project to be successful.

l. 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 any 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 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 Commonwealth'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 community benefits, including the economic impact the project will have on the Commonwealth and local community in terms of amount of tax revenue to be generated for the Commonwealth and political subdivisions, the number jobs generated for Virginia residents and level of pay and fringe benefits of such jobs, the training opportunities for

apprenticeships and other training programs generated by the project and the number and value of subcontracts generated for Virginia subcontractors.

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 plan that will be carried out to involve and inform the general public, business community, local governments, and governmental agencies in areas affected by the project;

d. Describe the compatibility of the project with local, regional, and state economic development efforts.

e. Describe the compatibility with the local comprehensive plan, local infrastructure development plans, and any capital improvements budget or other local spending plan.

f. Provide a statement setting forth participation efforts 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 (Part 2)

If the Commonwealth decides to proceed to the detailed stage (Part 2) with one or more proposals, each selected private entity must provide the following information, where applicable, unless the responsible Agency waives the requirement or requirements:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project;

2. A conceptual site plan indicating proposed location and configuration of the project on the proposed site;

3. Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the proposed project;

4. A detailed description of the proposed participation, use and financial involvement of the State, agency and/or locality in the project. Include the proposed terms and conditions for the project if they differ from the standard state General Conditions;

5. 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;

6. A statement and strategy setting out the plans for securing all necessary property. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the proposer intends to request the public entity to condemn;

7. 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;

8. 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.

9. A detailed discussion of assumptions regarding user fees or rates and usage of the projects.

10. Identification and discussion 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.

11. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.

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

13. Description of an ongoing performance evaluation system or database to track key performance criteria, including but not limited to, schedule, cash management, quality, worker safety, change orders, and legal compliance.

14. 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 public entity'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.

15. Acknowledge conformance with Virginia Code Sections 2.2–4367 thru 2.2-4377 (the Ethics in Public Contracting Act);

16. Additional material and information as the Agency may request.

VII. PROPOSAL EVALUATION AND SELECTION CRITERIA

In selecting proposals, all relevant information from both the Conceptual Stage and the Detailed Stage must be considered, along with the following:

A. Qualifications and Experience

To determine whether the proposer possesses the requisite qualifications and experience, factors to consider in review of either phase should include:

1. Experience, training and preparation with similar projects;

2. Demonstration of ability to perform work;

3. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;

4. Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;

5. Leadership structure;

6. Project manager's experience;

7. Management approach;

8. Project staffing plans, the skill levels of the proposed workforce, apprenticeship and other training programs offered for the project, and the proposed safety plans for the project;

9. Financial condition; and

10. Project ownership.

B. Project Characteristics

Factors to consider in determining the project characteristics include:

1. Project definition;

2. Proposed project schedule;

3. Operation of the project;

4. Technology, technical feasibility;

5. Conformance with applicable laws, regulations, codes, guidelines 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 Agency;

2. Financing and the impact on the debt or debt burden of the Agency and Commonwealth;

3. Financial plan, including overall feasibility and reliability of plan; operator's past performance with similar plans and similar projects; degree to which operator has conducted due diligence investigation and analysis of proposed financial plan and results of any such inquiries or studies.

4. Estimated cost; and

5. Life-cycle cost.

6. The identity, credit history, and past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable; and,

7. Such other items as the Commonwealth deems appropriate.

The Commonwealth may elect to accept the private entity's financing proposal or may select its own finance team, source, and financing vehicle.

D. Public 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, including the economic impact the project will have on the Commonwealth and local community in terms of amount of tax revenue to be generated

for the Commonwealth and political subdivisions, the number jobs generated for Virginia residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs generated by the project and the number and value of subcontracts generated for Virginia subcontractors.

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 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;

7. The private entity's compliance with a minority business plan, enterprise participation plan or good faith effort to comply with the goals of such plans;

8. The private entity's plan to employ local contractors and residents; and,

9. Other criteria that the Commonwealth deems appropriate.

VIII. INTERIM AND COMPREHENSIVE AGREEMENTS

Neither the Commonwealth nor the Agency shall accept liability for any part or phase of a project prior to entering into a properly executed interim or comprehensive agreement. The head of the affected Agency, or the Agency's Board, shall approve any interim or comprehensive agreement executed pursuant to the PPEA, but no such agreement shall be executed prior to receiving approval by the Governor or the appropriate Cabinet Secretary authorizing the Agency to proceed to the Detailed stage (Part 2) of the PPEA.

Any changes in the terms of an executed interim or comprehensive agreement shall be in the form of a written amendment.

A. Interim Agreement Terms

Interim agreements may be used when it is necessary or advisable to segment a project to produce distinct and clear deliverables necessary to keep the project moving towards development of a comprehensive agreement. An interim agreement may not be used to have the Commonwealth assume risks that should be assumed by the proposer or to pay costs attributable to the private entity's efforts in making the proposal. Interim agreements require the same level of approval as Comprehensive Agreements.

Development of an interim agreement is in the sole discretion of the head of the affected Agency and in no way limits the rights reserved by the Agency or the Commonwealth to terminate the evaluation of any or all proposals at any time.

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 by the Commonwealth, it agencies or instrumentalities;

3. The rights of the Commonwealth to inspect the project to ensure compliance with the comprehensive agreement and any development plans and specifications;

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 operator by the Commonwealth, its agencies or instrumentalities to ensure proper maintenance;

6. The terms under which the Contractor will reimburse the Commonwealth for services provided;

7. The policy and procedures that will govern the rights and responsibilities of the Commonwealth and the Contractor in the event that the comprehensive agreement is terminated or there is a material default by the Contractor including the conditions governing assumption of the duties and responsibilities of the Contractor by the Agency and the transfer or purchase of property or other interests of the Contractor by the Agency;

8. The terms under which the Contractor 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 Commonwealth.

    b. A schedule of the current user fees or lease payments shall be made available by the Contractor 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 Agency may be required to contribute financial resources, if any;

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

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

13. A periodic reporting procedure that incorporates a description of the impact of the project on the Commonwealth;

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

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

Parties submitting proposals understand that representations, information and data supplied in support of or in connection with proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the Commonwealth. Accordingly, as part of the Comprehensive Agreement, the prospective operator and its team members shall certify that all material representations, information and data provided in support of, or in connection with, a proposal is true and correct. Such certifications shall be made by authorized individuals who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information or data provided for a proposal, the prospective operator shall immediately notify the Commonwealth of same. Any violation of this section of the Comprehensive Agreement shall give the Commonwealth the right to terminate the Agreement, withhold payment or other consideration due, and seek any other remedy available under the law.

C. Notice and Posting requirements

1. In addition to the posting requirements of Section V, 30 days prior to entering into an interim or comprehensive agreement, a responsible public entity 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 responsible public entity. 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 a responsible public entity, the responsible public entity shall post the proposed agreement in the following manner:

a. For responsible public entities 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;" at www.eva.state.va.us and

b. For responsible public entities that are local public bodies, posting shall be on the responsible public 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," at www.eva.state.va.us in the discretion of the local responsible public entity.

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 responsible public entity and the private entity.

3. Once an interim agreement or a comprehensive agreement has been executed, the responsible Agency shall make procurement records available for public inspection, upon request.

a. Such procurement records shall include documents protected from disclosure on the basis that the release of such documents would adversely affect the financial interest or bargaining position of the responsible public entity or private entity.

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.

IX. GOVERNING PROVISIONS

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

APPENDIX

Public-Private Education Facilities and Infrastructure Act of 2002 as amended (through 2006)

§ 56-575.1. Definitions.

As used in this chapter, unless the context requires a different meaning:

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

"Commission" means the State Corporation Commission.

"Comprehensive agreement" means the comprehensive agreement between the private entity and the responsible public entity required by § 56-575.9.

"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.

"Material default" means any default by the private entity in the performance of its duties under subsection E of § 56-575.8 that jeopardizes adequate service to the public from a qualifying project.

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

"Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit 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 to 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, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; or (vii) 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.

(2002, c. 571; 2003, c. 1034; 2005, cc. 618, 865.)

§ 56-575.2. Declaration of public purpose.

A. The General Assembly finds that:

1. There is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of education facilities, technology infrastructure and other public infrastructure and government facilities within the Commonwealth that serve a public need and purpose;

2. Such public need may not be wholly satisfied by existing methods of procurement in which qualifying projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, operated, implemented, or installed;

3. There are inadequate resources to develop new education facilities, technology infrastructure and other public infrastructure and government facilities for the benefit of citizens of the Commonwealth, and there is demonstrated evidence that public-private partnerships can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;

4. Financial incentives exist under state and federal tax provisions that promote public entities to enter into partnerships with private entities to develop qualifying projects;

5. Authorizing private entities to develop or operate one or more qualifying projects may result in the availability of such projects to the public in a more timely or less costly fashion, thereby serving the public safety, benefit, and welfare.

B. An action under § 56-575.4 shall serve the public purpose of this chapter if such action facilitates the timely development or operation of qualifying projects.

C. It is the intent of this chapter, among other things, to encourage investment in the Commonwealth by private entities and facilitate the bond financing provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 or other similar financing mechanisms, private capital and other funding sources that support the development or operation of qualifying projects, to the end that financing for qualifying projects be expanded and accelerated to improve and add to the convenience of the public, and such that public and private entities may have the greatest possible flexibility in contracting with each other for the provision of the public services that are the subject of this chapter.

D. This chapter shall be liberally construed in conformity with the purposes hereof.

(2002, c. 571; 2003, c. 1034; 2005, c. 865.)

§ 56-575.3. Prerequisite for operation of a qualifying project.

A. Any private entity seeking authorization under this chapter to develop or operate a qualifying project shall first obtain approval of the responsible public entity under § 56-575.4. Such private entity may initiate the approval process by requesting approval pursuant to subsection A of § 56-575.4 or the responsible public entity may request proposals or invite bids pursuant to subsection B of § 56-575.4.

B. Any facility, building, infrastructure or improvement included in a proposal as a part of a qualifying project shall be identified specifically or conceptually.

C. Upon receipt by the responsible public entity of a proposal submitted by a private entity initiating the approval process pursuant to subsection A of § 56-575.4, the responsible public entity shall determine whether to accept such proposal for consideration in accordance with § 56-575.16. If the responsible public entity determines not to accept for consideration the proposal submitted by the private entity pursuant to subsection A of § 56-575.4, it shall return the proposal, together with all fees and accompanying documentation, to the private entity.

D. The responsible public entity may reject any proposal initiated by a private entity pursuant to subsection A of § 56-575.4 at any time.

(2002, c. 571; 2003, cc. 292, 1034; 2005, c. 865.)

§ 56-575.3:1. Adoption of guidelines by responsible public entities.

A. Any responsible public entity requesting or considering a proposal for a qualifying facility shall adopt and make publicly available guidelines that are sufficient to enable the responsible public entity to comply with this chapter. Such guidelines shall guide the selection of projects under the purview of the responsible public entity and include, but not be limited to, reasonable criteria for choosing among competitive proposals and timelines for selecting proposals and negotiating an interim or comprehensive agreement.

B. Such guidelines shall permit accelerated selection, review and documentation timelines for proposals involving a qualifying facility that the responsible public entity deems a priority.

(2005, c. 865.)

§ 56-575.4. Approval of qualifying projects by the responsible public entity.

A. A private entity may request approval of a qualifying project by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the qualifying project;

2. A description of the qualifying project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the initiation of and completion of the qualifying project to include the proposed major responsibilities and timeline for activities to be performed by both the public and private entity;

3. A statement setting forth the method by which the private entity proposes to secure necessary property interests required for the qualifying project;

4. Information relating to the current plans for development of facilities or technology infrastructure to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected local jurisdiction;

5. A list of all permits and approvals required for the qualifying project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;

6. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the private entity to accommodate such crossings;

7. A statement setting forth the private entity's general plans for financing the qualifying project including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on the behalf of the private entity;

8. The names and addresses of the persons who may be contacted for further information concerning the request;

9. User fees, lease payments, and other service payments over the term of the interim or comprehensive agreement pursuant to § 56-575.9 or 56-575.9:1 and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time; and

10. Such additional material and information as the responsible public entity may reasonably request.

B. The responsible public entity may request proposals or invite bids from

private entities for the development or operation of qualifying projects.

C. The responsible public entity may grant approval of the development or operation of the education facility, technology infrastructure or other public infrastructure or government facility needed by a public entity as a qualifying project, or the design or equipping of a qualifying project so developed or operated, if the responsible public entity determines that the project serves the public purpose of this chapter. The responsible public entity may determine that the development or operation of the qualifying project as a qualifying project serves such public purpose if:

1. There is a public need for or benefit derived from the qualifying project of the type the private entity proposes as a qualifying project;

2. The estimated cost of the qualifying project is reasonable in relation to similar facilities; and

3. The private entity's plans will result in the timely development or operation of the qualifying project.

In evaluating any request, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.

D. The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing and evaluating the request, including without limitation, reasonable attorney's fees and fees for financial, technical, and other necessary advisors or consultants.

E. The approval of the responsible public entity shall be subject to the private entity's entering into an interim or comprehensive agreement pursuant to § 56-575.9 with the responsible public entity.

F. In connection with its approval of the qualifying project, the responsible public entity shall establish a date for the commencement of activities related to the qualifying project. The responsible public entity may extend such date from time to time.

G. The responsible public entity shall take appropriate action to protect confidential and proprietary information provided by the private entity pursuant to an agreement under subdivision 11 of § 2.2-3705.6.

H. Nothing in this chapter or in an interim or comprehensive agreement entered into pursuant to this chapter shall be deemed to enlarge, diminish or affect the authority, if any, otherwise possessed by the responsible public entity to take action that would impact the debt capacity of the Commonwealth.

(2002, c. 571; 2003, c. 1034; 2004, c. 690; 2005, c. 865.)

§ 56-575.5. Service contracts.

In addition to any authority otherwise conferred by law, any public entity may contract with a private entity for the delivery of services to be provided as part of a qualifying project in exchange for such service payments and other consideration as such public entity may deem appropriate.

(2002, c. 571; 2005, c. 865.)

§ 56-575.6. Affected local jurisdictions.

A. Any private entity requesting approval from, or submitting a proposal to, a responsible public entity under § 56-575.4 shall notify each affected local jurisdiction by furnishing a copy of its request or proposal to each affected local jurisdiction.

B. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project shall, within sixty days after receiving such notice, submit any comments it may have in writing on the proposed qualifying project to the responsible public entity and indicate whether the facility is compatible with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan. Such comments shall be given consideration by the responsible public entity prior to entering a comprehensive agreement pursuant to § 56-575.9 with a private entity.

(2002, c. 571.)

§ 56-575.7. Dedication of public property.

Any public entity may dedicate any property interest, including land, improvements, and tangible personal property, that it has for public use in a qualifying project if it finds that so doing will serve the public purpose of this chapter by minimizing the cost of a qualifying project to the public entity or reducing the delivery time of a qualifying project. In connection with such dedication, a public entity may convey any property interest that it has, subject to the conditions imposed by general law governing such conveyances, to the private entity subject to the provisions of this chapter, for such consideration as such public entity may determine. The aforementioned consideration may include, without limitation, the agreement of the private entity to develop or operate the qualifying project. The property interests that the public entity may convey to the private entity in connection with a dedication under this section may include licenses, franchises, easements, or any other right or interest the public entity deems appropriate.

(2002, c. 571; 2005, c. 865.)

§ 56-575.8. Powers and duties of the private entity.

A. The private entity shall have all power allowed by law generally to a private entity having the same form of organization as the private entity and shall have the power to develop or operate the qualifying project and collect lease payments, impose user fees or enter into service contracts in connection with the use thereof.

B. The private entity may own, lease or acquire any other right to use or operate the qualifying project.

C. Any financing of the qualifying project may be in such amounts and upon such terms and conditions as may be determined by the private entity. Without limiting the generality of the foregoing, the private entity may issue debt, equity or other securities or obligations, enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying project.

D. In operating the qualifying project, the private entity may:

1. Make classifications according to reasonable categories for assessment of user fees; and

2. With the consent of the responsible public entity, make and enforce reasonable rules to the same extent that the responsible public entity may make and enforce rules with respect to similar facilities.

E. The private entity shall:

1. Develop or operate the qualifying project in a manner that is acceptable to the responsible public entity, all in accordance with the provisions of the interim or comprehensive agreement pursuant to § 56-575.9 or 56-575.9:1;

2. Keep the qualifying project open for use by the members of the public at all times, or as appropriate based upon the use of the facility, after its initial opening upon payment of the applicable user fees, lease payments, or service payments; provided that the qualifying project may be temporarily closed because of emergencies or, with the consent of the responsible public entity, to protect the safety of the public or for reasonable construction or maintenance activities. In the event that a qualifying project is technology infrastructure, access may be limited as determined by the conditions of the interim or comprehensive agreement;

3. Maintain, or provide by contract for the maintenance or upgrade of the qualifying project, if required by the interim or comprehensive agreement;

4. Cooperate with the responsible public entity in making best efforts to establish any interconnection with the qualifying project requested by the responsible public entity; and

5. Comply with the provisions of the interim or comprehensive agreement and any lease or service contract.

F. Nothing shall prohibit an private entity of a qualifying project from providing additional services for the qualifying project to public or private entities other than the responsible public entity so long as the provision of additional service does not impair the private entity's ability to meet its commitments to the responsible public entity pursuant to the interim or comprehensive agreement as provided for in § 56-575.9 or 56-575.9:1.

(2002, c. 571; 2003, c. 1034; 2005, c. 865.)

§ 56-575.9. Comprehensive agreement.

A. Prior to developing or operating the qualifying project, the private entity shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall provide for:

1. Delivery of maintenance, performance and payment bonds, letters of credit in connection with the development or operation of the qualifying project, in the forms and amounts satisfactory to the responsible public entity and in compliance with § 2.2-4337 for those components of the qualifying project that involve construction;

2. Review of plans and specifications for the qualifying project by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to standards acceptable to the responsible public entity. This shall not be construed as requiring the private entity to complete design of a qualifying project prior to the execution of a comprehensive agreement;

3. Inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement;

4. Maintenance of a policy or policies of public liability insurance (copies of which shall be filed with the responsible public entity accompanied by proofs of coverage) or self-insurance, each in form and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project;

5. Monitoring of the practices of the private entity by the responsible public entity to ensure that the qualifying project is properly maintained;

6. Reimbursement to be paid to the responsible public entity for services provided by the responsible public entity;

7. Filing of appropriate financial statements on a periodic basis; and

8. Policies and procedures governing the rights and responsibilities of the responsible public entity and the private entity in the event the comprehensive agreement is terminated or there is a material default by the private entity. Such policies and guidelines shall include conditions governing assumption of the duties and responsibilities of the private entity by the responsible public entity and the transfer or purchase of property or other interests of the private entity by the responsible public entity.

B. The comprehensive agreement shall provide for such user fees, lease payments, or service payments as may be established from time to time by agreement of the parties. A copy of any service contract shall be filed with the responsible public entity. In negotiating user fees under this section, the parties shall establish payments or fees that are the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project. The execution of the comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user fees, lease payments, or service payments provided for comply with this chapter. User fees or lease payments established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans to the private entity from time to time from amounts received from the federal, state, or local government or any agency or instrumentality thereof.

D. The comprehensive agreement shall incorporate the duties of the private entity under this chapter and may contain such other terms and conditions that the responsible public entity determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the responsible public entity agrees to provide notice of default and cure rights for the benefit of the private entity and the persons specified therein as providing financing for the qualifying project. The comprehensive agreement may contain such other lawful terms and conditions to which the private entity and the responsible public entity mutually agree, including, without limitation, provisions regarding unavoidable delays or provisions providing for a loan of public funds to the private entity to develop or operate one or more qualifying projects. The comprehensive agreement may also contain provisions where the authority and duties of the private entity under this chapter shall cease, and the qualifying project is dedicated to the responsible public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to such affected local jurisdiction for public use.

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

F. When a responsible public entity that is not an agency or authority of the Commonwealth enters into a comprehensive agreement pursuant to this chapter, it shall within 30 days thereafter submit a copy of the comprehensive agreement to the Auditor of Public Accounts.

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

(2002, c. 571; 2003, c. 1034; 2004, c. 986; 2005, c. 865.)

§ 56-575.9:1. Interim agreement.

Prior to or in connection with the negotiation of the comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. Such interim agreement may (i) permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying project, including, but not limited to, project planning and development, design and engineering, environmental analysis and mitigation, survey, and ascertaining the availability of financing for the proposed facility or facilities; (ii) establish the process and timing of the negotiation of the comprehensive agreement; and (iii) contain any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate.

(2005, c. 865.)

§ 56-575.10. Federal, state and local assistance.

A. Any financing of a qualifying facility may be in such amounts and upon such terms and conditions as may be determined by the parties to the interim or comprehensive agreement. Without limiting the generality of the terms and conditions of the financing, the private entity and the responsible public entity may propose to utilize any and all funding resources that may be available to them and may, to the fullest extent permitted by applicable law, issue debt, equity, or other securities or obligations, enter into leases, access any designated trust funds, borrow or accept grants from any state infrastructure bank, and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying facility.

B. The responsible public entity may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this chapter and may enter into any contracts required to receive such assistance. If the responsible public entity is a state agency, any funds received from the state or federal government or any agency or instrumentality thereof shall be subject to appropriation by the General Assembly. The responsible public entity may determine that it serves the public purpose of this chapter for all or any portion of the costs of a qualifying project to be paid, directly or indirectly, from the proceeds of a grant or loan made by the local, state, or federal government or any agency or instrumentality thereof.

(2002, c. 571; 2005, c. 865.)

§ 56-575.11. Material default; remedies.

A. In the event of a material default by the private entity, the responsible public entity may elect to assume the responsibilities and duties of the private entity of the qualifying project, and in such case, it shall succeed to all of the right, title and interest in such qualifying project, subject to any liens on revenues previously granted by the private entity to any person providing financing thereof.

B. Any responsible public entity having the power of condemnation under state law may exercise such power of condemnation to acquire the qualifying project in the event of a material default by the private entity. Any person who has provided financing for the qualifying project, and the private entity, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.

C. The responsible public entity may terminate, with cause, the interim or comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity.

D. The responsible public entity may make or cause to be made any appropriate claims under the maintenance, performance, or payment bonds; or lines of credit required by subsection A 1 of § 56-575.9.

E. In the event the responsible public entity elects to take over a qualifying project pursuant to subsection A, the responsible public entity may develop or operate the qualifying project, impose user fees, impose and collect lease payments for the use thereof and comply with any service contracts as if it were the private entity. Any revenues that are subject to a lien shall be collected for the benefit of and paid to secured parties, as their interests may appear, to the extent necessary to satisfy the private entity's obligations to secured parties, including the maintenance of reserves. Such liens shall be correspondingly reduced and, when paid off, released. Before any payments to, or for the benefit of, secured parties, the responsible public entity may use revenues to pay current operation and maintenance costs of the qualifying project, including compensation to the responsible public entity for its services in operating and maintaining the qualifying project. The right to receive such payment, if any, shall be considered just compensation for the qualifying project. The full faith and credit of the responsible public entity shall not be pledged to secure any financing of the private entity by the election to take over the qualifying project. Assumption of operation of the qualifying project shall not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues.

(2002, c. 571; 2003, c. 1034; 2005, c. 865.)

§ 56-575.12. Condemnation.

At the request of the private entity, the responsible public entity may exercise any power of condemnation that it has under law for the purpose of acquiring any lands or estates or interests therein to the extent that the responsible public entity finds that such action serves the public purpose of this chapter. Any amounts to be paid in any such condemnation proceeding shall be paid by the private entity.

(2002, c. 571; 2005, c. 865.)

§ 56-575.13. Utility crossing.

The private entity and each public service company, public utility, railroad, and cable television provider, whose facilities are to be crossed or affected shall cooperate fully with the other entity in planning and arranging the manner of the crossing or relocation of the facilities. Any such entity possessing the power of condemnation is hereby expressly granted such powers in connection with the moving or relocation of facilities to be crossed by the qualifying project or that must be relocated to the extent that such moving or relocation is made necessary or desirable by construction of, renovation to, or improvements to the qualifying project, which shall be construed to include construction of, renovation to, or improvements to temporary facilities for the purpose of providing service during the period of construction or improvement. Any amount to be paid for such crossing, construction, moving or relocating of facilities shall be paid for by the private entity. Should the private entity and any such public service company, public utility, railroad, and cable television provider not be able to agree upon a plan for the crossing or relocation, the Commission may determine the manner in which the crossing or relocation is to be accomplished and any damages due arising out of the crossing or relocation. The Commission may employ expert engineers who shall examine the location and plans for such crossing or relocation, hear any objections and consider modifications, and make a recommendation to the Commission. In such a case, the cost of the experts is to be borne by the private entity. Such determination shall be made by the Commission within ninety days of notification by the private entity that the qualifying project will cross utilities subject to the Commission's jurisdiction.

(2002, c. 571; 2005, c. 865.)

§ 56-575.14. Police powers; violations of law.

All police officers of the Commonwealth and of each affected local jurisdiction shall have the same powers and jurisdiction within the limits of such qualifying project as they have in their respective areas of jurisdiction and such police officers shall have access to the qualifying project at any time for the purpose of exercising such powers and jurisdiction.

(2002, c. 571.)

§ 56-575.15. Sovereign immunity.

Nothing in this chapter shall be construed as or deemed a waiver of the sovereign immunity of the Commonwealth, any responsible public entity or any affected local jurisdiction or any officer or employee thereof with respect to the participation in, or approval of all or any part of the qualifying project or its operation, including but not limited to interconnection of the qualifying project with any other infrastructure or project. Counties, cities and towns in which a qualifying project is located shall possess sovereign immunity with respect to its design, construction, and operation.

(2002, c. 571.)

§ 56-575.16. Procurement.

The Virginia Public Procurement Act (§ 2.2-4300 et seq.) and any interpretations, regulations, or guidelines of the Division of Engineering and Buildings of the Department of General Services or the Virginia Information Technologies Agency, including the Capital Outlay Manual and those interpretations, regulations or guidelines developed pursuant to §§ 2.2-1131, 2.2-1132, 2.2-1133, 2.2-1149, and 2.2-1502, except those developed by the Division or the Virginia Information Technologies Agency in accordance with this chapter when the Commonwealth is the responsible public entity, shall not apply to this chapter. However, a responsible public entity may enter into a comprehensive agreement only in accordance with guidelines adopted by it as follows:

1. A responsible public entity may enter into a comprehensive agreement in accordance with guidelines adopted by it that are consistent with procurement through competitive sealed bidding as defined in § 2.2-4301 and subsection B of § 2.2-4310.

2. A responsible public entity may enter into a comprehensive agreement in accordance with guidelines adopted by it that are consistent with the procurement of "other than professional services" through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310. Such responsible public entity shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received. Other factors that may be considered include (i) the proposed cost of the qualifying facility; (ii) the general reputation, industry experience, and financial capacity of the private entity; (iii) the proposed design of the qualifying project; (iv) the eligibility of the facility for accelerated selection, review, and documentation timelines under the responsible public entity's guidelines; (v) local citizen and government comments; (vi) benefits to the public; (vii) the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local contractors and residents; and (ix) other criteria that the responsible public entity deems appropriate.

A responsible public entity shall proceed in accordance with the guidelines adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the guidelines adopted by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public, based on (i) the probable scope, complexity or priority of the project; (ii) risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available. When the responsible public entity determines to proceed according to the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state agency is the responsible public entity, the approval of the responsible Governor's Secretary, or the Governor, shall be required before the responsible public entity may enter into a comprehensive agreement pursuant to this subdivision.

3. Nothing in this chapter shall authorize or require that a responsible public entity obtain professional services through any process except in accordance with guidelines adopted by it that are consistent with the procurement of "professional services" through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310.

4. A responsible public entity shall not proceed to consider any request by a private entity for approval of a qualifying project pursuant to subsection A of § 56-575.4 until the responsible public entity has adopted and made publicly available guidelines that are sufficient to enable the responsible public entity to comply with this chapter. Such guidelines shall:

a. If the responsible public entity is not an agency or authority of the Commonwealth, require the responsible public entity to engage the services of qualified professionals, which may include an architect, professional engineer or certified public accountant, not employed by the responsible public entity to provide to the responsible public entity independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any request by a private entity for approval of a qualifying project, unless the governing body of the responsible public entity determines that such analysis of a request by a private entity for approval of a qualifying project shall be performed by employees of the responsible public entity.

b. Provide for the posting and publishing of public notice of a private entity's request for approval of a qualifying project pursuant to subsection A of § 56-575.4 and a reasonable time period, determined by the responsible public entity to be appropriate to encourage competition and public-private partnerships pursuant to the goals of this chapter, such reasonable period not to be less than 45 days, during which the responsible public entity will receive competing proposals pursuant to that subsection.

Such guidelines shall also require advertising the public notice in the Virginia Business Opportunities publication and posting a notice on the Commonwealth's electronic procurement website.

5. A responsible public entity that is a school board or a county, city or town may enter into an interim or comprehensive agreement under this chapter only with the approval of the local governing body.

(2002, c. 571; 2003, cc. 292, 968, 1034; 2004, c. 986; 2005, c. 865; 2006, c. 936.)

§ 56-575.17. Posting of conceptual proposals; public comment; public access to procurement records.

A. Conceptual proposals submitted in accordance with subsection A or B of § 56-575.4 to a responsible public entity shall be posted by the responsible public entity within 10 working days after acceptance of such proposals as follows:

1. For responsible public entities 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

2. For responsible public entities that are local bodies, posting shall be on the responsible public 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 responsible public entity.

In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the responsible public entity so as to provide maximum notice to the public of the opportunity to inspect the proposals. 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 responsible public entity and the private entity.

B. In addition to the posting requirements of subsection A, for 30 days prior to entering into an interim or comprehensive agreement, a responsible public entity shall provide an

opportunity for public comment on the proposals. The public comment period required by this subsection may include a public hearing in the sole discretion of the responsible public entity. After the end of the public comment period, no additional posting shall be required.

C. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete, but before an interim agreement or a comprehensive agreement is entered into, a responsible public entity shall make available the proposed agreement in a manner provided in subsection A.

D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible public entity shall make procurement records available for public inspection, upon request. For the purposes of this subsection, procurement records shall not be interpreted to 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.

E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

F. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

G. The provisions of this section shall apply to accepted proposals regardless of whether the process of bargaining will result in an interim or a comprehensive agreement.

(2006, c. 936.)