CODE OF TOWN OF CLIFTON, VIRGINIA 2000

ADOPTED BY THE CLIFTON TOWN COUNCIL ON JANUARY 6, 2000 EFFECTIVE AT 1 AM ON JANUARY 7, 2000
WITH REVISIONS THROUGH DECEMBER 3, 2018.

CODE OF TOWN OF CLIFTON, VIRGINIA 2000

(Revised 2009-2018)

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CHAPTER 1

GENERAL PROVISIONS

CHAPTER 1

GENERAL PROVISIONS

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Chapter 1 GENERAL PROVISIONS

ARTICLE 1 GENERAL PROVISIONS

Sec. 1-1. DESIGNATION AND CITATION OF CODE.

The ordinances contained in this and the following Chapters and sections shall constitute and be designated as "The Municipal Code of Clifton, Virginia, 2000", and may be so cited. The Code may also be cited as the Municipal Code or in the provisions which follow, as "This Code".

Sec. 1-2. RULES OF CODE CONSTRUCTION; DEFINITIONS.

a. In the construction of this Code and all ordinances, the following rules of construction and definitions shall be observed unless inconsistent with the manifest intent of the Council or the context clearly requires otherwise:

1. And/or means and may read or and or may be read and if the sense requires it.

2. Building means any structure used or intended for supporting or sheltering any use or occupancy.

3. Business means any profession, trade, occupation and any other commercial enterprise conducted for monetary reward.

4. Charter means the Charter of the Town of Clifton.

5. Clerk means the Town Clerk.

6. Council means the governing body of the Town, the Town Council.

7. County means Fairfax County, Virginia.

8. Definitions given within a Chapter or Article apply only to words or phrases used in such Chapter or Article unless otherwise provided.

9. Department of Permits and Inspections shall mean the Department of Permits and Inspections of Fairfax County.

10. Designee, following an official of the Town, means the authorized agent, employee, or representative of such official.

11. Gender - Words in any section importing the masculine gender shall include the feminine and neuter, as well as the masculine.

12. May - The word may is permissive and discretionary.

13. Mayor means the Mayor of the Town.

14. Number - Words used in the singular include the plural and the plural includes the singular.

15. Oath means any form of attestation by which a person signifies that he is bound in conscience to perform an act or to speak faithfully and truthfully, and includes an affirmation or declaration in cases where by law an affirmation may be substituted for an oath.

16. Occupant means tenant or person in actual possession.

17. Operate means carry on, keep, conduct, maintain, manage, direct or superintend.

18. Ordinances mean the ordinances or by-laws of the Town of Clifton and all amendments and supplements thereto.

19. Owner means one who has complete dominion over particular property and who is the one in whom legal or equitable title rests; when applied to a building or land, owner means any part owner, joint owner, owner of a community or partnership interest, life tenant, tenant in common, tenant by the entirety, or joint tenant, of the whole or part of such building or land.

20. Person means any individual, natural person, legal entity; joint stock company, partnership, voluntary association, society, club, firm, company, corporation, business trust, organization, or any other group acting as a unit, or the manager, lessee, agent, servant, partner, member, director, officer or employee of any of them including an executor, administrator, trustee, receiver, or other representative appointed according to law.

21. Personal Property means any money, goods, movable chattels, things in action, evidence of debt, all objects and rights which are capable of ownership, and every other species of property except real property.

22. Public place means any park, stream, athletic field, playground, street, avenue, bus or railroad depot, station, terminal, or any other place commonly open to the public.

23. Shall - The word shall is mandatory.

24. Sidewalk means that portion of a street between the curb line and the adjacent property along the margin of a street or other highway, designated, constructed and intended for the use of pedestrians to the exclusion of vehicles.

25. Signature and subscription mean the name of a person, mark or symbol appended by him to a writing with intent to authenticate the instrument as one made or put into effect by him.

26. State means the State of Virginia.

27. Statutes or Revised Statutes mean the latest published edition of the Code, Statutes or Revised Statutes of Virginia.

28. Street means all streets, highways, avenues, boulevards, parkways, roads, lanes, viaducts, bridges and the approaches thereto, alleys, courts, places, squares, curbs, sidewalks, recreation and park lands used for vehicular traffic, or other public ways or thoroughfares in this Town, over which it has jurisdiction, which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this State.

29. Structure means that which is built or constructed.

30. Tenant means any person occupying the premises, building or land of another in subordination to such other person's title and with his express or implied assent, whether he occupies the whole or a part of those premises, building or land, whether alone or with others.

31. Tense - Words used in the past or present tense include the future, past, and present where applicable, unless the context clearly indicates otherwise.

32. Time of performance means the time within which an act is to be done as provided in any section or any order issued pursuant to any section, when expressed in days, and is computed by excluding the first and including the last day. If the last day is Sunday or a legal holiday, that day shall not be counted in the computation. When the time is expressed in hours, the whole of Sunday or a legal holiday from midnight to midnight is excluded.

33. Town means the Town of Clifton, in the County of Fairfax and State of Virginia.

34. Town limits means within the Town and includes not only the corporate limits of the Town, but also any property which it owns or which is under its jurisdiction.

35. Treasurer means the Town Treasurer.

36. Watercourse means any drain, ditch and stream, flowing in a definite direction or course in a bed with banks.

37. Week means seven (7) days.

38. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and others that have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such meaning.

39. Writing and written mean any representation of words, letters or figures, whether by printing or otherwise, capable of comprehension by ordinary visual means.

Sec. 1-3. TERRITORIAL APPLICABILITY.

This Code shall refer only to the commission or omission of acts within the territorial limits of the Town and to that territory outside this Town over which the Town has jurisdiction, or control by virtue of any Constitutional or Charter provisions, or any law.

Sec. 1-4. AUTHORITY OF CODE.

This Code is a revision and codification of the general ordinances of the Town of Clifton which have been enacted and published in accordance with the authority granted in section 15.2-1433, Va. Code, 1950.

Sec. 1-5. CERTIFIED COPY OF CODE ADMISSIBLE INTO EVIDENCE.

Any printed copy of this Code or any printed supplement thereto, published and certified according to law, shall be received in evidence in any court for the purpose of proving any Charter or ordinance provision therein contained with like effect and for the same purpose as the original ordinances, minutes or journals would be received.

Sec. 1-6. ACTS BY DEPUTY OR DESIGNEE.

Whenever a power is granted to or a duty is imposed upon a public officer or employee, the power may be performed by any authorized deputy or designee or by any person authorized pursuant to law or ordinances, unless this Code expressly provides otherwise.

Sec. 1-7. EFFECTIVE DATE OF ORDINANCE, AMENDMENT OR REPEAL; PUBLICATION REQUIREMENTS.

No ordinance or amendment or repeal of any section hereof shall be operative, in full force and effect, until it has been adopted in the manner prescribed by law.

Sec. 1-8. CODE PREVISIONS AS CONTINUANCE OF EXISTING ORDINANCES.

a. The provisions appearing in this Code shall be considered as restatements of the previously existing ordinances and by-laws adopted by the Town.

b. Precedent set under any previously enacted ordinance or by-law shall not be binding on this Code.

Sec. 1-9. EFFECT OF REPEAL OF ORDINANCES; REVIVAL.

a. Neither the adoption of this Code nor the repeal hereby of any ordinance of this Town shall in any manner affect the prosecution for violation of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty at the effective date due and unpaid under such ordinance, nor be construed as affecting any of the provisions of such ordinance relating to the collection of any such license or penalty or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof, required to be posted, filed or deposited pursuant to any ordinance, and all rights and obligations thereof appertaining shall continue in full force and effect.

b. Whenever any ordinance repealing a former ordinance, clause or provision is repealed, such repeal shall not be construed as reviving such former ordinance, clause or provision, unless expressly provided therein.

Sec. 1-10.CONFLICTING PROVISIONS.

a. If the provisions of different Chapters, Articles, or sections of this Code conflict with or contravene each other, the provisions of each Chapter, Article, or section shall prevail as to all matters and questions growing out of the subject matter of that Chapter, Article, or section.

b. If clearly conflicting provisions are found in different sections of the same Chapter, the provisions of the section last enacted shall prevail unless the construction is inconsistent with the meaning of that Chapter.

c. Where any conflict exists between a Chapter, Article, or section of this Code and any Chapter or section of the Town Charter or State Code, the Town Charter and/or State Code shall prevail.

Sec. 1-11.CATCHLINES AND HEADINGS; CONSTRUCTION.

All designations and headings of Chapters, Articles, and sections are intended only for convenience in arrangement and as mere catchwords to indicate the contents of such Chapter, Articles, or sections, whether printed in boldface type or Italics. They shall not be deemed or taken to be any part or title of such Chapters, Articles, or sections; nor unless expressly so provided, shall they be so deemed upon amendment or reenactment; nor shall they be construed to govern, limit, modify, alter or in any other manner affect the scope, meaning or intent of any of the provisions of this Code.

Sec. 1-12.NOTICES TO BE WRITTEN AND IN ENGLISH LANGUAGE.

All notices, reports, statements, applications or records required or authorized by this Code shall be made in writing in the English language unless specifically provided otherwise.

Sec. 1-13.NOTICES; SERVICE AND PROOF.

a. Unless otherwise specifically provided, whenever a notice is required to be given pursuant to any section of this Code, such notice shall be given either by personal delivery to the person to be notified or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the person to be notified at his last known business or residence address as the same appears in the public records or other records pertaining to the matter for which such notice is served, or by any other method of delivery approved by law. Service by mail shall be deemed to have been completed at the time of deposit in the post office or any United States mailbox.

b. Proof of giving any notice may be made by the certificate of any officer or employee of this Town or by affidavit of any person over the age of eighteen (18) years who actually accomplished personal service in conformity with this Code or other provisions of law applicable to the subject matter concerned, or by a return receipt signed by the recipient notified by United States mail.

Sec. 1-14.INSPECTION AND RIGHT OF ENTRY.

a. All records, building and premises subject to inspection under this Code may be inspected from time to time by the designated officer of the Town or his designee.

b. All records, rooms and areas of a building or premises shall be available and accessible for inspection. Such inspection shall be made during the usual business hours if the premises is used for nonresidential purposes, provided that inspections may be made at other times if:

1. The premises are not available for inspection during business hours.

2. There is reason to believe that violations are occurring on the premises which can only be discovered by inspection during other than business hours.

3. There is reason to believe a violation exists of a character which is an immediate threat to health or safety requiring inspection and abatement without delay.

c. Where the designated officer or his designee is refused entry or access or is otherwise impeded or prevented by the owner, occupant, or operator from conducting an inspection of the premises, such person shall be in violation of this Article and subject to the penalties hereunder.

Sec. 1-15.SEARCH WARRANT OR ACCESS WARRANT.

a. Any officer designated by the Town to inspect a premises may, upon affidavit, apply to the Judge of competent jurisdiction for a search warrant setting forth factually the actual conditions and circumstances that provide a reasonable basis for believing that a nuisance or violation of this Code may exist, including one or more of the following:

1. That the premises or records require inspection according to the cycle established by the inspecting officer of the of records, buildings, or premises of the type involved;

2. That observation of external conditions of the premises and its public areas has resulted in the belief that violations of this Code exist.

b. If the Judge of competent jurisdiction is satisfied as to the matters set forth in the affidavit, he shall authorize the issuance of a search warrant permitting access to and inspection of that part of the premises on which the nuisance or violation may exist.

Sec. 1-16.SUSPENSION OR REVOCATION OF LICENSES OR PERMITS; REFUSAL TO ISSUE LICENSES OR PERMITS.

a. The Town may refuse to issue a license or permit or the licenses or permits issued pursuant to this Code, unless otherwise provided hereunder, may be suspended or revoked by the Mayor or such other authorized official, department, board or agency where applicable, after notice and hearing for any of the following causes:

1. Any fraud, misrepresentations or false statements contained in the application for permit or license.

2. Any fraud, misrepresentations or false statements made in connection with the selling of goods, wares, merchandise and services.

3. Any violation of this Code and/or any ordinance of the Town.

4. Conviction of the applicant, licensee, or permittee of any crime or misdemeanor involving moral turpitude or a violation of any Act of the State, Town or any law of the United States having a reasonable relationship to the purpose and scope of the permit or license.

5. Conducting the activity under this Code and/or any ordinance of the Town in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, morals or general welfare of the public.

b. Notice of hearing for the suspension or revocation of a license or permit shall be in writing given by the Clerk, setting forth specifically the grounds of the complaint and the time and place of the hearing. Service of such notice shall be made by either personal service or by certified mail, return receipt requested, to the applicant, licensee or permittee at the last known address, at least five (5) days prior to the date set for the hearing.

c. In case of refusal to issue a permit or license or the suspension or revocation of a license or permit as herein provided, no portion of the application, license, or permit fee shall be returned to the applicant, licensee or permittee unless otherwise provided in this Code and/or any ordinance of the Town.

d. Any suspension or revocation hereunder may be either in addition to or instead of any penalty or fine as prescribed in this Code and/or any ordinance of the Town.

e. The order of the Mayor or such other authorized official, department, board or agency where applicable, shall be the final municipal action for the purpose of judicial review.

Sec. 1-17.CONTINUING OFFENSES.

For each day any violation of this Code occurs or continues to exist after proper notification of such violation, such day shall constitute a separate offense, unless otherwise provided in the notice.

Sec. 1-18.PROHIBITED ACTS INCLUDE CAUSING, PERMITTING, CONCEALING.

Whenever in this Code any act or omission is made unlawful, it shall include causing, allowing, permitting, aiding, abetting, suffering or concealing the fact of such act or omission.

Sec. 1-19.SAME OFFENSE PUNISHABLE BY DIFFERENT SECTIONS OF THE CODE; TOWN OPTION.

In all cases where the same offense is made punishable or is created by different sections of this Code, the Town may elect under which to proceed, but not more than one recovery shall be had against the same person for the same offense.

Sec. 1-20.CODE SEVERABILITY.

It is declared to be the intention of the Council that the sections, subsections, paragraphs, sentences, clauses and words of this Code are severable. If any section, subsection, paragraph, sentence, clause, or word is declared unconstitutional or otherwise invalid by the lawful judgment or decree of any court of competent jurisdiction, its unconstitutionality or invalidity shall not affect the validity of any of the remaining sections, subsections, paragraphs, sentences, clauses and words of this Code, since the sections or parts of sections would have been enacted by the Council without and irrespective of any unconstitutional or otherwise invalid section, subsection, paragraph, sentence, clause or word being incorporated into this Code.

Sec. 1-21.GENERAL PENALTY; SUBSEQUENT VIOLATION; SUSPENSION OR REVOCATION OF LICENSE OR PERMIT.

a. Whenever in this Code or in any ordinance of the Town any act or failure to do a required act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, where no specific penalty is provided therefor, the violation of any such provision of this Code or any ordinance shall be punished by a fine not exceeding Five Hundred Dollars ($500.00) or by imprisonment in the Fairfax County Jail or other place of legal incarceration for not more than thirty (30) days, or by both such fine and imprisonment in the discretion of the court.

b. Whenever in this Code or in any ordinance there is no provision for a greater penalty for a second or subsequent conviction for a violation of this Code, any person who has previously been convicted of the same violation shall be subject to a fine of not less than One Thousand ($1,000.00), more for each succeeding offense, not to exceed the maximum penalty permitted for each offense.

c. If the penalty for a particular offense is limited by State Statute, then such limitation shall be applicable to the provision of this Code and other ordinances of the Town not withstanding the provisions of the section.

d. The suspension or revocation of any license, certificate or other privilege conferred by the Town shall not be regarded as a penalty for the purposes of this Code, but shall be in addition thereto.

Sec. 1-22.PAYMENT OF FINES IN INSTALLMENTS BY INDIGENT PERSONS; PROCEDURE.[1]

a. In the case of indigency of the defendant (a person without means to pay the fine), the imposition of any fine in this Code shall be payable by the defendant to the Town Treasurer in equal monthly installments as set by the Court until the fine is satisfied in full.

b. Upon default by the defendant of any such monthly installments, the entire balance of the fine may be deemed immediately due and payable to the Town. The Town Treasurer shall report this default within thirty (30) days to the Court that imposed the fine.

c. The Court that imposed the fine, upon receipt of a report of such default from the Town Treasurer, shall set a date and place of hearing with proper notice to the defendant ordering him to appear and show cause why he should not be imprisoned until the fine is satisfied in full. Such notice shall be made either by personal service or by registered mail to the defendant at his last known address no later than five (5) days prior to the date set for the hearing.

d. After hearing thereon, if the evidence warrants, the Court, in its discretion, may sentence the defendant to imprisonment in the Fairfax County Jail or other place of legal incarceration for a term not to exceed thirty (30) days for any one (1) offense until the fine is fully paid.

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1 Decisional law: As to payment of fines in installments by indigent persons, see Tate v. Short, 401 U.S. 495 (1971).

CHAPTER 2

ADMINISTRATION

CHAPTER 2

ADMINISTRATION

Chapter 2 – ADMINISTRATION

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CHAPTER 2

ADMINISTRATION

ARTICLE 1

GENERAL PROVISIONS

CHAPTER 2

ADMINISTRATION

ARTICLE 1 GENERAL PROVISIONS

Sec. 2-1. AMENDMENTS TO CHAPTER.

This Chapter, which constitutes the by-laws of the Town, may be amended by a majority vote of the members of the Council.

Sec. 2-2. RULES, BY-LAWS AND CHARTER COMMITTEE; DESIGNATED.

The Council may establish a Rules, By-Laws, and Charter Committee and designate the membership thereof.

ARTICLE 2

TOWN OFFICIALS

ARTICLE 2 TOWN OFFICIALS

Sec. 2-3. POWERS AND DUTIES OF MAYOR.

a. The Mayor shall see that the ordinances of the Town are faithfully executed and shall be the chief executive officer and the head of the administrative branch of the Town government. The Mayor shall be responsible for the administration of the Town's affairs to the Council and to the voters of the Town.

b. The Mayor shall prepare or cause to be prepared annually, on the first Monday in July, a report to the Council in the name of the government of the Town. This report shall deal with the financial condition of the Town, and with the accomplishments of the Town and it's various departments and agencies. In the report the Mayor shall make whatever recommendations he deems proper for the public good and welfare of the Town. The report shall be published and printed for distribution as may be deemed advisable by the Council.

c. The Mayor shall have complete supervision over the financial administration of the Town government. He shall prepare or have prepared annually a budget and submit it to the Council. He shall supervise the disbursement of all moneys and have control over all expenditures to assure that budget appropriations are not exceeded.

d. The Mayor shall have such other powers and perform such other duties as may be provided by the Charter or as may be required of him by the Council, not inconsistent with the Charter or State law.

Sec. 2-4. POWERS AND DUTIES OF COUNCIL.

a. In addition to any other powers authorized by State law and the Town Charter, the Council may:

1. Make ordinances and prescribe fines or other punishment for violation thereof.

2. Appoint a collector of its taxes and levies, and such other officers, as they may deem proper, define their powers, prescribe their duties and compensation.

3. Lay off streets, walks or alleys, alter, improve and light the same and have them kept in good order.

4. Provide off-street automobile parking facilities and open the same to the public, with or without charge.

5. Lay off public grounds and provide all buildings proper for the Town.

6. Prescribe the time for holding markets and regulate the markets.

7. Prevent injury or annoyance from anything dangerous, offensive or unhealthy and cause any nuisance to be abated.

8. Regulate the keeping of gunpowder or other combustibles and provide magazines for the same.

Sec. 2-5. DESIGNATION OF RESPONSIBILITY FOR SERVICES.

a. The Council shall designate which of its members shall be responsible for proper performance in the Town of each of the following functions:

1. Police and fire protection.
2. Streets and roads.
3. Street lights.
4. Health and welfare.

5. Sanitation and sewerage.
6. Zoning and restoration.
7. County Liaison.
8. Provide places for the interment of the dead in or near the Town.
9. Make regulations concerning the building of houses in the Town.
10. Establish and maintain parks, playgrounds and boulevards.
11. Acquire and preserve things of historical interest.

Sec. 2-6. POWERS AND DUTIES OF CLERK.

a. The Clerk shall:

1. Serve as clerk of the Council and perform such other duties of a like nature as shall be required by that body.

2. Be responsible for the recording, filing, indexing and safekeeping of all proceedings of the Council.

3. Record in full, uniformly and permanently, all ordinances and shall authenticate the same.

4. Publish all adopted ordinances and resolutions of the Council, and all legal notices required by law or ordinance.

5. Prepare, attest and report on the vital statistics of the Town.

6. Be the custodian of the official seal of the Town.

Sec. 2-7. CLERK; VACANCY.

a. In case of vacancy in the office of Clerk for any cause, the Council shall fill the office. Any person so appointed shall serve in an interim capacity until duly qualified. Such person shall take the oath and have all powers and perform all the duties of such office.

b. In case of absence or temporary incapacity in the office of Clerk, the Council shall fill the office for such period of temporary absence.

Sec. 2-8. SUCCESSOR IN OFFICE OF CLERK.

All books, documents and papers, accounts, credits and deposits belonging to the Clerk's office, or in the custody of the Clerk, shall immediately be delivered up and transferred by him to his successor in office.

Sec. 2-9. TOWN SERGEANT.[1]

In addition to any other power conferred by State law, the Town Sergeant if appointed shall see that all Town ordinances are enforced.

Sec. 2-10.PAYMENTS BY TOWN TREASURER; LIMITS; EXCEPTIONS; TOWN TREASURER.

a. Apart from items specifically appropriated for in the Budget adopted for the fiscal year, no payments shall be made from the Town Treasury except in liquidation of charges for services or supplies specifically contracted for, including the amount of expenditure, by resolution of a majority of the members of the Council present in advance of the rendering of the services or the furnishing of the supplies. For an amount in excess of $500, an approval by two-thirds of the Council is required.

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[1] State law reference: As to Sergeants generally, see Code of Va., 1950, Sec. 15.2-1700 et. seq.

b. The Treasurer shall be the custodian of all Town funds and shall disburse the funds only upon direction by the Council or in any other manner according to law.

ARTICLE 3

PROCEDURE AT COUNCIL MEETINGS

ARTICLE 3 PROCEDURE AT COUNCIL MEETINGS

Sec. 2-11.COUNCIL MEETINGS; TIME AND PLACE; SPECIAL MEETINGS.

a. The Council shall hold its regular meetings at some convenient place in the Town at 7:30 p.m., on the first Tuesday of each month, unless the Council shall for any month prescribe a different time or place. At the discretion of the mayor, the regularly scheduled meeting of the Town Council may be rescheduled or cancelled for lack of a quorum.

b. Special meetings and executive meetings may be called by the Mayor or Acting Mayor at such times and places as he may deem proper. On written request signed by three (3) or more Councilmen, special meetings shall be called.

Sec. 2-12.OPEN COUNCIL MEETINGS.

Every meeting of the Council shall be open, except as noted in section 2-13, to all Town residents, property owners and members of the general public to express their views on any matter before the Council when called upon by the Mayor or any other member of the Council to do so, after the Council members have expressed their views.

Sec. 2-13.EXECUTIVE MEETING LIMITATIONS.

a. Closed meetings of the Council may be held only for the applicable purposes set forth in section 2.1-344.A. of the Code of Virginia (1950, as amended).

b. Closed meeting shall not be open to the public.

Sec. 2-14.PROPOSED RESOLUTIONS AND ORDINANCES; COPIES; TIME LIMIT.

a. A Council member, including the Mayor, introducing a proposed resolution or ordinance, must make a copy available to the Mayor and to each of the other members of the Council at least fifteen (15) days before the Council meeting at which it shall be introduced.

b. This section may be waived only by a unanimous vote of all members of the Council present at such meeting that an emergency exists.

Sec. 2-15.SUBMISSION OF MATTERS TO COUNCIL.

a. If any resident or property owner wishes a decision on some matter from the Council at the next scheduled meeting of the Council, the question should be submitted to the Clerk in writing at least fifteen (15) days before the meeting, so as to give the Council members the opportunity to collect relevant facts, check pertinent law, and give the matter careful consideration before the meeting.

b. Any question or proposal may be presented by any resident or property owner at any regularly scheduled Council meeting, if the resident or property owner is willing to postpone the decision until the next meeting of the Council while the Council members collect relevant facts, check pertinent law, and give the matter careful consideration.

Sec. 2-16.ORDER OF BUSINESS.

a. At each regular meeting the order of business shall be as follows:

1. Reading of minutes of last regular meeting and any subsequent special meetings.

2. Report of the Treasurer.

3. Reading of communications.

4. Citizens' remarks.

   A. Suggestions or complaints of citizens and taxpayers, and other persons authorized by the Mayor to address the Council.

   B. Each person wishing to address the Council shall, when recognized by the Mayor:

      i. Give his name and address

      ii. Direct his remarks to the Council and not to other citizens present

      iii. Be limited to one period of not over five (5) minutes, unless granted additional time by unanimous consent of the Council.

   C. Priority shall be given to persons who have signified to the Clerk their desire to address the Council.

   D. The Mayor shall enforce this Subsection.

5. Unfinished business

6. Reports of special committees

7. Reports of standing committees, in the order as may be determined by the Mayor

8. New business

9. Adjournment

Sec. 2-17.DUTIES OF THE MAYOR AT MEETINGS.

a. The Mayor shall act as chairperson of the Council.

b. In addition to the appointment of any committee with consent of the Town Council and the reference of communications to them, the Mayor may in his discretion assign to any committee for investigation and report matters which come within the proper functions of that committee.

Sec. 2-18.DUTIES OF THE CLERK AT MEETINGS.

a. At each meeting, the Clerk shall submit to the Mayor a statement of all matters pending and not disposed of by the Council at its last preceding meeting, which matters shall be considered as "unfinished business".

b. He shall submit a list of all special committees with the date of appointment and the subjects referred thereto, and a list of all matters specifically referred to each of the standing committees and not yet reported on.

c. He shall transmit to the chairman of each committee all papers (or copies thereof) relating to matters referred to that committee by the Mayor.

d. He shall submit to the Mayor a list of all persons who have expressed a desire to address the Council, together with all subjects to be discussed by them.

Sec. 2-19.MOTIONS.

All motions shall be made and seconded before being subject to debate. The Mayor may make or second a motion of any nature, the same as if he were a member of the Council.

Sec. 2-20.COMMUNICATIONS TO COUNCIL.

a. All communications received by the Clerk which require action of any sort by the Council shall be promptly submitted to the Mayor for reference to the proper committee.

b. Communications not received in time for the reference shall be read to the Council under section 2-16.a.5. except that, by direction of the Mayor, the Clerk shall prepare and read only a brief summary of any communication which is too long to justify its reading in full.

c. The Mayor shall refer to the proper committee all communications read or summarized at the meetings of the Council.

d. The committee to which the communication is referred shall return the same, with its recommendations thereon, within two (2) months of the date of the first meeting at which the communication was in the hands of the committee.

Sec. 2-21.PARLIAMENTARY AUTHORITY.

Robert's Rules of Order shall be the recognized authority as to any matter of procedure not covered by this Article.

Sec. 2-22.QUORUM; PASSAGE OF ORDINANCES.

Four (4) Councilmen, including the Mayor, shall constitute a quorum for the transaction of business. No ordinance shall be approved without a majority favorable vote of the entire Council.

Sec. 2-23. PRECINCT AND POLLING PLACE.

The Town shall constitute one precinct and the polling place shall be located at the Clifton Town Meeting Hall, 12641 Chapel Road.

CHAPTER 3

FIRE PREVENTION ORDINANCE

Chapter 3 FIRE PREVENTION ORDINANCE

Sec. 3-1. FIRE PREVENTION ORDINANCE

Adoption of Provisions of the Virginia Statewide Fire Prevention Code and the Fire Prevention Code of the County of Fairfax.

The provisions of the Virginia Statewide Fire Prevention Code and the Fire Prevention Code of the County of Fairfax shall be enforced by the Fairfax County Fire Marshal and, under the authority of the Fairfax County Fire Marshal, by the Deputy County Fire Marshal and the members of the Fire Marshal's staff. The Fairfax County Fire Marshal, the Deputy Fire Marshall and the members of the Fire Marshal's staff shall have all of the powers of the local fire official, the local arson investigator and the local Fire Marshal and his assistants as set forth in Title 27 in the Code of Virginia, as amended, and all the powers of the fire official and the enforcing agency set forth in the Virginia Statewide Fire Prevention Code and the Fire Prevention Code of the County of Fairfax.

CHAPTER 4

BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE ORDINANCE

CHAPTER 4

BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE ORDINANCE

Sec. 4-1. DEFINITIONS AND REQUIREMENTS.

Sec. 4-2. PERSONS SUBJECT TO BUSINESS LICENSING.

Sec. 4-3. APPLICATION FOR LICENSE; RENEWAL OF LICENSE; REQUIREMENTS.

Sec. 4-4. SEPARATE LICENSE REQUIRED FOR EACH PLACE OF BUSINESS OR OFFICE; EXCEPTION.

Sec. 4-5. COMPUTATION OF ANNUAL LICENSE TAXES: BEGINNING BUSINESS; RENEWAL OF LICENSES.

Sec. 4-6. SITUS OF GROSS RECEIPTS; APPORTIONMENT; AGREEMENTS.

Sec. 4-7. WHEN LICENSE TAXES AND FEES PAYABLE.

Sec. 4-8. PAYMENT BY CORPORATIONS AND PARTNERSHIPS.

Sec. 4-9. LEVY OF PENALTIES AND INTEREST; WAIVER OF PENALTIES.

Sec. 4-10. COLLECTION OF ASSESSMENTS; REFUNDS.

Sec. 4-11. APPEALS ON ASSESSMENTS; RULINGS.

Sec.4-12. RECORDS AND REPORTS REQUIRED.

Sec.4-13. TRANSFER OF LICENSE.

Sec. 4-14. LICENSE REQUIRED; PENALTY FOR FAILURE TO COMPLY WITH CHAPTER.

Sec. 4-15. EFFECT ON OTHER LICENSES.

Sec. 4-16. through 4-18. [RESERVED].

Sec. 4-20. AMUSEMENTS; LICENSE TAX RATE.

Sec. 4-21. BUILDERS, DEVELOPERS; LICENSE TAX RATE.

Sec. 4-22. BUSINESS SERVICE OCCUPATIONS; LICENSE TAX RATE.

Sec. 4-23. PERSONAL SERVICE OCCUPATIONS; LICENSE TAX RATE.

Sec. 4-24. CONTRACTORS AND CONTRACTING; LICENSE TAX RATE.

Sec. 4-25. HOTELS AND MOTELS; LICENSE TAX RATE.

Sec. 4-26. PROFESSIONS AND PROFESSIONAL SERVICES; LICENSE TAX RATE.

Sec. 4-27. REPAIR SERVICE OCCUPATIONS; LICENSE TAX RATE.

Sec. 4-28. RETAIL MERCHANTS; LICENSE TAX RATE.

Sec. 4-29. WHOLESALE MERCHANTS; LICENSE TAX RATE.

CHAPTER 4

BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE ORDINANCE

Sec. 4-30. MONEY LENDERS; LICENSE TAX RATE.

Sec. 4-31. TELEPHONE COMPANIES; LICENSE TAX RATE.

Sec. 4-32. HEAT, LIGHT, POWER AND GAS COMPANIES; LICENSE TAX RATE.

Sec. 4-33. REAL ESTATE BROKERS; LICENSE TAX RATE.

Sec. 4-34. RESEARCH AND DEVELOPMENT BUSINESS; LICENSE TAX RATE.

Sec. 4-35. CONSULTANTS AND SPECIALIZED OCCUPATIONS; LICENSE TAX RATE.

Chapter 4 BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE TAX ORDINANCE

Sec. 4-1. DEFINITIONS AND REQUIREMENTS.

a. General definitions. Except as otherwise provided by subsection b. of this section, the words and phrases defined in this section when used in this Chapter shall have the following meanings, unless a different meaning clearly is required by the context:

1. "Affiliated group" means:

A. One or more chains of corporations subject to inclusion connected through stock ownership with a common parent corporation which is a corporation subject to inclusion if:

i. Stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the corporations subject to inclusion, except the common parent corporation, is owned directly by one or more of the other corporations subject to inclusion; and

ii. The common parent corporation directly owns stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at least one of the other subject to inclusion corporations. As used in this subdivision, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends; the phrase "corporation subject to inclusion" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

B. Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:

i. At least eighty percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation; and

ii. More than fifty percent of the total combined voting power of all classes of stock entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

C. When one or more of the corporations subject to inclusion, including the common parent corporation is a non-stock corporation, the term "stock" as used in this subdivision shall refer to the non-stock corporation membership or membership voting rights, as is appropriate to the context.

2. "Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the Town Treasurer or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by the Town Treasurer when a written notice of assessment is delivered to the taxpayer by the Town Treasurer, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by this Chapter for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

3. "Base year" means the calendar year preceding the license year, except for contractors subject to the provisions of Va. Code § 58.1-3715 or for a different period for measuring the gross receipts of a business, such as for beginning businesses filing estimated license applications pursuant to sec. 4-5. of this Chapter.

4. "Business" means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business: (I) advertising or otherwise holding oneself out to the public as being engaged in a particular business or (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.

5. "Calendar year" means the period beginning on January 1 of each year and ending on December 31 of each year.

6. "Definite place of business" means an office or a location at which occurs a regular and continuous course of dealing for thirty consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not subject to licensure as a peddler or itinerant merchant.

7. "Financial services" means the buying, selling, handling, managing, investing, and providing of advice regarding money, credit, securities, or other investments.

8. "Gross purchases" means all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. Gross purchases shall include all costs incurred in the manufacture or acquisition of property of any nature or description acquired (I) for resale to retail merchants or (ii) for sale at wholesale to other wholesale merchants, institutional, commercial or industrial users. Gross purchases does not mean any costs incurred for the acquisition of property of any nature or description which, when sold by a wholesale merchant, is subject to taxation by the Virginia Retail Sales and Use Tax Act, Va. Code §§ 58.1-600 through 58.1-639, as amended, or by any similar retail sales and use tax. A wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares and merchandise if it cannot determine the cost of manufacture or chooses not to disclose the cost of manufacture.

9. "Gross receipts" means the whole, entire, total receipts, without deduction. Gross receipts consist of the gross receipts from any business, profession, trade, occupation or calling, including cash, credits, fees, commissions, brokerage charges and rentals, and property of any kind, nature or description from either sales made or services rendered without any deduction therefrom on account of cost of the property sold, the cost of material, labor or services or other costs, interest or any expense whatsoever, and such term shall include in case of merchants the amount of the retail value of supplies and goods furnished to or used by the licensee or his family or other person for which no charge is made. Gross receipts include receipts from all sales and services rendered or conducted from a place of business within the Town to persons in the Town or to persons outside the Town and all other receipts from all activities having a taxable situs within the Town for local license taxation authorized by Virginia law. For the purposes of this definition, receipts from rendering sales and services to persons include all gross receipts from government agencies, as well as those entities described within the definition of "person" provided by this section.

10. "License year" means the calendar year for which a license is issued for the privilege of engaging in business.

11. "Person" means any individual, firm, partnership, corporation, company, association or joint stock association. Person includes any trustee, receiver, assignee or personal representative thereof carrying on or continuing a business profession, trade, occupation or calling, but shall not include a court-appointed trustee, receiver or personal representative in the liquidation of assets for immediate distribution or a sergeant or sheriff, or any deputy, selling under authority of process or writ of a court of justice.

12. "Real estate services" means providing a service with respect to the purchase, sale, lease, rental, or appraisal of real property.

13. "Tax commissioner" means the chief executive officer of the Virginia Department of Taxation, or delegated representative.

b. Special definitions, exclusions and provisions. The general definitions provided by this Chapter shall be subject to the following limitations, unless a different meaning clearly is required by the context:

1. Exclusions from the definition of gross receipts:

A. Gross receipts do not include those receipts excluded by Virginia law pursuant to Va. Code § 58.1-3703(C).

B. Gross receipts do not include revenues that are attributable to taxable business activity conducted in another jurisdiction within the Commonwealth of Virginia and the volume attributable to that business activity is deductible pursuant to Va. Code §§ 58.1-3708 and 58.1-3709.

C. Pursuant to Va. Code § 58.1-3732, gross receipts do not include those amounts not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business.

D. Gross receipts do not include revenues that are attributable to business activity with a taxable situs in another jurisdiction not within the Commonwealth of Virginia which shall include any amount attributable to business conducted in another state or foreign country in which the taxpayer is liable for an income or other tax based upon income.

E. Gross receipts do not include any amounts received and paid to the United States, the Commonwealth or any county, city or town for the Virginia retail sales or use tax, for any local sales tax or any local excise tax on cigarettes, for any federal or state excise taxes on motor fuels.

F. Gross receipts do not include any amount paid for computer hardware and software that are sold to a United States federal or state government entity provided that such property was purchased within two years of the sale to said entity by the original purchaser who shall have been contractually obligated at the time of purchase to resell such property to a state or federal government entity. This deduction shall not occur until the time of resale and shall apply to only the original cost of the property and not to its resale price, and the deduction shall not apply to any of the tangible personal property which was the subject of the original resale contract if it is not resold to a state or federal government entity in accordance with the original contract obligation.

G. Gross receipts do not include licenses, admission taxes or pari-mutual wagering pools established under Va. Code §§ 59.1-392 or 59.1-393 in accordance with the provisions of Va. Code § 58.1-3732.1.

H. Gross receipts do not include any amounts received by a real estate broker which arise from real estate sales transactions to the extent that such amounts are paid to a real estate agent as a commission and the agent is subject to a business license tax on such gross receipts in accordance with the provisions of Va. Code § 58.1-3732.2. Real estate brokers must include all such receipts within their taxable gross as individual real estate agents are not licensed separately under Chapter 4, of the Code of the Town of Clifton. In addition, gross receipts, when used in connection with sec. 4-33. of this Chapter, means all commissions received by real estate brokers with respect to the purchase, sale or purchase and sale of any real estate and the management fees paid by real estate agents to real estate brokers as established in accord with a contractual agreement between the broker and the agents of that broker. After December 31, 1995, gross receipts, when used in connection with sec. 4-33. of this Chapter, do not include management fees paid by real estate agents to real estate brokers as established in accord with a contractual

agreement between the broker and the agents of that broker. Such receipts are taxable in accordance with sec. 4-23. of this Chapter.

I. Gross receipts do not include the value of any trade-in vehicle accepted in trade by a motor vehicle dealer who accepts a trade-in as part of a sale of a motor vehicle pursuant to Va. Code § 58.1-3734.1.

J. Gross receipts do not include all amounts received in the course of conducting the state lottery by a lottery sales agent licensed by the State Lottery Board, but gross receipts do include the compensation paid to a lottery sales agent in accordance with the provisions of Va. Code § 58.1-4011.

actually

K. Gross receipts do not include membership dues collected by trade, business, professional, service or civic associations, or other similar nonprofit organizations.

L. Gross receipts do not include amounts paid by advertising agents and agencies for any customer for advertising space, radio time, television time, electrical transcription, pressing, art work, engraving, plate, mats, printing stock and postage.

M. Gross receipts do not include income which is exempt from the federal income tax pursuant to § 501(c)(6) of the United States Internal Revenue Code, as amended. However, this exclusion pertaining to organizations which are exempt from the federal income tax pursuant to § 501(c)(6) of the Internal Revenue Code does not exempt unrelated business income received by those is taxable pursuant to § 501(b) of the United States Internal Revenue Code, as

United States
organizations which
amended.

N. Gross receipts do not include:

1. The income of a charitable nonprofit organization except to the extent an organization has receipts from an unrelated trade or business the income of which is taxable under Internal Revenue Code § 511 et seq. For the purpose of this subsection, "charitable nonprofit organization" means an organization which is described in Internal Revenue Code § 501(c)(3) and to which contributions are deductible by the contributor under Internal Revenue Code § 170, except that educational institutions shall be limited to schools, colleges and other similar institutions of learning.

2. On or measured by gifts, contributions, and membership dues of a nonprofit organization. Activities conducted for consideration which are similar to activities conducted for consideration by for-profit businesses shall be presumed to be activities that are part of a business licensure. For the purpose of this subsection, "nonprofit organization" exempt from federal income tax under Internal Revenue Code § nonprofit organizations.

subject to
means an organization
501, other than charitable

O. Gross receipts do not include receipts which are the proceeds of a loan transaction in which the licensee is the obligator, or the return of principal of a loan transaction in which the licensee is the creditor. Gross receipts also do not include the return of principal or basis upon the sale of a capital asset. Gross receipts, when used in connection with or in respect to financial transactions involving the sale of notes, stocks, bonds or other securities or the loan, collection or advance of money or the discounting of notes, bills or other evidence of debt, mean the gross interest, gross discount, gross commission or other gross receipts earned by means of, or resulting from such financial transactions, but gross receipts do not include any amount received as payment of debt.

P. Gross receipts do not include the pass-through funds of any money lender duly organized, registered and doing business as a cooperative association under the Virginia Cooperative Association Act or any corresponding cooperative association act of any other state or the District of Columbia. However, all funds used for operating expenses, retained margins and reserves of any such

cooperative association are gross receipts which are taxable in accordance with sec. 4-30. of this Chapter. Any cooperative money lender whose gross receipts are subject to taxation in accordance with this subparagraph shall submit such documentary proof as required by the Town Treasurer that the cooperative money lender is duly organized, registered and doing business as a cooperative association in the manner provided herein.

Q. Gross receipts do not include donations, gifts or contributions made without consideration to a nonprofit organization described in Internal Revenue Code § 501.

R. Gross receipts do not include any amounts received from withdrawals from inventory for purposes other than sale or distribution and for which no consideration is received and the occasional sale of assets other than inventory whether or not again or loss is recognized for federal purposes.

S. Gross receipts do not include investment income not directly related to the privilege exercised by a business subject to licensure not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.

T. Gross receipts do not include general and administrative intra-company receipts or intra-company reimbursements or transfer payments.

U. Gross receipts do not include receipts on any venture capital fund or other investment fund, except commissions and fees of such funds. Gross receipts from the sale and rental of real estate and buildings remain taxable.

V. Gross receipts do not include rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to purchase certain goods or services from a person other than the offeror, and which the recipient assigns to the licensee in consideration of the sale goods and services shall not be considered a rebate or discount to the licensee, but shall be included in the licensee's gross receipts together with any handling or other fees related to the incentive.

W. Gross receipts do not include any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts receivable created by sales which have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business).

X. Gross receipts do not include any amount representing returns and allowances granted by the business to its customer.

2. Exclusions from the definition of person:

A. Person does not include: (I) volunteer fire departments; (ii) volunteer rescue squads; or (iii) nonprofit charitable, cultural, educational or recreational organizations which are created to operate a community center, a swimming pool, a tennis court or some other facility or service for the exclusive benefit of the residents of the Town of Clifton.

3. Other special provisions:

A. Notwithstanding the provisions of sec. 4-22. of the Chapter, every person conducting or engaging in the occupation, business, trade or calling of leasing aircraft shall be taxed on the gross receipts of that activity at the annual license tax rate imposed on wholesale merchants by sec. 4-29.

c. The calculation of gross purchases and gross receipts for annual license tax or fee purposes shall be on a cash, a modified accrual or an accrual basis used for the preceding calendar year, but the basis used for such calculation of gross receipts for each person shall be the same system of accounts used by that person for federal income tax purposes.

d. Any person claiming the benefit of any exclusion, exemption, restriction or limitation to the taxes or fee imposed by this Chapter shall bear the burden of showing that the exclusion, exemption, restriction or limitation is applicable to their claim.

e. Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to state law, both the Town Treasurer and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

f. Notwithstanding Va. Code § 58.1-3903, the Town Treasurer shall assess the local license tax omitted because of fraud or failure to apply for a license for the current license year and the six preceding license years.

Sec. 4-2. PERSONS SUBJECT TO BUSINESS LICENSING.

a. Except as otherwise provided by this Chapter or by state law, the license taxes or fee imposed by this Chapter are imposed on every person engaged in any business, profession, trade, occupation or calling which has a taxable situs in the Town.

b. Every person shall apply for a license for each business or profession when engaging in a business in the Town if the person has a definite place of business in the Town; or there is no definite place of business anywhere and the person resides in the Town.

Sec. 4-3. APPLICATION FOR LICENSE; RENEWAL OF LICENSE; REQUIREMENTS.

a. Every person required to obtain a license by this Chapter shall make application for any license or licenses to the Town Treasurer. All applications for new licenses or for the renewal of licenses shall be submitted by mail or in person to the Town Treasurer.

b. The Town Treasurer shall furnish the necessary forms which shall be properly filled in with such information as the Town Treasurer may require. Every applicant for a license to conduct any business, profession, trade or occupation under the provisions of this Chapter shall furnish the Town Treasurer the information necessary to assess a license tax or fee on the basis provided by law. Such information shall be furnished in all instances regardless of the amount of gross receipts or type of business.

1. Such information shall be filed as follows:

A. For license tax year 1997 and preceding years, license applications shall be filed on or before January 31 of each year or within seventy-five calendar days of the commencement of the business operation.

B. For the license year commencing January 1, 1998 and the years thereafter, license applications shall be filed on or before March 1 of each year or within seventy-five calendar days of the commencement of the business operation.

2. All license information shall be submitted in writing on forms prescribed by the Town Treasurer and shall include, but not be limited to, the applicant's signature, correct name and trade name, correct mailing address, the correct business address, the nature, type and location of the business, profession, trade or occupation to be pursued, market area to be served, number of persons employed, and a recording of gross receipts for the preceding calendar year.

c. In the event that the filing due date, as set forth in subsection a of this section, or seventy-five days after the commencement of a business falls on a Saturday, Sunday, or legal holiday, then the application required to be filed by subsection a of this section shall be filed no later than the next succeeding day on which the Town Treasurer's office is open.

d. In the event of a failure or refusal to file the required necessary information with the Town Treasurer, the Town Treasurer shall assess such license tax upon the best information he can obtain (adding thereto the penalty prescribed by law).

e. The Town Treasurer may grant an extension of time in which to file an application for a license, for reasonable cause. The extension may be conditioned upon the timely payment of a reasonable estimate of the appropriate tax; the tax is then subject to adjustment to the correct tax at the end of the extension, together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, with a penalty of ten percent of the portion paid after the due date.

f. Prior to January 1, 1998, upon receipt of the application from the taxpayer the Town Treasurer shall compute the license tax due and bill the taxpayer for such tax. Effective January 1, 1998, the taxpayer shall compute the license tax due and remit payment of such tax and the license application and such information required under subsection b.2. of this section no later than March 1 of the tax year or, in the case of a beginning business, the tax shall be paid within 75 days of the date the business began in the Town of Clifton.

Sec. 4-4. SEPARATE LICENSE REQUIRED FOR EACH PLACE OF BUSINESS OR OFFICE; EXCEPTION.

A separate license shall be required for each definite place of business and for each business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied: (I) each business or profession is subject to licensure at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of the Town; (ii) all of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and (iii) the taxpayer agrees to supply such information as the Town Treasurer may require concerning the nature of the several businesses and their gross receipts.

Sec. 4-5. COMPUTATION OF ANNUAL LICENSE TAXES: BEGINNING BUSINESS; RENEWAL OF LICENSES.

a. Beginning business. Notwithstanding the provisions of section 4-1.c. of this Chapter, every person beginning a business, profession, trade, occupation or calling which is subject to a license tax or fee under the provisions of this Chapter, shall estimate the amount of the gross receipts or gross purchases that the person applying for a license expects to receive between the date of beginning business and the end of the then current license year, and the license tax or fee for the current year also shall be computed on such estimate. Whenever a license tax or fee is computed upon estimated gross receipts or gross purchases, such estimate shall be subject to adjustment by the Town Treasurer at the end of the tax year to reflect actual gross receipts or gross purchases and the Town Treasurer shall give credit for any overpayment on the license tax or fee payable the following year. Similarly, underestimates will be adjusted to reflect actual gross receipts or actual gross purchases and the amount underestimated will be added to the license tax for the succeeding year. License tax shall be levied according to the license fee table set forth under sec. 4-7. or the tax rates established within this Chapter.

b. Renewal of license. The license taxes and fees imposed by this Chapter shall be imposed annually on all phases of any business activity required to be licensed by this Chapter. Except as otherwise provided by this Chapter or by state law, the renewal of the annual license tax for each licensable business activity shall be computed by multiplying annual gross receipts or gross purchases from the preceding calendar year, as established in accordance with sec. 4-1.c., by the tax rate set forth in this Chapter which is appropriate for the type of business, profession, trade, occupation or calling to be licensed.

Sec. 4-6. SITUS OF GROSS RECEIPTS; APPORTIONMENT; AGREEMENTS.

a. Situs. Whenever the tax imposed by this Chapter is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a privilege subject to licensure at a definite place of business within the Town. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite places of business or offices as follows:

1. The gross receipts of a contractor shall be attributed to the definite place of business at which his services are performed, or if his services are not performed at any definite place of business, then the definite place of business from which his services are directed or controlled, unless the contractor is subject to the provisions of Va. Code § 58.1-3715.

2. The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled; however, a wholesaler or distribution house subject to a license tax measured by purchases shall determine the situs of its purchases by the definite place of business at which or from which deliveries of the purchased goods, wares and merchandise are made to customers. Any wholesaler who is subject to license tax in two or more localities and who is subject to multiple taxation because the localities use different measures, may apply to the Virginia Department of Taxation for a determination as to the proper measure of purchases and gross receipts subject to license tax in each locality.

3. The gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented or, if the property is not rented from any definite place of business, then to the definite place of business at which the rental of such property is managed.

4. The gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed or, if not performed at any definite place of business, then to the definite place of business from which the services are directed or controlled.

b. Apportionment. If the licensee has more than one definite place of business and it is impractical or impossible to determine to which definite place of business gross receipts should be attributed under the general rule, the gross receipts of the business shall be apportioned between the definite places of businesses on the basis of payroll. Gross receipts shall not be apportioned to a definite place of business unless some activities under the applicable general rule occurred at, or were controlled from, such definite place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall not be attributed to the Town solely because the other jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business in such other jurisdiction.

c. Agreements. The Town Treasurer may enter into agreements with any other political subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than one hundred percent of its gross receipts from all locations in the affected jurisdictions, the Town Treasurer shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved. If an agreement cannot be reached, either the Town Treasurer or taxpayer may seek an advisory opinion from the Virginia Department of Taxation pursuant to Va. Code § 58.1-3701; notice of the request shall be given to the other party. Notwithstanding the provisions of Va. Code § 58.1-3993, when a taxpayer has demonstrated to a court that two or more political subdivisions of Virginia have assessed taxes on gross receipts that may create a double assessment within the meaning of Va. Code § 58.1-3986, the court shall enter such orders pending resolution of the litigation as may be necessary to ensure that the taxpayer is not required to pay multiple assessments even though it is not then known which assessment is correct and which is erroneous.

Sec. 4-7. WHEN LICENSE TAXES AND FEES PAYABLE.

a. All license taxes imposed by this Chapter, except as provided under subsections c or d of this section, shall become due and payable as follows:

1. Beginning businesses. If any person shall begin a business, profession, trade, occupation or calling upon which an annual license tax or fee is imposed under this Chapter after January 1 of each license tax year, then such license tax or fee shall become due immediately, and payment shall be made within seventy-five calendar days of the time such person commences business.

2. Renewal of license. Notwithstanding subsection a.1., of this section,

A. For license tax year 1997 and preceding years, license taxes on are due and payable on or before April 15;

B. For the license year commencing January 1, 1998 and the years thereafter, payment of the license tax or fee shall be included as part of the annual license application as set forth in section 4-3. of this Chapter. Payment shall be made at the time of submission of the annual license application to the Town Treasurer, but in no circumstance later than March 1 of each year.

b. In the event that the payment due date, as set forth in subsection a of this section, or seventy-five calendar days after the commencement of a business falls on a Saturday, Sunday, or legal holiday, then the required tax or fee required shall be paid on the next succeeding day on which the Town Treasurer's office is open.

Sec. 4-8. PAYMENT BY CORPORATIONS AND PARTNERSHIPS.

All licenses issued and license taxes imposed under the provisions of this Chapter upon the gross receipts of a business, trade, occupation or calling conducted by a corporation or partnership shall be issued to and paid by the corporation or partnership, and when so paid, it shall be deemed to discharge 1. the license tax liability of the members of such partnerships insofar as it relates to partnership business or 2. the license tax liability of the employees of such corporations as it relates to the corporation business.

Sec. 4-9. LEVY OF PENALTIES AND INTEREST; WAIVER OF PENALTIES.

a. Levy of penalties. A penalty of ten percent of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the due date established by sec. 4-7. Only the late filing penalty shall be imposed by the Town Treasurer if both the application and payment are late; however, both penalties may be assessed if the Town Treasurer determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the Town Treasurer, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the Town Treasurer is not paid within thirty days, the Town Treasurer may impose a ten percent late payment penalty. If the failure to file or pay was not the fault of the taxpayer, the penalties shall not be imposed, or if imposed, shall be abated by the Town Treasurer. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.

1. "Acted responsibly" means that: a. the taxpayer exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business and b. the taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.

2. "Events beyond the taxpayer's control" include, but are not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with the sole

responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the Town Treasurer who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

3. In no case will the penalty for failure to file a license application by the date established in sec. 4-3. of this Chapter, nor the penalty for failure to pay the tax by the date established in sec. 4-7. of this Chapter exceed the amount of the tax due.

4. A penalty of ten percent shall be imposed upon any underpayment of the taxes assessable by this Chapter.

b. Levy of interest. Interest shall be charged on the late payment of the tax, or any portion thereof, from the due date until the date paid without regard to fault or other reason for the late payment.

1. Interest will accrue on the sum of the unpaid tax and penalty for the first year at the rate of ten percent and for all following years either at the rate of ten percent per year or at the rate established pursuant to § 6621 of the United States Internal Revenue Code, as amended, whichever is greater. Interest will be computed from the first day following the day on which the tax was payable.

2. No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be charged on a late payment, provided the late payment is made not more than thirty days from the due date of the tax.

c. Waiver of penalties. The Town Treasurer may waive any penalty for the failure to file a license application in accordance with sec. 4-3. if such failure was not the fault of the taxpayer. The Town Treasurer may waive any penalty for failure to pay a license tax or fee in accordance with sec. 4-7. if such failure was not the fault of the taxpayer.

Sec. 4-10. COLLECTION OF ASSESSMENTS; REFUNDS.

a. Collection of assessments.

1. Taxes and penalties herein provided shall be assessed and collected in the manner provided by law for the enforcement of the collection of other taxes. In addition, upon nonpayment, reasonable attorney's or collection agency's fees may be recovered by the Town, but such fees shall not exceed twenty percent of the delinquent tax bill. However, attorney's fees shall be added only if such delinquency is collected by action at law or suit in equity.

2. No tax assessment shall be delinquent and subject to collection during the pendency of any administrative appeal made to the Town Treasurer in accordance with Va. Code § 58.1-3980, so long as the administrative appeal is filed within ninety days of the date of the assessment. Any such appeal shall be in writing. Any such administrative appeal shall state the factual or legal basis for the appeal, and it shall provide copies of any documents which support the claim. If an administrative appeal has been filed in accordance with this subsection, no tax assessment shall be deemed delinquent and subject to collection for a period of thirty days after the date of the final determination of the appeal by the Town Treasurer. Nothing in this paragraph shall be construed to preclude the assessment or refund, following the final determination of such appeal, of such interest as otherwise may be provided by general law as to that portion of a tax bill which has remained unpaid or was overpaid during the pendency of such appeal and is determined in such appeal to be properly due and owing.

3. The period for collecting any license tax shall not expire prior to the period specified in Va. Code § 58.1-3940, two years after the date of assessment if the period for assessment has been extended pursuant to sec. 4-1.e. of this Chapter, two years after the final determination of an appeal for which collection has been stayed pursuant to sec. 4-11. of this Chapter, or two years after the final decision in a court application pursuant to Va. Code § 58.1-3984 or similar law for which collection has been stayed, whichever is later.

b. Refunds. Except as otherwise provided by this Chapter or by state law, there shall be no refunds of any license tax paid under the provisions of this Chapter.

1. In the event a person permanently ceases to engage in a business, profession, trade, occupation or calling within the Town during a year for which a license tax has already been paid, that person shall be entitled, upon application, to a refund for that portion of the license tax already paid, prorated on a monthly basis so as to ensure that the licensed privilege is taxed only for that fraction of the year during which it is exercised within the Town. For the purposes of proration, a period of more than one-half of a month (at least sixteen days) shall be considered a full month and a period of less than one-half of a month shall not be counted. However, if a person has obtained a license by payment of a license fee pursuant to sec. 4-7.d. of this Chapter, then no refund shall be allowed.

2. No interest shall be paid on a refund, provided the refund is made not more than thirty days from the date of the payment that created the refund or the due date of the tax, whichever is later.

3. Whenever an assessment of additional or omitted tax by the Town Treasurer is found to be erroneous, all interest and penalty charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any license tax from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged under Va Code § 58.1-3916.

Sec. 4-11. APPEALS ON ASSESSMENTS; RULINGS.

a. Any person assessed with a license tax or fee as a result of an audit may apply within ninety days from the date of such assessment to the Town Treasurer for a correction of the assessment. The application must be filed in good faith and sufficiently identify the taxpayer, audit period, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The Town Treasurer may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, a further audit, or other evidence deemed necessary for a proper and equitable determination of the application. The assessment shall be deemed prima facie correct. The Town Treasurer shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth its position. Every assessment pursuant to an audit shall be accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be followed in the Town (e.g., the name and address to which an application should be directed).

b. Provided a timely and complete application is made, collection activity shall be suspended until a final determination is issued by the Town Treasurer, unless the Town Treasurer determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of sec. 4-9. but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires to 1. depart quickly from the locality, 2. remove his property therefrom, 3. conceal himself or his property therein, or 4. do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

c. Any person assessed with a local license tax as a result of an audit may apply within ninety days of the determination by the Town Treasurer on an application pursuant to subsection a of this section to the Virginia Tax Commissioner for a correction of such assessment. The Tax Commissioner shall issue a determination to the taxpayer within ninety days of receipt of the taxpayer's application, unless the taxpayer and the Town Treasurer are notified that a longer period will be required. The application shall be treated as an application pursuant to Va. Code § 58.1-1821, and the Tax Commissioner may issue an order correcting such assessment pursuant to Va. Code § 58.1-1822. Following such an order, either the taxpayer or the Town Treasurer may apply to the appropriate circuit court pursuant to Va. Code § 58.1-3984. However, the burden shall be on the party making the application to show that the ruling of the Tax Commissioner is erroneous. Neither the Tax Commissioner

nor the Virginia Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.

d. On receipt of a notice of intent to file an appeal to the Tax Commissioner under subsection c of this section, the Town Treasurer shall further suspend collection activity until a final determination is issued by the Tax Commissioner, unless the Town Treasurer determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of sec. 4-9., but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" shall have the same meaning as set forth in subsection b of this section.

e. Any taxpayer may request a written ruling regarding the application of a license tax to a specific situation from the Town Treasurer. Any person requesting such a ruling must provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if 1. there is a change in the law, a court decision, or the guidelines issued by the Virginia Department of Taxation upon which the ruling was based or 2. the Town Treasurer notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

Sec.4-12. RECORDS AND REPORTS REQUIRED.

Every person who is assessable with a local license tax shall keep sufficient records to enable the Town Treasurer to verify the correctness of the tax paid for the license years assessable and to enable the Town Treasurer to ascertain what is the correct amount of tax that was assessable for each of those years. All such records, books of accounts and other information shall be open to inspection and examination by the Town Treasurer in order to allow the Town Treasurer to establish whether a particular receipt is directly attributable to the taxable privilege exercised within the Town. The Town Treasurer shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside the Town, copies of the appropriate books and records shall be sent to the Town Treasurer's office upon demand.

Sec.4-13. TRANSFER OF LICENSE.

Licenses may be transferred from one person to another; provided, that no such transfer shall be valid unless and until notice in writing be given to the Town Treasurer. Failure to notify the Town Treasurer of the transfer of the license within seventy-five days of such transfer shall invalidate such license.

Sec. 4-14. LICENSE REQUIRED; PENALTY FOR FAILURE TO COMPLY WITH CHAPTER.

Any person who willfully fails or refuses to apply for any license at the time or times required by this Chapter shall be subject to criminal penalties to the maximum extent permitted by Va. Code § 58.1-3916.1. Any person who makes any false statement with the intent to defraud in connection with any license required by this Chapter shall be subject to criminal penalties to the maximum extent permitted by Va. Code § 58.1-3916.1.

Sec. 4-15. EFFECT ON OTHER LICENSES.

The annual licenses required by this Chapter are revenue licenses. The requirement to obtain any license required by this Chapter and the issuance of any such license shall be in addition to any regulatory license requirements that may be imposed by law.

Sec. 4-16. through 4-18. [RESERVED].

Sec. 4-19. MINIMUM ANNUAL LICENSE TAX

The minimum annual license tax required by this Chapter shall be $25.00. No license shall be required by this Chapter where gross receipts do not exceed $5000.00.

Sec. 4-20. AMUSEMENTS; LICENSE TAX RATE.

Every person conducting or engaging in any amusement occupations, businesses, trades or callings shall pay an annual license tax of Twenty-six Cents for each One Hundred Dollars of gross receipts. Amusement occupations, businesses, trades or callings include, by way of illustration, but are not limited to, persons who provide or operate:

Amusement parks
Amusement rides
Arcades
Auditoriums
Billiard or pool halls
Bowling alleys
Coliseums
Golf courses
Golf driving ranges
Marinas
Miniature golf courses
Parks, athletic fields
Petting farms
Rifle ranges, shooting galleries
Skating rinks
Tennis courts
Theaters
Zoos, zoological parks

Sec. 4-21. BUILDERS, DEVELOPERS; LICENSE TAX RATE.

Every person conducting or engaging in the business, trade, occupation or calling of improving or developing for sale or rent of any property or structure owned or leased by or otherwise in the control of such builder and developer shall pay an annual license tax of Five Cents for each One Hundred Dollars of gross receipts on the business done within the County.

Sec. 4-22. BUSINESS SERVICE OCCUPATIONS; LICENSE TAX RATE.

Every person conducting or engaging in business service occupations, businesses, trades or callings shall pay an annual license tax of Nineteen Cents for each One Hundred Dollars of gross receipts. Business service occupations, businesses, trades or callings include, by way of illustration, but are not limited to, persons who provide or operate:

Addressing letters or envelopes
Advertising agent, agency or firm
Agents/Agencies: collection, credit bureau, employment, tour operator or travel
Airports
Audio-visual studios
Auto damage estimator service
Boarding Horses
Bookbinder
Correspondent (news) establishment or bureau
Data processing, computer service, systems development
Drafting services

Erecting, installing, removing, storing awnings
Impounding lots
Landfill
Lawn development and maintenance
Leasing any kind of tangible personal property
Livery stables
Messenger services
On line computer services, computer time share services
Operating analytical or engineering laboratories
Packing, crating, shipping, hauling or moving goods or materials.
Paging or beeper communication services
Parking lots, garages
Photo copying, photostating, facsimile copying
Plating or chromiumizing metals or other materials
Polling, tabulating services
Private detectives
Promotional agents or agency
Promoters of arts and craft shows
Protective agency or bodyguard
Public relations counselors
Publicity services, booking agents, concert managers
Realty multiple listing service
Royalty and/or franchise firms
Septic tank cleaning
Sign painting, window lettering, vehicle lettering
Storage of any kind of tangible personal property
Swimming pool maintenance and management
Telephone answering services
Temporary help services, firms
Title insurance company
Towing services
Tree surgery, trimming, removal
Uniform or linen services
Vehicular, electric, business or commercial advertising

Sec. 4-23. PERSONAL SERVICE OCCUPATIONS; LICENSE TAX RATE.

Every person conducting or engaging in any personal service occupations, businesses, trades or callings shall pay an annual license tax of Nineteen Cents for each One Hundred Dollars of gross receipts. Personal service occupations, businesses, trades or callings include, by way of illustration, but are not limited to, persons who provide or operate:

Ambulance services
Animal grooming
Animal hospital
Auctioneering
Adult and child care services
Cemeteries (except non-profit)
Chartered clubs
Civil marriage celebrant
Cleaning of any kind of tangible or real property
Day nursery, preschool
Dental laboratory
Diaper services

Extermination services
Fumigating or disinfecting services
Funeral directors, services
Furnishing labor services
Hair care services: barber shops, beauty salons
Hauling, transfer, transport
Health and fitness clubs
House, animal, plant sitting
House cleaning services
Instruction, tutoring, training services or courses
Interior decorating
Janitorial services
Kennels
Laundering, dry cleaning, pressing, dyeing services
Massage practitioners
Notary publics
Nurses registries
Personal care services: manicure, pedicure, tanning, facials
Photographers
Physician registries
Piano tuning
Picture framing, gilding
Press clipping services
Private hospitals (except non-profit corporations)
Private schools (other than religious, non-profit)
Retirement, convalescent, life care resident services (except non-profit corporations)
Sales of money orders, travelers' checks
Scalp treatment establishments
Seamstress services
Tailoring services
Taxi, limousine or bus services
Taxidermists
Turkish, Roman or other like bath or bath parlor
Upholstery and drapery services
U-drive-it companies
Vehicle title services
Wake-up services
Weight management programs
X-ray laboratories

Sec. 4-24. CONTRACTORS AND CONTRACTING; LICENSE TAX RATE.

Every person conducting or engaging in contracting occupations, businesses, trades or callings shall be considered a contractor and shall pay an annual license tax of Eleven Cents for each One Hundred Dollars of gross receipts. For the purposes of this Article, the meaning of the term "contractor" provided by Va. Code § 58.1-3714(B) is incorporated by reference. The provisions of Va. Code § 58.1-3715 relating (I) to licensing exemptions, (ii) to licensing requirements for businesses located outside of the Town which do more than $25,000 per year in the Town and (iii) to credits for business done in other counties, cities and towns in which a similar tax is paid are incorporated by reference.

Sec. 4-25. HOTELS AND MOTELS; LICENSE TAX RATE.

Every person operating a hotel, motel or similar business which rents rooms to transients shall pay an annual business license tax of Twenty-six Cents for each One Hundred Dollars of gross receipts.

Sec. 4-26. PROFESSIONS AND PROFESSIONAL SERVICES; LICENSE TAX RATE.

Every person conducting or engaging in any profession, or professional occupations or businesses shall pay an annual license tax of Thirty-one Cents for each One Hundred Dollars of gross receipts. Professions and professional services means services performed by the following persons and such occupations, and no others as the Department of Taxation may list in the BPOL guidelines promulgated pursuant to Va. Code § 58.1-3701.

Architect
Attorney-at-law
Certified public accountant
Dentist
Engineers
Land surveyor
Surgeons, practitioners of the healing arts (the art or science or group of arts or sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities.)
Veterinarian

Sec. 4-27. REPAIR SERVICE OCCUPATIONS; LICENSE TAX RATE.

Every person conducting or engaging in any repair service occupations, businesses, trades or callings shall pay an annual license tax of Nineteen Cents for each One Hundred Dollars of gross receipts. Repair service occupations, businesses, trades or callings include, by way of illustration, but are not limited to, persons who repair:

Automobiles, trucks, boats, cycles, recreational vehicles
Aircraft
Apparel
Furniture, upholstery, carpeting, rugs
Guns
Jewelry
Lawnmowers
Leather goods
Locks
Boilers
Machinery or tools: home, business, office, farm, industrial, commercial or road
Major or minor appliances or electronics
Motor vehicle body and paint shops
Reweaving, chair caning
Scales
Shades or blinds
Shoes
Toys
Watches or clocks
Welding or fabricating

Sec. 4-28. RETAIL MERCHANTS; LICENSE TAX RATE.

a. Every person who sells goods, wares or merchandise at retail only and not for resale in any retail merchants' occupations, businesses, trades or callings shall pay an annual license tax of Seventeen Cents for each One Hundred Dollars of gross

receipts. Retail merchants' occupations, businesses, trades or callings include, by way of illustration, but are not limited to, persons who sell:

Aircraft or aircraft parts
Animal supplies or feed
Antiques
Apparel
Appliances or electronics
Automobile, trucks, boats, cycles, recreational vehicles or parts
Baked goods
Books, stationery, periodicals
Building materials
Candy or nuts
Catered foods
Cigar, tobacco products
Dairy products
Drugs or convalescent aids
Dry goods
Fabrics
Flowers or plants
Foods or beverages
Fuel or fuel products
Furniture or home furnishings
Furs
Garden or agricultural supplies
General merchandise
Gifts, novelties or souvenirs
Groceries
Hardware
Ice
Jewelry
Livestock
Luggage
Lumber goods
Machinery and equipment
Millinery
Musical instruments
Office, store, appliance or photographic supplies
Optical goods
Paint, glass, wallpaper
Premium stamp suppliers
Prepared foods
Produce
Second hand goods
Sporting goods
Vending machine goods

b. A retail merchant's license, the tax on which would be One Hundred Dollars or more were it issued for the period of one year, may be issued on an installment basis by the Town Treasurer at the request of the licensee.

c. Except as otherwise provided by this subsection, any person who is engaged in business as a retail merchant and as a wholesale merchant shall obtain a license for both business activities. However, any retail merchant who conducts business as a wholesale merchant may elect to do such wholesale business under a retail merchants license by paying license taxes as a retailer on both this retail and wholesale businesses.

Sec. 4-29. WHOLESALE MERCHANTS; LICENSE TAX RATE.

Wholesale merchant means any person (I) who sells to retailers, as set forth in section 4-28., for resale; (ii) who sells at wholesale to other wholesale merchants; or (iii) who sells at wholesale to institutional, commercial or industrial users. Every person conducting or engaging in any wholesale merchants' occupations, businesses, trades or callings shall pay an annual license tax of Four Cents for each One Hundred Dollars of gross purchases. Wholesale merchants' occupations, businesses, trades or callings include, by way of illustration, but are not limited to, persons who sell:

Apparel
Automotive products
Chemicals
Coal, coke
Drugs
Dry goods
Electrical, plumbing goods
Farm products or supplies
Furniture and house furnishings
Groceries, foods or beverages
Hardware
Jewelry
Lumber, paint and construction materials
Machinery, equipment or supplies
Metals and metal work
Paper and paper products
Petroleum and petroleum products
Sporting goods
Tobacco and tobacco products, except leaf tobacco
Waste materials

Sec. 4-30. MONEY LENDERS; LICENSE TAX RATE.

Every person conducting or engaging in any of the following money lending occupations, businesses, trades or callings shall pay an annual license tax of Nineteen Cents for each One Hundred Dollars of gross receipts. Money lending occupations, businesses, trades or callings include, by way of illustration, but are not limited to, persons who provide or operate:

Buying installment receivable
Chattel mortgage financing
Consumer financing
Factor
Financing accounts receivable
Industrial loan company
Installment financing
Inventory financing
Loan or mortgage broker
Loan or mortgage company
Money lender

Sec. 4-31. TELEPHONE COMPANIES; LICENSE TAX RATE.

Every person engaged in business in the Town as a telephone company which is subject to assessment under Chapter 26 of Title 58.1 of the Code of Virginia shall pay an annual license tax of Thirty-eight Cents for each One Hundred Dollars of gross receipts from all sales of goods or services to the ultimate consumer with an exclusion of all receipts from long distance telephone calls.

Sec. 4-32. HEAT, LIGHT, POWER AND GAS COMPANIES; LICENSE TAX RATE.

Every person furnishing heat, light, power and gas for domestic, commercial or industrial consumption in the Town shall pay an annual license tax of Thirty-eight Cents for each One Hundred Dollars of gross receipts.

Sec. 4-33. REAL ESTATE BROKERS; LICENSE TAX RATE.

Every person licensed and doing business exclusively as a real estate broker with respect to the purchase and/or sale of any real estate shall be subject in calendar years 1993 and 1994 to an annual license tax of One Cent for each One Hundred Dollars of gross receipts in each of those years. In calendar year 1995, every such real estate broker shall pay an annual license tax of Ten Cents for each One Hundred Dollars of gross receipts. In calendar year 1996 and thereafter, every such real estate broker shall pay an annual license tax of Thirty-one Cents for each One Hundred Dollars of gross receipts.

Sec. 4-34. RESEARCH AND DEVELOPMENT BUSINESS; LICENSE TAX RATE.

a. Every person engaged in the business of research and development, designated as principal or prime contractor receiving identifiable federal appropriations as defined in subsection c of this section shall pay an annual license tax of Three Cents for each One Hundred Dollars of such research and development gross receipts.

b. Every person engaged in the business of research and development other than those described in subsection c of this section shall pay an annual license tax of Thirty-one Cents for each One Hundred Dollars of such research and development gross receipts.

c. For the purpose of this article, identifiable federal appropriations shall mean federal funds received for research and development services as defined in the Federal Acquisition Regulations ("FAR") by 48 C.F.R. § 31.205-18(a) for research and development in the areas of 1. computer and electronic systems, 2. computer software, 3. applied sciences, 4. economic and social sciences and 5. electronic and physical sciences.

d. Every person receiving identifiable federal appropriations for research and development who qualify for license taxation under subsection c of this section shall provide the required documentation to the Town Treasurer no later than January 31 each year confirming the applicability of subsection c. Such documentation will be prescribed by the Town Treasurer and shall show that (I) the person is the principal or prime contractor, and (ii) that all gross receipts subject to taxation under subsection c are federal funds received in accordance with all terms and conditions prescribed by the provisions of this section.

e. The provisions of subsection c of this section shall not apply in cases where documentation required by this section is not submitted in the time and manner prescribed by the provisions of this section.

Sec. 4-35. CONSULTANTS AND SPECIALIZED OCCUPATIONS; LICENSE TAX RATE.

Other than Professionals and Professional Services as set forth and taxed under section 4-26. of this Chapter, every person conducting or engaging in any consulting or specialized occupation or business shall pay an annual license tax of Thirty-one Cents for each One Hundred Dollars of gross receipts. Consulting, specialized occupations or businesses include, by way of illustration, but are not limited to, persons who provide or operate:

Accounting services: bookkeeping or tax preparation
Actuary
Analysts: business financial, marketing research or operations
Appraisers
Arborist
Artist
Blue printer
Brokers: stock or investment
Business operations management
Chemists
Commercial inventory, valuation service
Commission merchant
Consultant: business, engineering, financial, labor, tax or transportation
Counselors: family or financial
Designers: landscape, fashion or graphic
Entertainers, performers, musicians, storytellers or clowns
Estimators, measurers or assayers
Insurance claims adjustors
Investment advisory services
Labor arbitrators
Language translators or interpreters
Lecturers
Producers: motion picture, television or radio
Property management services
Public stenographers and recorders
Real estate settlement services
Sculptors
Title abstract companies
Writers or editors

CHAPTER 5

NUISANCES

CHAPTER 5

NUISANCES

ARTICLE 1 ANIMALS

5-1 MANNER OF KEEPING ANIMALS.

5-2 KEEPING OF HOGS PROHIBITED.

5-3 KEEPING OF VICIOUS ANIMALS PROHIBITED.

5-4 KEEPING OF REPTILES AND WILD ANIMALS.

5-5 ANIMALS OR POULTRY; LICENSE TO RAISE.

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ARTICLE 2 (RESERVED)

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Chapter 5 NUISANCES

ARTICLE 1 ANIMALS[2]

Sec. 5-1. MANNER OF KEEPING ANIMALS.

a. No person shall keep or maintain any animal in the Town in such manner so as to become a public nuisance or unreasonably disturb the peace, comfort or health of any person within the Town.

b. The keeping of all animals within the Town shall be subject to all pertinent regulations of the State Health Department, and County Health Officer, and the Fairfax County Code.

Sec. 5-2. KEEPING OF HOGS PROHIBITED.

No person shall keep any live hogs within the Town.

Sec. 5-3. KEEPING OF VICIOUS ANIMALS PROHIBITED.

No person shall keep any vicious animal, whether owned by him or not, on his premises within the Town.[3]

Sec. 5-4. KEEPING OF REPTILES AND WILD ANIMALS.

No person shall keep or maintain any poisonous reptile or wild animal without first having registered such animal or reptile with the County Chief of Police and the Health Officer. The County Chief of Police may prescribe regulations to insure the safe penning or caging of such animals.

Sec. 5-5. ANIMALS OR POULTRY; LICENSE TO RAISE.

a. Any person engaged in raising or breeding poultry, pigeons, rabbits, hares or guinea pigs for commercial purposes or otherwise shall obtain a Town license.

b. Each application shall state the number and kind of poultry or animals to be raised and the location of the premises to be used for that purpose.

c. Such licenses shall only be issued for the raising of animals or poultry in an area zoned as an Agricultural District.[4] *

Sec. 5-6. LICENSE FEE.

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[2] Note: County law governs the keeping of animals, dogs and fowl.
See Chapter 2 of Fairfax County Code.

[3] Decisional law reference: As to disorderly conduct provisions, see Colten v. Kentucky 407 U. S., 104 (1974)

[4] Cross reference: As to the Agricultural District, see section 9-2 of this Code.

Upon payment of a license fee of One Dollar ($1.00), the Town Clerk shall issue the license for raising poultry or animals if the provisions of this Article are complied with.

Sec. 5-7. ANIMALS OR POULTRY; SANITARY CONDITIONS FOR RAISING.

All persons raising poultry or animals within the Town, whether for commercial purposes or otherwise, shall be required to keep the same at all times in a clean and sanitary condition and free from obnoxious odors.

CHAPTER 5

NUISANCES

ARTICLE TWO (RESERVED)

ARTICLE THREE (RESERVED)

ARTICLE FOUR NOISE

Sec. 5.8. GENERAL PROVISIONS.

a. Short Title

This article shall be known and referred to as the "Noise Ordinance of the Town of Clifton, Virginia". It shall be applicable to the control of noises originating within the jurisdictional limits of the Town of Clifton, Virginia.

b. Policy

At certain levels, noise can be detrimental to the health, welfare, safety, peace and quality of life of the citizens of the Town of Clifton, and in the public interest noise should be controlled. The Town is also small in size with commercial establishments closely abutting residences. Therefore, it is the public policy of the Town of Clifton to promote an environment for its citizens that is free from excessive, repetitive and unnecessary noises.

c. Enforcement

Whenever the Town Council, the Town Council's duly authorized agent or a Fairfax County Police Officer has reason to believe that a violation of any provision of this Ordinance or a rule or regulation issued pursuant thereto has occurred, notice may be given of such violation to the person failing to comply with this Ordinance and an order given to said person to take such corrective measures as are necessary within a prescribed time thereafter.

Such notice and order shall be in writing and shall be served personally upon the person to whom directed, or if such person be not found, by mailing a copy thereof by certified mail to such person's usual place of abode and conspicuously posting a copy at the premises, if any, affected by the notice and order.

If such person fails to comply with the order issued hereunder, the duly authorized Agent or Officer may institute such actions as may be necessary to terminate the violation, including, if appropriate, obtaining criminal warrants, and applying to courts of competent jurisdiction for such injunctive relief as shall appear proper.

Violations of this Ordinance shall be punishable by a fine not exceeding $300 per violation.

Sec. 5-9. DEFINITIONS AND STANDARDS.

a. Definitions

The following words and phrases, when used in this Ordinance, shall, for the purposes of this Ordinance, have the meanings respectively ascribed to them in this Section, except in those situations where the context clearly indicates a different meaning.

1. Emergency Work

Work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from immediate exposure to danger or for the immediate health, safety, or welfare of the community.

2. Emergency Vehicle

A motor vehicle used in response to a public calamity or to protect persons or property from immediate exposure to danger, or for the immediate health, safety or welfare of the community.

3. Person

Any individual, partnership, corporation, firm, association, trust, estate, society, club, private institution, group of persons acting in concert, organization or agency, business, or any legal successor, representative, agent or agency of the foregoing.

4. Plainly Audible Sound

Any sound that can be detected by a person using his or her unaided hearing faculties. The detection of a rhythmic component of music is sufficient to constitute a plainly audible sound.

5. Sound-Amplifying Equipment

Any machine, device or equipment for the amplification of the human voice, music or any other sound. This term shall not include warning devices on authorized Emergency Vehicles or horns or other warning devices on other vehicles used only for traffic safety purposes.

5. Stationary Noise Source

Any equipment or facility, fixed or movable, capable of emitting sound beyond the property boundary of the property on which it is used.

Sec. 5-10. ADMINISTRATION, AUTHORITY AND DUTIES.

a. Administration of the Ordinance

The provisions of this Ordinance shall be administered and enforced by the Town Council, the Town Council's duly authorized agent, or the Fairfax County Police.

b. The Council shall have authority to:

1. Issue such orders, rules and regulations as may be necessary to effectuate the provisions of this Ordinance; and

2. Perform such other acts as may be necessary to carry out the functions of this Ordinance and such other acts as may be specifically enumerated herein.

c. The Town Council and the Fairfax County Police shall have authority to:

Obtain warrants for violations of any of the provisions of this Ordinance and apply to any court of competent jurisdiction for such injunctive relief as shall be necessary to terminate continuing violations of this Ordinance.

Sec. 5-11. PROHIBITED.

a. Specific Prohibitions

The following acts, which shall not be deemed to be an exclusive enumeration, are presumed to be noise disturbances in violation of this Ordinance. Said presumption shall be rebuttable by the person alleged to be responsible for said acts:

1. Operating, installing, having, or permitting the use or operation at any time of any radio, receiving set, musical instrument, television, phonograph, record, compact disc, tape player, loudspeaker, Sound-Amplifying Equipment, or any other device for the production or reproduction of sound, music, noise, or voice in such a manner as to be plainly audible across real property boundaries or boundaries of an affected person or through partitions common to residential dwellings, or on any public sidewalk or street or plainly audible at twenty-five (25) feet from such device when operated within a motor vehicle parked on a public or private right-of-way or in a public place.
2. Owning, keeping, possessing, or harboring any animal or animals which at any time frequently or habitually howl, bark, meow, squawk, or make such other noise as is plainly audible across real property boundaries or boundaries of affected persons or through partitions common to two persons within a building.
3. Operating, engaging in or causing to be operated any construction and/or other heavy equipment related to construction or development outdoors between the hours of 7 PM and 7 AM. No noise generation from such work shall be allowed at any time on Saturday or Sunday.
4. In addition to the specific enumerations above, it shall be unlawful for any person to make, continue to make, or cause to be made or continued, any other sound or noise within the Town of Clifton which is plainly audible across real property boundaries of affected persons, or through partitions common to residential dwellings, which continues unabated for over thirty minutes between the hours of 7 PM and 7 AM.

Sec. 5-12. VARIANCES AND EXEMPTIONS PERMITTED.

a. Emergencies

An exemption from the provisions of this Chapter is granted for noise caused in the performance of emergency work. Nothing in this Section shall be construed to permit law enforcement, ambulance, fire, or other emergency personnel to make excessive noise in the performance of their duties when such noise is unnecessary.

b. Exemptions

The Town Council or its authorized agent may grant specific, time delimited exemptions to the provisions of this Section during Town or CBA/CBA Town Improvement Fund sponsored events for the general benefit of the community and that are open to community members for the use or operation of a loudspeaker or other Sound-Amplification device in a fixed or movable position or mounted upon any motor vehicle for the purpose of giving instructions, information, directions, talks, addresses, lectures, or providing entertainment to any persons or assemblage of persons on any private or public property within the Town, but only between the hours of 7 AM and 11 PM of any specified day.

ARTICLE 6

PUBLIC NUISANCES

CHAPTER 5

NUISANCES

ARTICLE 6 PUBLIC NUISANCES

Sec. 5-14.DEFINITION.

As used in this Article:

a. Public nuisance shall mean any act, thing, occupation, condition or use of property which shall continue for such length of time as to:

1. Substantially annoy, injure or endanger the comfort, health, repose or safety of the public;

2. In any way render the public insecure in life or in the use of property;

3. Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way.

Sec. 5-15.PUBLIC NUISANCES PROHIBITED.

No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the Town.

Sec. 5-16.PUBLIC NUISANCES ENUMERATED.

Public nuisances affecting health shall include but not be limited to the following acts, omissions, conditions or things:

a. All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public.

b. Carcasses of animals, birds or fowl not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death.

c. Accumulations of decayed animals or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material whatsoever in which flies, mosquitoes, insects, rats or other vermin may breed.

d. All stagnant water in which mosquitoes, flies or other insects can multiply.

e. Privy vaults and garbage cans which are not fly-tight.

f. All noxious weeds and other rank growth or vegetation.

g. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within the limits of the Town in such quantities so as to endanger the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property or in violation of standards issued by the Environmental Protection Agency.

h. The pollution of any public well or cistern, stream, lake, canal or other body of water by sewage, or industrial wastes or other substances.

i. Any use of property, substances or things within the Town emitting or causing any foul, offensive, noisome, nauseous, noxious, or disagreeable odors, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the Town.

Sec. 5-17.FILING COMPLAINTS; INSPECTIONS.

a. All complaints alleging the existence of a public nuisance shall be filed with the Clerk.

b. The Clerk shall within 30 days notify the Town Sergeant, County Health Officer, Building Inspector or other person designated by the Town Council who shall inspect or cause to be inspected the premises and make a written report of his findings to the Mayor. Whenever practicable, the inspecting officer shall cause photographs to be made of the premises and shall file the photographs in the office of the Clerk.

Sec. 5-18.NOTICE TO ABATE NUISANCE.

a. If the inspecting officer determines that a public nuisance exists on private property and that there is a great and immediate danger to the public health, safety, peace, the Mayor may direct the Town Sergeant or other official designated by him to serve notice on the owner or, if the owner cannot be found, on the occupant or person causing, permitting or maintaining such nuisance and to post a copy of the notice on the premises.

b. Such notice shall direct the owner, occupant or person causing, permitting or maintaining such nuisance to abate or remove such nuisance within five (5) days. The notice shall state that unless such nuisance is so abated, the Town shall cause it to be abated and will charge the costs to the owner, occupant or person causing, permitting or maintaining the nuisance.

Sec. 5-19.ABATEMENT BY TOWN.

If the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be found, the County Health Officer or other designated official, in case of health nuisances, and the Town Sergeant or other official, in other cases, may cause the abatement or removal of such public nuisance.

Sec. 5-20.COST OF ABATEMENT.

In addition to any other penalty imposed by this Article for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the Town shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance. If notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as other special taxes.

Sec. 5-21. WEED AND VEGETATION CONTROL ORDINANCE

a. Definitions. For the purpose of this section, the following words and phrases shall have the meanings respectfully assigned to them by this section.

1. Owner or Occupier of property includes persons holding title to any land or lot in town; lessees, tenants and principal occupants in the town or agents of persons holding title to such land or lots, having care, custody, control and management of the land or lots and fiduciaries holding title to or having care, custody, control or management of land or lots in the town for others.

2. Weeds. The word "Weeds" as used in this section shall include any and all offensive and uncontrolled vegetation and/or vegetable growth or economically useless plants of unsightly appearance and wild or uncontrolled growth, standing on land, grass in excess of eight inches in height, unkept bushes, poison ivy, poison oak, and all uncontrolled vegetation and plant growth, but exclude trees and timber, plants, flowers or garden vegetables cultivated as or for landscaping or useful economic purposes.

b. The owners or occupiers of the property as herein described in the Town of Clifton shall not allow grass, weeds, offensive uncontrolled vegetation and/or other growth as heretofore described to grow on property under their control or ownership to exceed eight inches in height.

c. Where weeds, grass or other offensive and uncontrolled vegetation or growth as heretofore described shall exceed eight inches in height on any property within the Town of Clifton, and when either a written complaint of the existence of said grass, weeds or vegetation shall be received, or when said grass, weeds or vegetation shall be found on property within the Town of Clifton, the Town Clerk shall immediately notify the owner or occupant of such property and notify him to remove the grass, weeds, or vegetation within ten days of the date of such notice or appear at the next regular meeting of the Clifton Town Council for a hearing and opportunity to explain why such vegetation should not be abated. Such notification shall be by registered or certified letter sent to the owner and/or occupant of the property at their last known address. If, after diligent inquiry, no address can be found for such owner, the letter herein referred to shall be posted at a conspicuous place on the property.

d. If the vegetation heretofore referred has not been removed from the property within the ten-day period from the date the letter referred to above has been mailed or the notice posted, the Clifton Town Council, after their next regular Town Council meeting, shall, if due cause has not been given as to why the vegetation shall not be abated, cause removal of such vegetation by its appropriate agent or representative and the cost of said removal and expenses incurred pursuant to the enforcement of this section shall be billed to the owner of the property and, if said bill has not been paid within forty-five days, it shall become a lien on the property to the same extent and effect as a real estate tax and collected by the town as taxes and levies are collected.

CHAPTER 6

RESERVED

Chapter 6 RESERVED

CHAPTER 7

VEHICLES

Chapter 7 VEHICLES

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7-1 DEFINITIONS
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CHAPTER 7

VEHICLES

CHAPTER 7
VEHICLES

ARTICLE 1 DEFINITIONS

Sec. 7-1. DEFINITIONS.

As used in this Chapter:

1. Motor Vehicle shall mean any vehicle, which is self-propelled, and shall include, but not be limited to, any automobile, truck, motorized camper, or home, travel trailer, pickup camper, motorcycle or scooter, motorbike, trail bike, or any other power-assisted bicycle.
2. Motorized Camper or Home shall mean a portable dwelling designed and constructed as an integral part of a self- propelled vehicle.
3. Pickup Camper shall mean a structure designed primarily to be mounted on a pickup truck chassis and with sufficient equipment to render it suitable for use as a temporary dwelling for travel, recreational and vacation uses.
4. Travel Trailer shall mean a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses, permanently identified travel trailer by the manufacturer.
5. Golf Cart means a self-propelled vehicle that is designed to transport persons playing golf and equipment on a golf course or otherwise designed to transport people
6. Sidewalk shall mean that area of a public street set aside or used for pedestrian travel that is parallel and within the boundary lines of a street.
7. Street shall mean the entire width between the boundary lines of every way or place open to the use of the public for purposes of vehicular travel in the Town, including the streets and alleys, and for law-enforcement purposes, the entire width between the boundary lines of all private roads or private streets that have been specifically designated "highways," as that term is defined in Section 46.2-100 of the Code of Virginia, by ordinance and also including sidewalks and multi-purpose paths.

ARTICLE 2 -- MOTOR VEHICLE LICENSES

Sec. 7-2. MOTOR VEHICLE LICENSE REQUIRED.

There is hereby imposed by the Town Council a vehicle license fee upon every motor vehicle, including but not limited to automobiles, trucks and motorcycles, regularly garaged, stored, or parked in the Town. Notwithstanding the imposition and collection of this fee, the Town shall not require the display of a physical vehicle license decal on the windshield of any vehicle subject to this Article 2 of Chapter 7.
The Clifton Town Council hereby adopts the following provisions of the Fairfax County Code, Article 17.2 Sections 4-17.2-2 through 4-17.2-3, as amended.

Sec. 7-3. EXEMPTIONS

Provisions of this Article shall not apply to the property exempted from State registration under the Code of Virginia, Article 6, Chapter 6 of Title 46.2, as amended. Provisions of Chapter 7 shall also be subject to the restrictions set forth in Virginia Code § 46.2-755, as amended.
The local vehicle license fee shall not be applicable to the following classes of vehicles:

1. Any motor vehicle owned by the state or any political subdivision thereof or is owned by the United States government;
2. Any motor vehicle, owned and used for personal or official purposes by accredited consular or diplomatic officers of foreign governments, their family members and employees, who are nationals of the state by which they are appointed and are not citizens of the United States;
3. Any motor vehicle whose owner is on full-time active duty in the military service absent from his/her state of residence of domicile, which vehicle is normally garaged, stored or parked in the Town and registered in this state or any other jurisdiction. The vehicle license fee shall also not be applicable to a qualifying spouse of a military service member pursuant to this subsection. For purposes of this subsection, a qualifying spouse of a military service member shall mean that a spouse of a service member shall neither lose nor acquire domicile for purposes of the vehicle registration license by reason of being present in the Town solely to be with the service member in compliance with the service member's military orders if the domicile is the same for the service member and the spouse;
4. Any motor vehicle owned by a person who is granted tax relief in accordance with Chapter 4, Article 16.1, as amended, of the Fairfax County Code for that vehicle. Within any given household, this relief shall apply to one and only one vehicle;
5. Any motor vehicle used as a daily rental passenger vehicle;
6. Upon proof of State qualification and payment of the appropriate personal property tax, the following eligible applicants are entitled to exemption from the vehicle license on one and only one vehicle:
    a. Any disabled veteran, as defined and licensed under Virginia Code § §46.2-739 and 46.2-755 (B), as amended;
    b. Any honorably discharged prisoner of war as defined and licensed under Virginia Code § 46.2-746;

c. Any person awarded the Medal of Honor as defined and licensed under Virginia Code § 46.2-745;
d. Any member of the Virginia National Guard as defined and licensed under Virginia Code § 46.2-744; and
e. Any owner of antique motor vehicles as defined and licensed under Virginia Code § 46.2-730.

7. The vehicle license shall not be applicable to vehicles owned by the following:
   a. Vehicles owned by volunteer rescue squads
   b. Vehicles owned by volunteer fire departments
   c. Vehicles owned or leased by auxiliary police officers'
   d. Vehicles owned or leased by auxiliary police chaplains
8. The vehicle license fee shall not be applicable to vehicles owned by the following:
   a. Vehicles owned or leased by active members of volunteer fire departments; and
   b. Vehicles owned or leased by active members of volunteer rescue squads;
   c. In the case of active members of volunteer rescue squads and volunteer fire departments, application for exemption from a vehicle license fee shall be accompanied by written evidence of active membership, and no member shall receive a fee exemption for more than one and only one vehicle.

Sec. 7-4. LICENSE FEE; AMOUNTS.

a. The amount of the vehicle license fee pursuant to this Article shall be as follows. The manufacturer's shipping weight or scale weight shall be used for computing all fees required by this section to be based upon the weight of the vehicle. For purposes of this Article, and consistent with the Virginia Department of Motor Vehicles (DMV),
   a. the manufacturer's shipping weight shall be interpreted as the "empty weight" for passenger cars as listed in the Virginia DMV records;
   b. the manufacturer's shipping weight shall be interpreted as the "gross vehicle weight" for trucks, to include pick-up trucks, as listed in the Virginia DMV records.
      i. Eighteen dollars for motorcycles
      ii. Twenty-three dollars for any taxicab or other vehicle which is kept for rent or hire operated by a chauffeur for the transportation of passengers, and which operates or should operate under permits issued by the DMV as required by law. An additional fee of five dollars shall be charged if the weight of the vehicle is more than 4,000 pounds;
      iii. Twenty-three dollars for a bus used exclusively for transportation to and from church school for the purposes of religious instruction or church, for the purpose of divine worship. If the empty weight of the vehicle exceeds 4,000 pounds, the fee shall be twenty-eight dollars;
      iv. Thirty-three dollars for all other vehicles with a weight of 4,000 pounds or less;
      v. Thirty-eight dollars for all other vehicles with a weight of more than 4,000 pounds.

Sec. 7-5. ASSESSMENT OF VEHICLE LICENSE FEE; NON-PRORATION

1 The vehicle license fee shall be annually assessed on applicable vehicles at the time such vehicles are registered with the County. or the registration is renewed.

2 A vehicle properly registered with the County shall be liable for the vehicle license fee in any given year, even if the vehicle subsequently moves to a non-town situs location during that year. No refund or proration shall be provided upon moving outside the Town, although proration in accordance with the Fairfax County Code shall be allowed if the vehicle subsequently loses situs within the Town and Fairfax County during the same calendar year.

3 Vehicles with a situs in the Town shall be subject to monthly proration on the same basis as specified for local personal property taxes in the Fairfax County Code, as amended.

Sec. 7-6. LICENSE YEAR.

Any vehicle license fee shall be billed and payment collected at the same time and subject to the same payment deadlines as for personal property taxes set out in Article 17.1 of the Fairfax County Code, as amended.

Sec. 7-7. USE OF LICENSE FEES.

The license fees collected by the County shall be remitted to the Town Treasurer for deposit to the credit of the Town.

Sec. 7-9. CLERK TO MAINTAIN RECORDS.

The Town Clerk shall maintain a record of all vehicles licensed by the Town, including the owner's name, number of State and Town licenses, and the number and description of the vehicle.

Sec. 7-11. PENALTY.

Any person found guilty of violating any of the provisions of this Chapter shall be fined not more than One Hundred Twenty-Five Dollars ($125.00) or imprisoned not more than five (5) days, or both, for each such offense.

ARTICLE 3 GOLF CART OPERATIONS

This ordinance is adopted by the Town Council of the Town of Clifton, Virginia for Golf Carts garaged in Clifton, after considering the speed, volume and character of motor vehicle traffic using public roads located within the jurisdictional limits of the Town of Clifton and determining the golf cart operation on [the above listed portions of roads] is compatible with state and local transportation plans and consistent with the Commonwealth's Statewide Pedestrian Policy provided for in Section 33.1-23:001.

Sec. 7-12 AUTHORITY TO REGULATE

Pursuant to Sections 46.2-916.2 et seq and 46.2-676 of the Code of Virginia (1950) as amended, the Town of Clifton is authorized, by ordinance, to impose limitations and restrictions on the operation of golf carts upon public highways within the Town of Clifton. Specifically, the Town of Clifton is permitted to authorize operation of golf carts under an exemption to the provision requiring an independent police department in Section 46.2-916.2.C. of the Code of Virginia.

Sec. 7-13.INSTALLATION AND ONGOING MAINTENANCE OF REQUIRED SIGNS

Under Section 46.2.916.2 of the Code of Virginia, in authorizing the operation of golf carts, The Town of Clifton is responsible for the installation and continuing maintenance of any signs pertaining to the operation of golf carts. The Town of Clifton includes in this ordinance the ability to recover its costs of signs and maintenance pertaining thereto from organizations, individuals or entities requesting designations. The cost of installation and continuing maintenance of any signs pertaining to operation of golf carts shall not be paid by the Virginia Department of Transportation.

Sec. 7-14. GOLF CART OPERATION-UNAUTHORIZED USE

It shall be unlawful for any person to operate a golf cart on or over any street, sidewalk, or multipurpose path in the town except as provided in this article.

Sec. 7-15. LIMITATIONS

a. Golf carts may operate on designated public streets of the Town of Clifton according to the following limitations and provisions.

1. It shall be unlawful to operate a Golf Cart without possessing a valid motor vehicle driver's license issued by the Commonwealth of Virginia or other U.S. State.
2. Golf carts must display a "slow-moving vehicle" emblem conforming to the requirements of Section 46.2-1081 of the Code of Virginia.
3. Golf carts operating between sunset and sunrise must be equipped with lights as required by Article 3, Section 46.2-1010 et seq. of Chapter 10 of the Code of Virginia.
4. Golf carts operating on designated public streets shall be covered by liability insurance of not less than one hundred thousand dollars ($100,000) per accident. In lieu of such coverage, the owner may self-insure liability coverage if the Commissioner of the Virginia Department of Motor Vehicles has issued a certificate of self-insurance pursuant to Section 46.2-368 of the Code of Virginia.
5. Golf carts shall be operated in accordance with all applicable state and local laws and ordinances, including all laws, regulations and ordinances pertaining to the possession and use of alcoholic beverages.
6. Golf carts shall operate in a manner that does not impede the safety and efficient flow of motor vehicle traffic.
7. A Golf carts shall only transport the number of people the vehicle is designed to seat. Passengers shall be seated. No passengers shall be carried on the part of the golf cart designed to carry golf bags.
8. Golf carts shall operate in compliance with motor vehicle laws of Commonwealth.
9. Golf carts shall not operate in inclement weather nor when visibility is impaired by weather, smoke, fog or other conditions.

10. The Town Council or its designee my temporarily prohibit the operation of golf carts on any highway if it determines that the prohibition is necessary in the interest of safety.

11. Golf carts may not park in Ayre Square or in other town parks unless designated a golf cart parking zone.

Sec. 7-16. EXCEPTIONS

a. The limitations set forth in Section 7-15.a.1 and 2 above shall not apply to golf carts operating as follows:

1. To support an inherently governmental purpose, whether operated by Town employees, contractors or others designated by the Mayor or Town Manager, provided the golf cart does not operate on a public street within the Town with a speed limit over twenty-five (25) miles per hour except during special events when traffic on the roadway is redirected.

2. Notwithstanding anything contained herein to the contrary, the Town of Clifton reserves the right to restrict the operation of golf carts on the public highways within its jurisdictional limits during Town events such as Clifton Day, Holiday Homes Tour, Antique Auto Show or other events when public roads are closed to vehicular traffic. All restricted uses shall be included in the master plan submitted by the sponsoring organization and approved by the Town Council for the Town of Clifton or by separate Resolution of the Town Council for other events when public roads are closed to vehicular traffic.

Sec. 7-17. REQUIRED SAFETY EQUIPMENT

a. Annual Safety Inspection. Owners are solely responsible for an annual safety inspection for their golf carts.

b. Required Safety Equipment shall consist of the following:

1. Lights. Headlights, tail lights and turn signals for golf carts operating between sunset and sunrise.

2. Safety equipment. Horn, steering mechanism and gears, brakes, emergency/parking brake, one rearview mirror and an adequately fixed driver's seat.

3. All other factory installed safety or mechanical systems including checking for gasoline or propane leaks.

4. Speed governor, if gasoline powered.

5. Safety lap belts (seat belts), if so equipped.

6. Rubber or equivalent tires.

7. Slow moving vehicle emblem in conformity with Section 46.2-1081 of the Code of Virginia; and,

8. Proof of insurance is required.

c. Any golf cart found to not have described safety equipment shall be prohibited from driving on this ordinance and shall promptly remove its town license issued under section 7-18

Sec. 7-18. LICENSE AND DECALAND TRANSFER

a. Application for Golf Cart vehicle license shall be made to the Clerk.

b. License year for Golf Carts follows calendar year.

c. It is unlawful to operate a golf cart on the streets of the Town of Clifton without a current license decal displayed.

d. Any owner who sells or transfers a registered Golf Cart vehicle license, previously registered under the provisions of this Article, may have the license and the registration number thereon assigned to another vehicle of like design and titled in such owner's name, upon application to the Clerk on forms providing for the name and address of the applicant, and a description of the Golf Cart for which such license has been issued, as well as a description of the Golf Cart for which such license is to be transferred.

e. The application shall be accompanied by a fee of Twenty Dollars ($20.00).

f. Disposition of Fee Revenue. Fee revenue derived from the fee levied by this article shall be used as prescribed by 46.2-916.2 amended of the Code of Virginia to recover and offset costs incurred to post signs and mark crossings for golf carts. All remaining revenue will be placed in the Town of Clifton General Fund.

Sec. 7-19. LOCAL VEHICLE LICENSE

a. No golf cart shall be used on the public streets of the Town unless it has obtained a Town of Clifton Vehicle License Decal. Vehicle license will not be issued until the golf cart owner presents evidence of proper insurance (or self-insurance certificate) and the golf cart has evidence of the safety equipment required by Section 7-16 and all fees due have been paid.

Sec. 7-20. LIABLILITY DISCLAIMER

a. This Section is adopted to address the interest of public safety. Golf carts are not designed or manufactured to be used on public streets. The Town of Clifton in no way advocates or endorses the operation of golf carts on public streets or roads. The Town of Clifton assumes no liability for permitting golf carts to operate on public streets and roads under special legislation granted by the Virginia Assembly. The Town of Clifton, by regulating such operation is merely trying to address obvious safety issues. All persons who operate or ride upon golf carts upon public streets or roads do so at their own risk and peril and must be observant of bicyclists,

pedestrians and other vehicular traffic. Any person that operates a golf cart is responsible for procuring liability insurance sufficient to cover the risk involved in using a golf cart on the public streets and roads.

Sec. 7-21. Compliance and Penalty

It shall be unlawful for any person to refuse, fail or neglect to comply with any of the provisions of this article or any rule or regulation promulgated pursuant thereto. A violation of this article shall constitute a traffic infraction punishable by a fine not more than one hundred dollars ($100) per infraction.

CHAPTER 8

CIGARETTE TAX ORDINANCE

CHAPTER 8

CIGARETTE TAX ORDINANCE

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Chapter 8 CIGARETTE TAX ORDINANCE

Sec. 8-1. DEFINITIONS.

For the purpose of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section, except in those instances where the context clearly indicates a different meaning:

Board or NVCTB shall mean the Northern Virginia Cigarette Tax Board.

Carton means any container, regardless of material used in its construction, in which packages or cigarettes are placed.

Cigarette shall mean and include any roll of any size or shape for smoking, whether filtered or unfiltered, with or without a mouthpiece, made wholly or partly of cut, shredded or crimped tobacco or other plant or substitute for tobacco, whether the same is flavored, adulterated or mixed with another ingredient, if the wrapper or cover is made of any material other than leaf tobacco or homogenized leaf tobacco, regardless of whether the roll is labeled or sold as a cigarette or by any other name.

Cigarette Machine Operator means any individual, partnership or corporation engaged in the sale of packages of cigarettes from vending machines.

Dealer shall mean and include every manufacturer's representative, wholesaler, retailer, cigarette machine operator, public warehouseman or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the Town.

Package shall mean and include any container, regardless of the material used in its construction in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Packages are those containers of cigarettes from which individual cigarettes are ordinarily taken when they are consumed by their ultimate user. Ordinarily, a package contains twenty (20) cigarettes; however, "package" includes those containers in which fewer or more than twenty (20) cigarettes are placed.

Person shall mean and include any individual, firm unincorporated association, company, corporation, joint stock company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership, and conservator. The word "person" as applied to a partnership, unincorporated association or other joint venture means the partners or members, thereof, and as applied to a corporation, shall include all the officers and directors thereof.

Place of Business shall mean and include any place where cigarettes are sold, placed, stored, offered for sale, or displayed for sale or where cigarettes are brought or kept for the purpose of sale, consumption, or distribution, including vending machines, by a dealer within the Town.

Registered Agent shall mean and include every dealer and other person who shall be required to report and collect the tax on cigarettes under the provisions of this Chapter.

Retailer Dealer shall mean and include every person who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale within the Town to the ultimate consumer; or any person who, in the usual course of business, owns, leases, or otherwise operates within his own place of business, one or more cigarette vending machines for the purpose of sale within the Town of cigarettes to the ultimate consumer; or any person who, in any manner, buys, sells, stores, transfers, or deals in cigarettes for the purpose of sale within the Town to the ultimate consumer, who is not licensed as a wholesaler or vending machine operator.

Sale or Sell shall mean and include every act or transaction, regardless of the method or means employed, including barter, exchange, or the use of vending machines or other mechanical devices or a criminal or tortious act whereby either ownership or possession, or both, of any cigarettes shall be transferred within the Town from a dealer as herein defined to any other person for a consideration.

Stamp shall mean a small gummed piece of paper or decalcomania used to evidence provision for payment of the tax as authorized by the Northern Virginia Cigarette Tax Board, required to be affixed to every package of cigarettes sold or used within the Town.

Store or Storage shall mean and include the keeping or retention of cigarettes in this Town for any purpose except sale in the regular course of business.

Town shall mean the Town of Clifton, Virginia.

Use shall mean and include the exercise of any right or power over any cigarettes or packages of cigarettes incident to the ownership or possession of those cigarettes or packages of cigarettes including any transaction where possession is given or received or otherwise transferred, other than a sale.

User shall mean any person who exercises any right or power over any cigarettes or packages of cigarettes subject to the provisions of this Article incident to the ownership or possession of those cigarettes or packages of cigarettes or any transaction where possession is given or received or otherwise transferred, other than a sale.

Wholesale Dealer shall mean any individual, partnership or corporation engaged in the sale of cigarettes for resale into or within the Town.

Sec. 8-2. LEVY AND RATE.

In addition to all other taxes of every kind now or hereinafter imposed by law, there is hereby levied and imposed by the Town upon every person who sells or uses cigarettes within the Town from and after the effective date of this Chapter an excise tax equivalent to thirty (30) cents for each package of cigarettes sold or used within the Town. The tax shall be paid and collected in the manner and at the time hereinafter prescribed; provided that the tax payable for each cigarette or cigarette package sold or used within the Town shall be paid but once. The tax hereby levied shall not apply to free distribution of sample cigarettes in packages containing five or fewer cigarettes.

Sec. 8-3. METHODS OF COLLECTION.

The tax imposed by this Chapter shall be evidenced by the use of a tax stamp and shall be paid by each dealer or other person liable for the tax under a reporting method deemed by the Board to carry out the provisions of this Chapter. The stamps shall be affixed in such a manner that their removal will require continued application of water or steam. Each dealer or other person liable for the tax is hereby required, and it shall be his duty, to collect and pay the tax and report all packages of cigarettes on forms prescribed for this purpose by the Board, (1) the quantity of NVCTB stamped cigarettes sold or delivered to (a) each registered agent appointed by the Board for which no tax was collected, (b) each manufacturer's representative and (c) each separate person and place of business within the Town during the preceding calendar month, and, (2) the quantity of NVCTB stamps on hand, both affixed and unaffixed on the first day and the last day of the preceding calendar month and the quantity of NVCTB stamps or NVCTB stamped cigarettes received during the preceding calendar month, and (3) the quantity of cigarettes on hand to which the NVCTB stamp had not been affixed on the first and last day of the preceding calendar month and the quantity of cigarettes received during the preceding calendar month to which the NVCTB stamp had not been affixed, and (4) such further information as the Administrator for the Board may require for the proper administration and enforcement of this Chapter for the determination of the exact number of cigarettes in the possession of each dealer or user.

Each dealer or other person liable for the tax shall file such reports with the Board and pay the tax due to the Board between the first (1st) and twentieth (20th) day of each calendar month, and shall furnish a copies of all cigarette tax reports submitted to the Virginia Department of Taxation.

When, upon examination and audit of any invoices, records, books, cancelled checks, or other memoranda touching on the purchase, sale, receipt, storage or possession of tobacco products taxed herein, any dealer or other person liable for the tax is unable to furnish evidence to the Board of sufficient tax payments and stamp purchases to cover cigarettes which were sold, used, stored, received, purchased or possessed by him, the prima facie presumption shall arise that such cigarettes were received, sold, used, stored, purchased or possessed by him without the proper tax having been paid. The Board shall, from the results of such examination and audit based upon such direct or indirect information available, assess the tax due and unpaid and impose a penalty of ten (10) per cent and may impose interest of three-quarters (3/4) per cent per month of the gross tax due.

When any dealer or other person liable for the tax files a false or fraudulent report or fails to file a report or fails to perform any act or performs any act to evade payment of a tax, the Board shall revoke such dealer's permit to affix revenue stamps. Additionally, a dealer may be subject to a civil penalty of $500.00 for each day after the due date that a dealer fails or refuses to file a report required under this ordinance.

The dealer or other person liable for the tax shall be notified by certified mail of such deficiency and such tax, penalty, and interest assessed shall be due and payable within ten (10) days after notice of such deficiency has been issued. Every dealer or other person liable for the tax shall examine each package of cigarettes to ensure that the NVCTB stamp has been affixed thereto prior to offering them for sale.

Any dealer or other person liable for the tax who shall receive cigarettes not bearing the NVCTB stamp shall, within one hour of receipt of such cigarettes, commence and with all reasonable diligence continue to affix the NVCTB stamp to each and every package of cigarettes until all unstamped packages of cigarettes have been stamped and before offering such cigarettes for sale. Any dealer or other person liable for the tax who has notified the Board that he is engaged in interstate or intrastate business shall be permitted to set aside such part of his stock as may be legally kept for the conduct of such interstate or intrastate business (that is, cigarettes held for sale outside the jurisdiction of the Board) without affixing the stamps required by this Chapter. Any such interstate or intrastate stock shall be kept entirely separate and apart from the NVCTB stamped stock, in such a manner as to prevent the co-mingling of the interstate or intrastate stock with the NVCTB stock. Any dealer or other person liable for the tax found to have had untaxed cigarettes which have been lost, whether by negligence, theft, or any other unaccountable loss, shall be liable for and shall pay the tax due thereon.

It shall also be the duty of each dealer or other person liable for the tax to maintain and keep for a period of three (3) years, not including the current calendar year, records of all cigarettes received, sold, stored, possessed, transferred or handled by him in any manner whatsoever, whether the same were stamped or unstamped, and to make all such records available for audit, inspection and examination and to make available at all reasonable times, as sell as provide the means, facilities and opportunity for making such audit, inspection or examination upon demand of the Board.

Sec. 8-4. REGISTERED AGENTS.

Any dealer or other person liable for the tax who shall sell, use, store, possess, distribute or transport cigarettes within, or into the Town, shall first make application to the Board to qualify as a Registered Agent. Such application blank, which shall be supplied upon request, shall require such information relative to the nature of the business engaged in by said applicant as the Board deems necessary for the administration and enforcement of this Chapter. There is a yearly Registration Fee for all Wholesale Dealers and for all Cigarette Machine Operators. Such applicant shall provide a surety bond to the Board of one hundred and fifty (150) per cent of his average monthly tax liability with a surety company authorized to do business in the Commonwealth of Virginia. Such bond shall be so written that, on timely payment of the premium thereon, it shall continue in force from year to year. Any applicant whose place of business is outside the Town shall automatically, by filing his application, submit himself to the Board's legal jurisdiction and appoint the Administrator for the Board as his agent for any service of lawful process.

Upon receipt of the properly completed application forms, and the required surety bond executed, the Board shall determine whether the said applicant qualifies to be a registered agent. The Board will issue to said qualified applicant a yearly Registered Agent Permit to qualify him to purchase, sell, use, store, possess, distribute or transport within or into the Town, NVCTB stamped cigarettes. Registered Agents shall agree to the reporting and payment requirements placed upon him by this Chapter and the rules and regulations as from time to time may be promulgated by the Board. When any registered agent's monthly report and payment of the tax is not received within the dates prescribed, the Board shall impose a late reporting penalty of ten (10) per cent of the gross tax due or ten (10) dollars whichever is greater, but in no event more than one thousand (1000) dollars. The Board may also require such registered agent to provide proof that he has complied with all applicable laws of the Commonwealth or Virginia to legally conduct such business and to file financial statements showing all assets and liabilities. The Board may revoke any registered agent's permit due to failure to file tax reports in a timely manner, non-payment of taxes dues or if the cigarette tax surety bond should become impaired for any reason.

All money collected as cigarette taxes under this ordinance shall be deemed to be held in trust by the dealer collecting the same until remitted to the Board.

Registered agents must account for all NVCTB authorized tax stamps purchased. Periodic audits may be conducted to determine any unaccounted variance between the number of stamps purchased and the number of stamps reported and an assessment will be made for all unaccounted for stamps. Any assessment of registered agents located outside the jurisdictions of the Board will be based upon the average sales of packages of cigarettes by jurisdiction during the audit period. For registered agents located within the jurisdictions of the Board, any assessment will be based upon the tax rate of the jurisdiction in which they are located. In addition, there will be a penalty for non-reporting of ten per cent of the gross tax due.

Sec. 8-5. REQUIREMENTS FOR RETAIL DEALERS.

Retail dealers who shall sell, offer for sale, store, possess, distribute, purchase, receive or transport cigarettes for the purpose of sale within the Town, shall purchase cigarettes only from registered agents giving or supplying the business trade name and business address of the location where the cigarettes will be placed for sale to the public. Cigarettes purchased for personal use cannot be brought into a business for resale. Only properly registered and licensed retail stores may sell cigarettes to the public. To be properly registered and licensed, a retail store must first have a valid Virginia State Sales and Use Tax Certificate and valid retail business license. Cigarettes must be purchased and stored separately for each business location. All copies of cigarette purchases invoices/receipts must be retained by the retailer for a period of three years and shall be made available to agent of the NVCTB upon request for use in conducting audits and investigations. All copies of cigarette purchase invoices/receipts must be stored at the business retail location for a period of one year from date of purchase. Failure to provide cigarette invoices/receipts may result in confiscation of cigarettes until receipts can be reviewed by the Board to verify the proper tax has been paid. It is the responsibility of each retail location to insure that all cigarettes placed for sale or stored at that location be properly taxed and stamped. Cigarettes found without the NVCTB stamp or the proper jurisdictional tax paid will be seized by the agents of the Board.

Retail dealers must make their place of business available for inspection by tobacco revenue agents to insure that all cigarettes are properly stamped and all cigarettes taxes are properly paid.

Sec. 8-6. PRESUMPTION OF ILLEGALITY; SEIZURE OF CONTRABAND GOODS, SEALING/SEIZING OF MACHINES

If any cigarette machine operator or other person liable for the tax imposed by this article is found to possess any cigarettes without the jurisdictional tax paid or the proper tax stamp affixed, there shall be a rebuttable presumption that any such operate or other person shall be in possession of untaxed cigarettes in violation of this section.

If any cigarettes placed in any vending machines within the town, then there shall be a rebuttable presumption that such cigarettes were placed in that machine for sale within the town. If any vending machine located within the town contains cigarettes upon which the NVCTB tax stamp has not been affixed or on which the jurisdictional tax has not been paid or containing cigarettes placed so as to not allow visual inspection of the NVCTB tax stamp through the viewing area as provided for by the vending machine manufacturer, then there shall be a rebuttable presumption that the machine contains untaxed cigarettes in violation of this article.

Any cigarettes, vending machines, cigarette tax stamps, or other property found in violation of this Chapter shall be declared contraband goods and may be seized by the Board. In addition to any tax due, the dealer or other person liable for the tax possessing such untaxed cigarettes or tax stamps shall be subject to civil and criminal penalties herein provided.

In lieu of seizure, the Board may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by an unauthorized person shall be a violation of this Chapter. Nothing in this Chapter shall prevent the seizure of any vending machine at any time after it is sealed.

All cigarette vending machines shall be plainly marked with the name, address and telephone number of owner of said machine.

Sec. 8-7. ILLEGAL ACTS.

It shall be unlawful and a violation of this Chapter for any dealer or other person liable for the tax:

a. To perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this Chapter or of any part thereof, or to fail or refuse to perform any of the duties imposed upon him under the provisions of this Chapter or to fail or refuse to obey any lawful order which may be issued under this Chapter.

b. To falsely or fraudulently make, or cause to be made, any invoices or reports, or to falsely or fraudulently force, alter or counterfeit any stamp, or to procure or cause to be made, forged, altered or counterfeited any such stamp, or knowingly and willfully to alter, publish, pass or tender as true and false, altered, forged or counterfeited stamp or stamps.

c. To sell, offer for sale, or distribute any cigarettes upon which the NVCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid.

d. To possess, store, use, authorize, or approve the possession, storage or use of any cigarette packages upon which the NVCTB stamp has not been affixed or upon which the jurisdictional tax has not been paid.

e. To transport, authorize, or approve the transportation of any cigarette packages, in quantities of more than sixty (60) packages into or within the Town upon which the NVCTB stamp has not been affixed, if they are:

1. Not accompanied by a receipt/bill of lading or other document indicating the true name and address of the consignor or seller and the consignee or purchaser and the brands and quantity of cigarettes transported; or

2. Accompanied by a receipt/bill of lading or other document which is false or fraudulent in whole or part; or

3. Accompanied by a receipt/bill of lading or other document indicating:

A. A consignee or purchaser in another State or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid unless the tax of the jurisdiction of destination has been paid and said cigarettes bear the tax stamps of that State or District; or

B. A consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction who does not possess a Virginia Sales and Use Tax certificate and, where applicable, any licenses issued by the Commonwealth or local jurisdiction of destination.

f. To re-use or refill with cigarettes any package, from which cigarettes have been removed, for which the tax imposed has been theretofore paid;

g. To remove from any package any stamp with intent to use or cause the same to be used after same have already been used or to buy, sell, or offer for sale or give away any used, removed, altered or restored stamps to any person, or to re-use any stamp which had theretofore been used for evidence of the payment of any tax prescribed by this Chapter or to sell, or offer to sell, any stamp provided herein.

h. To sell, offer for sale or distribute any loose or single cigarettes.

i. To perform any act that violates the resolutions promulgated by the Board.

j. To transport, possess, store, use, authorize or approve the possession, storage or use of any cigarettes in quantities of more than sixty (60) packages upon which the NVCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid.

Sec. 8-8. POWERS OF THE NORTHERN VIRGINIA CIGARETTE TAX BOARD.

The Board may delegate any of its powers to its Administrator or employees and may adopt regulations regarding the administration and enforcement of the provisions of this Chapter.

The Board shall be granted the following powers:

a. To assess, collect, and disburse the cigarette tax for each participating jurisdiction;

b. To audit dealer sales of cigarettes for each participating jurisdiction;

c. To provide information to Commonwealth's attorneys County, City or Town attorneys for each participating jurisdiction;

d. To designate an Administrator;

e. To manage the Northern Virginia Cigarette Tax Board Fund;

f. To retain a certified public accountant to audit its books;

g. To designate a depository bank or banks;

h. To contract with member jurisdictions for administrative services;

i. To hold and convey real and personal property;

j. To enter into contracts;

k. To hire, supervise, and discharge its own employees;

l. To sue and be sued in its own name;

m. To prescribe the design of a stamp(s) and to issue and sell said stamps to authorized dealers:

n. To establish different classes of taxpayers;

o. To promulgate resolutions for the assessment and collection of cigarette taxes and the enforcement of this ordinance; and

p. To conduct inspections of any place of business in order to enforce the provisions of this ordinance and all resolutions of the Board.

The Board may employ legal counsel, bring appropriate Court action in its own name to enforce payment of the cigarette tax or penalties owed, and file tax liens against property of taxpayers hereunder.

The Board is authorized to enter into an agreement with the Department of Taxation under which a registered agent with the NVCTB who is also qualified to purchase Virginia Revenue Stamps, may qualify to purchase Dual Virginia-NVCTB stamps from the Virginia Department of Taxation. Authority to purchase dual Virginia-NVCTB stamps is granted solely by the Board and may be revoked or suspended for violations of this ordinance or resolutions adopted by the board.

The Board may appoint certain employees as Tobacco Revenue Agents, who shall be required to carry proper identification while performing their duties. Tobacco Revenue Agents are further authorized to conduct inspections of any place of business and shall have the power to seize or seal any vending machines, seize any cigarettes, counterfeit stamps or other property found in violation of this Chapter and shall have the power of arrest upon reasonable and probable cause that a violation of this Chapter has been committed. The Board is authorized to provide its Tobacco Revenue Agents with (1) firearms for their protection; (2) emergency-equipped vehicles while on duty; and, (3) other equipment deemed necessary and proper.

The Board may exchange information relative to the sale, use, transportation or shipment of cigarettes with an official of any other jurisdiction entrusted with the enforcement of the cigarette tax laws of said other jurisdiction.

Sec. 8-9. JEOPARDY ASSESSMENT.

If the Administrator for the Board determines that the collection of any tax or any amount of tax required to be collected and paid under this Chapter will be jeopardized by delay, he shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer, together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy, including penalties and interest. In the case of a current period, for which the tax is in jeopardy, the Administrator may declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and such tax shall be immediately due and payable, whether or not the terms otherwise allowed by this Chapter for filing a return and paying the tax has expired.

Sec. 8-10. ERRONEOUS ASSESSMENT: NOTICES AND HEARINGS IN THE EVENT OF SEALING OF VENDING MACHINES OR SEIZURE OF CONTRABAND PROPERTY.

Any person assessed by the Board with a cigarette tax, penalties, and interest, or any person whose cigarettes, vending machines, and other property have been sealed or seized under process of this Article, who has been aggrieved by such assessment, seizure, or sealing may file a request for a hearing before the Administrator for the Board for a correction of such assessment and the return of such property seized or sealed.

Where holders of property interest in cigarettes, vending machines, or other property are known at time of seizure or sealing, notice of seizure or sealing shall be sent to them by certified mail within twenty-four (24) hours. Where such holders of property interests are unknown at time of seizure or sealing, it shall be sufficient notice to such unknown interest holders to post such notice to a door or wall of the room or building which contained such seized or sealed property. Any such notice of seizure or sealing shall include procedures for an administrative hearing for return of such property seized or sealed as well as affirmative defenses set forth in this section which may be asserted.

Such hearing shall be requested within ten (10) days of the notice of such assessment, seizure, or sealing, and shall set forth the reasons why said tax, penalties and interest and cigarettes, vending machines, or other property should be returned or released. Within five (5) days after receipt of such hearing request the Administrator shall notify the petitioner by certified mail of a date and time for the informal presentation of evidence at a hearing to be held within fifteen (15) days of the date notification is mailed. Any such request for hearing shall be denied if the assessed tax, penalties and interest has not been paid as required or if the request is received more than ten (10) days from first notice to the petitioner of such seizure or sealing. Within five (5) days after the hearing, the Administrator shall notify the petitioner, by registered mail, whether his request for a correction has been granted or refused.

Appropriate relief shall be given by the Administrator if he is convinced by the preponderance of the evidence that and that said seized cigarettes were in the possession of a person other than the petitioner without the petitioner's consent at the time said cigarettes, vending machines or other property were seized or sealed or that petitioner was authorized to possess such untaxed cigarettes. If the Administrator is satisfied that the tax was erroneously assessed, he shall refund the amount erroneously assessed, together with any interest and penalties paid thereon and shall return any cigarettes, vending machines, or other property seized or sealed to the petitioner. Any petitioner who is dissatisfied with the written decision of the Board may, within thirty (30) days of the date of said decision, appeal such decision to the appropriate Court in the jurisdiction where the seizure or sealing occurred.

Sec. 8-11. DISPOSAL OF SEIZED PROPERTY.

Any seized and confiscated cigarettes, vending machines or other property used in the furtherance of any illegal evasion of the tax may be disposed of by sale or other method deemed appropriate by the Board after any petitioner has exhausted all Administrative appeal

procedures. No credit from any sale of cigarettes, vending machines or other property seized shall be allowed toward any tax and penalties assessed.

Sec. 8-12.EXTENSIONS.

The Administrator, upon finding of good cause, may grant an extension of time to file a tax report upon written application for a period not exceeding thirty (30) days. Except as hereinafter provided, no interest or penalty shall be charged, assessed or collected by reason of the granting of such an extension.

Sec. 8-13.PENALTY FOR VIOLATIONS OF CHAPTERS.

Any persons violating any of the provisions of this Chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two thousand, five hundred (2,500) dollars or imprisonment for not more than twelve (12) months or by both such fine and imprisonment. Such fine and/or imprisonment shall not relieve any such person from the payment of any tax, penalty, or interest imposed by this Chapter.

Sec. 8-14.EACH VIOLATION A SEPARATE OFFENSE.

The sale of any quantity or the use, possession, storage or transportation of more than sixty (60) packages of cigarettes upon which the NVCTB stamp has not been affixed, nor provision for the jurisdictional tax to be paid, shall be and constitute a separate offense. Each continuing day of violation shall be deemed to constitute a separate offense.

Sec. 8-15.SEVERABILITY.

If any section, phrase, or part of this Chapter should for any reason be held invalid by a Court of competent jurisdiction, such decision shall not effect the remainder of the Chapter; and every remaining section, clause, phrase, or part thereof shall continue in full force and effect.

CHAPTER 9

ZONING

CHAPTER 9

ZONING

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Chapter 9 ZONING

ARTICLE 1 THE CONSTITUTION OF THE ORDINANCE

Sec. 9-l. TITLE

Chapter 9 of the Code of the Town of Clifton, Virginia, shall be designated the Zoning Ordinance of the Town of Clifton, Virginia, and may be so cited.

Sec. 9-2. PURPOSE AND INTENT

The Zoning Ordinance of the Town of Clifton, Virginia is intended to promote the health, safety and general welfare of the public.

To accomplish these ends, the Zoning Ordinance is designed:

a. to create and maintain conditions under which people and their environment can exist in a productive and enjoyable harmony while fulfilling the social, economic and other requirements of present and future generations;

b. to maintain a convenient, attractive and harmonious community;

c. to recognize the needs of agriculture, housing, industry and business in the Town's future growth; and to preserve the historic features of the Town;

d. to provide residential areas with healthy surroundings for family life;

e. to protect against destruction of or encroachment upon historic areas or historic structures;

f. to promote the conservation of natural resources;

g. to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forestation, scenic vistas, and other similar areas, and to ensure that development in such areas is well controlled;

h. to protect against the following: overcrowding of land; undue intensity of noise; air and water pollution; undue density of population in relation to available community facilities; obstruction of light and air; danger and congestion in travel and transportation; and loss of life, health, or property from fire, flood, panic or other dangers;

i. to accomplish all other objectives and exercise all other powers set forth in Article 8 Chapter 11, Title l5.l of the Code of Virginia.

Sec. 9-3. SEVERABILITY

Should any section or any provision of this Ordinance be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so held to be unconstitutional or invalid.

Sec. 9-4. CONFLICTING ORDINANCES

Whenever any provision of this Ordinance imposes a greater requirement or a higher standard than is required in any State or Federal statute or other Town ordinance or regulation, the provision of this Ordinance shall govern. Whenever any provision of any State or

Federal statute or other Town ordinance or regulation imposes a greater requirement or a higher standard than is required by this Ordinance, the provision of such State or Federal statute or other Town ordinance or regulation shall govern.

Sec. 9-5. MINIMUM REQUIREMENTS

In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare. It is not the intent of this Ordinance to interfere with or abrogate or annul any easements, covenants, or other agreements between parties; provided, however, that where this Ordinance imposes a greater restriction upon the use and dimensions of buildings or premises, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations, or by easements, covenants, or agreements, the provisions of this Ordinance shall govern, except where expressly qualified by this Ordinance.

Sec. 9-6. EFFECTIVE DATE

The Zoning Ordinance of the Town of Clifton, Virginia, as herein presented, was adopted on January 6, 2000, and became effective at l a.m., on January 7, 2000, at which time the Zoning Ordinance of the Town of Clifton, Virginia, as adopted in l994 and as amended was repealed.

Sec. 9-7. COPY ON FILE

A certified copy of the Zoning Ordinance of the Town of Clifton, Virginia, as may be amended from time to time, shall be filed in the Office of the Clerk to the Town Council.

ARTICLE 2 GENERAL REGULATIONS

Sec. 9-8. TERRITORIAL APPLICATION OF REGULATIONS

The provisions of this Ordinance shall apply to all land and all structures in the incorporated territory of the Town of Clifton, Virginia.

Sec. 9-9. GENERAL EFFECT

No structure shall hereafter be erected and no existing structure shall be moved, altered, added to or enlarged, nor shall any land or structure be used or arranged to be used for any purpose other than that which is included among the uses listed in the following Articles, as permitted in the zoning district in which the structure or land is located, nor shall any land or structure be used in any manner contrary to any other requirements specified in this Ordinance. A structure shall be defined as that which is built or constructed and affixed to the ground, including but not limited to: buildings, including garages; sheds; greenhouses; swimming pools; fences; and the like. A building shall be defined as any structure used or intended for supporting or sheltering any use or occupancy.

Sec. 9-10. RESIDENTIAL AND NON-RESIDENTIAL USE PERMITS

a. Permit Required for Occupancy or Use.

No occupancy or use shall be made of any structure hereinafter erected or of any premises hereinafter improved, and no change in use shall permitted, unless and until a Residential or Non-Residential Use Permit has been approved in accordance with the provisions of this Section. A Residential or Non-Residential Use Permit shall be deemed to authorize and is required for both the initial and continued occupancy and use of the building or land to which it applies.

b. When Required.

A Residential or Non-Residential Use Permit, whichever is applicable, shall be obtained before any person shall:

1. Occupy or use, or permit or cause to be occupied or used, any building or structure hereafter erected;
2. Change the use, or permit or cause a change in the use, of any existing building;
3. Occupy or use any vacant land;
4. Make any change in the use of a non-conforming use;
5. Enlarge any use; or
6. Continue any use after a change in the ownership or proprietorship of such use, except a single family dwelling or agricultural use (a change in ownership shall include any transfer of more than 50% of the stock of the applicant or the sale or lease of more than 50% of the assets of the corporation).

c. Application for a Permit.

Written application for a Residential or Non-Residential Use Permit shall be made to the Town of Clifton in accordance with the administrative procedures and forms promulgated by the Planning Commission and available from the Town Clerk and the Town of Clifton website. The Residential or Non-Residential Use Permit Application shall be accompanied by, if applicable, a Fairfax County Building Permit Application (and any fees therefor) and a fee of:

1) $250.00, for adding to existing buildings, or new residential construction other than new homes, where the addition or new construction costs over $25,000.00;
2) $500.00, for new home or commercial construction;

3) $250.00 plus all costs for advertising for new special use permits in the Commercial District under Sec.9-21(a)(5) and new Bed & Breakfast use permits in the Residential District under Sec. 9-18(c)(K);
4) $75.00 plus all costs for advertising for any amendment to a special use permit in the Commercial District under Sec.9-21(a)(5) or amendment to a Bed & Breakfast use permit in the Residential District under Sec.9-18(c)(1)(K); or
5) $75.00, for all other construction, and any other use permit. Such fees shall be payable to the Town of Clifton and delivered to the Town Clerk together with the required written application, as required by the administrative procedures promulgated by the Planning Commission and available from the Town Clerk and the Town of Clifton website.

d. Standards for Issuance of a Permit.

1. The following minimum requirements must be met prior to preliminary issuance of a Residential or Non-Residential Use Permit:

   A. Compliance with the zoning district regulations;

   B. Provision of adequate parking;

   C. Issuance of an ARB Certificate of Appropriateness (or a waiver from the Chairman of the ARB);

   D. For any use that will result in a land disturbing activity that will exceed an area of 2,500 square feet, submission of a plan of development as described in the Town's Chesapeake Bay Preservation Ordinance; and

   E. Compliance with such other provisions as may be deemed reasonable and necessary by the Town Council to fulfill the purpose and intent of the Zoning Ordinance of the Town of Clifton and the Historic Overlay District.

2. The following minimum requirements must be met prior to final issuance of a Residential or Non-Residential Use Permit:

   A. Completion of the work or change, covered by the preliminary issuance of the Residential or Non-Residential Use Permit, in compliance with the minimum requirements set forth in paragraph 1. of this subsection and such other requirements as may be set forth in the Residential or Non-Residential Use Permit; and

   B. If applicable, issuance of and compliance with (as evidenced by passage of all final inspections) a Fairfax County Building Permit.

e. Procedure for Consideration of Application for a Permit.

1. Within a reasonable time after receipt by the Town Clerk of the materials required to be submitted under subsection C. of this section, the Planning Commission shall review the Residential or Non-Residential Use Permit Application and shall recommend to the Town Council the approval or denial of the preliminary issuance of a Residential or Non-Residential Use Permit thereon.
2. Within a reasonable time after the Planning Commission making its recommendation for the approval or denial of the preliminary issuance of a Residential or Non-Residential Use Permit, the Town Council shall approve or deny the preliminary issuance of the Residential or Non-Residential Use Permit

3. Within a reasonable time after receipt by the Town Clerk of written notice of the completion of the work or change, covered by the preliminary issuance of the Residential or Non-Residential Use Permit, and, if applicable, compliance

with (as evidenced by passage of all final inspections) a Fairfax County Building Permit, the Planning Commission shall recommend to the Town Council the approval of the final issuance of the Residential or Non-Residential Use Permit, unless it should appear to the Planning Commission that the occupancy or use is not in compliance with the standards set out in subsection D. of this section.

4. Within a reasonable time after the Planning Commission making its recommendation for the approval or denial of the final issuance of a Residential or Non-Residential Use Permit, the Town Council shall approve or deny the final issuance of the Residential or Non-Residential Use Permit.

5. Neither the Planning Commission nor the Town Council is required to take any action provided for under this subsection until the applicant complies with the provisions of subsection f. of this section.

f. Notice of Hearings and Attendance at Hearings.

The applicant shall post a notice (on forms provided by the Town Clerk) of the Residential or Non-Residential Use Permit Application in the Post Office and on the property concerned at least one week before the Planning Commission and Town Council meetings at which preliminary and final approval of the Residential or Non-Residential Use Permit is sought. The applicant or his agent must be present at all hearings on the Application before the Planning Commission and the Town Council and must provide proof of the notice required herein.

g. Permit Not To Validate Any Violation. No Residential or Non-Residential Use Permit shall be deemed to validate any violation of any provision of this or any other law or ordinance.

h. Revocation of Permit. The Town Council may revoke an approved Residential or Non-Residential Use Permit when it is determined that such approval was based on a false statement or misrepresentation of fact by the applicant.

i. Expiration of Permit. All Residential or Non-Residential Use Permits and ARB Certificates of Appropriateness shall expire at the end of two years from the date of issuance if construction has not been fully completed by such time. All Residential or Non-Residential Use Permits applied for by a person or persons subject to a business license will expire three (3) months after written notification, by the Town Council, to the person or persons subject to the business license, of non-payment of the BPOL tax, penalties, and/or interest due and payable to the Town.

j. Extension of Permit. The Town Council may renew any Residential or Non-Residential Use Permit that has not expired and the ARB may renew any Certificate of Appropriateness that has not expired.

Sec. 9-10.1. BUILDING PERMITS

The erection of all buildings and all structures, additions, deletions, and modifications thereto, shall be subject to the provisions of Chapter 61 of the Code of Fairfax County, Virginia. However, no building or structure, or addition, deletion, and modification thereto shall be erected until a Fairfax County Building Permit Application has been approved by Fairfax County, Virginia.

Sec. 9-11.ZONING MAP

The boundary lines of the zoning districts established herein shall be shown on a map of the Town, a copy of which shall be kept in the office of the Clerk to the Town Council and shall be available for public use and inspection.

Sec. 9-12.ZONING DISTRICT BOUNDARIES

The boundary line of the districts shall be as established and shown on the Zoning Map. The district boundary lines shall be, unless otherwise shown on the Zoning Map or herein described, either the center lines of streets or roads or railroads, or lines parallel or perpendicular thereto, as noted on the Zoning Map. The Zoning Map and all notations, dimensions, and designations shown thereon

shall be as much a part of this Chapter as if fully described herein; however, in the case of a conflict between the Zoning Map and the text of the zoning ordinance or its written amendmUents thereto, the text shall govern.

Sec. 9-13.PARKING *(Revised & Adopted June 3, 2014)*

a. Definitions.

1. Off-Street Parking - any space, whether or not required by the provisions of this Ordinance, specifically allotted to the parking of motor vehicles as an accessory use. For the purpose of this Ordinance, such space shall not be located in a dedicated right-of-way, a travel lane, a service drive, or any easement for public ingress and egress.

2. Gross Floor Area - the sum of the total horizontal areas of the several floors of all buildings on a lot, measured from the interior faces of exterior walls. The term "gross floor area" shall include basements; elevator shafts and stairwells at each story; floor space used for mechanical equipment with structural headroom of six feet six inches or more; penthouses, attic spaces, whether or not a floor has actually been laid, providing structural headroom of six feet six inches or more; interior balconies; and mezzanines.

   The gross floor area of structures devoted to bulk storage of materials shall be computed by counting each ten feet of height or fraction thereof as being equal to one floor.

   The term "gross floor area" shall not include balconies which do not exceed a projection of six feet beyond the exterior walls of the building.

3. Net Floor Area - the sum of the total horizontal areas of the several floors of all buildings on a lot, measured from the interior faces of exterior walls and from the centerline of walls separating two or more buildings. In the instance where one or more separate uses are contained within one building, the determination of the net floor area for one use shall be based upon the total horizontal area designated for that use, measured from the interior faces of exterior walls and from the interior faces of walls separating individual uses.

   The term "net floor area" shall exclude areas designed for permanent uses such as toilets, utility closets, mechanical and equipment rooms, public and fire corridors, stairwells and elevators. Generally, the amount of total net floor area of a building can be considered to be eighty (80) percent of the total gross floor area of the same building.

b. Non-Conforming Uses.

1. Any non-conforming use or structure which lawfully existed at the time of passage or any amendment of section 9-13 may be continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years.

2. When a non-conforming use or structure which is rendered non-conforming because of the operation of section 9-13 is enlarged, extended or expanded, whether indoors or outdoors, the current minimum off-street parking requirements shall be provided for the area or capacity of such enlargement, extension, or expansion. A change of ownership, in itself, without any enlargement, extension or expansion of the use or structure, shall not be deemed a new use for purposes of Section 9-13, but shall require a use permit application pursuant to Section 9-10. Structural alternations may be made to a structure which is non-conforming so long as such alternations do not enlarge, extend or expand such non-conformance. In all cases, state fire regulations must be complied with. Nothing herein shall prevent the strengthening or restoring to a safe and lawful condition of any part of any building declared unsafe by the Fire Marshall or other authorized person. Compliance with the minimum off-street parking requirements shall not be required for an expansion or enlargement to provide an accessibility improvement.

3. A non-conforming use changed or altered to a more restricted use or a conforming use may not thereafter be changed back to the original non-conforming use.

c. Off-street Parking Spaces.

Minimum required vehicular off-street parking spaces for uses within the Town.

1. Residential: at least two (2) off-street parking spaces shall be required for each new residential dwelling unit used solely as a residence or any commercial premises used also as a residence.

2. Restaurant: one (1) off-street parking space for every four (4) customer seats plus one (1) space for every two employees on the premises during peak hours of operation shall be required.

3. Commercial uses:

   A. Office: one (1) off-street parking space for every two hundred and seventy five (275) square feet of gross floor area shall be required; unless the building is utilized by more than one type of commercial use, in which case one (1) off street parking space for every two hundred and twenty (220) square feet of net floor area shall be required.
   B. Retail: one (1) off-street parking space for every two hundred (200) square feet of gross floor area shall be required, plus one (1) space for every two (2) employees on premises during peak hours; unless the building is utilized by more than one type of commercial use, in which case one (1) off street parking space for every two hundred and twenty (220) square feet of net floor area shall be required, plus one (1) space for every two (2) employees on premises during peak hours.
   C. Takeout of Food and Beverages: one (1) off-street parking space for every one hundred (100) square feet of gross floor area shall be required plus one (1) space for every two (2) employees on premises during peak hours.

4. The Town Council may modify requirements for off-street parking for office, retail, restaurant and commercial uses when it can be demonstrated that a particular use will not require the number of parking spaces calculated under the provisions of this section, or when the applicant has more than one type of commercial use at the location. However, in no instance shall the number of parking spaces approved for a given use fall below that needed for one (1) employee. The applicant/user shall demonstrate to the Town Council's satisfaction that a parking reduction is warranted.

5. Industrial uses: one (1) off-street parking space for every employee on a major shift, plus one (1) space for every company vehicle and piece of mobile equipment, plus a sufficient number of spaces for all those persons who may be expected to visit the same at any one time, shall be required.

6. Churches: one (1) space for every four (4) seats in the principal place of worship shall be required.

7. Public and quasi public uses, including but not limited to post offices, fire stations, government facilities and parks: one (1) off-street parking space for every employee on the premises at any one time plus one (1) space for every company vehicle and piece of mobile equipment shall be required. Furthermore, additional spaces deemed by the Town Council to be necessary for public parking may be required and will be based upon the type of use and the anticipated need for such parking.

8. For all other uses not specified herein, including, but not limited to Home Businesses, Schools, Classes, among others, a sufficient number of off-street vehicular parking spaces shall be required to accommodate the vehicles of all employees of the establishment, plus those of all persons who may be expected to visit the same at any one time. The spaces shall be specified by the use permit issued by the Town Council.

9. One loading space per building shall be required for all commercial uses for which regular deliveries or pick ups are made, unless deliveries will not occur during operating hours. A loading space shall be at least 8.5'x25'. The Town Council is authorized to waive the loading requirement when a determination is made that the proposed use can be adequately served by an existing or on or off-site loading area or where the provision of a loading area is not feasible because of the location of existing buildings or structures. Required off-street loading spaces may be provided jointly for two or more uses subject to the approval by the Town Council. The overall number of loading spaces

may be reduced by the Town Council where adjacent uses can demonstrate that they can be adequately served by a shared loading facility.

10. Where fractional spaces result from the minimum calculations required herein, the parking spaces required shall be the next whole number.

11. All required vehicular off street parking spaces for non-residential structures or uses permitted in the Commercial or Industrial District shall be located on the same lot as the structure or use to which they are accessory except

    A. Required off street vehicular parking spaces may be provided cooperatively for two or more commercial structures or uses within five hundred (500) feet of one another, subject to arrangements or agreements that will assure the permanent availability of such spaces to the satisfaction of the Town Council. The amount of such combined parking space shall equal the sum of the amounts required for the separate uses; provided, however, that the Town Council may reduce the total number of parking spaces required when it can be determined that the same spaces may adequately serve two or more commercial structures or uses by reason of the hours of operation of such structures or uses.

    B. Pedestrian access to the structure or use for which parking is needed shall be direct, convenient and safe.

12. No off-street vehicular parking for a non residential structure or use permitted in a Commercial or Industrial District shall be located in a Residential District except upon approval of a special exception application by the Town Council. The Town Council may approve such an application but only where the following conditions can be met:

    A. The residentially zoned property in question shall be within five hundred (500) feet of the non residential use or structure and the residentially zoned property shall be used as a Church or Public or Quasi-Public Use; the use of such residentially zoned property shall be subject to such arrangements or agreements that will assure the permanent availability of such spaces to the satisfaction of the Town Council. The amount of such combined parking space shall equal the sum of the amounts required for the separate uses; provided the Town Council may reduce the total number of parking spaces required when it can be determined that the same spaces may adequately serve the two uses or structures referred to herein, by reason of the hours of operation of such structures or uses. The proposed parking shall be so configured as to provide convenient direct and safe pedestrian access to the structure or use in question.

    B. The proposed parking shall not, in and of itself be intended for use as a commercial enterprise.

    C. Vehicular parking shall not be located closer to any lot line abutting a Residential District than the corresponding distance required for a building set-back on the adjacent residential lot.

    D. The use of residentially zoned land for off-street vehicular parking for a commercial use shall not conflict with the provisions of the Comprehensive Plan, the Historic Overlay Zoning District, and the remaining provisions of this Ordinance.

d. **Measurements.**

Each automobile parking space and travel aisle shall comply with the following tables and provisions.

PARKING SPACES			
Direction of Parking	**Stall Width ft (m)**	**Depth of Stalls ft**	**Aisle Width ft**
One-way aisle (one-side parking)	8 (2.4)	18	16
One-way aisle (two-side parking)	8 (2.4)	18	16
Two-way aisle (two-side parking)	8 (2.4)	18	16

UNIVERSAL SIZE CAR SPACES				
Parking Angle	**Stall Width ft (m)**	**Depth of Stalls Perpendicular to Aisle ft***	**One-way Aisle ft***	**Two-Way Aisle**
45º	8.5 (2.6)	18	16	16
60º	8.5 (2.6)	18	16	16
90º	8.5 (2.6)	18**	16	16
				Ẃ

* Where required, fire lanes shall have a minimum width of 18' (5.5m).

** This dimension may be reduced by up to 1.5' (0.45m) where the Town Council determines that adequate "head-in" overhang exists exclusive of required planting or screening requirements, and sidewalks.

When provided, motorcycle parking spaces shall conform to the following minimum geometrics. The stall width shall be 4' (1.2m) and the depth of the stall perpendicular to the aisle shall be 9' (2.7m). The travel aisle shall be as set forth in the Tables above. Motorcycle parking spaces shall not be considered in the required parking tabulation.

All off-street parking and loading areas shall be delineated by painted lines, wheel stops or other markings.

e. Setbacks.

Setbacks for all off-street parking areas shall conform to those established herein for buildings, except as may be modified by the use permit, where permissible.

f. Lighting.

In districts other than residential, or when residential property is approved for use as accessory parking to a commercial use, lighting of off-street parking areas shall be arranged so as not to cause glare onto the abutting or facing land zoned or being used as residential. Lighting shall be minimal and serving only to provide security for patrons of the structure or use for which parking is accessory. The parking area shall be generally illuminated in accordance with the hours of general operation of the structure or use for which it is associated.

g. Surface.

In districts other than residential, or when residential property is approved for use as accessory parking to a commercial use, any newly constructed off-street parking areas shall be constructed and maintained with a dustless surface which shall be defined to include asphalt, stone, gravel and alternate surface materials such as, but not limited to, porous pavement, gravel-pave, and pervious pavers.

h. Drainage.

Provisions for adequate storm-water drainage shall be made for all off-street parking areas.

i. Signs.

In districts other than residential, or when residential property is approved for use as accessory parking to a commercial use, signs indicating the location of off-street parking shall be prominently located for the convenience of the public.

j. Junk Vehicles.

In all districts, the parking of junk vehicles in view from public streets shall be prohibited. A junk vehicle shall be defined as any motor vehicle, trailer or semi-trailer which is inoperable and which by virtue of its condition cannot be economically feasibly restored. Any vehicle will be presumed to be a junk vehicle when: (a) valid license plates are not displayed, or license plates have been expired for more than sixty (60) days; or (b) valid state inspection stickers, as required for use of the vehicle, are not displayed, or have been expired for more than ninety (90) days; or (c) the vehicle remains in an inoperable condition for more than ninety (90) days.

k. Commercial Vehicles.

In all districts, except commercial and industrial, the parking of commercial vehicles shall be prohibited. A commercial vehicle shall be defined as any vehicle, used for business purposes having more than four wheels.

l. Off-street Parking and Loading Areas.

All off-street parking and loading areas shall be properly maintained in good condition, free from debris and potholes. All lines, headers, wheel stops, markings, and the like, shall be kept clearly visible and in place.

m. Off-street Parking Area Access.

All off-street parking areas shall have safe, direct and convenient access to a public street. All entrances and exits must comply with any regulations or rules by the Virginia Department of Transportation or Fairfax County.

n. Stacking.

Parking spaces may be "stacked" for up to two vehicles in Residential districts, for residential parking in commercial districts, and only for employee parking in commercial districts, such that one vehicle must be moved in order to move another vehicle, so long as there is a total depth of 36 feet for the two stacked parking spaces, and so long as there is direct access to a street or an aisle for exit and entrance for vehicles from the stacked parking spaces.

o. Off-street Parking for Commercial Structures.

Off- street parking for commercial structures or uses, including residential property approved for use as accessory parking to a commercial structure or use, shall be solely for parking of vehicles by patrons, occupants, or employees of the use or accessory use; no motor vehicle repair work or motor vehicle sales, may be performed in such parking areas.

p. Landscaping and Screening Requirements.

Landscaping requirements and screening may be required to minimize the impact of the use with respect to other nearby or adjacent residential or commercial properties.

q. Dumpsters.

All dumpsters located in such parking areas for a commercial structure or use shall be screened with fencing approved by the ARB.

r. Fencing.

Any such approved fencing for a commercial property, structure or commercial use may be 8 feet in height.

Sec. 9-14 SIGNAGE *(Revised, July 1, 2014)*

The purpose of this section is to regulate the size, location, height, and construction of all signs to protect public safety, and encourage harmonious and cohesive signage in the Town. The intent is not to limit design and color options but is to maintain signage that is visually compatible with the architectural character of the buildings and the historic nature of the Town.

a. Administration

1. Certificate of Appropriateness. No sign shall be erected, altered, relocated or displayed without a Certificate of Appropriateness as issued by the Architectural Review Board (ARB). Such Certificate shall be issued when all requirements of this Article have been met and when ARB approval has been obtained. Existing approved signs, removed for repair, do not require a new Certificate of Appropriateness if repaired sign is exactly the same as the approved original and the repair is completed and the sign restored within six (6) months. Any business which relocates, must apply for a new Certificate of Appropriateness for the new sign location or new sign design.

2. Definition. A "sign" shall include any display that includes wording, numbers, symbols, images, characters, or any visual component used to identify or advertise, including but not limited to banners, canopies, flags, or balloons.

3. Business Signs. Signs serving a business may be erected only with an approved Use Permit.

4. Certificate. Existing signs with a Certificate of Appropriateness and lawfully placed as of the date of enactment of this section of the ordinance are exempt from the revisions hereof. If an exempt sign is removed, except for repair, it shall not be erected, altered, relocated, or displayed without approval.

5. Application. A completed and properly filed application for Certificate of Appropriateness, including filing fee, shall be filed with the Chairman of the ARB on forms, available at www.cliftonva.us. Applicant shall include a drawing of the proposed sign which clearly indicates size, color, letter style, materials, message content and a diagram indicating where on the property or building the sign will be located. Applications will be accepted only from the owner(s) of the property on which the sign is to be posted or their designated agent.

b. General Regulations.

1. Illumination. Signs in the commercial district may be indirectly lighted if the source of light is shielded so that it only lights the face of the sign.

2. Termination of Sign Permits. Whenever the use of a building or premises by a business is discontinued, signs pertaining to that business shall be removed within seven (7) business days following the vacation of the premises, or within fourteen (14) business days of normal business operations ceasing, whichever is sooner. It shall be the responsibility of the building owner to ensure such removal.

c. Permitted Signs.

1. Subdivision Signs. One sign per street entrance in subdivision shall be permitted with the sign area, color, height and style to match the existing street signs in the Town. Message content is limited to the name of the street, which shall be approved by the ARB. Such signs shall be placed, relative to the road right-of-way, to match the existing location of approved signs in Town.

2. Freestanding Signs.

A. Definition. A “freestanding sign” consists of a two-dimensional, single-sided or double-sided surface which may be mounted to or hung from a post, or posts, which are permanently affixed to the ground.
B. Location. The sign shall be placed in an appropriate area to designate the location of the business and the entrance of the business.
C. Boundaries. The sign shall not extend beyond the property line.
D. Height. The top of the sign shall not exceed six (6) feet above the ground. Supporting members shall not exceed seven (7) feet above the ground.
E. Historic Markers. Approved Historic Markers shall not exceed eight (8) feet in height.
F. Maximum Number. The maximum number of freestanding signs allowed on a property shall be no more than one (1), unless a Use Permit Holder operates a business with frontage on two state maintained roadways, in which case two (2) freestanding signs may be permitted.
G. Maximum Total Signage. Each freestanding sign shall contribute to the *maximum total signage* allowed per business, as described in 9-14.d.2.C., except for multi-tenant directory signs as permitted in section 9-14.c.5. and 9-14.d.2.C.i.
H. Building Access. Freestanding signs shall not be located in such a way as to impede visual or physical access to the building.
I. Materials. Freestanding signs shall meet criteria for approved materials, as described in 9-14.f.

3. Building Mounted Signs.

A. Definition. A “Building Mounted Sign” consists of a two-dimensional, single or double-sided surface which is permanently affixed to a building exterior wall or structure, either directly or through use of a bracket.
B. Position.
   i. Shall be located on the building or structure in an approved location to identify either the presence of the business within the facility, or the primary entrance to the business.
   ii. Mounted on a bracket.
      a) 48" maximum projection from building surface.
      b) 6'-8" minimum height from walking surface to the bottom of the sign.
      c) Shall not impede visual, or physical access to the building.
C. Maximum Total Signage. Each building mounted sign shall contribute to the *maximum total signage* allowed per business, as described in 9-14.d.2.C., except for multi-tenant directories as permitted in section 9-14.c.5. and 9-14.d.2.C.i.
D. Materials. Building mounted signs shall meet criteria for approved materials, as described in 9-14.f.

4. Enter and Open/Close. Each permitted business shall be allowed one (1) such informational sign to be mounted on the building or glass, or painted on the glass, within three (3) feet of the primary public entrance. The sign shall not exceed one and a half (1.5) square feet and must be approved by the ARB. Content is limited to “Open,” “Closed,” “Entrance,” hours of operation, information related to business events, menus and special notices other than general business advertising. Such signs shall not contribute toward the maximum signage area permitted under section 9-14.d.

5. Building Directories. In addition to individual business signage, buildings with three (3) or more tenants may have an exterior building directory sign listing the current tenants with Use Permits in that building. The sign can be a wall mounted sign or a free standing sign.

A. Maximum Wall-mounted. The maximum size for a wall mounted building directory sign is four (4) square feet
B. Location. A wall mounted building directory sign shall be located in the proximity of the building entrance
C. Maximum Free-standing. The maximum size for a free standing building directory sign is nine (9) square feet

D. ARB Approved. Any building directory sign shall meet all requirements of this code and shall be approved by the ARB.
E. All Must Conform. Individual business listings on an approved Directory sign also must comply with section 9-14.d.2.C.i.
F. Building Access. Building Directory signs shall not impede visual or physical access to the building.
G. Materials. Building Directory signs shall comply with permitted materials as described in section 9-14.f.

6. Sandwich Boards and Movable Signs.

A. Definitions.
   i. A "sandwich board" sign shall consist of a pair of two-dimensional surfaces, hinged together at the top to create a moveable, two-sided, freestanding surface.
   ii. A "movable sign" may be a single two-dimensional sign not connected to a second panel, which is mounted on or against a structure, or via an integral support of complimentary material, which permits the sign to be easily removed and stored out of sight during non-business hours.
B. Maximum Size. Six (6) square feet maximum area per face.
C. Height. Maximum height for a sandwich board sign or movable sign shall be forty inches (40").
D. Boundaries. Sandwich Board signs and Moveable signs shall only be displayed on business property and in vicinity of the business the sign is serving.
E. Prohibited Locations. Shall never be located on sidewalks or in parking spaces.
F. Hours. Shall be displayed only during the firm's business hours and shall be stored out of view at all other times.
G. Maximum Number. One sandwich board or movable sign per building is allowed, unless otherwise approved by the ARB, pursuant to an approved Comprehensive Signage Plan, as described in 9-14.e.2.B.
H. Materials. Sandwich board signs and movable signs shall meet criteria for approved materials, as described in 9-14.f.
I. Existing Certificate. Sandwich board signs and movable signs displayed with a Certificate of Appropriateness shall not contribute to the maximum total signage allowed per business, as specified in 9-14.c.2.G., except when used under an approved Comprehensive Signage Plan as specified in 9-14.e., in which case the Comprehensive Signage Plan shall dictate the approved number of all signs.

7. Memorial Markers

A. Maximum Size. One (1) square foot maximum area.
B. Ground Location. Ground-mounted markers shall be mounted level with the ground.
C. Bench Location. Memorial markers on benches are permitted, but shall not exceed eight (8) square inches, and shall be mounted directly on back of bench.
D. Prohibited. No memorial markers shall be allowed other than those set forth above.

8. Historic Markers.

A. Appearance. All Historic Markers shall match the existing Town standard.
   i. Size – twenty-two and a half inches wide by thirty inches high (22 1/2" W x 30" H);
   ii. color -- dark forest green; and,
   iii. Lettering style -- hand painted white or cream letters.
B. Content. The message content shall be reviewed and approved by the Town of Clifton Historic Preservation Committee prior to approval by the ARB.
C. Maximum Size. Approved Historic Markers shall:
   i. Not exceed eight (8) feet in height;
   ii. be freestanding signs; and,
   iii. be mounted on an approved post.
D. Materials. All historic markers shall meet criteria for approved materials, as described in 9-14.f.

E. Excluded from Total Signage. Historic markers shall not contribute to the maximum signage allowed per business or Use Permit.

9. Parking Control Signs

A. Purpose. The intent of this provision is to ensure that parking control signs make the least visual impact while conveying information deemed necessary to manage private, commercial parking facilities.
B. ARB Approved. Signs displaying information regarding parking on privately-owned, commercially zoned property, or church property, are permitted only when approved by the ARB.
C. Commercial. A commercial building may post one (1) approved parking control sign no larger than twelve inches high by twenty-four inches wide (12”H x 24”W) at each entrance to the facility parking lot.
D. Directional. Where a parking facility is not clearly visible from the parking entrance sign location, one (1) additional approved sign not larger than six inches high by twenty-four inches wide (6"H x 24”W) may be posted to provide additional direction to parking spaces.
E. Content. Approved parking facility signage may include only the name of the business, or identification of the property served by the parking facility, hours of use, directional symbols or lettering, and the words PARKING and ONLY.
F. Towing Notice. A privately-owned, commercially zoned or church parking facility may post one towing notification sign with each approved parking entrance sign.
   i. Such signage shall be consistent with the Fairfax County Code section 82-5-32;
   ii. Must be attached to the same post as the parking entrance sign; and
   may not be larger than the minimum size required by the county.

G. Location. Parking control signage shall be displayed only in specific locations approved by the ARB.
H. Excluded from Total Signage. Approved parking control signage shall not contribute to the maximum aggregate size, and maximum number of signs described in 9-14.d.2.
I. Materials. Parking control signage must comply with materials described in 9-14.f., except as permitted in 9-14.c.9.F.
J. Boundary. Parking control signage may be displayed only on the same property as that occupied by the private business it serves, unless an agreement is in place to provide alternative offsite parking per code section 9.13.c.11. and/or 9.13.c.12. Such alternative use has to be approved by the Town Council and referenced in a valid, approved Use Permit.
K. Building Access. Parking control signage may not be located in such a way as to block parking spaces, walkways, or access to the building.
L. Height. Parking control signage and its supporting members may not exceed forty-eight inches (48”) above grade.
M. Individual Parking Control Signage. In the case where multiple buildings or parcels share a parking lot or entrance to a parking lot, pursuant to an enforceable agreement, or where private business parking adjoins town-owned or controlled parking, a business or commercial property owner may display one (1) individual parking control sign at each valid parking space identifying the business or commercial property the space serves. All such signage shall be approved by the ARB and may be placed only at parking spaces controlled by the business or property owner displaying the sign. Such signs shall not exceed forty-eight inches (48”) height above grade, unless expressly required by county or state law.
N. Temporary Signs. Temporary parking control signage is permitted for Town approved events.
   i. May be posted one calendar day before the scheduled day of the event and for not longer than 48 hours.
   ii. Such signage shall not exceed six (6) square feet. One such sign shall be permitted per parking facility.
O. Prohibited. No other parking control signage, except as described in 9-14.c.9., is permitted.

10. Legally Required Signs. Any sign legally required by county, state, or federal authority is authorized.

d. Permitted Size and Number of Signs.

1. Residential District home business signs shall not exceed three (3) square feet.

2. Commercial District

   A. Maximum Size. No individual sign face shall exceed twelve (12) square feet, except signage located on or in front of a building face less than thirty (30) linear feet in length, which shall not exceed nine (9) square feet.
   B. Maximum Number. No business shall display more than two (2) individual general advertisement signs.
   C. Maximum Total Signage. The total area of all signage shall not exceed twelve (12) square feet per each business with an approved Use Permit, with the following exception:

      i. Placards on Directories approved under 9-14.c.5 shall not be counted against the total allowable signage, or number of permitted signs for an individual business, provided the placard advertising that business does not exceed six inches (6") height or eighteen inches (18") length. Directory Placards exceeding either or both these dimensions shall be counted in all tabulations.
      ii. For the purpose of meeting maximum total signage area, only one face of a two-sided sign shall be counted.

e. Alternate Compliance Method

1. Comprehensive Signage Layout Concept. Commercial District building owners may submit a Comprehensive Signage Layout Concept to the ARB for and individual building, indicating:
   - Potential sign locations;
   - Method of display and attachment; and,
   - Potential sandwich board locations.

   The ARB review will consider:
   - Building size;
   - Amount of street frontage;
   - Multiple street frontages and public views; and,
   - Architectural integrity of signage impact.

2. The ARB, when deemed appropriate to maintaining the architectural character of the building and the Town, may change the allowable signage area and number permitted in section 9-14.d.2. based on an approved Comprehensive Signage Layout, as set forth below.

   The ARB may allow the following changes:

   A. Apportioning. Buildings with multiple tenants having approved Use Permits may apportion differing amounts of signage to individual businesses. At no time may the total amount of all building signage exceed a number which uses the following multiplication factors:
      i. Two or more stories. 0.6 square feet per lineal footage of building facing AND adjoining a VDOT maintained road or other public roadway, or a Town-owned or controlled parking facility, for buildings with two or more full stories above grade.

      ii. One story. 0.3 square feet per lineal footage of building facing AND adjoining a VDOT maintained road or other public roadway, or a Town-owned or controlled parking facility, for buildings with one full story above grade.

      iii. Differing Number of Stories. For buildings with distinct areas with differing number of stories, evaluate each area of the building where signs will be displayed using the appropriate multiplication factor. That is, one-story sections will use the .3 factor and sections of two stories or more will use the .6 factor.

iv. The above tabulations shall determine the total amount of signage permitted on the building, but approved signage may be located on <u>any</u> side of the building regardless of whether that side contributes to the allowable signage area, provided:

a) Signage on any one side of the building does not exceed the amount appropriate for that side, as demonstrated by conforming with the above tabulations,

b) The entire building does not exceed the maximum total area of signage permitted by the tabulations in 9-14.e.2.A.i thru 9-14.e.2.A.iii.

B. Sandwich and/or movable signs. An approved Comprehensive Signage Plan may allow additional sandwich board or movable signs as follows:

i. Multi-tenant buildings with more than 65 lineal feet of building facing AND adjoining a VDOT maintained road or other public roadway, or a Town-owned or controlled parking facility shall be permitted a total of two (2) sandwich board signs or movable signs, provided no individual business displays more than one (1) such sign.

3. Approved Plans. An approved Comprehensive Signage Plan will include the prescribed location(s) for signs of a specified size. Subsequent changes in businesses occupying multi-tenant buildings shall not cause changes to the specified sizes or locations of signs in an approved Comprehensive Signage Plan.

f. Permitted Materials.

1. Wood. 3/4" or greater wood; all non-metallic paint sheens are acceptable.
2. PVC. 3/4" or greater painted, smooth, cellular PVC; all non-metallic paint sheens are acceptable.
3. High Density Urethane Foam. 3/4" - 2 1/2" thick High Density Urethane Foam, using one or more of the following surface finishes:
   A. Matte finish acrylic lettering, symbols, or borders
   B. Smooth, routed finish
   C. Sandblasted finish
   D. Rough textured grain finish
4. Matte, or Satin paint.
5. Iron brackets and frames.
6. Chalkboard surfaces for sandwich boards, movable signs, or building mounted signs smaller than two (2) square feet.
7. Other materials may be submitted for ARB consideration.

g. Prohibited Signs. The following signs are prohibited and shall not be erected. The Town Council,

and its agents are authorized to immediately remove and dispose of any such unlawfully erected sign.

1. Off-site. All off-site signs, including but not limited to real estate signs not on the property being advertised, unless otherwise approved by the Town Council.
2. Displayed on Public Property. Any sign erected on public property which is owned or leased by the Town of Clifton or any other public property, other than those erected at the direction of the Town. These include but are not limited to real estate and political signs. Any such unlawfully erected sign is subject to immediate removal and disposal by the Town.
3. Stationary Vehicles. Any sign displayed on a stationary vehicle when said vehicle is used primarily for the purpose of and serving the function of a sign. An exception is made for those vehicles which are in fact regularly used for business transportation and delivery, and display the name of the related business or delivery service.
4. Illegal. Any sign that violates any provision of any law of the Commonwealth of Virginia relating to outdoor advertising on streets and highways.
5. Non-conforming Illuminated. Any illuminated sign other than those identified in sections 9-14.b.1.
6. Flashing. Any flashing sign.

7. String / Rope Lights. String lights or rope lights, or LED lights used as a sign, to illuminate a sign or as a border to a sign.
8. Trees and Vegetation. Any sign attached to vegetation, including trees.
9. Deteriorated. Any sign which has deteriorated or is in a state of disrepair.
10. No Certificate. Any sign which has been erected, mounted, or displayed after January 1, 1980 without an approved ARB Certificate of Appropriateness.
11. Non-conforming Digital / Electric. Any digital or electric sign other than those specifically permitted in section 9-14.
12. Signs consisting of illuminated tubing or neon.

h. Signs Not Requiring ARB Approval.

1. Church Sign Updates. Changing message content on approved church signs.
2. Installed by Government. Signs erected by the Town of Clifton, the State of Virginia or Fairfax County including, but not limited to traffic control signs signals, regulatory devices, legal announcements and directional signs.
3. Flags. National, State or local flags or other civic, charitable, educational or philanthropic groups or decorative flags without wording, which can in no way be construed as advertising and which are not otherwise prohibited by any statute or ordinance.
4. Address Numbers. Property address numbers when affixed directly to the building or mailbox.
5. Seasonal. Seasonal displays or decorations, not advertising a product, service or entertainment.
6. Contractor's Display. One contractor's sign may be displayed per construction project, and may not exceed nine (9) square feet in total area, and may not be posted longer than sixty (60) days, or the length of the project, whichever is shorter.

    A. Extended Period. Signs posted beyond sixty (60) days require a Certificate of Appropriateness.
    B. Certificate of Appropriateness. Contractors' signs with a Certificate of Appropriateness may not exceed nine (9) square feet and may be displayed for up to one hundred-eighty (180) days or until completion of work, whichever comes first.
7. Real Estate. Real Estate Signs for the purpose of advertising the sale or lease of the premises, limited to the following:

    A. Each property for sale or lease shall be permitted one (1) sign, located anywhere on the property, advertising the sale or lease of said property. Property bordered by more than one road shall be permitted two (2) signs, with no more than one sign permitted on each road.
    B. All real estate signs shall include the words "SALE" or "FOR SALE" or "RENT" or "FOR RENT" or some combination of these or similar words in lettering which is clearly legible from the road.
    C. Size of the sign shall not exceed four (4) square feet. If freestanding, the height shall not exceed six (6) feet.
    D. Any "For Lease" or "For Rent" sign displayed longer than sixty (60) days shall require an ARB Certificate of Appropriateness.

8. Political Campaigns. Political campaign signs on private property may be erected not more than sixty (60) days prior to the election. Such signs shall be removed within seven (7) days after the election.

    A. Political signs shall be freestanding and not attached to any building or vegetation.
    B. Political Signs are limited to two (2) per property, may not exceed eight (8) square feet each and may not be illuminated.

9. Interior Display Signs. Interior signs are permitted on the interior of one window or door per business provided that they cover no more than twenty percent (20%) of the glass area to which they are affixed and that the same signs are not displayed for longer than thirty (30) days. Exception: The 20% requirement may be exceeded for posting of notices such as Certificates of Appropriateness, Use Permits, Building Permits and the like.

10. Each commercially-zoned building or church shall be allowed up to two (2) square feet of service signage that will not contribute toward the maximum total signage allowed under section 9-14.d. Such signage shall be limited to identification of delivery locations, trash and dumpster management, utility services , and other signage identifying building and service information, and shall not include advertising of any sort.

11. Special Events. Temporary banners or signs intended to notify the public of special events, not of a recurring nature, may be erected for no more than forty-five (45) days upon the specific, written approval of the Town. Any such banner or sign must be removed within seven (7) days following the event announced.

i. **Violations.**

This section of the Code, 9-14 SIGNAGE, shall be enforced by the Architectural Review Board, which for the purposes of Section 9-14 is the Town Council's duly authorized agent.

1. No Certificate. Signs displayed without a Certificate of Appropriateness

   A. Written Notice. The business and the building owner shall receive written notification of the violation.
   B. Conformance. Upon notification, the business or the building owner shall immediately remove the sign or submit an application for a Certificate of Appropriateness to the ARB within five (5) business days of receipt of the written notification or be subject to the fines detailed below. If a Certificate of Appropriateness is approved and issued there shall be no fines imposed. If the application is not approved the business or the building owner shall remove the sign within five (5) days of the ARB decision or be subject to the fines detailed below.

2. Prohibited Signs. Any sign that is expressly prohibited under section 9-14.g shall be removed within five (5) days of written notification provided by the Town. If such signs are not removed within five days the business and building owner will be subject to fines as detailed below. The ARB will not accept or review applications for signs that are expressly prohibited by section 9-14.g.

3. Violation Fines. Fines of $100 per day of violation for each sign displayed without a Certificate of Appropriate shall be assessed to the building owner.

   A. Fines will begin to accrue five (5) business days after written notification is provided for any sign identified as a Prohibited Sign; or,
   B. Any sign which has not been submitted for a Certificate of Appropriateness.
   C. Fines will begin to accrue five (5) business days after any denial of an application for Certificate of Appropriateness.

4. Enforcement. Violations shall be subject to the provisions of Article 4 Enforcement of the Zoning Code.

Sec. 9-15. PROHIBITED USES

a. No mobile home or van shall be occupied on any lot on a permanent basis in any district.

b. Bookstores dealing in pornographic literature, massage parlors, or similar uses shall not be allowed in any district.

Sec. 9-16. NON-CONFORMING USES AND STRUCTURES

a. Any non-conforming use or structure which lawfully existed at the time of the passage of this Chapter may be continued and any such existing non-conforming building or structure may be restored or structurally altered provided it shall meet the requirements of this section and all other sections of this Chapter, the Code of the Town of Clifton and other applicable statutes and ordinances.

b. Alteration, extension or enlargement of non-conforming uses or structures. Changes in non-conforming uses or structures in all Districts shall conform to the following requirements:

l. Any structure or use of land which is non-conforming because of use shall not be enlarged or extended in any manner whatsoever.

2. There shall be no structural alterations made to any non-conforming building or structure that is non-conforming because of use. Structural alterations may be made to a building which is non-conforming because it fails to comply with height, area, yard, off-street parking or other like requirements of this Chapter, so long as such alterations do not extend or enlarge the non-conformance. In all cases, state fire regulations must be complied with as to access and fire-resistance of the structure. Nothing herein shall prevent the strengthening or restoring to a safe and lawful condition of any part of any building declared unsafe by the Fire Marshal or other authorized person.

3. A non-conforming use changed or altered to a more restricted use or a conforming use may not thereafter be changed back to the original non-conforming use.

4. In the event that there shall be a cessation of operation of any nonconforming use for a period of twenty-four consecutive calendar months, the cessation shall be an abandonment of such non-conforming use. Any subsequent attempt to rely upon, exercise, or reinstate such abandoned non-conforming use shall be a violation of the terms of this Chapter.

5. Nothing in this Chapter shall require any change in plans, construction, or designated use of a structure or building for which a building permit has been heretofore validly issued if construction has been started and diligently prosecuted at the time of the adoption of this Chapter.

6. Nothing in this Chapter shall be construed as authorization for or approval of the continuance of the use of a building, structure or premises in violation of any zoning ordinances, rules or regulations in effect immediately preceding the time of the effective date of this Chapter, unless such use ceases to be in violation under the provisions of this Chapter.

c. Restoration of existing buildings which are non- conforming because of use. Nothing in this Chapter shall prevent the restoration or continuance of a non-conforming building or structure which is non-conforming because of its use and which is partially destroyed by fire, explosion, act of God, or by any public enemy, or the like, if the extent of the destruction be not more than fifty per cent (50%) of the tax appraisal of record of the whole building or structure at the time of the partial destruction. If, however, any such building or structure shall be destroyed in the manner aforesaid to an extent exceeding fifty per cent (50%) of the tax appraisal of record of the whole building or structure at the time of such destruction, then the same

may only be reconstructed and thereafter used in such a manner as to conform to all requirements, terms and conditions of this Chapter.

d. Restoration of existing buildings which are non-conforming because of reasons other than use. Nothing in this Chapter shall prevent the restoration or continuance of a non-conforming building or structure which is non-conforming because it fails to comply with any height, area, yard, off-street parking or other like requirements of this Chapter, and which is partially destroyed by fire, explosion, act of God, or by any public enemy, or the like, provided that any restoration of any such building or structure shall comply with Paragraph (b) (2) of this section.

e. No non-conforming building or structure shall be moved on the same lot or to any other lot which is not properly zoned to permit such non-conforming use.

f. Structures may be erected, developed, rebuilt, restored, structurally altered, reconstructed or improved provided it shall meet the requirements of this section and all other sections of this Chapter, the Code of the Town of Clifton and all other applicable statutes and ordinances on any non-conforming lot:

1. which is presently existing or has been approved by the Town of Clifton prior to September 2, 1986, and recorded in the County land records prior to July 1, 1987, of less than one acre, but 10,000 square feet or more,

2. which is presently existing or has been approved by the Town of Clifton prior to August 1, 1997, and recorded in the County land records prior to July 1, 1998, of less than five acres, but one acre or more.

g. Any non-conforming lot which is presently existing or has been approved by the Town Council prior to October 2, 1990 and recorded in the County of Fairfax land records at that time having less than a minimum lot width of one hundred (100) feet or a minimum frontage of sixty (60) feet shall be deemed to be a nonconforming lot. On such lot, structures may be erected, developed, rebuilt, restored, structurally altered, reconstructed or improved provided it shall meet the requirements of this section and all other sections of this Chapter, the Code of the Town of Clifton and all other applicable statutes and ordinances.

Sec. 9-17. LIMITATION ON THE OCCUPANCY OF A DWELLING UNIT

A dwelling unit may be occupied by not more than one (l) family, and such family may consist of not more than one (l) of the following:

a. One (l) person or two (2) or more persons related by blood or marriage with not to exceed two (2) roomers or boarders, and with any number of natural children, grandchildren, foster children, or adopted children. A roomer or boarder shall be defined as a person who rents and lives in one or more rooms of a dwelling from a person who owns and occupies the same dwelling for a period of not less than thirty (30) days.

b. A group of not more than four (4) persons not necessarily related by blood or marriage.

c. Any other housekeeping unit which may be approved by the Town Council as being compatible with the character of the neighborhood in which it is to be located, provided such housekeeping unit does not exceed ten (l0) persons.

Section 9-17A. MOBILE TEMPORARY STRUCTURES

The outdoor storage of Mobile Temporary Structures is permitted in accordance with the standards listed below:

a. A Mobile Temporary Structure is any assembly of materials which is not included in the definition of structure set forth in Section 9-9 of the Code, is not permanently affixed to the ground, and is not regularly operated and licensed in compliance with the Virginia Motor Vehicle Code, which may be used to contain tangible property and/or persons, whether for storage, occupancy, or commercial purposes; including but not limited to, dumpsters, storage pods, shipping containers, tiny houses, food trucks, truck trailers, mobile homes, and the like. All Mobile Temporary Structures must be authorized by Use Permit, except as set forth below, and any Mobile Temporary Structure which does not have a

Use Permit authorizing its use, or is not in compliance with its Use Permit, shall not be allowed and will be considered to be a structure permanently affixed to the ground, pursuant to Section 9-9 of the Code for which a Use Permit and Certificate of Appropriateness shall be required.

b. A Use Permit shall be required for all Mobile Temporary Structures, except for the following:

(1) The loading, unloading and/or temporary parking of any Mobile Temporary Structure for not longer than 72 hours, measured from the commencement of its location on any property in the Town to its removal from such property;

(2) The use of any Mobile Temporary Structure, commonly known as a dumpster, for the disposal of waste materials by persons or businesses having a valid residential Use Permit for construction, or a valid non- residential Use Permit, issued by the Town, allowing such Temporary Mobile Structure; provided that such Temporary Mobile Structure is maintained and emptied by a contractor licensed for such disposal services, is wholly located on private property and not in a public right of way, is specifically allowed and its location is specifically set forth in the Use Permit; any fencing required by the Use Permit or the Code is provided and its use does not extend beyond the period specified for the use authorized by the Use Permit.

c. 1 Except as provided above, the owner or lessee of any property in the Town on which Mobile Temporary Structures are to be located shall obtain a Use Permit, by filing an application for a Use Permit as set forth in Section 9-10 of the Code and pay a fee of $25 to the Town.

2 Such Mobile Temporary Structures shall be no larger than 200 square feet, and no higher than 13 feet measured from the ground on which the Mobile Temporary Structure sits, to the top of the highest point on the Mobile Temporary Structure, but shall in no event be higher than the principal structure on the property; shall meet all set back requirements for the applicable zoning district under the Code, and shall be located whenever possible in the rear of the property.

3 Such Mobile Temporary Structure shall not be located in or impede the use of any parking area, loading area, aisle or driveway, unless it is the applicant's own and located in a residential district. However, such Mobile Temporary Structure may be located in a parking area for a property zoned commercial or industrial or for a residential public use zoned property, if such parking for the property and the uses thereon can be reduced based on the parking spaces presently required by existing use permits relating to the property.

4 No more than one Mobile Storage Structure may be located on a lot within the Town at one time.

5 The Use Permit shall set forth the exact location of the Mobile Temporary Structure on the property, the length of time such Mobile Temporary Structure is allowed on the property, whether fencing is required, and whether such Mobile Temporary Structure may be located within the setbacks of any commercially zoned property (but not within the setbacks of any residentially zoned property), and any other restrictions or requirements which may be deemed reasonably and necessary by the Planning Commission and the Town Council to fulfill the purpose and intent of the Zoning Ordinance of the Town of Clifton and the Historic Overlay District.

6 Any Mobile Temporary Structure may be replaced by another such assembly of materials of no larger size or capacity during the period for which a Use Permit continues in effect.

d. This Section shall be enforced in accordance with Article 4 of the Code.

ARTICLE 3 ZONING DISTRICTS

Sec. 9-18.ZONING DISTRICTS ESTABLISHED

a. The Zoning Districts in the Town of Clifton shall be as follows:

1. Residential District
2. Agricultural District
3. Commercial District
4. Industrial District
5. Community Open Space and Recreation (COSR) District
6. Low Impact Commercial District

b. The zoning overlay districts in the Town of Clifton shall be as follows:

1. Historic Overlay District
2. Floodplain Overlay District

Sec. 9-19. RESIDENTIAL DISTRICT

a. In a Residential District no building shall be erected, enlarged, or used, and no land shall be used, except for one or more of the following purposes:

1. Single family dwelling.

2. Churches, parsonages, community buildings and parks.

3. Home Businesses.

4. Private garages and accessory buildings.

5. Boarding or maintaining of horses on a lot of no less than two (2) acres.

b. Buildings and structures in Residential Districts shall be regulated as follows:

1. Minimum lot size: Five acres.

2. Maximum height of building: Thirty-five (35) feet.

3. Building set-back requirements:

Front: Forty-five (45) feet from centerline of abutting street.

Side: Ten (10) feet from adjoining property lines on either side of a building.

Rear: Twenty-five (25) feet from adjoining property line in the rear of the lot, except corner lots which set-back shall be the same as the side-yard requirement. In no case shall any building or structure be erected, constructed, or enlarged within ten (10) feet of any adjoining property line. The setback line shall be measured from the closest part of the structure to the property line, including porches, etc., but excluding any roof overhangs and any uncovered stairway or steps, provided that such stairway or steps do not extend more than four (4) feet beyond any wall of the structure.

Exception: any building or addition may be set back from a street the same distance as the set-back line observed by that one, of the two existing buildings on the immediate adjoining lots on either side, which is nearer to the street centerline. A building or addition may be permitted to set back from the street less than the required set-back to conform to the set-back established by adjacent existing buildings located on that side of the street within the same block. An addition may be permitted to set back from the street less than the required set-back to conform to the existing building set-back, but no closer to the street than the existing building.

4. The minimum lot width shall be one hundred (100) feet measured at the front setback line, which width shall continue back to the midpoint of the lot depth.

5. The minimum frontage of a lot shall be sixty (60) feet.

6. Retaining walls exceeding two (2) feet in height may not be erected without a Use Permit issued by the Town Council.

7. Fences may not be erected without the approval of the ARB. Fences six (6) feet or less in height may be erected in any location regardless of the set-back requirement. Fences greater than six (6) feet in height may not be erected in the set-back yard area. Fences may not be erected that exceed eight (8) feet in height or that obstruct safe passage of vehicular traffic or that obstruct necessary sight distances. Fences 6 feet or less in height do not need to be reviewed by Planning Commission..

8. Garages, tool sheds, and other similar detached accessory structures may be erected on any property, provided that such detached accessory structures, except garages, not exceed one hundred (10) square feet in floor area and provided that such structure shall conform to the set-back requirements as specified for a Residential District. However, accessory buildings as described above, may be located up to ten (10) feet from the railroad right-of-way and up to ten (10) feet from the rear property line.

9. Apartments, including duplexes, townhouses, and other multi-family or attached dwellings, shall be allowed only by special use permit issued by the Town Council and subject to appropriate and reasonable restriction in order to preserve the historic nature of the Town consistent with the intent and purpose of the Zoning Ordinance and the Historic Overlay District.

10. Minimum lot size shall calculated on the gross area of the lot, except when thirty (30) percent or more of the total area of the lot is comprised of any or all of the following features:

A. Floodplains and adjacent slopes in excess (15) percent grade.

B. Quarries.

C. Marine clays.

D. Existing water bodies, unless a water body is a proposed integral design component of an open space system for a given development.

When thirty (30) percent or more of the total area of the lot is comprised of any or all of the above features, then the calculated size (for the purposes of meeting minimum list size) of the area exceeding thirty (30) percent (containing any or all of the above features) will be reduced by fifty (50) percent. The fifty (50) percent reduction shall apply, notwithstanding that such areas may be used for open space, parks, schools, rights-or-way or utility easements.

c. Definitions

1. Home Business

One or more businesses, for each of which a separate use permit must be obtained, conducted entirely within a dwelling, or operated primarily from said dwelling, or in any structure appurtenant thereto, and which use is ancillary to the primary use of the lot for dwelling purposes provided the following requirements are met for all such businesses:

A. that the dwelling is the bona fide residence of the owner(s) of the business;

B. that the total area utilized by all such businesses, regardless of location on the lot, may not exceed 20% to 25% of the gross floor space of the dwelling;

C. that all such businesses may have no more than one employee on site at any one time, who is not a full time resident of the dwelling;

D. that no sales of goods, provision of services, pickups or deliveries, or other activities occur in connection with all such businesses which result in visits to the premises by more than six people per day and not to exceed more than two client, customer, pick-up or delivery vehicles, situated on or about the premises at any one time; provided, however, that visits by the public, customers or clients, in numbers greater than six people per day, and the display of merchandise may be permitted on an individual basis for special occasions, such as a sale, fair, or class, as specified on the use permit;

E. that there be no identification sign or advertising sign for all or any such businesses;

F. that all such businesses may operate within those hours approved by the Town Council and set forth on the use permit; provided, however, the hours of business during which clients or customers may visit, or pick-ups and deliveries be made to the premises, are to be not earlier than 8 a.m. and not later than 9 p.m., except when all provisions of 9-19.C.1. (K) have been met.

G. all work and storage in connection with any such businesses must be within a completely enclosed building and screened from public view as noted in the use permit;

H. no noxious, dangerous, harmful or offensive dust, odors or fumes shall be generated in connection with any such businesses;

I. no dangerous or explosive materials may be stored on the premises in connection with any such businesses;

J. that all such businesses be consistent with the purpose and intent of Historic Overlay District and the Town Plan of Clifton.

K. A Bed & Breakfast may be permitted as a home business with the Residential District, providing the following conditions are met:

1. The Planning Commission, after soliciting citizen comment, finds the impact on neighboring residences to be negligible;

2. the proposed Bed & Breakfast must provide overnight accommodations in a private, owner occupied home that provides not more than three (3) guest rooms for occasional guests;

3. the use shall be permitted only on streets designated as "non-residential" by VDOT;

4. the parking area shall be screened from residential properties adjacent to the parcel or parcels upon which the B&B is located;

5. Food services shall be limited to food provided to overnight lodgers and their immediate family, friends, or business associates only.

6. no outdoor parking shall be allowed within setbacks.

All provisions of 9-19.C.1. must be met and complied with, except that guests may arrive later than 9 p.m. and depart before 8 a.m. All applicable State and County regulations concerning Bed & Breakfast s must be met and complied with. All adjacent property owners will be notified when a Use Application is filed or a Bed & Breakfast as a home business with the Residential District. The limitation on the number of clients in Section 9-19.c.1.D shall not apply to any Bed and Breakfast approved to operate under this Code, but shall in no case exceed the number of occupants for a residence, as specified in section 9.17.

2. Lot frontage: that dimension of a lot measured along the front street line thereof. The shorter street line of a lot abutting on more than one street shall be deemed to be the front street line thereof, regardless of the location of the principal entrance of a building on the lot.

3. Building Height:: the vertical distance to the highest point of the roof for flat roofs; to the deck line on mansard roofs; and the average height between eaves and ridge for gable, hip and gambrel roofs measured from grade.

4. Grade: For the purpose of calculating maximum building height, grade is determined by the lowest ground elevation at eight (8) feet from the building wall.

Sec. 9-20.AGRICULTURAL DISTRICT

a. The permitted uses in the Agricultural District shall be:

1. Farming, dairy farming, livestock and poultry raising, forestry, floriculture, and other uses commonly classed as agricultural, but not including the maintenance and operation of a commercial greenhouse, the feeding of garbage to animals, the raising of fur-bearing animals as a principal use, or the operation of or maintenance of a commercial stockyard or feed yard.

2. Wayside stands for the sale of products raised on the immediate premises.

3. Boarding horses.

4. If 75% of the land is used for a permitted use set forth in (l) of this paragraph, then only single family detached dwellings and home businesses, as defined in this Chapter, shall be permitted.

b. The minimum lot size requirement for the Agricultural District shall be five (5) acres.

c. The height, setback, lot width and frontage restrictions shall be the same as are required in the Residential District, section 9-19.

Sec. 9-2l.COMMERCIAL DISTRICT

a. The permitted uses in a Commercial District shall be:

l. Offices.

2. Retail or wholesale trades and services, but not including any use which requires the accumulation of refuse or junk.

3. Uses permitted in the Residential District.

4. Private Schools.

5. Hotels, restaurants, bed and breakfast inn, and apartments, including duplexes, townhouses, and other multi-family or attached dwellings, shall be allowed only by special use permit issued by the Town Council and subject to appropriate and reasonable restrictions in order to preserve the historic nature of the Town, consistent with the intent and purpose of the Zoning Ordinance and the Historic 0verlay District.

b. The minimum lot size requirement for the Commercial District shall be l0,000 square feet.

c. The height, lot width, frontage and setback restrictions of the Commercial District shall be the same as are required in the Residential District, section 9-19; except, however that the side yard set-back shall be twenty five (25) feet as a transitional yard where the Commercial District side yard property line abuts a parcel zoned residential.

Sec. 9-22.INDUSTRIAL DISTRICT

a. The permitted uses in the Industrial District shall be:

1. Manufacturing and assembly, provided that:

A. all work and storage is within a completely enclosed building and screened from public view;

B. no noxious, dangerous, harmful or offensive dust, odors or fumes shall be generated.

C. no dangerous or explosive materials are stored on the premises;

D. no noise generated by said manufacturing shall exceed 85 decibels as measured at the lot boundaries;

E. no substances generated by said manufacturing shall pollute the waters or waterways.

2. Uses permitted in the Commercial and Residential Districts.

b. The minimum lot size requirement for the Industrial District shall be 20,000 square feet.

c. The height, setback, lot width and frontage restrictions shall be the same as are required in the Residential District, section 9-19.

Sec. 9-23.HISTORIC OVERLAY DISTRICT

a. Purpose. The Historic Overlay District is created for the purpose of promoting the general welfare, educational, and recreational pleasure of the public through the perpetuation of the historic nature of the Town and to maintain the historical, architectural and cultural significance of the Town.

b. District boundaries. The Historic Overlay District shall cover all land within the boundaries of the Town.

c. Prohibitions. No structure shall be erected, reconstructed, restored or have the exterior altered in the District until a Certificate of Appropriateness for the work has been approved by the Architectural Review Board (ARB), following the procedures set forth below; nor shall any building in the District be demolished, razed, relocated or moved until a Certificate of Appropriateness has been approved by the ARB. However, a Certificate of Appropriateness will not be required if the structure being erected, constructed, reconstructed, restored, demolished, razed or altered does not exceed 100 square feet in size. No sign, fence and/or retaining wall shall be erected or modified in the District until a Certificate of Appropriateness has been approved by the ARB.

d. Architectural Review Board.

l. The Architectural Review Board (ARB) shall be established for the purpose of administering the provisions of the Historic Overlay District. The ARB shall be composed of five (5) or seven (7) voting members appointed by the Town Council, who shall be residents of the Town of Clifton, with a demonstrated knowledge of and interest in the preservation of historical and architectural landmarks. It is recommended that the composition of the ARB be as follows:

A. At least one member shall be a certified architect;

B. At least one member shall be a member of the Town Council;

C. The other members shall be drawn from the interested citizens at large.

2. Members shall serve for a term of two years, and members may be reappointed to succeed themselves.

3. The members of the ARB shall elect a Chairman who shall call the meetings of the ARB when needed. All members shall be notified at least five days in advance of the meeting. All meetings shall be open to the public.

4. Robert's Rules of Order shall be the recognized authority as to any matter or procedure not covered by this Ordinance.

5. Members shall not vote on any action in which their financial interests or those of their immediate family are directly involved.

6. The ARB shall keep records of their proceedings and such records shall be made available to the public upon request to the Chairman.

e. Powers and duties of the ARB. The powers and duties of the ARB shall be as follows:

l. To hear and decide on the issuance of Certificates of Appropriateness for the erection (including siting), reconstruction, restoration, or exterior alteration of any building in the District.

2. To hear and decide on the issuance of Certificates of Appropriateness for the demolition, razing, relocation or moving of any building in the District.

3. To hear and decide on the issuance of Certificates of Appropriateness for signs and fences..

4. To formulate recommendations concerning the use of markers for historic sites and buildings.

5. To cooperate with and enlist the assistance of the Fairfax County History Commission, the Virginia Landmarks Commission, the Virginia Department of Historic Resources, the National Trust for Historic Preservation, and other interested parties in efforts to preserve, restore, and conserve historic, architectural and/or aesthetic landmarks, buildings, sites or areas in the Town.

f. Application. Written Application for a Certificate of Appropriateness shall be filed with the ARB in accordance with the procedures and forms promulgated by the ARB and available from the Town Clerk and the Town of Clifton website. A fee of $10.00 shall be paid for each sign and fence application; a fee of $50.00 shall be paid for each sign and/or fence application submitted after installation of said sign and/or fence; a fee of $100.00 shall be paid for each addition and/or remodeling project up to 200 square feet; and a fee of $250.00 shall be paid for each addition and remodeling project exceeding 200 square feet or for new home construction, with each application filed before work on the structure has started. The applicant shall also pay any actual costs of any review fees incurred by the ARB, including any consultant's fees and other costs set forth in Virginia State Code Section 15.2-2286. All such fees shall be payable to the Town of Clifton and delivered to the Town Clerk.

g. The ARB shall review each application for a Certificate of Appropriateness promptly upon its receipt of the same. In reviewing applications for the erection, construction, reconstruction, remodeling, exterior alteration or restoration of a building or structure, the ARB shall not consider interior arrangement, and shall not make any requirements except for the purpose of preventing developments architecturally incompatible with the historic aspects of the Historic Overlay District. The ARB shall consider the following in determining the appropriateness of architectural features:

l. the exterior architectural features, including all signs;

2. the general design, arrangement, texture, material, and fenestration of the proposed building or structure and the relation of such factors to similar features of buildings or structures in the immediate vicinity of the historic and building within the Historic Overlay District;

3. the extent to which the building or structure would be harmonious with or architecturally incompatible with the historic district or historic landmarks;

4. the extent to which the building or structure will preserve or protect historic places and areas of historic significance in the Town;

5. the extent to which the building or structure will promote the general welfare of the Town and all citizens by the preservation and protection of historic places and areas of historic interest in the Town;

6. the standards and recommendations for development as set forth in the "Architectural & Planning Guidelines, Clifton, Virginia" for the Clifton Historic Overlay District.

h. In reviewing the application for a Certificate to raze or demolish any building or structure in the historic district, the ARB shall review the circumstances and the condition of the structure or part proposed for demolition and shall report its finding based on consideration of any or all of the following criteria:

l. Is the building of such architectural or historical interest that its removal would be to the detriment of the overall historic nature of the district?

2. Is the building of such old and unusual or uncommon design, texture and material that it could not be reproduced or be reproduced only with great difficulty?

3. Would retention of the building help preserve and protect the historic character of the district?

h. In reviewing an application for a Certificate to move or relocate any building or structure in the Historic District, the ARB shall consider the following criteria:

l. Would the proposed relocation have a detrimental effect on the structural soundness of the building or structure?

2. Would the proposed relocation have a detrimental effect on the historical aspects of other buildings in the Historic Overlay District?

3. Would relocation provide new surroundings that would be harmonious with or incongruous to the historical and architectural aspects of the structure or building?

4. Would relocation of the building help preserve and protect a historic place or area of historic interest in the Town?

j. The ARB, on the basis of the information received from the applicant and from its general background and knowledge, and upon application of the appropriate criteria set forth in Paragraphs g, h, and i above, shall approve, approve with modifications, or disapprove the application. If the ARB disapproves the application, it shall, within three days, so notify the applicant in writing of the reasons for the disapproval.

k. Any person aggrieved by any decision of the ARB may appeal such decision to the Town Council, provided such appeal is filed with the Clerk to the Town Council within ten (l0) days of the ARB's decision. The Town Council shall hear the appeal within forty-five (45) days of the filing of the appeal. The ARB may present its reasons for its decisions at the appeal. The Town Council may affirm, reverse, or modify the decision of the ARB.

l. Any person or persons jointly or severally aggrieved by any decision of the Town Council or any officer, board or agency of the Town may appeal such decision to the Circuit Court of Fairfax County for review by filing a petition at law setting forth the alleged illegality of the action of the Town Council, provided such petition is filed within forty-five (45) days after the final decision is rendered by the Town Council. The filing of said petition shall stay the decision of the Town Council pending the outcome of the appeal to the Court, except that the filing of such petition shall not stay the decision of the Town Council if such decision denies the right to raze or demolish any building or structure in the Historic District.

m. In addition to the right of appeal set forth in Paragraphs k and l above, the owner of a building or structure in the Historic District shall, as a matter of right, be entitled to raze or demolish such building or structure, provided that:

l. he has applied to the ARB for such right;

2. the owner has for the period of time set forth in the time schedule below and at a price reasonably related to its fair market value, made a bona fide offer to sell such landmark, building or structure, and the land pertaining thereto, to the Town, to any person, firm, corporation, or to any department, officer, agency, board of government of the Federal, State, or local governmental body, which gives reasonable assurance that it is willing to preserve and restore such landmark, building, or structure and the land pertaining thereto or described; and,

3. that no bona fide contract, binding upon all parties thereto shall have been executed for the sale of any such landmark, building or structure, and the land pertaining thereto, prior to the expiration of the applicable time period set forth in the time schedule below. Any appeal which may be taken to the Court from the decision of the Town Council, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from, shall not affect the right of the owner to make the bona fide

offer to sell referred to above. No offer to sell shall be made more than one (l) year after a final decision by the Town Council, but thereafter, the owner may renew his request to the Town Council to approve the razing or demolition of the historic landmark, building, or structure. The time schedule for offers to sell shall be as follows:

A. Three (3) months when the offering price is less than twenty-five thousand dollars ($25,000.00);

B. Four (4) months when the offering price is twenty-five thousand dollars ($25,000.00) or more, but less than forty thousand dollars($40,000.00);

C. Five (5) months when the offering price is forty thousand dollars ($40,000.00) or more, but less than fifty-five thousand dollars ($55,000.00);

D. Six (6) months when the offering price is fifty-five thousand dollars ($55,000.00) or more, but less than seventy-five thousand dollars ($75,000.00);

E. Seven (7) months when the offering price is seventy-five thousand dollars ($75,000.00) or more, but less than ninety thousand dollars ($90,000.00);

F. Twelve (l2) months when the offering price is ninety thousand dollars ($90,000.00) or more.

Sec. 9-23A. COMMUNITY OPEN SPACE AND RECREATION (COSR) DISTRICT

a. Permitted Land Uses shall be any of the following: Parks, parkland, playgrounds, athletic fields, stream valley parks, community structures, pavilions, and recreational, educational, and cultural facilities. All permitted land uses shall be for non-commercial and not-for-profit organizations.

b. Permitted Special Event Uses are the types of events that are permitted in the COSR District. They are events and activities that are consistent with the community-oriented nature of the district. Examples of such are: holiday picnics and celebrations, educational uses, fine & performing arts events, school fair, fundraisers for non-profit organizations (such as marathons, breakfasts, and homes tours), athletic events, farmers' markets, antique auto shows, and over-flow parking from a community event not held in the COSR District (such as for a PTA function or for Clifton Day).

1. A Special Event Use Permit shall be approved by the Town Council prior to the event being held.
2. Recurring Special Events (such as a weekly farmers' market) can be included on one Special Event Use Permit application.

c. Events not requiring Special Event Use Permits. Use permits are not required for Permitted Special Events with 20 or fewer participants.

d. Prohibited uses are uses which are not Permitted Uses or Permitted Event Uses pursuant to this section.

e. Parking. A sufficient number of off-street vehicular parking spaces shall be required to accommodate the vehicles of all employees or volunteer workers who will drive to the event, plus the vehicles of all persons who may be expected to visit the event at any one time. Public property may be excluded from this requirement. The spaces shall be specified by the Use Permit issued by the Town Council.

f. The height, setback, lot width and frontage restrictions shall be the same as are required in the Residential District, section 9-

Sec. 9- 23B. LOW IMPACT COMMERCIAL DISTRICT

a. The permitted uses in a Low Impact Commercial District shall be offices and uses allowed in the Residential District One or more businesses shall be permitted, for each of which a separate use permit must be obtained, provided the following

requirements are met for all such businesses: All use shall be conducted entirely within a building, or operated primarily from said building, or in any structure appurtenant thereto.

1. No sales of goods, provision of services, pickups or deliveries, or other activities occur in connection with all such businesses which result in visits to the premises by more than fifteen people per day, (exclusive of employees of such business);

2. All such businesses may operate within those hours approved by the Town Council and set forth on the use permit; provided, however, the hours of business during which clients or customers may visit, or pick-ups and deliveries be made to the premises, are to be not earlier than 8 a.m. and not later than 9 p.m..

3. all work and storage in connection with any such businesses must be within a completely enclosed building and screened from public view as noted in the use permit;

4. no noxious, dangerous, harmful or offensive dust, odors or fumes shall be generated in connection with any such businesses; and

5. no dangerous or explosive materials may be stored on the premises in connection with any such businesses.

b. The minimum lot size requirement for the Low Impact Commercial District shall be l0,000 square feet.

c. The height, lot width, frontage and setback restrictions of the Low Impact Commercial District shall be the same as are required in the Residential District, section 9-19; except, however that the side yard set back shall be twenty five (25) feet as a transitional yard where the Low Impact Commercial District side yard property line abuts a parcel zoned residential.

ARTICLE 4 ENFORCEMENT

Sec. 9-24.ENFORCEMENT

This Ordinance shall be enforced by the Town Council or its duly designated agent. If the Town Council or its agent finds that any of the provisions of this Ordinance are being violated, they shall notify in writing the owner of the property and the occupant of the property of the nature of the violation and shall allow a reasonable time for correction of the violation.

Notice to the owner shall be sufficient if sent by certified or registered mail, postage prepaid, to the address of the owner indicated in the current tax records of Fairfax County. Notice to the occupant shall be sufficient if sent by certified or registered mail, postage prepaid, to the property.

In the event that the violation is not corrected, then the Town Council or its agent may bring legal action to insure compliance with the provisions, including, but not limited to, injunction, abatement, or other appropriate action or proceeding.

Sec. 9-25.VIOLATIONS AND PENALTIES

a. Any person, whether owner, lessee, principal, agent, employee, or otherwise, who violates any of the provisions of this Ordinance, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or uses any building or uses any land in violation of any detailed statement or plan submitted by him and approved under the provisions of this Ordinance, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of up to One Thousand Dollars ($l,000.00). Each day that a violation continues shall be deemed a separate offense.

b. Any building erected or improvements constructed contrary to any of the provisions of this Ordinance and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this Ordinance shall be and the same is hereby declared to be unlawful.

c. The Town Council or its agent may initiate injunction, mandamus, or any other appropriate action to prevent, enjoin, abate or remove such erection or use in violation of any provision of this Ordinance. Such action may also be instituted by any citizen who may be aggrieved or particularly damaged by any violation of any provisions of this Ordinance.

d. Upon its becoming aware of any violation of any provisions of this Ordinance, the Town Council or its agent shall serve notice of such violation on the person committing or permitting the same, and if such violation has not ceased within such reasonable time as the Town Council or its agent has specified in such notice, it shall institute such action as may be necessary to terminate the violation.

e. The remedies provided for in this section are cumulative and not exclusive and shall be in addition to any other remedies provided by law.

ARTICLE 5 ZONING AMENDMENTS

Sec. 9-26.ZONING AMENDMENTS

a. The Town Council may amend this Chapter by amending the text thereof, or by changing any district boundary shown on the Zoning Map as adopted.

b. An amendment shall be initiated by other than the Town Council in the following manner:

   l. By the filing with the Council of a petition of the owners or their agents of the land to be rezoned, which petition shall be sworn to under oath and acknowledged before a Notary Public.

   2. Said petition shall be on a standard form entitled "Application for Zoning Map Amendment" and shall be accompanied by a fee of five hundred ($500.00).

c. A public hearing shall be held by the Planning Commission on any such petition, as provided by state law. The Planning Commission shall report to the Council its recommendations with respect to the proposed amendment stating its reasons either for or against said amendment.

d. A public hearing shall be held by the Town Council on any such petition, as provided by state law.

e. Upon denial by the Council of any petition for rezoning of property filed pursuant to the above procedure, no further petition concerning any or all of the same property for amendment to the same zoning category as applied for in the petition denied shall be filed by the previous applicant within nine months of such denial.

ARTICLE 6 ZONING APPEALS

Sec. 9-27.BOARD OF ZONING APPEALS

The Board of Zoning Appeals (BZA) is established to vary specific terms of the Ordinance to the ends that the intent of the provisions may be effected, and to perform such other duties as are set forth in Article 8, Chapter ll, Title l5.l of the Code of Virginia, and those duties as set forth in the provisions of this Ordinance as it exists and as it may be amended.

The BZA shall consist of five (5) or seven (7) residents of the Town, and the members shall be appointed by the Circuit Court of Fairfax County. Their terms of office shall be for five years, except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the BZA shall notify the court at least thirty days in advance of the expiration of any terms of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term, and members may be reappointed to succeed themselves. Members of the Board shall hold no other public office in the Town, except that one may be a member of the local planning commission.

The Board shall keep a full public record of its proceedings and shall submit a report of its activities to the Town Council at least once each year. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the Board.

a. Application. An application for a variance or other request shall be filed with the secretary of the BZA on a form designated by the secretary. Unless waived by the BZA, the application shall contain at least (l) the name and address of the applicant, (2) the location and owner of the property, (3) a plat of the property, (4) a statement of the section of the Ordinance for which a variance is requested, (5) a statement of the justification for the requested variance.

ARTICLE 7 FLOOD PLAIN CONTROLS AND ESTABLISHMENT OF FLOOD PLAIN DISTRICT

Sec. 9-28. GENERAL PROVISIONS

a. Statutory Authorization and Purpose

This ordinance is adopted pursuant to the authority granted to localities by Va. Code§ 15.2-2280. The purpose of these provisions is to prevent: the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by

1. regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies;
2. restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding;
3. requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or flood-proofed against flooding and flood damage; and,
4. protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

b. Applicability

These provisions shall apply to all privately and publicly owned lands within the jurisdiction of the Town of Clifton and identified as being flood-prone, as defined herein.

c. Compliance and Liability

1. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this ordinance and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this ordinance.
2. The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study, but does not imply total flood protection. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that districts outside the floodplain district or land uses permitted within such district will be free from flooding or flood damages.
3. Records of final actions associated with administering this ordinance shall be kept on file by the Town Clerk and maintained by the Town of Clifton.
4. This ordinance shall not create liability on the part of the Town or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

d. Abrogation and Greater Restrictions

Upon adoption, this ordinance will be the Flood Plain ordinance of the Town of Clifton.

e. Severability

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

f. Violations

Any person who fails to comply with any of the requirements or provisions of this article shall be subject to the penalties and enforcement procedures in accordance with Sections 9-24 and 9-25 of the Town Code.

Sec. 9-29 - DEFINITIONS

a. Base Flood- A flood having a one percent chance of being equaled or exceeded in any given year.

b. Base Flood Elevation: The FEMA designated one hundred (100) year water surface elevation; the water surface elevation of the base flood in relation to the datum specified on the Town of Clifton's Flood Insurance Rate Map; the one hundred (100) year flood or 1% annual chance flood, is the Base Flood Elevation.

c. Basement - Any area of the building having its floor sub-grade (below ground level) on all sides.

d. Development - Any man-made change to improved or unimproved real estate resulting in land disturbance in excess of 2500 square feet or 100 cubic yards of fill, including, but not limited to, the erection of buildings or other structures, or the substantial improvement thereto, storage of equipment or materials, mining, or dredging.

e. Elevated Building - A non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and piers).

f. Encroachment - The advance or infringement of development into a floodplain, from an adjacent property, which may impede or alter the flow capacity of a floodplain.

g. Flood or Flooding

1. A general or temporary condition of partial or complete inundation of normally dry land areas in the flood plain or floodway from
   a. the overflow of inland or tidal waters; or,
   b. the unusual and rapid accumulation or runoff of surface waters from any source.
   c. mudflows which are proximately caused by flooding as defined in paragraph (l)(b) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

h. Flood Insurance Rate Map (FIRM) - an official map of a community, on which the FEMA Flood Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

i. Flood Insurance Study (FIS) -an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

j. Floodplain or Flood-Prone Area- The land areas in and adjacent to streams and watercourses subject to continuous or periodic inundation from flood events with a one (1) percent chance of occurrence in any given year.

k. Flood proofing - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

1. Floodway- The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

m. Freeboard - A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. ""Freeboard, tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed. When a freeboard is included in the height of a structure, the flood insurance premiums will be significantly cheaper.

n. Highest Adjacent Grade - the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

o. Historic Structure- Any structure that is

1. listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
   a. certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
   b. individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
   c. individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either
      A. by an approved state program as determined by the Secretary of the Interior; or,
      B. directly by the Secretary of the Interior in states without approved programs.

p. Lowest Floor- The lowest floor of the lowest enclosed area (including basement).

q. Manufactured Home- A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, storage units, and other similar vehicles placed on a site for greater than 180 consecutive days, but does not include a recreational vehicle.

r. New Construction-. For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after May 2, 1977, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

s. Recreational Vehicle- A vehicle which is

1. built on a single chassis;
2. contains 400 square feet or less when measured at the largest horizontal projection;
3. designed to be self-propelled or permanently towable by a light duty truck; and,
4. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

t. Special Flood Hazard Area- The land in the floodplain as shown on the FIRM (subject to a one (1%) percent or greater chance of being flooded in any given year).

u. Start of Construction - Means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

v. Structure Means that which is built or constructed and affixed to the ground, including but not limited to, walled and roofed buildings, swimming pools, gas or liquid storage tanks that are principally above ground, as well as manufactured homes and all mobile homes that remain upon the property in excess of 180 days, unless in conjunction with construction in which case they shall be allowed for the duration of construction.

w. Substantial Damage- Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

x. Substantial Improvement- Any modification, alteration, repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. Substantial improvement shall include structures which have incurred substantial damage regardless of the actual repair work performed, but shall not, however, include either:

1. any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
2. any alteration of a Historic Structure or the land on which an Historic Structure is located, if necessary to protect the existence and character of the Historic Structure, provided that the alteration will not preclude the structure's continued designation as an Historic Structure.

y. Violation- the failure of a structure or other development to be fully compliant with this ordinance.

Sec. 9-30- ESTABLISHMENT OF FLOOD PLAIN ZONING DISTRICTS

a. Description of Districts

1. Basis of Districts

The various Floodplain Districts shall include Special Flood Hazard Areas, as defined in this ordinance, the Floodway district, defined below and the Special Floodplain District, defined below. The basis for the delineation of these districts shall be the Flood Insurance Study (FIS) and the Flood Insurance Rate Maps (FIRM) for Fairfax County and the Town of Clifton prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated September 17, 2010, and any subsequent revisions or amendments thereto.

The boundaries of the Floodplain Districts are established as shown on the Flood Insurance Rate Map which is declared to be a part of this ordinance and which shall be kept on file by the Town of Clifton.

A. The Floodway District is delineated, for purposes of this ordinance, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one hundred (100)-year flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this District are specifically defined shown on the accompanying Flood Insurance Rate Map.

B. The Special Floodplain District shall be those areas identified as an AE Zone on the maps accompanying the Flood Insurance Study for which one hundred (100)-year flood elevations have been provided.

2. Overlay Concept

A. The Floodplain Districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning Map, and as such, the provisions for the Floodplain Districts shall serve as a supplement to the underlying district provisions.

B. If there is any conflict between the provisions or requirements of the Floodplain Districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the Floodplain Districts shall apply.

C. In the event any provision concerning a Floodplain District is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the remaining underlying provisions shall remain applicable.

b. District Boundarv Changes

The delineation of any of the Floodplain Districts may be revised by the Town where natural or man- made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U. S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration.

c. Interpretation of District Boundaries

Initial interpretations of the boundaries of the Floodplain Districts shall be made by the Town Council. Should a dispute arise concerning the boundaries of any of the districts, the Town Council shall make the necessary determination. The person questioning or contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Town Council and to submit his own technical evidence if he so desires.

d. Submitting Technical Data

A community's base flood elevations may increase or decrease resulting from man-made physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

Sec. 9-31- DISTRICT PROVISIONS

a. Permit and Application Requirements

1. Permit Requirement

All Development occurring within any Floodplain District shall be undertaken only upon the issuance of a use permit, issued by the Town of Clifton pursuant to its ordinances ("Use Permit"). Such Development shall be undertaken only in strict compliance with the provisions of this Ordinance and with all other applicable codes and ordinances, as amended, federal or state, such as the Virginia Uniform Statewide Building Code (VA USBC) and the Town's Subdivision Regulations, and other zoning requirements of the Town of Clifton. Prior to the issuance of any such Use Permit, the Town of Clifton shall require the applicant certify compliance with all applicable state and federal laws; that the Development site is reasonably safe from flooding; and that under no circumstances shall any Development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system, within any Floodplain District. The applicant shall be required to demonstrate that all State and Federal permits required of the application have been obtained, prior to the issuance of any such Use Permit. The applicant shall be required to pay all fees incurred by the Town of Clifton for the review of the Use Permit including, but not limited to, the fees of the Town of Clifton's independent engineer consultant.

2. Site Plans and Permit Applications

All applications for Development within any Floodplain District and all Use Permits issued for the Floodplain shall incorporate the following information:

A. The elevation of the Base Flood at the site.

B. The elevation of the Lowest Floor (including basement).

C. For structures to be flood-proofed (non-residential only), the elevation to which the structure will be flood-proofed.

D. Topographic information showing existing and proposed ground elevations.

b. General Standards

The following provisions shall apply to all Use Permits in a Flood Plain District:

1. New Construction and Substantial Improvements shall be according to the VA USBC, and anchored to prevent flotation, collapse or lateral movement of the structure.

2. New Construction and Substantial Improvements shall be constructed with materials and utility equipment resistant to flood damage.

3. New Construction or Substantial Improvements shall be constructed by methods and practices that minimize flood damage.

4. Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

5. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

7. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding. In addition to provisions 1-7 above, in all Flood Plain Districts, the additional provisions shall apply:

8. Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U. S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, in riverine areas, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and the Federal Insurance Administrator. In addition the applicant is required to insure that all Federal and State permits that are required at the time of application have been obtained.

9. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

c. Specific Standards

In all Flood Plain Districts where base flood elevations have been provided in the Flood Insurance Study or generated according to accepted engineering practices and FEMA practices, the following provisions shall apply:

1. Residential Construction

New Construction or Substantial Improvement of any residential Structure shall have the lowest floor, including basement, elevated to or above the Base Flood Elevation by eighteen inches.

2. Non-Residential Construction

New Construction or Substantial Improvement of any commercial, industrial, or non-residential building (or manufactured home} shall have the lowest floor, including basement, elevated to or above the base flood elevation by (eighteen (18) inches). Buildings located in all AE zones may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the Base Flood Elevation plus eighteen inches are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by the Town of Clifton with the final site plans.

3. Elevated Buildings

Fully enclosed areas of New Construction or Substantially Improved Structures, which are below the regulatory flood protection elevation shall:

A. not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator), or entry to crawl space.

B. be constructed entirely of flood resistant materials below the regulatory flood protection elevation;

C. include, in the Special Floodplain District measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:

i. Provide a minimum of two openings on different sides of each enclosed area subject to flooding.

ii. The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding.

iii. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.

iv. The bottom of all required wall openings shall be no higher than one (1) foot above the adjacent grade.

v. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.

vi. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

4. Standards for Manufactured Homes and Recreational Vehicles

A. All Manufactured Homes placed, or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as

the result of a flood, must meet all the requirements for new construction, including the elevation and anchoring requirements in Sections 9-31b and c.

B. All Recreational Vehicles placed on sites must either:

i. be on the site for fewer than 180 consecutive days;

ii. be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions; or

iii. meet all the requirements for Manufactured Homes in Sections 9-31 b and c.

d. Standards for the Floodway District

The following provisions shall apply within the Floodway District:

1. Encroachments, Development, New Construction, Substantial Improvements are prohibited unless certification such as hydrologic and hydraulic analyses (with supporting technical data) is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the Base Flood. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently-accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Town.

Development which increases the water surface elevation of the Base Flood may be allowed, provided that the applicant first applies with the Town's approval through the Use Permit process, for a conditional Flood Insurance Rate Map and Floodway revision, and receives the approval of the Federal Emergency Management Agency, demonstrates no adverse impact on the floodwater elevation and obtains the appropriate easements from the adjoining landowners.

The placement of Manufactured Homes (mobile homes) is prohibited, except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring, elevation, and encroachment standards are met.

e. Standards for the Special Floodplain District

The following provisions shall apply within the Special Floodplain District:

No New Construction, Substantial Improvements, or other Development (including fill in excess of 100 cubic yards) shall be permitted within the areas of Special Flood Hazard, designated as Zone AE on the Flood Insurance Rate Map, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the Base Flood more than one foot at any point within the Special Floodplain District.

Development activities in the Special Floodplain District which increase the water surface elevation of the Base Flood by more than one foot may be allowed, provided that the applicant first applies, with the Town's approval as part of the Use Permit process, for a conditional Flood Insurance Rate Map revision, and receives the approval of the Federal Emergency Management Agency.

f. Standards for Subdivision Proposals

All subdivision proposals to be located in any Floodplain District shall be consistent with Chapter 10 of the Town Code and in addition shall:

1. Be consistent with the need to minimize flood damage;

2. Shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;

3. Shall have adequate drainage provided to reduce exposure to flood hazards, and

4. Base Flood Elevation data shall be provided for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed fifty lots or five acres, whichever is the lesser.

Sec. 9-32- SPECIAL EXCEPTIONS: FACTORS TO BE CONSIDERED

Special exceptions shall be issued only upon (i) a showing of good and sufficient cause, (ii) after the Town of Clifton has determined that failure to grant the special exception would result in exceptional hardship to the applicant, (iii) after the Town of Clifton has determined that the granting of such special exception will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances; and (iv) after the review and recommendation of the Planning Commission with respect to such application for a special exception. While the granting of special exceptions generally is limited to a lot size less than one-half acre, deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a special exception diminishes. Special Exceptions may be issued by the Town of Clifton for New Construction and Substantial Improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the Base Flood level, in conformance with the provisions of this section.

Special Exceptions may be issued for New Construction and Substantial Improvements and for other Development necessary for the conduct of a functionally dependent use provided that the criteria of this section are met, and the Structure or other Development is protected by methods that minimize flood damages during the Base Flood and create no additional threats to public safety.

In passing upon applications for Special Exceptions, the Town of Clifton shall ascertain that all relevant factors and procedures specified in other sections of the zoning ordinance are satisfied and consider the following additional factors, where applicable:

a. The danger to life and property due to increased flood heights or velocities caused by Encroachments. No Special Exception shall be granted for any proposed Development within any Floodplain District that will cause any increase in the one hundred (100)-year flood elevation.

b. The danger that materials may be swept on to other lands or downstream to the injury of others.

c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

e. The importance of the services provided by the proposed facility to the community.

f. The requirements of the facility for a waterfront location.

g. The availability of alternative locations not subject to flooding for the proposed use.

h. The compatibility of the proposed use with existing Development and Development anticipated in the foreseeable future.

i. The relationship of the proposed use to the Town of Clifton Comprehensive Plan and floodplain management program for the area.

j. The safety of access by ordinary and emergency vehicles to the property in time of flood.

k. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.

l. The historic nature of a structure. Special Exceptions for repair, reconstruction, or rehabilitation of Historic Structures and the land around it, may be granted upon a determination that the proposed repair, reconstruction, or rehabilitation will not preclude the structure's continued designation as a Historic Structure and the Special Exception is the minimum necessary to preserve the historic character and design of the structure.

m. Such other factors which are relevant to the purposes of this ordinance.

n. The Town of Clifton may refer any application and accompanying documentation pertaining to any request for a Special Exception to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters, and all such resultant fees shall be borne by the applicant.

The applicant shall notify all adjoining landowners and all landowners immediately across the street from the applicant's property of the applicant's application for a Special Exception and shall provide a copy of the application thirty days prior to the consideration of the application for a Special Exception by the Planning Commission.

The applicant shall submit the application and proof of compliance with all required information set forth in the ordinance to the Planning Commission in accordance with the procedures for the filing of Use Permits.

Special Exceptions shall be issued only after the Town of Clifton has determined that the special exception will be the minimum required to provide relief.

The Town of Clifton shall notify the applicant for a Special Exception, in writing and signed by Chairman of Planning Commission, that the issuance of a Special Exception to construct a Structure below the one hundred (100)-year flood elevation (a) increases the risks to life and property and (b) may result in increased premium rates for flood insurance.

A record shall be maintained of the above notification as well as all Special Exception actions, including justification for the issuance of the Special Exception. Any Special Exceptions that are issued shall be provided to the Federal Insurance Administrator at its request.

Sec. 9-33 -EXISTING STRUCTURES IN FLOODPLAIN AREAS

A Structure or use of a Structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions:

a. Existing Structures in the Floodplain District shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed expansion would not result in any increase in the Base Flood Elevation.

b. Any modification, alteration, repair, reconstruction, or improvement of any kind to a Structure located in the Floodplain District to an extent or amount of less than fifty (50) percent of its market value shall conform to the VA USBC.

c. The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its location in a floodplain area to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full

compliance with this ordinance and shall require the entire structure to conform to the VA USBC, unless such structure is an Historic Structure.

Sec. 9-34- USES

a. Permitted Uses

The following uses and topographic improvements may be permitted in Floodplain Districts if, and only if, upon a determination of the Town of Clifton that such use is permitted in the zoned district in which located, and that the use is in accordance with the provisions of this Floodplain Ordinance.

1. Residential uses and accessory residential uses such as play areas, lawns, play courts, trails, gardens, patios, and decks.

2. Community, commercial and public recreational uses consistent with the Town of Clifton Comprehensive Plan and Historical Overlay District, such as picnic grounds, parks, wild life and nature preserves, and hiking, bicycle and equestrian trails. This paragraph shall not be deemed to permit any paved tennis or play courts, or any use requiring the approval of a Building Permit or requiring fill on the floodplain.

3. Off street parking and loading areas including aisles and driveways.

4. Where approved by the Town of Clifton, railroad track and roadway floodplain crossings meeting VDOT and/or Fairfax County design requirements and where any additional rise in water surface will not have an adverse effect upon the floodplain and/or will be set aside in an easement.

5. Public and private utility lines, and all public uses and public improvements performed by or at the direction of the Town of Clifton, or may be required by the Town of Clifton, to include but not be limited to channel improvements and erosion control, reservoirs, storm water management and best management practice facilities and similar uses provided the installation of such facilities is accomplished with appropriate easements or agreements and with the minimum disruption to the floodplain.

All new and replacement water supply and sanitary sewage systems in the Floodplain and the designated districts shall be designed, located and constructed so as to minimize waters into the system, and discharge from the sewage system into flood waters. All new and replacement gas and electrical systems shall be designed, located, and constructed so as to minimize or eliminate flood damage.

6. Substantial Improvement to Structures, additions or permitted accessory structures to single family dwellings constructed prior to May 2, 1977, subject to the following conditions:

A. The estimated cost of the addition or permitted accessory structure is less than fifty (50) percent of the assessed value of the existing structure

B. Meets all general and specific standards for construction set forth in the Floodplain Ordinance.

C. As may be required by the Town of Clifton, the applicant and owners shall sign a "hold harmless" agreement holding the Town of Clifton and/or Fairfax County harmless from all adverse effects which may arise as a result of the construction and establishment of the proposed use within the floodplain. Such an agreement shall be recorded among the land use records of Fairfax County.

D. No fill impacting the Floodplain elevation is required.

7. There shall be no storage of herbicides, pesticides, or toxic or hazardous substances as set forth in Title 40, Code of Federal Regulations, arts 116.4 and 261.30 et seq in a floodplain.

8. For uses other than those enumerated in above, the applicant shall demonstrate to the satisfaction of the Town of Clifton the extent to which:

A. There are no other feasible options available to achieve the proposed use; and

B. The proposal is the least disruptive option to the floodplain; and

C. The proposal meets the environmental goals and objectives of the adopted Town of Clifton Comprehensive Plan for the subject property.

9. Nothing herein shall be deemed to prohibit the refurbishing, repair, or reconstruction of an existing Structure, as long as such actions do not change the Structure's status as a Historic Structure, or its location within the Clifton Historic District, providing such improvements are done in conformance with the Virginia Uniform Statewide Building Code and the Town of Clifton Zoning Ordinances.

10. Nothing herein shall be deemed to preclude public uses and public improvements performing by or at the direction of the Town of Clifton, as long as there is no impact to Flood Plain elevations.

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SUBDIVISION ORDINANCE

CHAPTER 10

SUBDIVISION ORDINANCE

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Chapter 10 SUBDIVISION ORDINANCE

ARTICLE 1 TITLE, POLICY AND PURPOSES

Sec.10-1. TITLE

Chapter 10 of the Code of the Town of Clifton, Virginia shall be designated the Subdivision Ordinance of the Town of Clifton, Virginia, and may be so cited.

Sec.10-2. POLICY AND PURPOSES

It is hereby declared to be the policy of the Town of Clifton to consider the subdivision of land as subject to the power of the Town of Clifton to implement the Comprehensive Plan. This Ordinance is adopted for the following purposes:

a. To establish subdivision standards, procedures and reviews for the Town of Clifton, Virginia.

b. To guide and facilitate the orderly, beneficial growth of the community by assuring the orderly subdivision of land and its development.

c. To promote the public health, safety, convenience, comfort, prosperity and general welfare within the Town.

d. To preserve the historic features of the Town of Clifton.

e. To encourage to the extent possible the preservation of such environmental features as existing tree cover, steep slopes, streams and floodplains.

ARTICLE 2 ADMINISTRATION

Sec.10-3. ADMINISTRATOR

The Planning Commission is hereby delegated the authority and the power by the Town Council of Clifton to administer this Ordinance.

Sec.10-4. DUTIES

The Planning Commission shall perform its duties as regards subdivisions and subdividing in accordance with this Ordinance and Article 7 of the Virginia Planning Act.

Sec.10-5. ADDITIONAL AUTHORITY

In addition to the regulations herein contained for the platting of subdivisions, the Planning Commission may, from time to time, establish any reasonable additional administrative procedures deemed necessary for the proper administration of this Ordinance.
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ARTICLE 3 DEFINITIONS

Sec.10-6. ADEQUATE DRAINAGE

Adequate drainage of surface water means the effective conveyance of storm and other surface waters through and from the development site and the discharge of such waters either into a natural watercourse, i.e., a stream with incised channel (bed and banks), or into a drainage facility of sufficient capacity without adverse impact either upon the land over which the waters are conveyed or upon the watercourse or facility into which such waters are discharged.

Sec.10-7. BEST MANAGEMENT PRACTICES (BMP'S)

A technique, or combination or techniques, that is determined by a state or designated area wide planning agency to be the most effective practicable means of preventing or reducing the amount of pollution generated by non-point sources to a level compatible with those water quality goals adopted by Fairfax County for the Occoquan Reservoir. Such techniques may include, but not be limited to, volume control measures incorporated into the stormwater management system (i.e. standard detention pond facilities modified in design to reduce the release rate of detained stormwater, percolation trenches, natural open space), porous pavement, creation of marsh/wetland areas, provision of vegetative strips for sheet flow and programs for parking lot vacuuming and street sweeping.

Sec.10-8. COMMISSION

The Town of Clifton Planning Commission.

Sec.10-9. CONSTRUCTION PLANS

Any drawing required by the Town of Clifton Planning Commission which may be used in the processing of record plats or for the construction of any phase of on-site or off-site improvements. These include but are not limited to site plans, grading plans, plans and profiles and cross sections.

Sec.10-10.DRIVEWAY

That space or area of a lot measuring a minimum of ten (10) feet in width that is specifically designated and reserved for the movement of motor vehicles within a lot, between two lots in the case of a shared driveway, or from a lot to a public street.

Sec.10-11.FRONTAGE

A lot shall be deemed to have frontage if it is contiguous to a public street and has a width of sixty (60) feet at the public street right-of-way.

Sec.10-12.LOT

For the purposes of this Ordinance the term lot shall mean a parcel of land, tract or plot of land however designated, which is to be used, developed, sold, conveyed or built upon as a single unit.

Sec.10-13.LOT CONSOLIDATION

The joining of two or more separate lots of record into a smaller number of lots.

Sec.10-14.STREET

A strip of land intended primarily for vehicular traffic and providing the principal means of access to three or more lots, parcels, tracts or plots of land, and which may include sidewalks, trails, sewers, and other storm drainage facilities and public utilities.

Sec.10-14.STREET, ARTERIAL

Streets that provide service to trips of moderate length at higher levels of travel mobility than a collector street. Arterial streets do not penetrate identifiable neighborhoods. A minor arterial street serves intra-urban trips between smaller geographic areas. Such a facility is designed with greater emphasis on traffic movement or services than it is on providing access to abutting land. A principal arterial street carries the major portion of trips entering and leaving an urban area as well as the majority of through movements desiring to by-pass a central town or city. The concept of service to abutting land is subordinate to the provision of travel service to major traffic movements.

Sec.10-15.STREET, COLLECTOR

A street which provides for principal internal movements at moderate operating speeds within residential developments, neighborhoods and commercial or industrial districts. It also provides the primary means of circulation between adjacent neighborhoods and can serve as a local bus route. A collector street functions to distribute trips from arterials to local and other collector streets. Conversely, it collects traffic from local streets and channels it into the more intensively used arterial system. The collector street provides for the dual purpose of land access and local traffic movement. In line with its dual function, there must be continuity in the pattern of these streets.

Sec.10-16.STREET, LOCAL

A street which primarily provides direct access to residential, commercial, industrial, or other abutting property. The local street system includes all facilities not classified as a principal arterial, minor arterial or collector street. Overall operating speeds are low in order to permit frequent stops or turning movements to be made with maximum safety. Service to through traffic movement is deliberately discouraged.

Sec.10-17.STREET, PRIVATE

A street providing sole access to three or more lots, and which is not or cannot be accepted into the State of Virginia Highway System.

Sec.10-18.STREET, PUBLIC

A platted street, dedicated for the use of the general public and paved in order that every person has the right to pass and to use it at all times for all purposes of travel, transportation and parking to which it is adapted and devoted.

Sec.10-19.SUBDIVIDE

To divide or redivide any tract, parcel or lot of land into two or more parts including condominium development or condominium conversion where there is any division or redivision of real property.

Sec.10-20.SUBDIVIDER

A person or his agent who has applied for approval of or has duly recorded a plat for the subdivision of a tract of land.

Sec.10-21.VDOT

An abbreviation for the Virginia Department of Transportation.

ARTICLE 4 APPROVAL OF PLATS AND PLANS

Sec.10-22.PLATTING REQUIRED

Any owner or developer of any tract of land situated within the town limits who subdivides the same shall cause a plat of such subdivision, with reference to known or permanent monuments, to be made and recorded in the office of the clerk of Fairfax County. No such plat of subdivision shall be recorded unless and until it shall have been submitted, approved and certified by the Planning Commission in accordance with the regulations set forth in this Ordinance. No lot shall be sold in any such subdivision before the plat shall have been recorded. Nor shall any building be erected or sold upon such lot before the plat shall have been recorded.

Sec.10-23.PLAT PREPARATION

Every such plat shall be prepared by a surveyor or engineer duly licensed by the State of Virginia, who shall endorse upon each plat a certificate signed by him setting forth the source of the title of the land subdivided, and the place, of record of the last instrument in the chain of title. When the plat is of land acquired from more than one source of title, the outlines of the several tracts shall be indicated upon such plat, within an inset block, or by means of a dotted boundary line upon the plat.

Sec.10-24.NO ONE EXEMPT

No person, owner or corporation shall subdivide any tract of land that is located within the Town, except in conformity with the provisions of this Ordinance.

ARTICLE 5 FILING OF PLATS AND PLANS -- GENERAL

Sec.10-25. FILING OF PLATS

Whenever any subdivision of land is proposed, and before any permit for clearing, grading or any other construction shall be granted, the subdivider or his agent shall apply in writing to the Planning Commission for the approval of a preliminary subdivision plat and submit the number of copies of the plat as required by the Commission's administrative procedures ten days before the next scheduled meeting of the Planning Commission and submit one copy to the Town Clerk. Upon receipt of a plat and payment of fees, the Planning Commission shall, at its next regularly scheduled meeting, with the subdivider present, make a determination whether the plat is officially accepted for review.

If the proposed subdivision is a resubdivision, if it adjusts an existing boundary line, or if a consolidation of lots is proposed, the applicant/subdivider or his agent shall apply in writing as outlined in section 10-25 above, and submit the number of copies of the plat as required by the Commission's administrative procedures in the time period outlined in section 10-25 above. See also ARTICLE 16.

Sec.10-26.FEES

There shall be a charge for the examination and approval or disapproval of every plat and plan reviewed by the Planning Commission. The town fee schedule shall be set at a $250.00 per lot one-time administrative fee. At the time of submission of the preliminary plat, and at the time of submission of the construction/final plans, a review fee shall be collected to cover costs of plan review. At each submission the fee shall be $2000.00 per lot, with a minimum fee of $7000.00. The Town shall maintain an account for each subdivision application and provide a monthly accounting of all review fees paid out. If the account balance falls below $2000.00, the applicant will be notified. The applicant must provide the Town sufficient funds to restore the account balance to $2000.00 within ten (10) days following notification. If the applicant does not restore the account balance within ten days, all reviews will cease and the Planning Commission may deny the application on this basis. At the time for final plat approval, an accounting will be made and any Town review costs exceeding fees paid will be paid prior to approval. Subsequent to approval, any excess fees paid will be refunded. Subdivision construction plan review and site inspection fee accounting will be made prior to bond release. In the event the Planning Commission deems it necessary to retain consultants, engineers, attorneys, or inspection agencies in connection with its review of any of the above submissions, the subdivider shall be responsible for those costs incurred by the Planning Commission.

Sec.10-27.NOTICE

a. Acceptance and Hearing Date.

After the Planning Commission officially accepts the plat for review, a hearing date shall be set to consider testimony regarding the plat.

b. Sub-divider Advised.

The sub-divider shall be advised of the date of the hearing.

c. Notice Responsibility of Sub-divider.

The provision of notice shall be the responsibility of the sub-divider. The sub-divider shall be required to notify all owners of property contiguous to and across the street or road from the parcel to be subdivided. Such notice shall provide information on the proposed subdivision and shall provide the date of the scheduled hearing. This notification must be to a minimum of ten (10) property owners within the Town other than the owner of the parcel to be subdivided and must be to those who own property closest to the parcel to be subdivided.

d. Notice Includes Tax Map Reference.

The Tax Map reference number shall be included in the notice sent to property owners.

e. Notice Ten Days Prior.

Notice shall be sent at least ten days prior to the hearing by registered or certified mail to the last known address of such owners as shown on the current real estate tax assessment book and shall be deemed adequate compliance with the requirement. Written proof of notification of all such owners shall be provided to the Planning Commission.

f. Notice Content.

The notice shall read as follows: "This is to notify you that a proposed subdivision plat, entitled, has been submitted to the Town of Clifton Planning Commission. The proposed subdivision plat may be reviewed by contacting the Secretary of the Planning Commission. A hearing will be held on [date set for public hearing] for purposes of obtaining public comment and input."

Sec.10-28.PROCEDURE

a. Review and Schedule.

After review of any plat by the Planning Commission, its consultants, any appropriate Town agency (including the Architectural Review Board), County of Fairfax, or State agency in order to determine whether or not the plat generally conforms to the requirements of the Subdivision Ordinance and the standards, regulations and requirements of the appropriate County and State agencies, the Commission shall, within sixty (60) days advise the sub-divider, his agent, engineer or surveyor concerning any additional data which may be required and of the decision of the Planning Commission. In the event of State agencies making a review of such plat, the Commission shall act upon such plat within thirty-five (35) days after receiving approval from all State agencies.

b. Physical Improvements Required by Preliminary Plat.

Where physical improvements are required by the approved preliminary plat, construction plans shall be submitted by the sub-divider in accordance with Article 7 and all other pertinent sections of this Ordinance, and shall be in complete conformance with the approved preliminary plat.

c. Final Plat Filing Date.

A final plat shall be filed by the sub-divider after approval of the preliminary plat and with a construction plan if such has been required. The final plat shall be submitted in accordance with Article 8 and all other pertinent sections of this Ordinance, and shall be in complete conformance with the approved preliminary plat.

d. Omissions.

Failure of the sub-divider to provide information deemed necessary by the Commission for full review of the plat or plan, or failure to resubmit a revised, corrected plat or plan within six (6) months of Planning Commission action of the plat will necessitate consideration of any plat submitted thereafter as new. Consideration of the plat by the Commission shall commence only after a determination is made that the plat is officially accepted for review and payment of a new review fee has been made if required by the Planning Commission.

Sec.10-29.NECESSARY CHANGES

No change, erasure or revision shall be made on any preliminary plat or final plat, nor on accompanying data sheet after approval of the Planning Commission, unless authorization for such changes has been requested in writing from and granted by the Planning Commission.

Sec.10-30.APPEALS OF THE COMMISSION'S DECISION

Appeals of the Commission's decision shall be made to the Circuit Court in accordance with section 15.2-2259 of the Code of Va. Appeals shall cite the section of the Ordinance in which the appellant alleges the Planning Commission to be in error. The appeal shall be filed within sixty (60) days of written disapproval by the Commission.

ARTICLE 6 PRELIMINARY PLATS

Sec.10-31.PREPARATION

The sub-divider shall present to the Commission the required number of copies of a preliminary plat layout as set forth in the Commissioner's administrative procedures drawn no smaller than at a scale of fifty (50) feet to the inch. The preliminary plat shall include the following information:

a. Names and Dates.

Name of subdivision, owner, sub-divider, surveyor or engineer, date of drawing, number of sheets, north point and scale.

b. Vicinity Map.

Location of proposed subdivision by a vicinity map at a scale of not less than two (2) inches equal one mile showing adjoining roads and nearest intersecting streets, their names and numbers, the Fairfax County/Town of Clifton boundary lines, subdivisions and other landmarks.

c. Survey.

The boundary survey or existing survey of record, total acreage of subdivided area, number and approximate area and frontage of all building sites, existing buildings within the boundaries of the tract, names of owners and their property lines within the boundaries of the tract and adjoining such boundaries.

d. Streets.

All existing, platted and proposed streets, their names, numbers, and widths; existing utility or other easements, public areas and parking spaces, culverts, drains and watercourses, their names and other pertinent data.

e. Drainage.

The proposed drainage layout, including drainage easements and means of transporting the drainage to a well defined bed and banks channel with the capacity to convey a two (2) year storm without overtopping its banks which is considered adequate drainage.

f. Street Construction.

A cross section showing the proposed street construction, depth, and type of base, type of surface and other pertinent data.

g. Contour Map.

A contour map with two foot intervals and a profile for all proposed streets showing tentative grades, along the center line of streets.

h. Water and Sewer Connections.

Proposed connections with existing sanitary sewers and existing water supply or alternate means of sewage disposal and water supply.

i. Public Use Dedications.

All parcels of land to be dedicated for public use, their area and their proposed use, and the condition of such dedication.

Sec.10-32.PRELIMINARY PLAT

The following construction may be required to be included on the preliminary plat prior to preliminary plat approval.

a. Storm water management.
b. BMP's.
c. Trails.
d. Sidewalks.
e. Street lights.
f. Recreation facilities.
g. Tentative Grading Plan.

Sec.10-33.DESIGN REQUIREMENTS

Subdivisions within the Town shall be designed so as to reflect the existing small town, historical and rural character of the Town and the scale of the municipality as it lies within an otherwise low-density, environmentally sensitive area. New development along new or existing streets shall be compatible and consistent with the appearance of the existing Town, maintaining streetscapes as are presently found in the Town along public roads designed to rural standards, rather than to urban standards, characterized by curb and gutter construction. The Architectural Review Board (ARB), or a consultant designated by the ARB, may serve as the Commission's consultant in reviewing the impact of the proposed subdivision on the historic character of the Town.

a. Street Arrangement.

The arrangement of streets in new subdivisions shall make provision for the continuation of existing streets in adjoining areas. The street arrangement must be such as to cause no unnecessary hardship to owners to adjoining property when they plat their own land and seek to provide convenient access to it. Where, in the opinion of the Planning Commission, it is desirable to provide for street access to adjoining property, proposed streets shall be extended by dedication and construction to the boundary line of such property. Half streets along the boundary of land proposed for subdivision shall not be permitted.

b. Intersections.

Whenever possible streets should intersect at right angles. All streets shall approach other streets at an angle of not less than eighty (80°) degrees, unless the Commission, at the recommendation of the State highway engineer, shall approve a lesser angle of approach for reasons of contour, terrain or matching of existing conditions. In all hillside areas, streets running with contours shall be required to intersect at an angle of not less than sixty (60°) degrees, unless otherwise approved by the Commission at the recommendation of the highway engineer.

c. Maximum Right-of-Way (ROW)

The maximum right-of-way width of proposed streets, measured from lot line to lot line shall be as follows, modified only by VDOT requirements for acceptance into the State Highway system:

1. Collector or local streets not more than fifty (50) feet.

d. Cul-de-sacs.

Generally local terminal streets (cul-de-sacs) designed to have one end permanently closed, shall be no longer than twelve hundred (1200) feet to the beginning of the turn around. Each cul-de-sac must be terminated by a right-of-way turn around of not less than one hundred ten (110) feet in diameter.

e. No Private Streets.

There shall be no private streets platted in any subdivision. Every subdivided property or lot shall be served from a publicly dedicated street. There shall be no reserve strip of land between properties or lots controlling access to streets.

f. Street Alignment and Name.

Proposed streets which are obviously in alignment with other already existing and named streets either in the Town of Clifton or the County of Fairfax shall bear the names of the existing streets. In no case shall the names of the proposed streets duplicate existing

street names either within the Town of Clifton or Fairfax County irrespective of the use of the suffixes street, avenue, boulevard, drive, way, place, lane or court. Street names shall be indicated on the preliminary and final plats and shall be approved by the Commission. Names of existing streets shall not be changed except by approval of the governing body.

g. Public Water.

Where public water is available, the service shall be extended by the sub-divider to all lots within the proposed subdivision, including fire hydrants, in accordance with the design standards and specifications for water system construction and improvements in Fairfax County. The service shall meet the approval of the Commission.

h. Sewage Disposal.

Every subdivision shall be provided with a means of sewage disposal satisfactory to the Virginia Department of Health.

1. Where public sewage facilities are available the service shall be extended to all lots within the subdivision and septic tanks will not be permitted.

i. Private Wells and Sewage Facilities.

Nothing in this Ordinance shall prevent the installation of privately owned water wells and/or individual lot sewage disposal facilities in areas where public water and/or sewerage facilities are not available, provided, however, that such installations must meet all the requirements of the State Water Control Board, the State Health Department, and any other State or local regulation having authority over such installation.

j. Minimum Lot Width.

The minimum lot width shall be one hundred (100) feet measured at the front setback line, which width shall continue back to the midpoint of the lot depth.

k. Minimum Frontage.

The minimum frontage of a lot shall be sixty (60) feet.

l. Identify Required Improvements.

The sub-divider shall provide all necessary information needed to determine what improvements are necessary to properly develop the subject property, including the proposed drainage system and flood control devices.

m. Arrangement of Lots.

In addition to the area and width requirements of this Ordinance and the Zoning Ordinance, lots shall be arranged in order that the following considerations are satisfied:

1. The lot arrangement, design and shape shall be such that lots will provide satisfactory and desirable sites for buildings, and be properly related to topography and conform to requirements of this Ordinance. Lots shall not contain peculiarly shaped elongations solely to provide necessary square footage of area which would be unusable for normal purposes.

2. Each lot shall abut on a street dedicated by the subdivision plat or on an existing publicly dedicated street. If the existing streets are not fifty (50) feet in width or such greater or lesser width as may be required by the Commission, the subdivider shall dedicate such additional width as required for a minimum of one half (1/2) of the ultimate width for such street as determined by the Planning Commission.

3. Corner lots shall have extra width sufficient for maintenance of any required building lines on both streets as determined by the Commission.

4. Side lines of lots shall be approximately at right angles, or radial to the street line.

5. All remnants of lots below minimum size left over after subdividing of a tract must be added to adjacent lots, or otherwise disposed of rather than allowed to remain as unusable parcels.

6. Where the land covered by a subdivision includes two or more parcels in separate ownership, and the proposed lot arrangement is such that a property ownership line divides one or more of the proposed lots, the land in each proposed lots so divided shall be transferred by the subdivision deed of dedication to single ownership, simultaneously with the recording of the final plat. Said deed and the final plat both shall be recorded together.

7. Lots intended for business or industrial use shall be designed specifically for such purposes with adequate space set aside for off-street parking and delivery facilities.

8. Lots shall be arranged to provide the minimum amount of clearing necessary for required grading and building sites. Fairfax County Public Facility Manual standards for tree cover, tree preservation, and associated erosion control considerations shall apply unless otherwise modified by the Planning Commission.

n. Block Requirements.

Where created by the subdivision of land, all new blocks shall comply with the following general requirements:

1. Generally, the maximum length of blocks shall be twelve hundred feet.

2. Blocks shall be wide enough to allow two tiers of lots of minimum depth, except where fronting on collector streets, or prevented by topographical conditions or size of the property, in which case the Commission may approve a single tier of lots of minimum depth.

3. Where a proposed subdivision will adjoin a collector road or thoroughfare, the Commission may require that the greater dimension of the block shall be parallel to such road to avoid unnecessary additional intersections, or may require lots to back up to such road with direct access to it prohibited.

o. Subdivision Name.

The platted name of the subdivision shall be subject to Planning Commission approval. The subdivision name shall not duplicate or approximate the name of the Town of Clifton nor shall it duplicate or closely approximate the names of existing or platted subdivisions within the Town or the County of Fairfax.

p. Controlling Run-off.

The preliminary plat shall show the location and type of improvements proposed for the purpose of controlling storm water run-off quantity (i.e. stormwater management) and quality (i.e. Best Management Practices) which facilities shall be required according to the standards and criteria adopted in the Fairfax County Public Facilities Manual.

q. Proffers.

In the interest of public welfare the sub-divider shall provide reservations of suitable land for schools, parks, play grounds in accord with the Comprehensive Plan, the Capital Improvements Program and the official map.

Sec.10-34.LIMITS OF APPROVAL

The approval of the preliminary plat by the Planning Commission does not guarantee approval of the final plat and does not constitute approval or acceptance of the subdivision by the governing body or authorization to proceed with construction or improvements within the subdivision.

Sec.10-35.LIFE OF PRELIMINARY PLATS

The sub-divider shall have not more than one (1) year after receiving approval of his preliminary plat to obtain approval for a final plat in accordance with this Ordinance. Failure to do so shall make the preliminary approval null and void. The Planning Commission may, on written request of the sub-divider and for good cause shown, grant an extension of this limit. A preliminary plat is subject to all Ordinance and Fairfax County Public Facilities Manual changes at all times. Such approval gives no grandfather rights against future Ordinance amendments. Approval shall not be considered to be an acceptance of such plat for recordation.

ARTICLE 7 IMPROVEMENTS/SUBDIVISION CONSTRUCTION PLAN

Sec.10-36.CONSTRUCTION PLAN

A construction plan shall be submitted by the sub-divider in accordance with the construction plan requirements established under this Section to insure compliance with the Zoning Ordinance and to provide specific information on improvements to be made by the sub-divider as required in this Ordinance and the Fairfax County Public Facilities Manual. The construction plan must be approved by the Planning Commission prior to the approval of the final subdivision plat. The construction plan shall conform to the layout, notes, and all conditions of the approval of the preliminary plat.

Sec.10-37.CONSTRUCTION REQUIRED BY THE SUBDIVIDER

All required improvements shall be installed by the sub-divider at his cost. The sub-divider's bond shall not be released until construction has been inspected and approved by the appropriate engineers representing VDOT and the Town.

Sec.10-38.SPECIFICATIONS TO BE FOLLOWED

In cases where specifications have been established either by the Virginia Department of Transportation for streets, curbs, etc. or by local ordinances and codes, such specifications shall be followed. In cases where Virginia Department of Transportation specifications are lacking or are less restrictive than the requirements of this Ordinance, this Ordinance shall prevail.

Sec.10-39.DESIGN REQUIREMENTS

Subdivision construction plans prepared by a certified professional engineer or licensed land surveyor shall be submitted to the Commission for review and approval. The number of copies to be submitted shall be designated by the Commission.

a. Subdivision Streets.

All streets in the proposed subdivision shall be designed in accordance with the following minimum requirements and constructed by the subdivider at no cost to the Town.

1. Where drainage and drainage structures require curbs and gutters, the same shall be installed by the subdivider and when curbs and gutters are required on any part of a block they shall be installed on both sides of the street and in that entire block.

2. The grades of streets on subdivision construction plans shall be approved by the Planning Commission after recommendation of the highway engineer. Street grades shall not exceed nine (9%) percent unless specifically approved by VDOT after a recommendation by the Planning Commission.

3. Street identification signs of a design approved by the Commission shall be installed at all intersections.

b. Monuments.

1. In all subdivisions, monuments shall be placed in the ground at all lot corners and angle points in the outer lines of the subdivision, and at all points of angles and curvature in the right of way lines of all streets within the subdivision, according to the duly adopted standards and criteria of The Fairfax County Public Facilities Manual.

2. All monuments must be installed by the subdivider and shall meet the minimum specifications. Upon completion of subdivision streets, sewers and other improvements, the subdivider shall make certain that all monuments

required by the Commission are clearly visible for inspection and use. Such monuments shall be inspected and approved before the agreement and bond for the improvements are released.

3. Concrete monuments four inches in diameter or square, three feet long with a flat top, shall be set at all street corners, at all points where the street line intersects the exterior boundaries of the subdivision, and at all angle points, and points of curve in each street. The top of the monument shall have an appropriate mark to identify properly the location and shall be set flush with the finished grade.

4. All other lot corners shall be marked with iron pipe not less than three-fourths inch in diameter and twenty-four inches long and driven so as to be flush with the finished grade. When rock is encountered, a hole shall be drilled four inches deep in the rock, into which shall be cemented a steel rod one-half inch in diameter, the top of which shall be flush with the finished grade line.

c. Fire Hydrants.

The installation of adequate fire hydrants in a subdivision at locations approved by the Planning Commission may be required, provided necessary public water is available. The Commission shall consult with the proper authority before approving such location.

d. Easements.

The Planning Commission may require that easements for drainage through adjoining property be provided by the sub-divider. Easements of not less than ten (10) feet in width shall be provided for water, sewer, power lines and other utilities in the subdivision when required by the Planning Commission.

e. Conform to Fairfax County Public Facilities Manual.

Where not inconsistent with the provisions of this Ordinance, the construction plans and design for the subdivision are to conform to the requirements and standards of the Fairfax County Public Facilities Manual or as directed by the Planning Commission. When shown on the approved preliminary plat all construction including but not limited to storm water management facilities, Best Management Practices, trails, sidewalks, street lights and streets shall be designed in accordance with the Public Facilities Manual and VDOT's Road and Bridge Standards unless otherwise directed by the Planning Commission.

1. Normally storm water management and Best Management Practices will be required with any new subdivision and are to be provided in accordance with Fairfax County's Public Facilities Manual. Design of facilities requiring little or no maintenance is encouraged. If the Planning Commission determines that a particular site is not adaptable to storm water management or Best Management Practices due to size, shape or topography, the Commission may waive these requirements.

f. Conform to Town Flood Plain Ordinance.

Construction plans shall conform to the provisions of the Town of Clifton Flood Plain Ordinance.

g. Land Disturbing Activities.

In any subdivision which proposes land disturbing activities, vegetation may be disturbed only to the minimum extent feasible for purposes of preparing access and building sites. The limits of such land disturbing activities shall be clearly shown on the submitted plans. The Fairfax County Arborist has jurisdiction within the Town of Clifton to determine which trees on the parcel to be subdivided are eligible to be preserved and the measures that the subdivider/developer must take to so preserve in accordance with Fairfax County Public Facilities Manual standards. The Arborist's determination shall be implemented unless otherwise modified by the Planning Commission.

h. Problems soils.

Where a soil report would be required under the standards and criteria of the Fairfax County Public Facilities Manual the same shall be required in the Town of Clifton and may be used to determine appropriate standards and restrictions in the development of the subject property.

i. Driveways.

Driveways shall not exceed a maximum grade of fifteen (15%) percent unless otherwise specifically approved by the Planning Commission.

j. Utilities Underground.

The Construction plans shall note that "All utilities when provided by the sub-divider shall be installed underground in accordance with duly adopted County standards, as established in the Fairfax County Public Facilities Manual. All other utilities shall be installed underground in accordance with standards of utility practice for underground construction, which standards and any amendments thereto shall be furnished to the Commission by the Utility Company, and in accordance with standards furnished to and regulations issued by the applicable regulatory authority."

k. Tentative Grading.

Tentative grading of lot development shall be shown.

l. Certification and Approval.

The sub-divider shall provide on the construction plans a properly qualified certified engineer's or surveyor's statement that such improvements, when properly installed will be adequate for proper development. The highway engineer shall then recommend approval or disapproval of the plans. The sub-divider shall also provide any other information required by the highway engineer.

Sec.10-40.COMPLIANCE WITH FAIRFAX COUNTY'S EROSION AND SEDIMENTATION CONTROL AND CONSERVATION ORDINANCE

Compliance with Fairfax County's Erosion and Sedimentation Control and Conservation Ordinance is required.

Sec.10-41.APPROVAL TIMEFRAME AND PROCEDURE FOR SUBDIVISION CONSTRUCTION PLANS

a. Submit Construction Plan.

The Construction plan shall be acted upon within sixty (60) days, except under abnormal circumstances, from receipt thereof either by the Planning Commission Secretary or by the Commission's consultant. Determination as to who will receive the plan for review, and the number of copies required shall be made by the Planning Commission at the subdivider's request prior to plan submission.

b. Fees.

There shall be a charge for examination and approval or disapproval of every subdivision construction plan reviewed by the Planning Commission or its consultant in accordance with section 10-26. The balance of any plan review and site inspection fees due shall be paid prior to the plan approval.

c. Recommendations for Approval.

Prior to approval of the construction plan by the Commission, the Commission shall have received recommendations for approval, or approvals from all other Town, County or State Agencies as may be appropriate.

d. Off-site Easements.

All off-site easement plats required for the subdivision shall be approved and recorded prior to plan approval.

e. Erosion and Sediment Control Agreement.

Execution of an erosion and sedimentation control agreement and payment of an escrow deposit shall be required prior to plan approval.

f. Pro-rata Share Off-site Improvements.

Payment of the sub-division's pro rata share for off-site improvements shall be made prior to approval of the subdivision construction plans. In the event that the Town of Clifton or County of Fairfax establishes a general sewer, water and/or drainage improvement program for an area having related and common sewer, water and drainage conditions, the sub-divider of land shall pay in cash his pro rata share of the cost of providing reasonable and necessary sewerage, water, and drainage facilities, located outside the property limits of the land owned or controlled by the sub-divider but necessitated or required, at least in part, by the construction or improvement of the subdivision or development.

1. The sub-divider's pro rata share shall be limited to the proportion of such total estimated cost which the increased sewage flow, water flow and/or increased volume and velocity of storm water runoff to be actually caused by the subject subdivision or development bears to the total estimated volume and velocity of such sewage, water and/or runoff from such area in its fully developed state.

2. Each such payment received shall be expended only for the construction of those facilities for which the payment was required, and until so expended shall be held in an interest-bearing account for the benefit of the sub-divider.

Sec.10-42.LIFE OF SUBDIVISION CONSTRUCTION PLANS

The construction plan for the required physical improvements shall be submitted and approved prior to the approval of the final plats. The life of subdivision construction plans shall be one (1) year. The approval of the construction plans and specifications shall be null and void if the final subdivision plat is not recorded in the County land records within one (1) year of such approval of the construction plans unless such period of one (1) year is extended by the Planning Commission. All extensions will be subject to all ordinances and codes then in effect.

ARTICLE 8 FINAL PLATS

Sec.10-43.PREPARATION

The subdivision plats submitted to the Planning Commission for final approval shall be submitted in accordance with Virginia Public Records Act section 42.1.82 and shall be clearly and legibly drawn in ink upon a stable, reproducible original and drawn no smaller than at a scale of fifty (50) feet to the inch on sheets having a size no larger than 18 x 24 inches. In addition to conforming to the layout and conditions and to the requirements of the approved preliminary plat, the final plat shall include the following:

a. Reserve Space for Official Approvals.

A blank oblong space three (3) inches by five (5) inches shall be reserved along the right hand border for the use of the approving authority.

b. Title.

A Certificate signed by the surveyor or engineer setting forth the source of the title of the owners of the land subdivided and the place of record of the last instrument in the chain of title.

c. Consent.

A statement to the effect that the subdivision as it appears on this plat is with the free consent and in accordance with the desires of the owners, proprietors and trustees, if any, which shall be signed by the owners, proprietors and trustees, if any, and shall be duly acknowledged before some officer authorized to take acknowledgments of deeds.

d. Multiple Tracts.

When the subdivision consists of land acquired from more than one source of title, the outlines of the various tracts shall be indicated by dash lines, and identification of the respective tracts shall be placed on the plat.

e. Bearings and Distances.

The accurate location and dimensions by bearings and distances with all curve data on all lots and street lines and center lines of streets, boundaries of all proposed or existing easements, parks, school sites, all existing public and private streets, their names, numbers and widths, easements for all existing utilities and those to be provided such as sanitary sewers, storm drains, water mains, manholes and underground conduits, water courses and their names, names of owners and their property lines, both within the boundary of the subdivision and adjoining said boundaries.

f. Accuracy.

Distances and bearings must balance and close with an accuracy of not less than one in ten thousand.

g. Curve Data.

The curve data for all curves along all street center lines and all individual lot lines shall be shown in detail at the curve data table containing the following: Delta, radius, arc, tangent, chord and chord bearings.

Sec.10-44.PREREQUISITES FOR APPROVAL

The plat shall not be approved until the subdivider has complied with all conditions of the preliminary plat and has complied with the general requirements and minimum standards of design in accordance with this Ordinance. Payment of all final plat review fees, including pro rata share for offsite improvements and any additional plat review expenses incurred by the Commission shall occur prior

to the Commission's approval of the final plat. Before any plat will be finally approved by the Planning Commission and before there will be acceptance of dedication for public use of any right-of-way located within the proposed subdivision which has constructed therein, or proposed to be constructed therein, any street, curb, gutter, sidewalk, drainage or sewerage system or other improvement, financed or to be financed in whole or in part by private funds, the subdivider thereof shall furnish to the Planning Commission one of the following:

a. Payments.

A certified check in the amount of the design engineer's construction cost estimate for such facilities outlined in section 10-44 above. The check shall accompany the final plat when the plat is submitted to the Commission.

b. Surety Bond.

A bond with surety, satisfactory to the Planning Commission, in an amount sufficient for and conditioned upon the construction of such facilities as outlined in section 10-44 above. The bond shall guarantee that the improvements will be installed within a reasonable time, such time to be designated by the Planning Commission. The bond shall accompany the final plat when it is submitted to the Commission.

c. Contract.

A contract for the construction of such facilities as outlined in section 10-44 above and the contractors bond with surety satisfactory to the Planning Commission, in an amount sufficient for and conditioned upon the construction of such facilities. The contractor's bond shall guarantee that the improvements will be installed within a reasonable time, such time to be designated by the Planning Commission. The contract and bond shall accompany the final plat when it is submitted to the Commission.

Sec.10-45.APPROVAL OF FINAL PLAT

a. Fees and Charges.

There shall be a charge for the examination and approval or disapproval of every final plat reviewed by the Planning Commission. At the time of filing the final plats, the sub-divider shall pay the Treasurer of the Town of Clifton, Virginia an initial review and approval fee deposit in accord with the Fairfax County Fee Schedule. Prior to plat approval an accounting will be made and any Town review costs exceeding fees paid will be paid prior to approval. Subsequent to approval any excess fees paid will be refunded. In the event that the Planning Commission deems it necessary to retain an engineer in connection with its review of the final plats or any submission related thereto, the applicant shall be responsible for those costs incurred by the Planning Commission.

b. Approval on Face.

Approval of the final plat shall be written on the face of the plat by the Planning Commission.

Sec.10-46.LIFE OF FINAL PLATS

The sub-divider shall record the plat within six (6) months after final approval; otherwise the Planning Commission shall mark the plat "void" and return same to sub-divider.

a. Approval of the final plat of subdivision or sections thereof shall not be deemed the acceptance by the Town, County or State of any street or other public space shown on the plats for maintenance repair or operation thereof.

Sec.10-47.AS BUILT PLANS

Upon final completion, there shall be submitted a certified "as built" plan showing all improvements: Storm and sanitary sewer location, except the building and service connection, shall be certified correct by a registered professional engineer or certified land surveyor

registered in the state. All other utility locations, except building and service connections, shall thereafter be shown on this or similar plan with the notation "from available records"; such plan and records shall be furnished by the utility company whose location is shown thereon.

Sec.10-48.ACCEPTANCE OF STREETS

Upon satisfactory completion of the installation of the required improvements, the su-divider shall make application for acceptance by, and comply with all requirements of, the Virginia Department of Transportation, in order that the streets may be accepted by VDOT for operation and maintenance.

Sec.10-49.BOND RELEASE

a. Bond Release.

Unless otherwise stated in the provisions of this Ordinance, bonding and bond release procedures will be as set forth in the Fairfax County Public Facilities Manual.

b. Inspection and Approval.

The sub-divider's bond shall not be released until construction has been inspected and approved by the Planning Commission's authorized inspection agency.

c. General Provisions.

Within thirty (30) days of the Planning Commission's receipt of written notice by the sub-divider of completion of part or all of any facilities required to be constructed, partial or final release of the bond shall be made unless the Commission notifies the sub-divider in writing of non-receipt of approval by any applicable state or county agency, or of any specified defects or deficiencies in construction and suggested corrective measures prior to the expiration of the thirty (30) day period.

1. A copy of the notice sent to the Commission shall at the same time also be sent by the sub-divider to the Commission's authorized inspection agency. The inspection agency shall inspect the completed facilities and provide a recommendation to the Planning Commission to approve or not approve the requested partial or final release of the bond and reasons therefore prior to Planning Commission action on the request. The costs incurred by the Commission's inspection agency for the inspection of the subject facilities shall be charged to and paid for by the sub-divider.

2. If no such action is taken by the Planning Commission within the specified thirty (30) day time period the request shall be deemed approved and a partial release shall be granted to the sub-divider. No final release shall be granted until after expiration of such thirty (30) day period and there is an additional request in writing sent by certified mail return receipt to the Chairman of the Planning Commission. The Planning Commission shall act within ten (10) working days of receipt of the request; then if no action is taken the request shall be deemed approved and final release granted to the sub-divider.

d. Partial Bond Release.

The sub-divider may, provided the facilities covered by a bond are free of defects or deficiencies in construction thereof, request a partial release of the bond, provided, however, that the face amount of the bond after partial release shall never be less than the original bond estimate amount or the cost to complete the improvements, whichever is greater. Requests for partial release shall be in writing and sent by certified mail to the Chairman of the Planning Commission. A copy of the request shall at the same time be sent to the Commission's inspection agency. Such requests for partial release shall be approved by the Planning Commission within thirty (30) days after receipt of the written request unless the sub-divider is notified in writing of any specified defects or deficiencies in construction and suggested corrective measures.

ARTICLE 9 PERMITS

Sec. 10-50.PERMITS

No permit will be issued by any officer of the Town of Clifton, or the County of Fairfax, Virginia for the construction of any building, or other improvements requiring a permit, upon any land concerning which a plat is required by this Ordinance, unless and until the requirements of this Ordinance have been complied with.

ARTICLE 10 VIOLATION – FINE – MISDEMEANOR

Sec.10-51.VIOLATION - FINE - MISDEMEANOR

Any person who (a) subdivides land without making and recording a plat of the subdivision, or (b) records any plat of subdivision, unless the subdivision was lawfully created prior to the adoption of a subdivision ordinance applicable thereto, or (c) sells or transfers any land of a subdivision, unless the subdivision was lawfully created prior to the adoption of a subdivision ordinance applicable thereto, without fully complying with the provisions of Article 6 of Chapter 22 of Title 15.2 of the Virginia Code and the provisions of this ordinance, shall be subject to a fine of not more than $500 for each lot or parcel of land so subdivided, recorded, sold, or transferred. The description of the lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from the penalties or remedies herein provided. However, nothing herein contained shall be construed as preventing the passage of title as between the parties to the instrument.

ARTICLE 11

Sec.10.52. RESERVED

ARTICLE 12 AMENDMENT

Sec.10-53.AMENDMENT

Any provision of this Ordinance may be changed or amended from time to time by the Town Council of Clifton, Virginia in accordance with section 15.2-2204 of the Code of Virginia.

ARTICLE 13 VALIDITY

Sec.10-54.VALIDITY

If any section, subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of the Ordinance.

ARTICLE 14 REPEAL OF CONFLICTING ORDINANCES

Sec.10-55.REPEAL OF CONFLICTING ORDINANCES

Any Subdivision Ordinances in conflict with this Ordinance are hereby declared null and void.

ARTICLE 15 RESERVED

ARTICLE 16 BOUNDARY LINE ADJUSTMENTS AND CONSOLIDATION OF LOTS

Sec. 10-57. GENERAL PROVISIONS – BOUNDARY LINE ADJUSTMENTS

a. Boundary line adjustments are considered subdivisions and applications for such are subject to the provisions of this Ordinance. However, where the Planning Commission finds that there may be no need for public improvements, and the boundary line adjustment proposes a realignment as set forth in subsection d of this section, an expedited review process may be permitted.

b. When the Planning Commission deems that the advice of a consultant is necessary for application review, the cost to the applicant shall be as is set forth in section 10-26 and section 10-58.b of this Ordinance.

c. In the event that a boundary line adjustment, or lot consolidation, involves parcels of land owned by more than one owner of record, a combined application shall be made and signed by each property owner of record, who are jointly and severally responsible for paying any required fees or costs pursuant to this Chapter.

d. Where a boundary line adjustment proposes to realign any private wells, septic systems, driveways, accessory structures, dwelling additions, retaining walls, underground or above ground utility tanks located on adjacent lots, which are existing on or before the date of this ordinance amendment on such lot, or when a boundary line adjustment proposes to change the boundary between two lots while not changing the square footage of each lot, the Planning Commission may provide an expedited review process provided that the applicant satisfies the following requirements:

i. No conforming lot or parcel is made nonconforming as a result of the boundary line adjustment.
ii. Any existing non-conforming lot pursuant to Section 9-16(f) shall remain non-conforming notwithstanding any boundary line adjustment pursuant to this Section.
iii. Only two parcels or lots may adjust their boundaries by this process.
iv. The boundary line adjustment shall not result in any additional buildable lots or parcels.
v. The boundary line adjustment shall be designed to ensure that any private wells, septic systems, driveways, accessory structures, additions to the dwelling or to buildings on the parcel, retaining walls, and/or above ground or underground utility tanks, which are existing on such lot on or before the date of this ordinance amendment, are located on the same lot as the existing primary structure so served, and such boundary line adjustment shall involve the minimum change in lot size necessary to achieve such purpose.
vi. The boundary line adjustment shall not relocate or alter any existing easements or utility right-of-ways without the written express consent of all persons holding interest(s) therein, as evidenced by the signatures on a boundary line adjustment deed recorded in the land records of Fairfax County, with a plat showing the realigned parcels. The owner(s) shall provide copies of the recorded document to the Town of Clifton.

vii. If the application for the boundary line adjustment is approved, a deed and plat showing the boundary line adjustment shall be duly recorded in the land records of Fairfax County, and the owner(s) shall provide copies of the recorded documents to the Town of Clifton.

Sec.10-58. GENERAL PROVISIONS - CONSOLIDATION OF LOTS

a. Consolidation of lots requires review and approval by the Planning Commission.

b. The consolidation of lots shall not be allowed in the event that the lots to be consolidated are of different zoning classifications.

c. If an application for consolidation of lots is approved, a deed and plat showing the newly consolidated lot shall be duly recorded in the land records of Fairfax County, and the owner(s) shall provide copies of the recorded documents to the Town of Clifton.

Sec.10-59.PROCEDURE FOR BOUNDARY LINE ADJUSTMENTS AND CONSOLIDATION OF LOTS

a. Application

An application for a boundary line adjustment or a consolidation of lots shall be submitted as an application to the Secretary of the Planning Commission at least twenty one (21) days prior to the next scheduled Planning Commission meeting date. The application form and the number of such copies shall be as set forth in the Planning Commission's administrative procedures. The request will state the reason for the boundary line adjustment or the consolidation of lots and will state that the provisions of section 10-57 or 10-58, as applicable of the Subdivision Ordinance have been met. A plat prepared and certified by a Virginia licensed land surveyor drawn no smaller than at a scale of fifty (50) feet to the inch and showing the location of all existing structures, easements, and existing and proposed boundary lines together with setbacks to existing buildings shall be submitted as part of the application. Notice shall be provided to property owners in the area as required by section 10-27 of this Ordinance.

b. Deposit

The initial review and inspection fee deposit for an application to adjust an existing boundary line, or to consolidate lots shall be $150.00. The applicant shall also be responsible for those costs and fees incurred by the Planning Commission or its consulting engineer in the examination of the application.

c. County Health Department

If existing or proposed building sites are involved in the case of a boundary line adjustment, or a lot consolidation, approval of the plat by the County Health Department will be required prior to approval by the Planning Commission.

d. Restrictions and Requirements

The Planning Commission may require construction of street widening, dedication of right of way, easements and construction for storm drainage, walks, trails, and other public uses, and may impose other appropriate restrictions or requirements on the plat.

e. Determination

A determination will be made by the Planning Commission within sixty (60) days that the proposed boundary line adjustment or consolidation of lots meets the requirements set forth in Sections 10-57, 10-58 and/or 10-59, and the application may be approved or denied. If the application is denied in the case of a boundary line adjustment, an application for subdivision of the parcels in question may be filed.

CHAPTER 11

CHESAPEAKE BAY PRESERVATION ORDINANCE

CHAPTER 11

CHESAPEAKE BAY PRESERVATION ORDINANCE

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Chapter 11 CHESAPEAKE BAY PRESERVATION ORDINANCE

Sec. 11-1 . TITLE

This Ordinance (hereinafter "the Ordinance") shall be known and may be cited as the Town of Clifton Chesapeake Bay Preservation Ordinance.

Sec. 11-2. FINDINGS OF FACT

The Chesapeake Bay is one of the most important and productive estuaries in the world, providing substantial economic and social benefits to the people of the Town of Clifton and the Commonwealth of Virginia. Healthy state and local economies are integrally related to and dependent upon the health of the Chesapeake Bay; therefore the general welfare of the people of the Commonwealth depends upon the health of the Bay.

Waters of the Chesapeake Bay and its tributaries have been degraded significantly by nonpoint source pollution. By contributing to nonpoint source pollution, damage to and improper development of lands hereby designated by the Town Council as Chesapeake Bay Preservation Areas (hereinafter CBPA's) threatens public safety and the general welfare. These lands need to be protected from destruction and damage in order to protect the quality of water in the Bay and consequently the quality of life in the Town of Clifton and the Commonwealth of Virginia.

Sec. 11-3. PURPOSE

a. Purpose.

The Chesapeake Bay Preservation Ordinance for the Town of Clifton is enacted to implement the requirements of the Chesapeake Bay Preservation Act (Sec.10.1-2100 et seq of the Code of Virginia) and its subsequent regulations (Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC10-20-10 et seq.)). It is the policy of the Town of Clifton to protect the quality of water in the Chesapeake Bay and its tributaries and, to that end, to require all land uses in CBPA's and development in CBPA's to avoid or minimize damage to CBPA's in an effort to achieve the following:

1. protection of existing high-quality state waters and restoration of all other state waters to a condition or quality that twill permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them;

2. safeguarding the clean waters of the Commonwealth from nonpoint source pollution;

3. prevention of any increase in nonpoint source pollution;

4. reduction of existing nonpoint source pollution;

5. promotion of water resource conservation in order to provide for the health, safety and welfare of the present and future citizens of the Town of Clifton and the Commonwealth of Virginia.

b. GOAL AND INTENT.

The goal and intent of the ordinance is to minimize potential nonpoint source pollution from stormwater runoff, minimize potential erosion and sedimentation, reduce the introduction of nutrients and toxins into state waters affecting the Chesapeake Bay, maximize rainwater infiltration while protecting groundwater, and ensure the long-term performance of the measures hereby employed.

Sec. 11-4. AUTHORITY AND ADMINISTRATION

a. Authority.

This ordinance is enacted under the authority of section 10.1-2100 et seq. of the Code of Virginia (the Chesapeake Bay Preservation Act) and section 15.2-2283 of the Code of Virginia. Authority to protect water quality is also provided by Title 15.2-2283 of the Code of Virginia

b. Administration.

The Planning Commission is hereby delegated the authority and power by the Town of Clifton to administer this Ordinance. The Commission shall perform these duties by assuring that all requirements set forth in this Chapter 11, "Chesapeake Bay Preservation Act Ordinance," are evaluated and duly considered by the Commission in making their recommendations to the Town Council for the approval (or disapproval) of any plans of development including Use Permits, Subdivision development and construction plats and plans or other such similar requests/ applications. Commission recommendations will be pursuant not only to this Chapter, but shall also be governed by the underlying Chapters of the Town of Clifton Ordinances including: the "Zoning Ordinance" and the "Subdivision Ordinance," respectively.

c. Administration Technical Assistance.

The Planning Commission may require external (i.e., consultant, engineer, and/or inspection or review agent) technical assistance in the analysis and review of Use Permit Applications and/or Subdivision plats and plans to determine compliance with the requirements of this ordinance. In such instances the Commission is granted authority by the Town Council to obtain that assistance from: (1) consultant(s), (2) licensed engineer(s), (3) review agency (ies) (i.e., Chesapeake Bay Local Assistance Department, or other), and/or (4) inspection agency (ies) and to require that the applicant be responsible for those costs incurred by the Commission. The "Subdivision Ordinance" further delineates those fees as may be required of the applicant.

Sec. 11-5. DEFINITIONS

The following words and terms used in the Ordinance have the following meanings, unless the context clearly indicates otherwise.

a. "Best Management Practice (BMP)" means a practice, or combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practicable means for preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals of this Ordinance.

b. "Buffer area" means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

c. "Chesapeake Bay Preservation Area (CBPA)" means any land designated by Town of Clifton pursuant to section 11-8 of this Ordinance and Section 2107 of Title 10.1 of the Code of Virginia. The Chesapeake Bay Preservation Area consists of a Resource Protection Area (RPA) and a Resource Management Area (RMA).

d. "Development" means the construction or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility facilities or structures.

e. "Floodplain" means all lands that would be inundated by flood water as a result of a storm event of a 100-year return interval.

f. "Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula RKLS/t, where K is the soil

susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

g. "Highly permeable soils" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soils Survey Handbook" of November 1996 in the "Field Office Technical Guide: of the U.S. Department of Agriculture Natural Resources Conservation Service.

h. "Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to: roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

i. "Land Disturbing Activity" means any practice by which the existing contour/surface area of the soil totalling 2500 square feet or greater is modified, provided, however, that this does not apply to activities in the Resource Protection Area.

j. "Nonpoint Source Pollution" means contamination from diffuse sources that is not regulated as point source pollution under section 402 of the Clean Water Act.

k. "Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to section 404 of the Federal Clean Water Act, in 33 CFR 328.3b.

l. "Plan of Development" means any process for plan review under the provisions of this Ordinance and the Subdivision Ordinance and the Zoning Ordinance designed to ensure compliance with §10.1-2109 of the Act and this Ordinance, prior to the issuance of a building permit.

m. "Public road" means a publicly-owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to i. the Erosion and Sediment Control Law (§10.1-560 *et seq.* of the Code of Virginia) and ii. the Virginia Stormwater Management Act (§10.1-603 *et seq.* of the Code of Virginia). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by a local government in accordance with the standards of that local government.

n. "Redevelopment" means the process of developing land that is or has been previously developed, to the extent that there is no net increase in the building footprint.

o. "State waters" means all waters on the surface or in the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

p. "Substantial alteration" means any expansion or modification of a building, or development which would result in a disturbance of land exceeding an area of 2500 square feet in the Resource Management Area only.

q. "Resource Management Area" means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area. RMAs include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

r. "Resource Protection Area" means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

s. "Use" means an activity on the land other than development, including, but not limited to agriculture, horticulture, and silviculture.

t. "Water Dependent Facility" means a facility development of land that cannot exist outside of the Resources Protection Area. These facilities are limited to the outfall structure of storm sewers.

Sec. 11-6. SEVERABILITY

If any provision herein is declared unlawful, it shall be struck from the text leaving the remaining provisions in effect.

Sec. 11-7. VALIDITY

If any of the Articles, Sections, Paragraphs, sentences, clauses or phrases of this Ordinance shall be declared unconstitutional or invalid by a valid judgment or decree of a court or competent jurisdictions, such unconstitutionality or invalidity shall not affect the validity of the Ordinance in its entirety or any of the remaining Articles, Sections, Paragraphs, sentences, clauses, and phrases.

Sec. 11-8. AREAS OF APPLICABILITY

This ordinance shall apply to all lands in Chesapeake Bay Preservation Areas (CBPA's), which shall include lands that meet the designation criteria in this section. CBPA's are divided into Resource Protection Areas (hereinafter "RPA") and Resource Management Areas (hereinafter "RMA") that are subject to the use restrictions and regulations in this ordinance. RPA's are protected from most development because, left intact, they function to improve and protect water quality. RMA's, which include all areas in the Town of Clifton outside of RPA's, are regulated to protect both the associated RPA and water resources from degradation resulting from development and land disturbing activity.

a. RPA's.

Resource Protection Areas consist of sensitive lands adjacent to water bodies with perennial flow that have either an intrinsic water quality value due to the ecological and biological processes they perform or that are sensitive to uses or activities such that the use results in significant degradation to the quality of State Waters. In their natural condition, these lands provide for the removal, reduction, or assimilation of nonpoint source pollution entering the Bay and its tributaries. RPA's shall include land characterized by one or more of the following features:

1. A Nontidal Wetland connected by surface flow and contiguous to a tidal wetland or water body with perennial flow; and

2. A buffer area consisting of any land within 100 feet of a feature listed in (1) above and along both sides of any water body with perennial flow.

b. RMA's.

Resource Management Areas means that component of the Chesapeake Bay Preservation Area (CBPA) compriseof lands that, if improperly used or developed, have a potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area. The RMA is generally characterized by the following land categories: floodplains, highly erodible soils, including steep slopes; highly permeable soils; and nontidal wetlands not included in the RPA.

Sec. 11-9. INCORPORATION OF CBPA BOUNDARIES INTO ZONING ORDINANCE

a. Incorporating RPA's and RMA's by Reference.

The above designation criteria which define the boundaries of RPA's and RMA's are incorporated by reference with this section into the Town of Clifton Ordinance including the "Zoning Ordinance"and the "Subdivision Ordinance." The Clifton CBPA Map shows the general location of CBPA's and should be considered by persons contemplating activities within the Town of Clifton prior to engaging in a regulated activity. However, this Map should be considered a planning tool. Boundaries of RPA's shall be delineated by the applicant during the plan of development process as outlined in Section 11-15 of this Ordinance or through the review of a water

quality impact assessment as required Section 11-15.c or as established by the Town Council and in accordance with provisions of this Ordinance.

b. RPA Boundaries.

The boundaries of RPAs and RMAs are drawn based on available mapping resources. The Town Council shall determine site specific boundaries based on more reliable field data developed and examined during the plan of development process or through the review of a water quality impact assessment.

1. It is the burden of the applicant to show the appropriate RPA boundaries, applying the criteria in 11-8 above, in all subdivision plats and plans (including water quality impact assessments), development or construction plats and plans and/or Use Permit Applications submitted for review. Where RPA boundaries on the adopted map may differ from boundaries as determined from the text of this Ordinance, the text shall govern. Such boundary locations shown on plans of development can be approved, modified or disapproved by the Town Council.

2. Any landowner or agent of the landowner may submit certification from a professional engineer, land surveyor or landscape architect certified or licensed to practice in the Commonwealth of Virginia for review and approval by the Town Council.

c. Lands Meeting Definition of CBPA Component Presumed to Exist.

Lands that meet the above definition of a component of a CBPA (section 11-8 of the Ordinance) but not identified on the Clifton CBPA map are presumed to exist in the Town of Clifton and are hereby designated to be within the CBPA and protected under all of the terms and provisions of this ordinance.

d. When this Ordinance Shall Govern.

Whenever any provision of this Ordinance imposes a greater requirement or a higher standard than is required in any State or Federal statute or other Town of Clifton or Fairfax County ordinance or regulation, the provision of this Ordinance shall govern. Whenever any provision of any State or Federal statute or other Town of Clifton or ordinance or regulation imposes a greater requirement or a higher standard than is required by this Ordinance, the provision of such State or Federal statute or other Town of Clifton ordinance or regulation shall govern.

Sec. 11-10. ALLOWED DEVELOPMENT IN RPA'S

Development shall be allowed in the RPA only when permitted by the Town Council and if it is water dependent as designated in this Ordinance, constitutes redevelopment as permitted in the underlying zoning district, and is in compliance with all requirements in this Ordinance. A water quality impact assessment shall be required for any proposed land distributing activity, redevelopment or development in accordance with Sec. 11-15.3 of this Ordinance.

Sec. 11-11. ALLOWED DEVELOPMENT IN RMA'S

Permitted uses, special permit uses, accessory uses, and special requirements shall be as established by the underlying zoning district, unless modified by the performance requirements set forth section 11-12.

Sec.11-12. GENERAL PERFORMANCE REQUIREMENTS FOR DEVELOPMENT AND REDEVELOPMENT IN CBPA'S

In order to attain the water quality objectives set forth in section 11-3 (the "purpose") of this ordinance, development and redevelopment in all components of CBPA's must meet and maintain the performance criteria set forth in sections 11-12 through 11-13.

a. When the Town Council Shall Approve a Development or Redevelopment.

CHAPTER 11

CHESAPEAKE BAY PRESERVATION ORDINANCE

The Town Council shall approve a proposed development or redevelopment greater than 2500 square feet only if it is found that the regulated activity is determined to be in accordance with this Ordinance and that the applicant has demonstrated to the Town Council by a preponderance of the evidence that the proposed development, or redevelopment meets or exceeds the following performance criteria:

1. Any land disturbing activity that exceeds an area of 2,500 square feet shall be subject to a plan of development process, including the approval of a site plan in accordance with the provisions of the Zoning Ordinance or a subdivision plat in accordance with the Subdivision Ordinance. The construction of single family dwellings, septic tanks and drainfields shall not be exempt from this requirement.

2. No more land shall be disturbed that is necessary to provide for the proposed use or development.

3. Indigenous vegetation shall be preserved to the maximum extent practicable consistent with the use or development proposed;

4. Land development shall minimize impervious cover consistent with the proposed use or development or redevelopment.

5. Stormwater Quality Management Requirements:

   A. For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices (BMP's) consistent with the water quality protection provisions of the Virginia Stormwater Management Regulations (4VAC3-20-10 et.seq.).

      i. For development, the post-development nonpoint source pollution load shall be reduced by no less than fifty (50) percent compared to the nonpoint source pollution load projected for the development without treatment.

      ii. For redevelopment sites, the nonpoint source pollution load shall be reduced by at least ten (10) percent. The Town Council may waive or modify this requirement for redevelopment sites that originally incorporated water quality BMPs, provided the following provisions are satisfied:

         a) In no case may the post-development nonpoint source pollution runoff load exceed the pre-development load;

         b) Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling nonpoint source pollution;

         c) If BMPs are structural, evidence shall be provided that facilities are in good working order and performing at the design levels of service. The Town Council may require review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this Ordinance.

      iii. For redevelopment, both pre- and post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.

6. Land upon which agricultural activities are being conducted shall undergo a soil and water quality conservation assessment. Such assessments shall evaluate the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management and management of pesticides, and where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is accomplished consistent with this Article.

7. Development and redevelopment exceeding 2500 square feet of land disturbance (including construction of all single family houses, septic tanks and drainfields) must comply with a local erosion and sedimentation control ordinance which by Town of Clifton Resolution pursuant to §21-89.5 is the Fairfax County Erosion & Sediment Control Ordinance. That ordinance is administered for the Town of Clifton by Fairfax County.

8. Onsite sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall:

   A. have pump-out accomplished for all such systems at least once every five years

   B. for new construction, provide a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site. Building shall be prohibited on the area of all sewage disposal sites until the structure is served by public sewer or an onsite sewage treatment system which operates under a permit issued by the State Water Control Board. All sewage disposal records shall be administered to provide adequate notice and enforcement;

   C. compliance with Chapter 68 of the Fairfax County Code shall be deemed to constitute compliance with this requirement.

   This requirement shall not apply to any parcel of land for which a site plan or preliminary subdivision plat was filed on or before May 21, 1973, and approved by November 20, 1976, if the Director of Health Services determines the parcel to have insufficient capacity to accommodate a reserve sewage disposal site except as may be required in the Commonwealth of Virginia Sewage Handling and Disposal Regulations.

9. The Town Council shall require certification on all plans of development and redevelopment that all wetlands permits required by law will be obtained prior to commencement of land disturbing activities. No land disturbing activity requiring wetlands permits shall commence until all such permits have been obtained by the applicant.

b. Compliance.

The Town Council shall ensure that these standards are met through the Use Permit Application review process of the Zoning Ordinance and/or through development and construction plats and plans reviewed as required by the Subdivision Ordinance for Subdivisions. Also, any development or redevelopment exceeding 2500 square feet of disturbance must be reviewed as to compliance with this ordinance, as well as with the underlying ordinances including the Zoning Ordinance and the Subdivision Ordinance.

Sec. 11-13. ADDITIONAL PERFORMANCE REQUIREMENTS FOR RPA'S

a. Roads and Driveways that are Not Exempt.

Roads and driveways not exempt under this ordinance may be constructed in or across Resource Protection Areas if each of the following conditions is met:

1. The Town makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across a Resource Protection Area;

2. The alignment and design of the roadway are optimized, consistent with other applicable requirements, to minimize 1. encroachment in the Resource Protection Area and 2. adverse effects on water quality;

3. The design and construction of the road or driveway satisfy all applicable criteria of this ordinance, including submission of a water quality impact assessment;

4. The plan for the road or driveway proposed in or across the RPA is reviewed by the Town as part of a use permit, subdivision and/or plan of development approval process.

b. When the Town Council may Permit a Water Dependent Facility.

The Town Council may permit redevelopment or development of a new or expanded water-dependent facility in a RPA provided that the applicant has demonstrated by a preponderance of the evidence that the regulated activity meets or exceeds the following standards:

1. all performance requirements set forth in this ordinance;

2. the non-water dependent component of a proposed development is located outside of the RPA;

3. access is provided with the minimum disturbance necessary; where possible, a single point of access will be provided;

4. the activity is consistent with the requirements of the comprehensive plan;

5. redevelopment in a RPA shall be permitted only is there is no increase in the amount of impervious cover, no further encroachment within the RPA and its conforms to stormwater management requirements and erosion and sediment control requirements of this ordinance.

c. Buffer requirements.

1. To minimize the adverse effects of human activities on the other components of the RPA, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained, if present, and established where it does not exist.

   A. The 100-foot buffer area adjacent to any component of the RPA and along both sides of a water body with perennial flow shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.

   B. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions set forth in this Ordinance.

      a) In order to maintain the functional value of the buffer area, indigenous vegetation may be removed only, as permitted by the designated authority, to provide for reasonable sight lines, access paths, general woodlot management, subject to the following:

      i. Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.

      ii. Any path shall be constructed and surfaced so as to effectively control erosion.

      iii. Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed pursuant to sound horticultural practice as recommended by the Town or by a professional forester, arborist, or County extension agent, upon review and approved by the Town.

      iv. Artificial maintenance of buffers with chemical fertilizers, herbicides and pesticides shall be avoided except after other efforts to preserve or establish vegetation in a buffer have failed.

C. Modifications to buffer requirements.

i. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

a) encroachments into the buffer area shall be minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;

b) if practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and

c) the encroachment may not extend into the seaward 50 feet of the buffer area.

Sec. 11-14. ADMINISTRATIVE WAIVERS AND EXEMPTIONS FROM THE CHESAPEAKE BAY PRESERVATION ORDINANCE

a. Nonconforming Use and Development Waivers.

The Town Council may permit the continued use, but not necessarily the expansion of any structure in existence on the date of the adoption of this Ordinance. No change or expansion of use shall be allowed with the exception that:

1. The Planning Commission may grant a nonconforming use and development waiver for structures on legal nonconforming lots or parcels to provide for remodeling and alterations to such nonconforming structures provided that:

   A. There will be no net increase in nonpoint source pollution load;

   B. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this Article.

2. An application for a nonconforming use and development waiver shall be made to and upon forms furnished by the Planning Commission and shall include for the purpose of proper enforcement of this Ordinance, the following information:

   A. Name and address of applicant and property owner;

   B. Legal description of the property and type of proposed use and development;

   C. A sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the Resource Protection Area:

   D. Location and description of any existing private water supply or sewage system.

3. A nonconforming use and development waiver shall become null and void twelve months from the date issued if no substantial work has commenced.

4. An application for the expansion of a nonconforming principal structure may be approved by the designated authority through an administrative review process provided that the following findings are made:

   A. The request for the waiver is the minimum necessary to afford relief;

B. Granting the waiver will not confer upon the applicant any specific privileges that are denied by this Ordinance to other property owners in similar situations;

C. The waiver is in harmony with the purpose and intent of this Article and does not result in water quality degradation;

D. The waiver is not based on conditions or circumstances that are self-created or self-imposed;

E. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;

F. Other findings, as appropriate and required by Town of Clifton are met; and

G. In no case shall this provision apply to accessory structures.

b. Public Utilities, Railroads, and Facilities Exemptions.

1. Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with (i) regulations promulgated pursuant to the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and the Stormwater Management Act (§ 10.1-603.1 et. seq. of the Code of Virginia), (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation, or (iii) local water quality protection criteria at least as stringent as the above state requirements will be deemed to constitute compliance with this Ordinance. The exemption of public roads is further conditioned by Section 11-13.1 of this Ordinance since section 11-13.1 outlines the conditions for construction of public roads.

2. Construction, installation, and maintenance of water, sewer, natural gas, underground telecommunications and cable television lines owned, permitted or both by the Town of Clifton shall be exempt from the criteria in this part provided that:

   A. to the degree possible, the location of such utilities and facilities should be outside Resource Protection Areas;

   B. No more land shall be disturbed than is necessary to provide for the proposed utility installation;

   C. All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality;

   D. Any land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this part.

c. Exemptions in Resource Protection Areas.

The following land disturbances in Resource Protection Areas may be exempt from the criteria of this part provided that they comply with subdivisions 1 through 4 below: 1) water wells; 2) passive recreation facilities such as boardwalks, trails, and pathways; and 3) historic preservation and archaeological activities.

1. Any required permits except those to which this exemption specifically applies, shall have been issued;

2. Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;

3. The intended use does not conflict with nearby planned or approved uses; and

4. Any land disturbance exceeding an area of 2500 square feet shall comply with the erosion and sediment control requirements of the Town of Clifton.

d. Exceptions.

Exceptions of the requirements of sections 11-10 and 11-13 of this Ordinance may be granted, provided that:

1. A request for an exception to the requirements of sections 11-10 and 11-13 of this Ordinance shall be made in writing to the Planning Commission. It shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a water quality impact assessment which complies with the provisions of Section 11-15.3 of this Ordinance.

2. The Planning Commission shall review the request for an exception and the water quality assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Ordinance if the Planning Commission finds:

   A. Granting the exception will not confer upon the applicant any special privileges that are denied by this Ordinance to other property owners within the Town;

   B. The exception request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;

   C. The exception request is the minimum necessary to afford relief;

   D. The exception request will be in harmony with the purpose and intent of the Ordinance, and not injurious to the neighborhood or otherwise detrimental to the public welfare and is not of substantial of detriment to water quality; and

   E. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.

3. If the Planning Commission cannot make the required findings or refuses to grant the exception, the Planning Commission shall return the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision to the applicant, with a copy to the Town Council. The applicant may then apply to the Town Council for an exception.

4. The Town Council shall consider the water quality impact assessment and the findings and rationale of the Planning Commission in determining harmony with the intended spirit and purpose of this Ordinance.

5. The Town of Clifton shall notify the affected public of any such exception requests and shall consider these requests in a public hearing in accordance with §15.2-2204 of the Code of Virginia, except that only one hearing shall be required.

6. A request for an exception to the requirements of provisions of this Ordinance other than Sections 11-10 and 11-13 Additional Performance Requirements for RPAs, shall be made in writing to the Planning Commission. The Planning Commission may grant these exceptions provided that:

   A. Exceptions to the requirements are the minimum necessary to afford relief; and

   B. Reasonable and appropriate conditions are placed upon any exception that is granted, as necessary, so that the purposed and intent of this Ordinance is preserved.

Sec. 11-15. PLAN OF DEVELOPMENT CRITERIA, REQUIREMENTS AND EVALUATION PROCEDURES

a. Application Fees, Submission of Drawings and other Information.

1. Application for a Plan of Development approval shall be made to the Town Clerk and the fee for such application shall be $25.00. The original of the application and the fee for the application shall be delivered to the Town Clerk. Twelve (12) copies of the Plan of Development application and twelve (12) copies of all site drawings and other applicable information incorporating the requirements of this Ordinance shall be submitted to the Planning Commission for review at least two weeks prior to the Commission hearing date. This Plan of Development application may be filed separately or in conjunction with a use permit or subdivision application.

2. All information required in this section shall be certified as complete and accurate by a professional engineer.

3. As part of its review of an application, the Planning Commission may require a review by its chosen consultants or by the Chesapeake Bay Local Assistance Department (CBLAD) to determine compliance with this ordinance. CBLAD comments are advisory only. Any costs incurred in the application review process will be the responsibility of the applicant/Land owner and must be paid for prior to approval of the application.

4. When submitting a plan for review, an applicant shall include the following information as applicable. The Planning Commission may request additional information as necessary due to the scope and nature of the proposed project.

   A. General Information:

      i. Date and name of project.

      ii. A Boundary survey of the site or site drawing showing north arrow, scale, property line measurements, and existing and proposed zoning.

      iii. A description of the proposed project including a description of the proposed use or uses, location, dimensions of proposed or existing structures including marine and temporary structures, and adjacent land uses.

      iv. Location of all building restriction lines, setbacks, easements, covenant restrictions, and rights-of-way on and adjacent to the site including off-site roads.

      v. Location and dimensions of all driveways, parking areas and other impervious surfaces with indication of the type of surface material.

      vi. Computations of total site area in acres, the amount and percent of the site to be cleared for the project, and the amount and percent to be covered by impervious surface after development.

      vii. Copies of all permits from applicable agencies necessary to develop the project, especially wetlands permits.

      viii. Existing and proposed topography and general soils information.

      ix. The location of all RPA features, including the 100 foot buffer and any water body with perennial flow.

x. Specifications for the preservation of existing vegetation, re-establishment of denuded areas, and supplemental planting.

xi. Location and description of all existing and proposed on-site sewage disposal systems including reserve sites, and of all existing and proposed wells.

xii. Location and description of all erosion and sediment control devices.

b. Stormwater Management.

NOTE: This information shall be submitted in addition to the General Information if stormwater management is required for water quality protection.

1. Stormwater management calculations (Virginia Stormwater Management Handbook).

2. A brief explanation of the selected Best Management Practices (including nonstructural practices and techniques) and how they were determined.

3. Location and design of planned stormwater control devices. In addition,

   A. For structures involving embankments:

      i. A typical cross-section through the embankment showing any necessary core, and all design elevations including any freeboard allowances;

      ii. The composition of core material.

      iii. Latitudinal and longitudinal cross-sections of any outlet structure.

   B. For infiltration facilities:

      i. Typical cross-sections;

      ii. Composition of trench materials.

      iii. Soil data supporting trench viability.

4. For detention and retention facilities, hydrologic calculations including:

   A. Rainfall intensities or characteristics:

   B. Existing and proposed drainage areas mapped (in acres);

   C. Runoff coefficients or runoff curve numbers;

   D. Times of concentration. Any overland flow over 200 feet used in computations must be documented on a map;

   E. Storm routings with full hydrographs for all design storm events (normally the 2- and 10-year storms).

5. Hydraulic calculations including:

   A. For any pipe or culvert structure:

i. Inlet and outlet elevations;

ii.. Length and diameter or height;

iii. Manning's roughness coefficient;

iv. Verification of inlet/outlet control conditions.

B. For any stream or channel analysis:

i. Channel bottom profile and 100' cross-sections;

ii. Manning's roughness coefficient determination for each different channel reach.

6. All engineering calculations must be performed in accordance with the procedures outlined in the current edition of the Virginia Stormwater Management Handbook.

7. The plan shall establish a long-term schedule for inspection and maintenance for the planned Best Management Practices, including all maintenance requirements, persons responsible for performing maintenance, and any agreement necessary to ensure the maintenance is carried out.

c. Water Quality Assessment Information.

NOTE: This information shall be submitted in addition to the General Information and Stormwater Management for any proposed land development or redevelopment in the Resource Protection Area or for any other development as deemed necessary by the Planning Commission, because of the unique characteristics of the site or intensity of the proposed use or development. The water quality impact assessment shall include but not be limited to the following:

1. Location and nature of the proposed encroachment into the buffer area, including justification for such encroachment.

2. Hydrogeology (for major impacts only):

A. Disturbance or encroachment into RPA features and justification for action;

B. Disruptions or reductions in the supply of water to wetlands, streams, lakes, rivers, or other water bodies;

C. Disruptions to existing hydrology including wetlands and stream circulation patterns;

D. Location of dredge material and location of dumping area for such material;

E. Location of and impacts on shellfish beds, SAV, and fish spawning areas;

F. Description of proposed mitigation measures for identified hydrogeological impacts.

3. Landscaping:

A. Location and description of all existing plant material;

B. Clear delineation of all existing plant material;

C. Proposed mitigation measures for land disturbance.

4. Wastewater:

   A. Description of wastewater disposal techniques, including calculations and locations of on-site sewage disposal systems, and techniques and standards for wastewater system and sewer line construction;

   B. Discussion of potential wastewater disposal impacts on water quality and proposed mitigation measures for such impacts.

4. Identification of existing characteristics and conditions of RPA and RMA features.

6. Additional information shall be required as deemed necessary by the Planning Commission to demonstrate compliance with the criteria of this Ordinance.

d. Evaluation Procedures for Water Quality Impact Assessments.

1. Upon the completed review of an application, the Planning Commission will determine if any proposed encroachment into the buffer area is consistent with the provisions of this Ordinance and make a finding based upon the following criteria:

   A. The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area:

   B. Impervious surface is minimized;

   C. Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;

   D. The development, as proposed, meets the purpose and intent of this Ordinance;

   E. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

2. Upon the completed review of an Application, the Planning Commission will determine if the proposed development is consistent with the purpose and intent of this Ordinance and makes a finding based upon the following criteria:

A. Within any RPA, the development, if proposed is water-dependent; the development or redevelopment, if proposed does not increase impervious surfaces and/or is in accordance with the provisions of this Ordinance.

B. The disturbance of any wetlands will be minimized;

C. The development will not result in unnecessary disruption of the hydrology of the site;

D. The development will not result in unnecessary degradation to aquatic vegetation or life;

E. The development will not result in unnecessary destruction of plant materials on site;

F. Proposed erosion and sediment control measures are adequate to achieve the reductions in erosion and minimize off-site sedimentation;

G. Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required performance standard for pollution control;

H. The development, as proposed, is consistent with the purpose and intent of any other Town Ordinances.

i. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

3. The Planning Commission shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the Planning Commission based on the criteria listed above.

4. The Planning Commission shall find the proposal to be inconsistent with the purpose and intent of this Ordinance when impacts created by the proposal cannot be mitigated. Evaluation of the impact will be made by the Planning Commission based on the criteria listed above.

5. In the event that the plan or stormwater management plan is not approved or required modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the Town Council. In granting the appeal, the Town Council must find the plan in accordance with all applicable ordinances and include necessary elements to mitigate any detrimental impact on water quality and upon adjacent property and the surrounding area, or such plan meets the purpose and intent of this Ordinance. If the Town Council finds that the applicant's plan does not meet the above state criteria, it shall deny approval of the plan.

Sec. 11.16. ENFORCEMENT AND PENALTIES FOR VIOLATION

The enforcement and penalties for violation shall be those set forth under sections 9-24 and 9-25 of Article 4 of the Zoning Ordinance.

CHAPTER 12

EROSION AND SEDIMENT CONTROL ORDINANCE

Chapter 12 EROSION AND SEDIMENT CONTROL ORDINANCE

The Fairfax County Erosion and Sediment Control Ordinance is adopted by reference as The Town of Clifton Erosion and Sediment Control Ordinance.

CHAPTER 13

CLIFTON DAY NOISE ORDINANCE

CHAPTER 13

CLIFTON DAY NOISE ORDINANCE

13-1 DESIGNATION OF CLIFTON DAY

13-2 PROHIBITED SOUND ON CLIFTON DAY

13-3 EXCEPTIONS

13-4 ARREST

13-5 PENALTIES

Chapter 13 CLIFTON DAY NOISE ORDINANCE

Sec. 13-1.DESIGNATION OF CLIFTON DAY

The second Sunday (or third Sunday if the second Sunday has inclement weather) of October of each year beginning in 1975 and each year thereafter shall be designated "Clifton Day" in the Town of Clifton.

Sec. 13-2.PROHIBITED SOUND ON CLIFTON DAY

On Clifton Day, no person shall produce, cause to be produced, or permit to be produced on his property or in his dwelling or rental unit sound, including but not limited to all sound caused by musical instruments, if such sound caused by musical instruments, if such sound is heard by others outside the property line of the property from which the sound is produced.

Sec. 13-3.EXCEPTIONS

Subsections 13-2, 13-4. 13-5.a, 13-5.b, and 13-5.c of this Ordinance shall not apply to any emergency vehicle or fire, police or traffic control protection, or to any activity which is part of the official Clifton Day program.

Sec. 13-4.ARREST

Any person in violation of section 13-2 of this ordinance shall be given one warning to cease such violation by any official town representative (including the Mayor and Town Council members) prior to actual arrest. Upon willful failure to cease such violation after the aforesaid notice, such persons shall be arrested by any law enforcement officer designated by the Town Council or Mayor of the Town of Clifton as the agent of the Town (including the Town Sergeant), or any law enforcement officer of the County of Fairfax or the State of Virginia.

Sec. 13-5.PENALTIES

a. 1st Offense

Any person found guilty of violating this Ordinance shall be fined $250.00 plus court costs, and any legal fees, costs or expenses incurred by the Town of Clifton.

b. 2nd Offense

Any person found guilty of violating this Ordinance a second time shall be fined $500.00, plus all court costs and any legal fees, costs, or expenses incurred by the Town of Clifton, plus they shall be sentenced to serve one day in jail.

c. 3rd Offense

Any person found guilty of violating this Ordinance a third or successive time shall be fined $1,000.00, plus all court costs and any legal fees, costs, or expenses incurred by the Town of Clifton, plus they shall be sentenced to serve ten days in jail.

CHAPTER 14

INDUSTRIAL DEVELOPMENT AUTHORITY OF THE TOWN OF CLIFTON, VIRGINIA

CHAPTER 14

INDUSTRIAL DEVELOPMENT AUTHORITY

14-1 TITLE

14-2 GENERAL PROVISIONS

14-3 DIRECTORS

14-4 BY-LAWS

Chapter 14 INDUSTRIAL DEVELOPMENT AUTHORITY OF THE TOWN OF CLIFTON, VIRGINIA

Sec. 14-1. TITLE

This Ordinance (hereinafter "the Ordinance") shall be known and may be cited as the Town of Clifton Industrial Development Authority Ordinance.

Sec. 14-2. GENERAL PROVISIONS

a. Authority and Purpose of Ordinance.

This Ordinance is adopted pursuant to Section 15.2-4901 et seq. of the Code of Virginia (1950), as amended (hereinafter referred to as the "Act"). Pursuant to the Act, there hereby is created a political subdivision of the Commonwealth of Virginia, named as provided in subsection 2 hereof, with such public and corporate powers as are set forth in or permitted by the Act. This Ordinance is intended to govern the affairs and the conduct of business of the Authority with respect to the performance of its functions, powers and duties under the Act.

b. Name of the Authority.

The name of the Authority shall be the "Industrial Development Authority of the Town of Clifton, Virginia" (hereinafter referred to as the "Authority").

c. Seal.

The Seal of the Authority shall be in the form of a circle enclosing the seal of the Town of Clifton, Virginia, and shall bear the name of the Authority and the year of its creation (2003).

Sec.14.3.DIRECTORS

a. Number; Qualification.

The Authority shall consist of the seven Directors, not more than three of which are permitted to be elected members of the governing body of the Town of Clifton, Virginia. Each Director shall reside in the Town of Clifton or in Fairfax County, Virginia, take and subscribe the oath prescribed by Section 49-1 of the Code of Virginia (1950), as amended, and hold the office for the term of his appointment as prescribed by Section 15.2-4904 of the Act until his successor shall have been appointed and qualified. A Director must continue to reside either in the Town of Clifton or in Fairfax County, Virginia, or such Director's office shall be deemed to be vacant and available for appointment. A Director shall be eligible for reappointment and shall be required to satisfy all requirements for appointment to the Board of Directors at the time of such reappointment.

b. Removal; Vacancies.

Each Director may be removed from office by a majority of the appointed Directors of the Authority, for cause, after a public hearing. Any vacancy in the Board of Directors occurring other than by expiration of term shall be filled in compliance with the Act and this Ordinance but for the unexpired term only.

c. Designees.

No Director of the Authority shall be permitted to designate any person to represent and take action for him at meetings of the Authority.

CHAPTER 14

INDUSTRIAL DEVELOPMENT AUTHORITY

Sec. 14-4.BY-LAWS

The Authority shall be authorized to establish its procedure for meetings, appointment and removal of officers, establishment of committees and other administration pursuant to by-laws adopted and amended by the Authority from time to time.

CHAPTER 15

RESERVED

Chapter 15 RESERVED

MEALS TAX

CHAPTER 16

MEALS TAX

16-01 TITLE

16-02 DEFINITIONS

16-03 LEVY

16-04 COLLECTION OF TAX BY SELLER

16-05 EXEMPTIONS: LIMITS ON APPLICATION

16-06 GRATUITIES AND SERVICE CHARGES

16-07 REPORT OF TAXES COLLECTED; REMITTANCE; PRESERVATION OF RECORDS

16-08 PENALTY & INTEREST FOR FAILURE TO FILE RETURN OR REMIT TAX WHEN DUE

16-09 PENALTY FOR VIOLATION OF ORDINANCE

16-10 DUTY OF PERSON GOING OUT OF BUSINESS

16-11 ENFORCEMENT

16-12 REGULATIONS

Chapter 16 MEALS TAX

Sec. 16-1. TITLE

This Ordinance (hereinafter "the Ordinance") shall be known and may be cited as the Town of Clifton Meals Tax Ordinance.

Sec. 16-2. DEFINITIONS

a. *Cater*. The furnishing of food, beverages, or both on the premises of another, for compensation.

b. *Collector*. The Town Treasurer.

c. *Food*. Except as otherwise provided herein, all food, beverages or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time or place of service.

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

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

f. *Restaurant*. Any one of the following:

   a. Any place where food is prepared for service to the public on or off the premises, or any place where food is served, including but not limited to, lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodation of public or private clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and colleges, and kitchen areas of local correctional facilities subject to standards adopted under Va. Code § 53.1-68. Excluded from this definition are places manufacturing packaged or canned foods which are distributed to grocery stores or other similar food retailers for sale to the public.

   b. Any place or operation which prepares or stores food for distribution to persons of the same business operation or of a related business operation for service to the public, including but not limited to, operations preparing or storing food for catering services, push cart operations, hot dog stands, and other mobile points of service. Such mobile points of service are also deemed to be restaurants unless the point of service and of consumption is in a private residence.

g. *Town*. The Town of Clifton, Virginia.

CHAPTER 16

MEALS TAX

Sec. 16-03. LEVY

a. There is hereby imposed and levied by the Town on each person a tax at the rate of two percent (2%) on the amount paid for meals purchased from any food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not effective date one month before a Fairfax County meals tax effective date.

Sec. 16-04. COLLECTION OF TAX BY SELLER

Every person receiving any payment for food with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this ordinance from the person on whom the same is levied or from the person paying for such food at the time payment for such food is made.

The collector shall prescribe a meals tax collection return form, which shall show the amount of charges collected for meals and the tax required to be collected. The form shall contain an appropriate signature block and shall call for such other information as the collector may require.

Every person collecting the meals tax shall complete a meals tax collection return and submit it and the remittance of the tax to the collector on or before the close of business on the twentieth day of each month or on the next business day, if the former day is not a business day. Each return shall cover the amount of tax due and collected the preceding month.

All tax collections shall be deemed to be held in trust for the Town.

Sec. 16-05. EXEMPTIONS: LIMITS ON APPLICATION

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

b. The tax imposed under this ordinance shall not be levied on the following:

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

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

3. Alcoholic and non-alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption;

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

5. Any food or food product purchased for home consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and non-factory sealed beverages.

6. Vending machine sales.

c. The tax imposed hereunder shall not be levied on meals sold or provided by: the following purchases of food and beverages:

1. Restaurants to their employees as part of their compensation when no charge is made to the employee;

2. Volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; educational, charitable, fraternal, or benevolent organizations, on an occasional basis, not exceeding three times per calendar year as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes;

3. Churches that serve meals for their members as a regular part of their religious observances;

4. Public or private elementary or secondary schools, or public or private colleges or universities, to their students or employees;

5. Hospitals, medical clinics, convalescent homes, nursing homes or other extended care facilities to patients or residents thereof;

6. Day care centers;

7. Homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or

8. Age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees.

d. The tax imposed hereunder also shall not be levied on meals:

1. Used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States.

2. Provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations; or

3. Provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.

e. Additionally, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and used by the United States for any military or naval purpose shall be required to collect and remit meals taxes.

Sec. 16-06. GRATUITIES AND SERVICE CHARGES

The tax imposed hereunder may not be imposed on (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price of the meal; or (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price of the meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the sales price.

Sec. 16-07. REPORT OF TAXES COLLECTED; REMITTANCE; PRESERVATION OF RECORDS

It shall be the duty of every person required by this ordinance to pay to the Town the taxes imposed by this ordinance to make a report thereof setting forth such information as the collector may prescribe and require, including all purchases taxable under this ordinance, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this ordinance.

Such records shall be kept and preserved for a period of three (3) years. The Collector shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this ordinance, and to make transcripts of all or any parts thereof.

Sec. 16-08. PENALTY & INTEREST FOR FAILURE TO FILE RETURN OR REMIT TAX WHEN DUE

a. If any person shall fail to file a tax return required by this Ordinance when due, the collector shall assess a penalty of ten percent (10%) of the tax assessable on such return, or ten dollars ($10.00), whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax assessable. The penalty shall be assessed on the day after such return is due. Any such penalty shall become a part of the tax.

b. If any person shall fail to pay a tax imposed by this article, when due, the collector shall assess a penalty ten percent (10%) for the first month the taxes are past due, and five percent (5%) for each month thereafter, up to a maximum of 25% of the taxes collected but not remitted, or ten dollars ($10.00), whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax assessable. The penalty for failure to pay any tax shall be assessed on the day after the tax is due. Any such penalty shall become a part of the tax.

a. In addition to the penalty on delinquent taxes imposed under this Ordinance, there shall be added to such tax by the collector, interest at the rate of ten percent (10%) per annum on the taxes and penalty. The interest shall commence on the first day following the day such taxes are due and shall continue until all such taxes and penalty are paid. The Town shall pay to the taxpayer interest on the overpayments due to erroneously assessed taxes imposed under this Ordinance at the same rate as is assessed in this section on delinquent taxes, provided that no interest shall be required to be paid on a refund of ten dollars ($10.00) or less.

b. Penalty and interest for failure to file a return or to pay a tax imposed under this Ordinance shall not be imposed if such failure was not the fault of the taxpayer, or was the fault of the collector, as the case may be. The failure to file a return or to pay a tax because of the death of the taxpayer or a medically determinable physical or mental impairment on the date the return or tax is due shall be presumptive proof of lack of fault on the taxpayer's part, provided the return is filed or the taxes are paid within thirty days of the due date; however, if there is a committee, legal guardian, conservator or other fiduciary handling the individual's affairs, such return shall be filed or such taxes paid within 120 days after the fiduciary qualifies or begins to act on behalf of the taxpayer. Interest on such taxes shall accrue until paid in full. Any such fiduciary shall, on behalf of the taxpayer, by the due date, file any required returns and pay any taxes which come due after the 120-day period. The collector shall make determinations of fault relating exclusively to failure to pay a tax, and of fault relating exclusively to failure to file a return.

Sec. 16-09. PENALTY FOR VIOLATION OF ORDINANCE

a. Any person who willfully fails or refuses to file a return as required under this Ordinance or who makes a false statement with intent to defraud in such returns shall, upon conviction thereof, be guilty of (i) a Class 3 misdemeanor if the amount of the tax lawfully assessed in connection with the return is $1,000 or less, or (ii) a Class 1 misdemeanor if the amount of the tax lawfully assessed in connection with the return is more than $1,000.

b. Except as otherwise provided in this Ordinance, any corporate or partnership officer, as defined in Virginia Code § 58.1-3906, or any other person required to collect, account for, or pay over the meals tax imposed under this ordinance, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade such tax or payment thereof, shall, in addition to any other penalties imposed by law, be guilty of a Class 1 misdemeanor.

c. The Town may collect delinquent meals taxes by civil action or other authorized judicial, administrative, or statutory tax or debt collection procedure.

d. The Town reserves the right to prosecute violations of this Ordinance under the applicable criminal provisions of state law.

e. Each violation of or failure to comply with this Ordinance shall constitute a separate offense. Conviction of any such violation shall not relieve any person from the payment, collection or remittance of the tax as provided in this Ordinance.

Sec. 16-10. DUTY OF PERSON GOING OUT OF BUSINESS

Whenever any person required to collect and remit to the Town any tax imposed by this Chapter shall cease to operate or otherwise dispose of his or her business, the tax shall immediately become due and payable, and the person shall immediately make the collector a report and remittance thereof.

Sec. 16-11. ENFORCEMENT

a. It shall be the duty of the collector to ascertain the identity of every seller in the Town liable for the collection of the tax imposed by this Chapter, who fails, refuses or neglects to collect such tax or to make the reports and remittances required by this Chapter. The collector may summon the taxpayer or any other person to appear before him at his office, to answer, under oath, questions relating to the tax liability of any and all taxpayers and/or to produce documents relating to such tax liability. The collector may seek a conviction or other civil remedy, including injunction, against such person.

b. Any such person who refuses to answer, under oath, questions touching any person's tax liability shall be deemed guilty of a Class 4 misdemeanor. Each day's refusal to answer such questions shall constitute a separate offense. Any court of competent jurisdiction may, or upon application of the collector or his deputy, compel the compliance of a taxpayer summoned or required to produce documents.

c. The summons may be served by the collector, or his deputy or designee, or may be directed to the sheriff to be served pursuant to Va. Code Ann. § 8.01-292 and executed and returned in like manner as civil process of a court of competent jurisdiction.

d. In the event the purchaser of any meal refuses to pay the tax imposed by this Chapter, the seller may call upon the Police Department for assistance; and the investigating officer may, when probable cause exists, issue the purchaser a summons returnable to the General District Court as provided by law.

Sec. 16-12. REGULATIONS

The Town Treasurer may issue regulations for the administration and enforcement of this Chapter not in conflict with this Chapter.