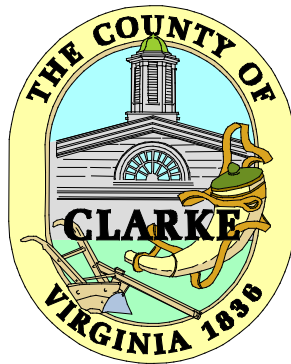


# Code of Clarke County, Virginia



Re-Codified 1997 Adopted October 21, 1997

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Re-Codified 1988

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1<sup>st</sup> Revision and Codification of the General Ordinances Passed  
on or before February 6, 1974

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Updates through August 8, 2024

*This a controlled document.*

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# Chapter 1 General Provisions

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# Chapter 1 General Provisions

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## Article I Adoption of Code by Board of Supervisors

[11-17-1997]

### *§ 1-1. Designation and citation of Code.*

The ordinances embraced in this and the following chapters and sections shall constitute and be designated The Code of the County of Clarke, Virginia, and may be so cited. Such Code may also be cited as The Clarke County Code.

(Code 1974, § 1-1. Contents and designation of Code)

State Law references § 15.2-1433. Codification and recodification of ordinances, Code of Virginia; § 8.01-386 judicial notice of laws, Code of Virginia.

### *§ 1-2. Definitions and rules of construction*

In the interpretation of this Code and of all ordinances of the county, the following definitions and rules of construction shall be observed, unless they are inconsistent with the manifest intent of the board of supervisors, or the context clearly requires otherwise. All words, terms, etc., not defined in this section or elsewhere in this Code shall be construed as provided in the Code of Virginia.

Board of Supervisors, Board	Whenever the terms "board of supervisors" and "board" are used, they shall be construed to mean the Board of Supervisors of the County of Clarke.
Code of Virginia	The words "Code of Virginia" shall mean the <u>Code of Virginia of 1950</u> , as amended.
Commonwealth, state	The words "the commonwealth," "this commonwealth," "the state," and "this state" shall mean the Commonwealth of Virginia.
Computation of time	The time within which an act is to be done shall be computed by excluding the first and including the last day; and if the last day is Saturday, Sunday, or a legal holiday, that day shall be excluded.

County	The words "the county" and "this county" shall mean the County of Clarke in the Commonwealth of Virginia.
Fee	The word "fee" shall mean a rate, charge, or license tax consistent with state requirements, that is fixed from time to time by the Board of Supervisors by resolution.
Following	The word "following," when used by way of reference to any section or sections in this Code, shall be construed to mean next following that in which such reference is made.
Gender	A word importing that masculine gender only may extend and be applied to females and to corporations as well as to males.
Health officer	The term "health officer" shall mean the public health officer of the county or representative of the state board of health serving this county.
May	The word "may" shall be permissive.
Month	The word "month" shall mean a calendar month.
Number	A word importing a singular number only may extend and be applied to several persons or things, as well as to one (1) person or thing, as well as several persons or things.
Oath	The word "oath" shall be construed to include an affirmation in all cases in which by law an affirmation may be substituted for an oath.
Occupant	The word "occupant" applied to a building or land shall mean any person who holds a written or oral lease of or actually occupies the whole or part of such building or land, either alone or with others.

Officers, boards, etc.	Whenever reference is made to a particular officer, department, board, commission, or other agency, such reference shall be construed as if followed by the words "of the County of Clarke, Virginia." A reference to a particular officer shall also be construed as if followed by the words "or his duly authorized representative, deputy, or assistance," subject, however to the provisions of § 15.2-1502 Employment of certain deputies and assistants; delegation of powers and duties of the Code of Virginia.
Owner	The word "owner" applied to any property shall include any part owner, joint owner, tenant in common, joint tenant, or tenant by the entirety of the whole or part of such property.
Person	The word "person" shall include a firm, partnership, association of persons, corporation, body politic, organization, or any other group acting as a unit as well as an individual.
Police Officer	The words "police officer" shall include the sheriff and his deputies, state police officers, United States marshals and their deputies, and all other law enforcement officers having authority to make arrests, but shall not include private citizens who may make arrests under the common law for felonies and breaches of the peace committed in their presence.
Preceding	The word "preceding" when used by way of reference to any section or sections of this Code shall be construed to mean next preceding that in which such reference is made.
Property	The word "property" shall mean real, personal, or mixed property.



Public grounds	The words "public grounds" shall mean the parks and all public lands owned by the county, and those parts of public places which do not form traveled parts of streets as defined in this section.
Road; highway	The words "road" and "highway" shall have the same meaning as the word "street" as such word is defined in this section.
Shall	The word "shall" shall be mandatory.
Sidewalk	The word "sidewalk" shall mean any portion of a street between the curblineline or the lateral lines of a roadway where there is no curb and the adjacent property line, intended for the use of pedestrians.
Standard time	Whenever particular hours are specified in this Code relating to the time within which any act shall or shall not be performed by any person, the time applicable shall be official standard time, or daylight savings time, whichever may be in current use in the county.
State	See "commonwealth."
Street	The word "street" shall include avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges, and the approaches thereto, and all other public thoroughfares in the county, and shall mean the entire width thereof between abutting property lines.
Swear, sworn	The words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed" in all cases in which by law an affirmation may be substituted for an oath.
Tense	Words used in the present tense shall include the future.

Written, in writing

The words "written" and "in writing" shall include any representation of words, letters, or figures, whether by printing or otherwise.

Year

The word "year" shall mean a calendar year.

(Code 1974, §1-2 Effective date of Code)

State law references - Common law, statutes and rules of construction, Code of Virginia, § 1-1 Contents and designation of Code et seq.; § 49-9 When affirmation may be made, Code of Virginia .

### *§ 1-3. Provisions considered as continuations of existing ordinances*

The provisions appearing in this Code, so far as those of the ordinances included in this Code, shall be considered as continuations thereof and not as new enactments.

(Code 1974, § 1-4. Effect of such repeal generally; effect of revision or amendment of state Constitution)

### *§ 1-4. Severability*

The provisions of this Code and the application thereof to any person or circumstances, which are held invalid, shall not affect the validity of other provisions or applications of this Code which can be given effect without the invalid provisions or applications.

(Code 1974, § 1-6 Effect of repeal of validating statutes)

State law reference - § 1-17.1 Severability of statutes, Code of Virginia.

### *§ 1-5. Catchlines of sections*

The catchlines of the sections of this Code are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections, nor as any part of any section, nor, unless expressly so provided, shall they be so deemed when any section, including its catchline, is amended or reenacted.

(Code 1974, § 1-3 Repeal of acts of a general nature)

State law reference - § 1-13.9 Headlines of sections of Code of Virginia.

### *§ 1-6. Classification of and penalties for violations; continuing violations*

- a) Whenever in this Code, any ordinance or resolution of the county, or rule, regulation or order promulgated by any officer or agency of the county under authority duly vested in him or it, any act is prohibited or is declared to be unlawful or a misdemeanor or an offense, the doing of any act is required, or the failure to do any act is declared to be unlawful or a

misdemeanor or an offense and no specific class of misdemeanor or penalty is provided therefore, the violation of any such provision of this Code or any such ordinance, resolution, rule, regulation or order shall be punished by a fine of not more than two thousand five hundred dollars (\$2,500.00), by imprisonment for not more than twelve (12) months, or by both such fine and imprisonment; provided, however, that such penalty shall not exceed the penalty prescribed by general law for a like offense. (Amended by Ordinance of 06/18/91 increasing fine from \$1,000 to \$2,500.)

- b) Whenever in this Code, any other ordinance of the county, or any rule or regulation promulgated by any officer or agency of the county under authority duly vested in such officer or agency it is provided that a violation of any provision thereof shall constitute a class 1, 2, 3 or 4 misdemeanor, such violation shall be punished as follows:
- 1) **Class 1 misdemeanor:** By a fine of not more than Two thousand Five Hundred dollars (\$2,500.00), or by confinement in jail for not more twelve (12) months, or by both such fine and confinement. (Amended by Ordinance of 6/18/91 increasing fine from \$1,000 to \$2,500.)
  - 2) **Class 2 misdemeanor:** By a fine of not more than one thousand dollars (\$1,000.00), or by confinement in jail for not more than six (6) months, or by both such fine and confinement. (Amended by Ordinance of 06/18/91 increasing fine from \$500 to \$1,000.)
  - 3) **Class 3 misdemeanor:** By a fine of not more than five hundred dollars (\$500.00).
  - 4) **Class 4 misdemeanor:** By a fine of not more than Two Hundred Fifty dollars (\$250.00). (Amended
- c) Except as otherwise provided, each day any violation of this Code or any such ordinance, rule, regulation or order continues shall constitute a separate offense.

(Code 1974, § 1-7 Acts passed between certain dates not affected)

State law references - Penalties for violation of ordinances, Code of Virginia, § 15.2-1429 therefore, Code of Virginia § 18.2-9 Classification of criminal offenses; § 18.2-11. Punishment for conviction of misdemeanor.

*§ 1-7. Liability of corporations, associations, organizations and their agents, officers for violations.*

- a) Any violation of this Code by any officer, agent or other person acting for or employed by any corporation or unincorporated association or organization, while acting within the scope of his office or employment, shall in every case also be deemed to be a violation by such corporation, association or organization.
- b) Any officer, agent or other person acting for or employed by any corporation or unincorporated association or organization shall be subject and liable to punishment as well

as such corporation or unincorporated association or organization for the violation by it of any provision of this Code, where such violation was the act or omission or the result of the act, omission or order of any such person.

(Code 1974, § 1-8 Notice, recognizance or process given, taken or issued before Code in force.)

*§ 1-8. Effect of Code on prior offenses, rights, prosecutions, judgments.*

Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done; any penalty or forfeiture incurred; any contract or right established or accruing; any prosecution, suit or proceeding pending or any judgment rendered on or before the effective date of this Code.

(Ordinance of 12-3-74, § 3)

*§ 1-9. Miscellaneous provisions not affected by Code.*

Nothing in this Code or the ordinance adopting this Code shall affect any ordinance or resolution:

- 1) Promising or guaranteeing the payment of money by or for the county or authorizing the issuance of any bonds or any evidence of indebtedness;
- 2) Authorizing or otherwise relating to any contract or obligation assumed by the county;
- 3) Granting any franchise or right;
- 4) Related to particular traffic-control devices required by law, that is consistent with this Code;
- 5) Related to license or privilege taxes, that is consistent with this Code;
- 6) Related to aviation;
- 7) Related to a county agricultural district;
- 8) Related to erosion and sediment control;
- 9) Related to cable television;
- 10) Related to county inventories;
- 11) Related to social security, retirement and group insurance;
- 12) Related to the amount of tax exemptions;
- 13) Appropriating funds or related to the compensation and other benefits of officers, agents or employees or an annual tax levy or budget;

- 14) Establishing magisterial districts;
- 15) Establishing fees;
- 16) Authorizing, providing for or otherwise related to any particular street, alley, right-of-way or other public improvement or easement;
- 17) Making any assessment;
- 18) Related to zoning or the subdivision of land;
- 19) Related to electrical wiring and installments;
- 20) The purposes of which have been accomplished;
- 21) That is temporary, although general in effect; or
- 22) That is special, although permanent in effect;

and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

(Ord. of 12-3-74, § 3)

*§ 1-10 Effect of repeal on former ordinances.*

When an ordinance that has repealed another ordinance shall itself be repealed, the previous ordinance shall not be revived without express words to that effect.

(Code 1974, § 1-5. Effect of such repeal as to persons in office)

# Chapter 6 Boards And Commissions

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## Chapter 6 Boards And Commissions

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[HISTORY: Adopted by the Board of Supervisors of Clarke County as indicated in article histories. Amendments noted where applicable.]

### General References

Supervisors, Board of Chapter 39

### Code Of Virginia References

§ 22.1-57.3 Election of school board members

### Article I Appointments

#### *§ 6-1. Appointive boards generally.*

Except as otherwise provided by law, ordinance or resolution, all appointments to county boards and commissions shall be from the county at large.

### Article II School Board

#### *§ 6-2 Election; terms of office; composition.*

- a) Following the voter referendum held on November 8, 1994, in favor of changing the method of selecting School Board members to direct election by the voters and pursuant to the authority contained in the Code of Virginia, § 22.1-57.3, elections of School Board members in Clarke County shall be held to coincide with the elections of the members of the governing body of the county, commencing at the regular general election to be held November 7, 1995.
- b) The initial elected School Board shall consist of the same number of members as the appointed School Board being replaced, and the elected members shall be elected from the established county election districts.
- c) The terms of the members of the elected School Board for the county shall be the same as the terms of the members of the governing body for the county.
- d) At each subsequent regular general election for members of the governing body, the same number of members of the School Board shall be elected.
- e) The election districts for the School Board shall be coterminous with the election districts for the county governing body.

- f) The terms of office for the elected School Board members shall commence on January 1 of the year following the general election. On December 31 following the first election of county School Board members, the terms of office of the members of the appointed School Board then in office shall expire, and the School Board Selection Commission shall be abolished.

## Amendments Chapter 6

01-19-1988

Adopted 1-19-1988 as §2-6 of the 1987 Code

03-21-1995

Adopted 3-21-1995



# Chapter 10 Checks, Fraudulent

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## Chapter 10 Checks, Fraudulent

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 01-19-1988 as § 2-5 of the 1987 Code. Amendments noted where applicable.]

### Code of Virginia References

§ 15.2-106. Ordinances providing fee for passing bad checks to localities

#### *§ 10.1. Using bad checks for payments to county.*

For the uttering, publishing or passing of any check or draft for payment of taxes or any other sums due the county which is subsequently returned for insufficient funds or because there is no account or the account has been closed, there is imposed a fee in an amount not to exceed the amount provided for in § 15.2-106 of the Code of Virginia.

#### *§ 10.2. Payment of local taxes, fees, or other charges by credit card.*

- a) The Treasurer of Clarke County is authorized to accept payment of local taxes and other fees or charges by use of a credit card.
- b) In addition to any penalties and interest arising pursuant to § 58.1-3915. Penalty for failure to pay taxes by December 5 through § 58.1-3918. Interest on taxes not paid by following day, the Treasurer may add to such payment a sum not to exceed four percent of the amount of tax, penalty, interest or other fee or charge for the acceptance of such card, provided that such charge does not exceed the amount charged to the county by the credit card service.

### Amendments Chapter 10

03-16-1999

Adopted § 10.2 Payment of local taxes, fees, or other charges by credit card. Section Added.

# Chapter 12 Conservation Easement Program

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## Chapter 12 Conservation Easement Program

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[HISTORY: Adopted by the Board of Supervisors of Clarke County June 18, 2002]

### § 12-1. Articles of Incorporation

- A. The name of the Authority is the Clarke County Conservation Easement Authority. The address of its principal office is 102 North Church Street, Berryville, Virginia 22611.
- B. The Authority is created under the Public Recreational Facilities Authorities Act, Chapter 56 of Title 15.2 (§ 15.2-5600 Public Recreational Facilities Authorities Act, et seq.), Code of Virginia.
- C. The participating locality is Clarke County, Virginia.
- D. The names, addresses, and terms of office of the initial members of the Board of Directors of the Authority are:

Name	Address	Term
Michael Hobert	P.O. Box 588 Berryville, VA 22611	12/31/02
Tom McFillen	117 Rosemont Circle Berryville, VA 22611	4/30/03
Winkie MacKay-Smith	1038 Carters Line Road White Post, VA 22663	12/31/04
John Bieschke	P.O. Box 61 White Post, VA 22663	12/31/03
David Weiss	P.O. Box 349 Berryville, VA 22611	12/31/03
Randy Buckley	P.O. Box 1 White Post, VA 22663	12/31/04
Jane Radford	2008 Morgans Mill Road Bluemont, VA 20135	12/31/02

- E. The purposes of the Authority are to acquire and/or receive conservation easements, by purchase, gift, or other conveyance; to hold and enforce conservation easements conveyed to it; to administer the Clarke County Conservation Easement Purchase Program pursuant to Chapter 72 Conservation Easement Purchase Program of the Clarke County Code; and to exercise any powers authorized by the Public Recreational Facilities Authorities Act.

### § 12.2. Board of Directors

The powers of the Authority shall be exercised by a Board of Directors of seven (7) members, appointed by the Board of Supervisors, to be comprised of one (1) member from the Board of Supervisors, one (1) member from the Planning Commission, and five (5) Clarke County citizen members. At the first meeting of the Board of Supervisors each calendar year, beginning 2003,

the Board shall appoint one (1) member from the membership of the Board of Supervisors for a term of one (1) year beginning January 1; one (1) member from the Planning Commission for a one (1) year term beginning May 1; and a member or members to fill expiring citizen member terms, for a term of three (3) years beginning January 1.

*§ 12-3 Co-Holding of Easements*

[Added 07-09-18]

The county and the authority shall be co-holders of all conservation easements acquired and/or received by the Authority. In addition, where advisable the Authority shall seek an additional public body, as defined in the Virginia Open-Space Land Act, or, as permitted by law, other federal or state agency or private organization, to be an additional co-holder.

**Amendments Chapter 12**

2007-09-18

CC-07-07 add section 12-3 Co-holding of Easements.

# Chapter 16 Fire Companies, Volunteer

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## Chapter 16 Fire Companies, Volunteer

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 1-19-1988 as § 5-2 of the 1987 Code. Amendments noted where applicable.]

### Code of Virginia References

§ 40.1-79.1. - Statutory authority

§ 40.1-103. - Cruelty and injuries to children

### *§ 16-1. Minimum Age For Volunteer Firefighter*

Any person 16 years of age or older, with parental or guardian approval, may work with or participate fully in all activities of a volunteer fire company, provided that such person has attained certification under National Fire Protection Association 1001, level one, firefighter standards, as administered by the State Department of Fire Programs.

### *§ 16-2. Exemptions<sup>1</sup>*

Any trainer or instructor of such persons mentioned in § 16-1 and any member of a paid or volunteer company who supervises any such persons shall be exempt from the provisions of § 40.1-103 of the Code of Virginia when engaged in activities of a volunteer fire company, provided that the volunteer fire company has purchased insurance which provides coverage for injuries to or the death of such persons in their performance of activities under this chapter.

### References

<sup>1</sup> Editor's Note: Amended at time of adoption of Code (See Ch. 1, General Provisions, Art. 1)

# Chapter 17 Fire, Emergency Medical Services (EMS), and Emergency Management

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## Chapter 17 Fire, Emergency Medical Services (EMS), and Emergency Management

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 10-21-2014 as Chapter 17 of the 1997 Code as. Amendments noted where applicable.]

### Code of Virginia References

§ 18.2-414.1. Obstructing members of rescue squad in performance of mission; penalty.

§ 27-14. Ordinances as to fire/EMS departments, etc.

§ 27-15.1. Authority of chief or other officer in charge when answering alarm or operating at an emergency incident; penalty for refusal to obey orders.

§ 27-23.6. Provision of fire-fighting or emergency medical services.

§ 44-146.19. Powers and duties of political subdivisions.

### *§17-1 Establishment of the Department of Fire, Emergency Medical Services (EMS), and Emergency Management*

- A. In order to help ensure the protection of citizens, visitors, and property of Clarke County, the firefighting, emergency medical services (EMS), and emergency management services are organized under a Department of Fire, Emergency Medical Services (EMS), and Emergency Management (“the Department”). These services shall be provided by using both County-employed and volunteer company firefighters and EMS personnel. As such, the County-recognized volunteer fire-fighting and EMS entities shall be deemed an instrumentality of the County and shall receive the full benefit and protections of the law while acting in that capacity.
- B. In order to effectively carry out the provisions of Subsection A of this section, the Department shall be organized to coordinate all fire, EMS, and emergency management and preparedness services within the County.
- C. The Department shall be composed of the County officials and County-employed staff (“the Staff”) of the Department, and the volunteer fire and EMS companies. The volunteer fire and EMS companies are recognized as entities of the Department and are an integral part of the County’s public safety program.

### *§17-2 Appointment of the Chief*

- A. The County Administrator shall appoint the head of the Department, who shall be known as the “Chief”. The Chief shall carry out the responsibilities set forth in §17.5. The Chief shall have no jurisdiction over the internal affairs of the volunteer companies. The Chief

shall report to the County Administrator and the Department Staff shall report to the Chief.

### *§17-3 Emergency Management*

- A. The County Administrator shall serve as the County's Director of Emergency Management. The responsibilities of the Director of Emergency Management may be delegated at the discretion of the County Administrator.
- B. The Chief shall serve as the County's Coordinator of Emergency Management and shall provide general management of the planning, preparation, and response for any disaster which impacts the County and requires implementation of the County's emergency operations plan.

### *§17-4 Responsibilities of the Department*

- A. The Department shall be responsible for coordinating and managing the services and functions as described above in §17-1 and in the sections below.
- B. The Department may employ Staff to perform a variety of functions to support fire, EMS, and emergency management services. These functions include but are not limited to firefighting, emergency medical services/EMT, volunteer recruitment/retention, grant writing, and administrative services. The Chief shall manage and oversee the Staff unless otherwise designated by the County Administrator.

### *§17-5 Responsibilities of the Chief*

- A. The Chief shall carry out the responsibilities and general management of the Department, shall establish and enforce Departmental policies, procedures, and guidelines consistent with this Chapter for the administration and operation of the Department. The Chief's specific responsibilities shall be as assigned by the County Administrator.
- B. The Chief shall have management oversight of the Department's Staff. Management oversight of the volunteer companies and volunteer staff shall be the responsibility of the chiefs of the individual companies and their respective governing boards.
- C. The Chief shall make periodic recommendations to the County Administrator and Board of Supervisors on how to effectively provide the best fire and emergency services available based on risk management principles within the parameters established by the Board for fiscal management and emergency response service level objectives.
- D. The Chief shall serve as a senior officer for fire and/or EMS and shall have the authority to take command of an incident on an as-needed basis in the absence of, or directed by, a volunteer chief. The Chief shall possess the skills, training, and certifications necessary to serve as a senior fire officer, senior EMS officer, or both. The Chief shall have the authorities granted by the Code of Virginia §27-15.1, §27-17, and §27-17.1.

*§17-6 Reserved*

*§17-7 Recognition of Providers of Fire and Emergency Services*

- A. Volunteer organizations. The following volunteer organizations are hereby recognized as entities of the Clarke County Department of Fire, Emergency Medical Services (EMS), and Emergency Management and are hereby permitted to provide fire and EMS services in Clarke County:
  - 1. John H. Enders Fire Company and Rescue Squad
  - 2. Boyce Volunteer Fire Company
  - 3. Blue Ridge Volunteer Fire and Rescue Company 8
- B. Other organizations and groups. The following organizations and groups are hereby recognized as non-jurisdictional entities that are hereby permitted to provide fire and EMS services in Clarke County:
  - 1. Mount Weather Emergency Operations Center.
  - 2. Entities responding to Clarke County emergencies in accordance with mutual aid agreements.
- C. Response areas. Each of the organizations listed in §17-7(A) shall be assigned response areas that provide the best services to the citizens of the County. Response areas shall be determined among the volunteer companies and a written copy of the response areas shall be provided to the Chief, who shall maintain the copy and make it available to the Emergency Communications Center and the general public. Response areas may be reviewed and updated periodically. Non-jurisdictional entities listed in §17-7(B) may be assigned a response area if determined to be appropriate by the volunteer companies.

*§17-8 Entities of County Fire and EMS Department*

- A. Each of the organizations listed in §17-7(A) and (B) shall coordinate their operations and activities with the Department and shall carry out their assigned tasks to the best of their ability.
- B. Each volunteer organization listed in §17-7(A) shall appoint a chief who shall be responsible for the overall direction and control of fire and EMS activities using federally-mandated NIMS protocols within the organization's respective first due response areas. Additionally, the chief shall ensure that the organization complies with all of the provisions of applicable laws, ordinances, and standard operating procedures/guidelines in coordination with the Department and shall advise and communicate the organization's operations and activities with the Chief.
- C. The fire and EMS Staff, when responding to calls, shall follow all applicable federal, state, and local regulations and will function under the same standards incorporating NIMS as noted in subsection B above.

*§17-9 Personnel Responsibility and Authority*

- A. All officially recognized members of the organizations listed in §17-7(A) and (B) shall perform their respective duties, as outlined in the standard operating procedures/guidelines and applicable laws and ordinances, to the best of their ability.
- B. All officially recognized members of the organizations listed in §17-7(A) and (B) shall be subject any procedures and practices established by the Board of Supervisors.
- C. While performing in their official capacity, each of the members of the organizations and groups listed in in §17-7(A) and (B) shall have the authority to carry out their respective assignments as provided for in applicable laws, ordinances, and standard operating procedures/guidelines.
- D. While performing in their official capacity and acting within the guidelines of the Department, each of the members of the organizations and groups listed in in §17-7(A) and (B) shall be afforded all of the privileges, rights, and remedies available to them under the law.

*§17-10 Obedience to orders of the senior officer in charge at the scene of accidents, disasters, and other fire, medical, and rescue oriented incidents*

Every person present at the scene of any fire, medical, or rescue emergency shall be obedient to the orders of the senior officer in charge in any matter related to fire/medical/rescue matters; freedom of fire and EMS company, personnel, and apparatus to perform their duties or to function properly; and the maintenance of order at or near the scene of the emergency.

It shall be unlawful for any person to disobey any such order of the senior officer in charge.

The senior officer in charge shall have the authority to cause the arrest of persons who disobey such orders and to hold them in custody until the incident or danger is abated, at which time the violator shall be dealt with according to law.

*§17-11 Service fee for ambulance transport*

Code of Virginia References (§18.2-414.1; §27-14; 15.1; and 23.6; §44-146.19; §32.1-111.14; §38.2-3407.9)

*A. Purpose.*

A service fee is hereby established for basic life support transport (BLS), advanced life support level 1 transport (ALS 1), advanced life support level 2 transport (ALS 2), and for ground transportation mileage on each person being transported by an emergency services organization that is authorized to

provide emergency medical services in accordance with this Chapter.

*B. Definitions.*

As used in this article, the following terms shall have the meanings indicated:

1. Advanced life support level 1 (ALS 1) – Medical treatment or procedures provided to a patient beyond the training of an EMT-Basic as defined by the National Emergency Medicine Services (EMS) Education and Practice Blueprint for the Emergency Medical Technician – Basic (EMT-Basic), but not ALS 2.
2. Advanced life support level 2 (ALS 2) – Advanced life support services provided to a patient, including one or more of the following medical procedures:
  - a. Defibrillation/cardioversion
  - b. Endotracheal intubation
  - c. Cardiac pacing
  - d. Chest decompression
  - e. Intraosseous line
  - f. Administration of three or more medications

*C. Fee Schedule.*

The schedule of fees for emergency ambulance transport services shall be set by resolution of the Clarke County Board of Supervisors and may be updated from time to time.

*D. Billing.*

1. Clarke County or its agent shall generate a bill for ambulance transports. Billing, payment, and collection policies shall be established by resolution of the Board of Supervisors.
2. Clarke County may contract with a third-party that shall be designated as the County's agent for billing and related services.

3. Emergency medical services organizations shall submit information required for the County or its agent to generate a bill for such services including but not limited to call sheets/patient care reports. Due to the fact that patient care information is highly confidential under several state and Federal laws, such information will remain the responsibility of the organization responding to individual calls. Information shared under this subsection shall be that information reasonably necessary to accomplish the billing process or other arrangement as mutually agreed to by the providing agency and the County.

## Amendments Chapter 17

2014-10-21

Chapter 17 Added CC-2014-3

2015-01-20

Chapter 17 Fire, Emergency Medical Services (EMS), and Emergency Management, Department Of, Amendment to establish a service fee for ambulance transport. CC-2015-01

2016-09-20

Chapter 17 §17-6 Fire and EMS Commission B. Membership Composition

2023-09-19

Change "Director" to "Chief" and clarify EOP roles.

2024-01-16

Remove §17-6 Fire and EMS Commission and remove "whose point of origin is within the boundaries of Clarke County" from §17-11(D).

# Chapter 24 Officers And Employees

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## Chapter 24 Officers And Employees

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[HISTORY: Adopted by the Board of Supervisors of Clarke County as indicated in article histories. Amendments noted where applicable.]

### General References

Chapter 71 Building Construction

### Code Of Virginia References

§ 15.2-1527. Bonds of officers

§ 36-105. - Enforcement of Uniform Statewide Building Code

§ 36-97 et seq. - Uniform Statewide Building Code

### Article I Bonds

[Adopted 01-19-1988 as § 2-1 of the 1987 Code]

#### *§ 24-1. Bonds of officers, employees and agents.*

All officers, employees and agents of the county who are required to give bond shall give bond with corporate surety, and the county shall pay the premium therefore, except as to the Treasurer, who may give bond as provided in the Code of Virginia, § 15.2-1529. Amount of bond of treasurer or director of finance of counties

### Article II Disposition of Fees

[Adopted 01-19-1988 as § 2-4 of the 1987 Code]

#### *§ 24-2. Payment into county treasury.*

Except as may be specifically provided otherwise by state law, this Code or other ordinances, all fees paid to county officers and employees for services rendered or documents furnished shall belong to the county and shall be paid into the county treasury by the recipients thereof not less frequently than once each week.

### Article III Building Official/Department

[Adopted 01-19-1988 as § 4-1 of the 1987 Code]

#### *§ 24-3. Office of Building Official established.*

The office of the Building Official is hereby established. Except as may be provided otherwise by state law, this Code or other ordinance, the Building Official shall administer and enforce the provisions of Chapter 71, Building Construction, and the provisions of state law relating



to buildings and structures within the county, and he shall have such powers and perform such duties as may be necessary for such administration and enforcement.

*§ 24-4. Records; annual report.*

- A. The Building Official shall keep or cause to be kept a record of the business of his office, which shall be open to public inspection.
- B. The Building Official shall annually submit a report to the Board of Supervisors covering the work of his office during the preceding year.

*§ 24-5. Building Department.*

The office of the Building Official as established by this article shall be deemed to constitute the Building Department of the county and may be referred to as such, provided that the Board of Supervisors may at any time enter into an agreement with the governing body of another Virginia county or municipality or with some other agency or a state agency approved by the State Department of Housing and Community Development for the enforcement of any part or all of the Virginia Uniform Statewide Building Code within the county.<sup>2</sup>

**Article IV Employment, licensing and volunteer service; background check**

*§ 24-6. Employment, licensing and volunteer service background check.*

- A. This section is enacted to comply with the provisions of Code Virginia §§ 15.2-1503.1, 15.2-1505.1 and 19.2-389(A)(7), as amended, to be able to access criminal history record information regarding those persons conditionally offered employment in sensitive positions in the County service in order to determine whether the past criminal conduct of such persons would be compatible with the nature of such employment.

Further, the provisions of this section are intended to be in addition to, and not in derogation of all other federal and state statutes and County ordinances providing for access to criminal history record information concerning applicants for, and persons offered, positions in the County service.

- B. An applicant, licensee or volunteer seeking to engage in employment or volunteer service shall submit fingerprints taken by the county sheriff's office to the Central Criminal Records Exchange in Richmond, Virginia, along with the appropriate fees.
- C. The county shall pay all applicable fees to Central Criminal Records Exchange.

The Central Criminal Records Exchange will compare the subject's fingerprints against its criminal file and, if no disqualifying conduct is found therein, submit the fingerprints to the Federal Bureau of Investigation for a comparison with nationwide records.

The results of the Federal Bureau of Investigation will be returned to the Central Criminal Records Exchange, which will disseminate the state and national results to the Office of the County Administrator.

- D. The Office of the County Administrator shall disseminate the results of the criminal background check to the county for fitness determination.
- E. In rendering a fitness determination, the county will decide whether the record subject has been convicted of or is under pending indictment for:
  - 1. A crime which bears upon his ability of fitness to serve in that capacity; or
  - 2. Any felony or a misdemeanor which involved force or threat of force, controlled substances, was a sex-related offense, or a crime involving moral turpitude; or
  - 3. Has been the subject of a founded child abuse or neglect complaint.
- F. Any such person will be presumptively disqualified and any such person who is presumptively disqualified will only be permitted to engage in employment or volunteer service if authorized by the County Administrator and County Attorney.
- G. A record subject denied employment, licensure or service as a volunteer shall be notified that information from the Central Criminal Records Exchange contributed to such denial.

Should the record subject seek to amend or correct the record, the subject must contact the Central Criminal Records Exchange for a Virginia record or the Federal Bureau of Investigation for records from other jurisdictions maintained in its file.

## Amendments Chapter 24

2016-05-17

Chapter 24 add Article IV Employment, licensing and volunteer service; background check  
CC-2016-02

## References

<sup>2</sup>Editor's Note: See ~36-97 et seq. of the Code of Virginia

# Chapter 34 Sanitary Authority

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## Chapter 34 Sanitary Authority

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 01-19-1988 as § 2-8 of the 1987 Code. Amendments noted where applicable.]

### Code Of Virginia References

§ 15.2-5100. Virginia Water and Waste Authorities Act et seq.

§ 15.2-5102. One or more localities may create authority

§ 15.2-5108. - Issuance of certificate or charter (The Certificate of Incorporation or Charter of the Clarke County Sanitary Authority is on file in the office of the County Administrator.)

§ 15.2-5113. Members of authority board; chief administrative or executive officer.

§ 15.2-5114. Powers of authority.

### *§ 34-1. Continuity of Authority Actions.*

Nothing in this Code or the ordinance adopting this Code<sup>3</sup> shall affect any current ordinance, resolution or Articles of Incorporation related to the Clarke County Sanitary Authority, and they are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

### *§ 34-2. Membership.*

The board of the Authority shall be appointed by the Board of Supervisors and shall be composed of five members, one of whom shall be a resident of the Town of Boyce, each for a term of four years and until his successor is appointed and qualifies except appointments to fill vacancies, which shall be for the remainder of such un-expired term. The Town may submit a nominee or nominees to the Board of Supervisors for its consideration in making the appointment of the Boyce resident member.

### Amendments Chapter 34

2009-09-15

Chapter 34 Code of Virginia reference update and §34-2. Membership revise membership requirements to reflect changes mandated by State Code.CC-2009-06.

### References

<sup>3</sup>Editor's Note: See Ch. 1, General Provisions, Art. I.

# Chapter 36 Industrial Development Authority

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## Chapter 36 Industrial Development Authority

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[History June 6, 1972, adopted an ordinance creating the Industrial Development Authority of Clarke County, Virginia]

### Code of Virginia References

§ 15.2-4900. Industrial Development and Revenue Bond Act

#### *§ 36-1 Name*

The name of the authority shall be the Industrial Development authority of Clarke County, Virginia.

#### *§ 36-2 Definitions*

All terms used herein shall have the meanings given them in the Act.

#### *§ 36-3 Powers*

The authority shall have all the powers set forth in and permitted by the Act, including, without limitation, all powers incidental thereto or necessary for the performance of those hereinafter stated:

- A. To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;
- B. To adopt and use a corporate seal and to alter the same at pleasure;
- C. To enter into contracts;
- D. To acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish one or more authority facilities including all real and personal properties which the board of directors of the authority may deem necessary in connection therewith and regardless of whether any such facilities shall then be in existence;
- E. To lease to others any or all of its facilities and to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with an of the obligations thereof; and to include in any such lease, if desired, a provision that the lessee thereof shall have options to renew such lease or to purchase any or all of the leased facilities, or that upon payment of all of the indebtedness of the authority it may lease or convey any or all of its facilities to the lessee thereof with or without consideration;

- F. To sell, exchange, donate, and convey any or all of its facilities or properties whenever its board of directors shall find any such action to be in furtherance of the purposes for which the authority was organized;
- G. To issue its bonds for the purpose of carrying out any of its powers, including specifically, but without intending to limit any power conferred by this ordinance, the issuance of bonds to provide long-term financing of any pollution control facility, whether any such facility was constructed prior to or after the enactment hereof or the receipt of a commitment from the authority to undertake financing pursuant hereto, subject to limitations set forth in the Act;
- H. As security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities or any part or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues therefrom or from any part thereof or from any loans made by the authority;
- I. To employ and pay compensation to such employees and agents, including attorneys and real estate brokers, whether engaged by the authority or otherwise, as the board of directors shall deem necessary in carrying on the business of the authority;
- J. To exercise all powers expressly given the authority by the Board of Supervisors, or its successor, and to establish bylaws and make all rules and regulations, not inconsistent with the provisions of this ordinance or of the Act, as it may be amended from time to time, deemed expedient for the management of the authority's affairs;
- K. To appoint an industrial advisory committee or similar committee or committees to advise the authority, consisting of such number of persons as it may deem advisable. Such persons may be compensated and reimbursed for expenses as permitted by the Act;
- L. To borrow money and to accept contributions, grants and other financial assistance from the United States of America and agencies or instrumentalities thereof, the Commonwealth of Virginia (the "Commonwealth"), or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance or repair of the authority facilities, for the payment of principal of any bond of the authority, interest thereon, or other cost incident thereto, or in order to make loans in furtherance of the purposes of the Act of such money, contributions, grants, and other financial assistance, and to this end the authority shall have the power to comply with such conditions and to execute such agreements, trust indentures and other legal instruments as may be necessary, convenient or desirable and to agree to such terms and conditions as may be imposed; and
- M. To make loans or grants to any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of the Act, including for the purposes

of promoting economic development, subject to the restrictions set forth in the Act and to enter into such contracts, instruments, and agreements as may be expedient to provide for such loans and any security therefore. The authority is also permitted to forgive loans or other obligations, if it is deemed to further economic development.

#### *§ 36-4 Other Matters*

All matters regarding the authority, including, without limitation, the membership of its board of directors, its governance, the issuance by it of bonds, notes and other obligations, and the liability of the Commonwealth, its political subdivisions and the officers and directors of the authority with respect to bonds issued by the authority, shall be governed by the terms of the Act, subject to any restrictions set forth in the bylaws of the authority, as such bylaws may be amended from time to time.

#### *§ 36-5 Effective Date*

This ordinance shall take effect immediately upon its passage by the Board of Supervisors.

### Amendments Chapter 36

1999-10-22

Reestablish the Industrial Development Authority. Number assigned by staff for consistency with other localities



# Chapter 39 Supervisors, Board Of

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## Chapter 39 Supervisors, Board Of

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 01-19-1988 as Secs. 2-26 through 2-28 of the 1987 Code. Amendments noted where applicable.]

### Code Of Virginia References

Chapter 31 2.2-3100.1 et seq. State and Local Government Conflict of Interests Act

§ 2.2-3700. et seq. – Virginia Freedom of Information Act

§ 2.2-3707 Meetings to be public; notice of meetings; recordings; minutes

§15.2-1414.1 Compensation of Board members

§ 15.2-1416. Regular meetings

§ 15.2-1417. Special meetings

§ 15.2-1422. Electing a chairman and vice-chairman; mayor and vice-mayor

§ 15.2-1427. Adoption of ordinances and resolutions generally; amending or repealing ordinances

### § 39-1. Agenda.

The Clerk of the Board of Supervisors shall prepare and make available to each member of the Board of Supervisors a detailed agenda at least one day prior to each regular or adjourned meeting of the Board. No such agenda shall be departed from at the meeting to which it relates except by majority vote of the Supervisors present at the meeting.

### § 39-2. Rules.

The Board of Supervisors may, by resolution or ordinance, promulgate rules:

- A. Governing the conduct of its members with respect to their official duties and transactions and with respect to the ethics of office and imposing penalties for the violation thereof.
- B. Providing for the attendance at its meetings of the Sheriff of the county or, at his option, one of his Deputies to preserve order and to discharge such other duties as may be necessary for the dispatch of such business as may be before the Board.
- C. Providing for the attendance at its meetings of such other county officers and employees as may be helpful to the Board by providing information, opinions and advice.

- D. Providing for the order of business and parliamentary procedure at its meetings.<sup>4</sup>
- E. Providing for the appointment, powers and duties of standing and special committees.
- F. Providing for executive sessions of the Board, but no ordinance or resolution shall be offered and no final vote, decision or action shall be taken on any question or subject during an executive session.
- G. For such other purposes not contrary to state law, this Code or other ordinance as may be within the power of the Board of Supervisors to regulate for the conduct of its business.

*§ 39-3. Addressing the Board.*

Any orderly person present at a meeting of the Board of Supervisors may, upon recognition by the presiding officer, request permission to address the Board.

The presiding officer may grant such request if he considers it to be in the public interest so to do, and he shall grant such request upon the demand of any two Supervisors.

When, as the result of such an address to the Board, it appears that a subject should be considered by the Board at a subsequent meeting, the Clerk of the Board shall place such matter on the agenda for the next regular meeting of the Board of Supervisors.

## References

<sup>4</sup> Editor's Note: The rules of procedure promulgated by the Board of Supervisors are on file in the County Administrator's office.

# Chapter 40 Voting Districts

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## Chapter 40 Voting Districts

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### *§ 40-1. Election districts established and defined; population of districts and supervisor representation*

A. *Election Districts of Clarke County*, pursuant to, and as set by the authority contained in the Code of Virginia, § 15.2-1400, § 24.2-304.1-7, and § 15.2-1211 are hereby created and set forth in this section.

a. The election districts with populations set forth are as follows; supervisor representation to be as indicated:

Berryville            2,997, represented by one supervisor.

Buckmarsh            2,827, represented by one supervisor.

Millwood            3,021, represented by one supervisor.

Russell            3,082, represented by one supervisor.

White Post            2,880, represented by one supervisor.

b. The boundaries of the respective *election* districts are as set forth below, and when reference is made in the following descriptions to a road, *railroad*, or river as a boundary, it shall be construed to mean the center line of such boundary:

#### Berryville Election district.

Berryville election district shall comprise the area bounded as follows:

- Beginning at the intersection of North Buckmarsh Street (U.S. Route 340) and Mosby Boulevard (Virginia Route 1035),
- thence in a northwesterly direction with Mosby Boulevard to its intersection with Jackson Drive (Virginia Route 1041),
- thence in a southwesterly direction with Jackson Drive to its intersection with West Main Street (Virginia Route 7 Business),
- thence in a northwesterly direction with West Main Street to corporate limits of the Town of Berryville,
- thence in southwesterly and southeasterly direction with the town limits to Alexander Drive,

- thence in a southeasterly direction with Alexander Drive to its intersection with Hermitage Boulevard (Virginia Route 1029)
- thence in a southeasterly direction with Hermitage Boulevard to its intersection with Dunlap Drive (Virginia Route 1028),
- thence in a northeasterly direction with Dunlap Drive to its intersection with Henderson Court (Virginia Route 1027)
- thence in a southeasterly direction with Henderson Court to its intersection with Taylor Street (Virginia Route 1006),
- thence in a southeasterly direction with Taylor Street to its intersection with South Buckmarsh Street (U.S. Route 340),
- thence in a southwesterly direction with South Buckmarsh Street to its intersection with Hermitage Boulevard (Virginia Route 1029),
- thence in a southeasterly direction with Hermitage Boulevard to its intersection with South Church Street (Virginia Route 616),
- thence in a southwesterly direction with South Church Street to its intersection with South Buckmarsh Street (U.S. Route 340),
- thence in a southwesterly direction with South Buckmarsh Street to the corporate limits of the Town of Berryville,
- thence in a southeasterly direction with the Berryville town limits to its intersection with the Norfolk Southern Railroad,
- thence in a northeasterly direction with the Norfolk Southern Railroad its intersection with Jack Enders Boulevard (Virginia Route 700),
- thence in a northerly direction with Jack Enders Boulevard to its intersection with East Main Street (Virginia Route 7 Business), thence in a westerly direction with East Main Street to its intersection with First Street (Virginia Route 615),
- thence in a northeasterly direction with First Street to its intersection with East Fairfax Street (Virginia Route 1026),
- thence in a westerly direction with East Fairfax Street to its intersection with Soldiers Rest Lane (the eastern property line of Tax Map Parcel 142A-((A))-17),
- thence in a northeasterly direction with Soldiers Rest Lane, (the eastern property line of Tax Map Parcels 14A2-((A))-17 and 17A) to its intersection with the northern limits of the Town of Berryville,

- thence in a westerly direction with the Berryville town limits to its intersection with North Buckmarsh Street (U. S. Route 340),
- thence in a southerly direction with North Buckmarsh Street, to its intersection with Mosby Boulevard (Virginia Route 1035), the point of beginning.

#### Buckmarsh Election District

Buckmarsh election district shall comprise the area bounded as follows:

- Beginning at the intersection of Lord Fairfax Highway (U. S. Route 340) with the Jefferson County line,
- thence in a southeasterly direction with the Clarke-Jefferson County line to its intersection with the Loudoun County line,
- thence in a southwesterly direction with the Clarke-Loudoun County line to Harry Byrd Highway (Virginia Route 7),
- thence in a westerly direction with Harry Byrd Highway to its intersection with Pine Grove Road (Virginia Route 679),
- thence in a westerly direction with Pine Grove Road to its intersection with Harry Byrd Highway (Virginia Route 7),
- thence with in a westerly direction with Harry Byrd Highway to the Shenandoah River,
- thence in a southwesterly direction with the Shenandoah River to a point in the center of the Shenandoah River nearest the intersection of Lockes Mill Road (Virginia Route 613) and Briggs Road (Virginia Route 621),
- thence in a westerly direction with Lockes Mill Road and in a northerly direction with Springsbury Road (both Virginia Route 613) to its intersection with Jack Enders Boulevard (Route 700),
- thence in a northerly direction with Jack Enders Boulevard to its intersection with East Main Street (Virginia Route 7 Business),
- thence in a westerly direction with East Main Street to its intersection with First Street (Virginia Route 615),
- thence in a northeasterly direction with First Street to its intersection with Fairfax Street,
- thence in a westerly direction with Fairfax Street to Soldiers Rest Lane (the eastern property line of Tax Map Parcel 14A2-((A))-17),

- thence in a northeasterly direction with Soldiers Rest Lane (the eastern property line of Tax Map Parcel 14A2-((A))-17 and 17A) to its intersection with the northern corporate limits of the Town of Berryville,
- thence in a westerly direction with the Berryville town limits to its intersection with Lord Fairfax Highway (U. S. Route 340),
- thence in a northeasterly direction with Lord Fairfax Highway to its intersection with the Jefferson County line, the point of beginning.

#### Blue Ridge Precinct of the Buckmarsh Election District

The Blue Ridge Precinct of the Buckmarsh Election District described above shall comprise the area bounded as follows:

- Beginning at the intersection of the Clarke-Jefferson County line with the Clarke-Loudoun County line,
- thence in a southwesterly direction with the Clarke-Loudoun County line to Harry Byrd Highway (Virginia Route 7),
- thence in a westerly direction with Harry Byrd Highway to the intersection of Pine Grove Road (Virginia Route 679),
- thence with Pine Grove to its intersection with Harry Byrd Highway (Virginia Route 7),
- thence with Harry Byrd Highway in a westerly direction to the Shenandoah River,
- thence in a northerly direction with the Shenandoah River to the Clarke-Jefferson County line,
- thence in an easterly direction with the Clarke-Jefferson County line, the point of beginning.

The Buckmarsh Precinct shall comprise the remaining area as set forth in the above description of the Buckmarsh election District.)

#### Millwood Election District

Millwood election district shall comprise the area bounded as follows:

- Beginning at the intersection of Senseny Road (Virginia Route 657) and Janeville Road (Virginia Route 652),
- thence in an easterly direction with Senseny Road to its intersection with Westwood Road (Route 636),



- thence in a northeasterly direction with Westwood Road to its intersection with West Main Street (Virginia Route 7 Business),
- thence in a southwesterly direction with West Main Street to corporate limits of the Town of Berryville,
- thence in southwesterly and southeasterly direction with the town limits to Alexander Drive,
- thence in a southeasterly direction with Alexander Drive to its intersection with Hermitage Boulevard (Virginia Route 1029)
- thence in a southeasterly direction with Hermitage Boulevard to its intersection with Dunlap Drive (Virginia Route 1028),
- thence in a northeasterly direction with Dunlap Drive to its intersection with Henderson Court (Virginia Route 1027)
- thence in a southeasterly direction with Henderson Court to its intersection with Taylor Street (Virginia Route 1006),
- thence in a southeasterly direction with Taylor Street to its intersection with South Buckmarsh Street (U.S. Route 340),
- thence in a southwesterly direction with South Buckmarsh Street to its intersection with Hermitage Boulevard (Virginia Route 1029),
- thence in a southeasterly direction with Hermitage Boulevard to its intersection with South Church Street (Virginia Route 616),
- thence in a southwesterly direction with South Church Street to its intersection with South Buckmarsh Street (U.S. Route 340),
- thence in a southwesterly direction with South Buckmarsh Street to the corporate limits of the Town of Berryville,
- thence in a southeasterly direction with the Berryville town limits to its intersection with the Norfolk Southern Railroad,
- thence in a northeasterly direction with the Norfolk Southern Railroad its intersection with Jack Enders Boulevard (Virginia Route ~~613~~ 700),
- thence in a northeasterly direction with Jack Enders Boulevard to its intersection with Springsbury Road (Virginia Route 613),

- thence in a southerly direction with Springsbury Road to its intersection with Lockes Mill Road (Virginia Routes 618 and 613),
- thence in an easterly direction with Lockes Mill Road (Virginia Route 613) to the intersection of Briggs Road (Virginia Route 621),
- thence to a point in the center of the Shenandoah River nearest the intersection of Lockes Mill Road and Briggs Road,
- thence in a northeasterly direction with the Shenandoah River to its intersection with Harry Byrd Highway (Virginia Route 7),
- thence in an easterly direction with Harry Byrd Highway to its intersection with Pine Grove Road (Virginia Route 679),
- thence in an easterly direction with Pine Grove Road to its intersection with Harry Byrd Highway (Virginia Route 7),
- thence continuing with Harry Byrd Highway to the Loudoun County line,
- thence in a southwesterly direction with the Clarke-Loudoun County line to its intersection with John Mosby Highway (U. S. Route 50),
- thence in a westerly direction with John Mosby Highway to its intersection with Millwood Road (Virginia Route 723),
- thence continuing in a westerly direction with Millwood Road to a point where Spout Run intersects Millwood Road east of the village of Millwood,
- thence in a northwesterly direction with Spout Run and its tributary Page Brook Run to a point where Page Brook Run intersects Lord Fairfax Highway (U. S. Route 340),
- thence in a northeasterly direction with Lord Fairfax Highway to its intersection with Annefield Road (Virginia Route 633),
- thence in a westerly direction with Annefield Road to its intersection with Janeville Road (Virginia Route 652),
- thence with Janeville Road in a northerly direction to its intersection with Senseny Road (Virginia Route 657), the point of beginning.

#### Pine Grove Precinct of the Millwood Election District

The Pine Grove Precinct of the Millwood Election District described above shall comprise the area bounded as follows:

- Beginning in the center of the Shenandoah River nearest to a point at the intersection of Lockes Mill Road and Briggs Road (Virginia Route 613 and 621),
- thence in a northeasterly direction with the Shenandoah River to its intersection with Harry Byrd Highway (Virginia Route 7),
- thence in an easterly direction with Harry Byrd Highway to the intersection with Pine Grove Road (Virginia Route 679),
- thence in an easterly direction with Pine Grove Road to its intersection with Harry Byrd Highway (Virginia Route 7),
- thence continuing with Harry Byrd Highway to the Clarke-Loudoun County line,
- thence in a southwesterly direction with the Clarke-Loudoun County line to its intersection with Morgans Mill Road (Virginia Route 605),
- thence in a westerly direction with Morgans Mill Road, to its intersection with Frogtown Road (Virginia Route 649),
- thence in a southerly direction to Morgan Mill Stream,
- thence in a westerly direction with Morgan Mill Stream to its intersection with the Shenandoah River,
- thence in a northwesterly direction with the Shenandoah River to a point in the center of the Shenandoah River nearest the intersection of Lockes Mill Road and Briggs Road (Virginia Route 613 and 621), the point of beginning.

(The Millwood Precinct shall comprise the remaining area as set forth in the above description of the Millwood Election District.)

#### Russell Election District

Russell election district shall comprise the area bounded as follows:

- Beginning at a corner of Frederick, Clarke, and Jefferson Counties,
- thence in a southeasterly direction with the Clarke-Jefferson County line to its intersection with Lord Fairfax Highway (U. S. Route 340),
- thence in a southwesterly direction with Lord Fairfax Highway to its intersection with Harry Byrd Highway (Virginia Route 7 Bypass), at
- which point U.S. Route 340 becomes North Buckmarsh Street thence in a southwesterly direction with North Buckmarsh Street to its intersection with Mosby Boulevard, (Virginia Route 1035),

- thence in a northwesterly direction with Mosby Boulevard to its intersection with Jackson Drive (Virginia Route 1041),
- thence in a southwesterly direction with Jackson Drive to its intersection with West Main Street (Virginia Route 7 Business),
- thence in a northwesterly direction with West Main Street to Westwood Road (Virginia Route 636),
- thence in a southwesterly direction with Westwood Road to its intersection with Senseny Road (Route 657),
- thence in a westerly direction with Senseny Road to the Frederick County Line,
- thence in a northeasterly direction with the Clarke-Frederick County line to the corner of Frederick, Clarke, and Jefferson Counties, the point of beginning.

*White Post Election District*

White Post *election* district shall comprise the area bounded as follows:

- Beginning at a corner between Frederick, Clarke, and Warren Counties,
- thence in a northerly direction with the Frederick and Clarke County line to Senseny Road (Virginia Route 657),
- thence in an easterly direction with Senseny Road to its intersection with Janeville Road (Virginia Route 652),
- thence with Janeville Road in a southerly direction to its intersection with Annefield Road (Virginia Route 633),
- thence with Annefield Road in a southeasterly direction to its intersection with Lord Fairfax Highway (U.S. Route 340),
- thence in a southerly direction with Lord Fairfax Highway to its intersection with Page Brook Run,
- thence in a southerly direction with Page Brook until it joins Spout Run,
- thence in a southerly direction with Spout Run to a point east of the village of Millwood where Spout Run intersects Millwood Road (Virginia Route 723),
- thence in an easterly direction with Millwood Road to its intersection with John Mosby Highway (U.S. Route 50),

- thence continuing in an easterly direction with John Mosby Highway to the Loudoun County line,
- thence in a southwesterly direction with the Fauquier County line at its intersection with the Warren County line,
- thence in a westerly direction with the Warren County line to a corner between Frederick, Clarke, and Warren Counties, the point of beginning.

*§ 40-2. Central Absentee Voter Election Precinct established and defined*

[Amended 2005-08-16; 2010-04-20]

- A. A central absentee voter election precinct for Clarke County is hereby created, pursuant to Code of Virginia § 24.2-712 Central absentee voter precincts; counting ballots.
- B. The location of this precinct shall be Berryville Clarke County Government Center, 101 Chalmers Court, Berryville, Virginia.

*§ 40-3. Polling Places established*

[Amended 198-05-19; 1999-04-20; 2002-05-21; 2005-08-16; 2007-01-16; 2014-07-15; 2016-07-19]]

The following are hereby designated as polling places:

- A. For Berryville Election District [07-15-2014]
  - CCPS Administration Building
  - 317 West Main Street
  - Berryville, VA 22611
- B. For Buckmarsh Election District:
  - 1) For Buckmarsh Precinct [04-20-1999]
    - Social Hall - John Enders Volunteer Fire Company
    - 9 South Buckmarsh Street
    - Berryville, VA 22611
  - 2) For Blue Ridge Precinct [02-18-1992]
    - Social Hall - Blue Ridge Volunteer Fire Company
    - 131 Retreat Road
    - Bluemont, VA 20135

C. For Millwood Election District:

1) For Millwood Precinct [Effective after 11-08-2016]:

Veterans of Foreign War [VFW] Post 9760  
425 South Buckmarsh Street  
Berryville, VA 22611

2) For Pine Grove Precinct [05-21-2002]:

Social Hall - Blue Ridge Volunteer Fire Company  
131 Retreat Road  
Bluemont, VA 20135

D. For Russell Election District [01-16-2007]:

Clarke County Recreation Center  
225 Al Smith Circle  
Berryville, VA 22611

E. E. For White Post Election District [05-19-1998]:

Boyce Volunteer Fire Company  
7 South Greenway Avenue  
Boyce, VA 22620

## Amendments Chapter 40

1998-05-19

§ 40-3. Polling Places established: Amended for White Post District from Boyce Volunteer Fire Department to Boyce Elementary School

1999-04-20

§ 40-3. Polling Places established: Amended for Buckmarsh from VFW to John H. Enders Fire Company

2001-05-19

§ 40-1 Voting Districts - (Ord. adopted 5/19/92) - Approved: July 17, 2001

2001-10-16

§ 40-2. Central Absentee Voter Election District - (Ord. Adopted 10/16/01) - Approved: October 16, 2001

2002-05-21

§ 40-3. Polling Places established: Amended for Millwood from Bishop's Chapel to Millwood Community Center; and For Pine Grove from Church of the Good Shepard to Blue Ridge Volunteer Fire Company

2005-08-16

§ 40-2. b) change from 102 North Church Street to Grace Episcopal Parish Hall 110 North Church Street

§ 40-3. Polling Places established to change polling places for Berryville from 104 North Church Street to Grace Episcopal Church Parish Hall, 110 North Church Street. CC-05-04

2007-01-16

§40-3 Polling Places Established Millwood Voting District from Millwood Community Center to Powhatan School; Russell Voting District from Ruritan Social Hall to Clarke County Recreation Center; White Post Voting District from Boyce Elementary School to Boyce Volunteer Fire Department CC-06-06

2010-04-20

§ 40-2. Central Absentee Voter Election District b) change from Grace Episcopal Parish Hall 110 North Church Street to Berryville Clarke County Government Center, 101 Chalmers Court CC-10-03

2011-04-19

§ 40-1. Voting Election districts established and defined; population of districts and supervisor representation revise to reflect 2010 Census population increase from 12,652 to 14,034 (+11.4%) CC-11-03/2011-02ORD

2014-07-15

§ 40-3 Polling Places Established. Amend A. For Berryville Election District Change from 110 North Church Street to 317 West Main Street CC-2014-02

2016-07-19

§ 40-3 Polling Places Established. Millwood Election District Millwood Precinct Change from Powhatan School 49 Powhatan Lane, Boyce, VA 22620 to Veterans of Foreign War [VFW] Post 9760 425 South Buckmarsh Street Berryville, VA 22611 CC-2016-03

2022-02-15

§40-1 Table a. Updated Voting Election districts established and defined; population of districts and supervisor representation revise to reflect 2020 Census population increase.  
§40-2 Changed "district" to "precinct."

# Chapter 48 Agricultural and Forestal District

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## Chapter 48 Agricultural and Forestal District

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 03-17-1992. Amendments noted where applicable.]

### General References

State Code 15.2-4300 thru 4314

#### *§ 48-1. Renewal.*

The Clarke County Agricultural and Forestal District is modified and renewed in accordance with the provisions of § 15.2-4300 Agricultural and Forestal Districts Act of the Code of Virginia §15.2 –4300 thru 4314

- A. Only lands currently zoned Agricultural-Open Space-Conservation (AOC) and Forestal Open-Space Conservation (FOC) shall be included in the District.
- B. Land situated within incorporated town limits shall not be included in the District.

#### *§ 48-2. Addition of lands to District.*

[Amended 1998-03-17]

##### A. Addition of lands to the District:

- 1) At the time of District review. Qualifying lands may be added to the District at the time of District review in accordance with the procedures set forth in the Agricultural and Forestal Districts Act of the Code of Virginia (§15.2-4300 thru 4314).
- 2) During the District term. Qualifying lands may be added to the District during the District term in accordance with the procedures set forth in the Agricultural and Forestal Districts Act of the Code of Virginia (§15.2-4300 thru 4314). Applications to add qualifying lands to the District during the District term shall be considered on an annual basis subject to procedures established by the Board of Supervisors.

- B. Qualifying lands. The Land Evaluation and Site Assessment (LESA) System shall be employed as the dominant decision-making tool as to the qualification for land the District as follows except for land considered as open space. Though referred to generically as LESA, there are two separate scoring systems -- one for agricultural parcels and another for forestal parcels. The difference in the two systems is the indicator species used to classify productive soils.

- 1) Parcels having a composite LESA score of 72 or higher for parcels less than 40 acres, a LESA score of 68 or higher for parcels between 40 and 129.99 acres or a LESA score of 64 or higher for parcels 130 acres or greater shall qualify for inclusion in the District.
  - 2) 2) Parcels having a composite LESA score of lower than 60 shall not be qualified for inclusion in the District unless they qualify as described in Subsection D below.
- C. Other qualifying lands. Tracts which are adjacent to and operated contiguously with farming or forestry properties qualifying as in Subsection B(1) above and which are owned by one or more individuals who also own the qualifying farming property, shall be qualified for inclusion provided that the adjacent tract does not lie within the corporate limits of Berryville or Boyce.
- D. Qualifying open space lands. Parcels proposing to be included in the District as open space shall meet the following criteria:
- 1) The parcel shall not contain any commercial use except that which is allowed as a Principal Use and/or Structures by the County Zoning Ordinance.
  - 2) The parcel shall consist of a minimum of 5 acres.
    - a) The Board may make an exception to 5 acre minimum upon recommendations from the Advisory Committee and Planning Commission if the parcel is adjacent to a perpetual conservation easement, historical easement and/or is considered an environmentally sensitive area as determined by the County Natural Resource Planner or a County approved environmental or historical professional.
  - 3) The parcel shall contain at least one unused dwelling unit right.
  - 4) The parcel shall not use or transfer the dwelling unit right(s) during the term of the District.

*§ 48-3. Term of District.*

The term of the Clarke County Agricultural and Forestal District shall be 6 years.

*§ 48-4. Effects on land use.*

A. Within the District.

- 1) Subdivisions. A minor subdivision that creates no more than one additional lot shall be permitted for any parcel within the District during the term of the

District except for property requesting inclusion to the District as open space. Requirements for open space is set forth in Section 48-2 (E) of this code.

2) Boundary Line Adjustments:

- a) Involving District parcels. Boundary line adjustments between parcels within the district shall be permitted.
- b) Involving District and non-district parcels. Boundary line adjustments between parcels where one of the parcels is not in the District shall be permitted if the parcel in the District is receiving land. If the District parcel is transferring land either with or without a dwelling unit right then the District parcel shall be limited to only one such boundary line adjustment during the term of the District and such boundary line adjustment shall be in lieu of the District parcel's subdivision right as set forth in Chapter 48-4 (A)(1).

3) Rezoning. No parcel within the District shall be rezoned to other than an Agricultural-Open Space-Conservation (AOC) and/or Forestal Open-Space Conservation (FOC) zoning category.

4) Special use permits.

- a) A special use permit shall not be granted for any parcel within the District other than special use permits for livestock auction markets, small-scale processing of specialty fruits and vegetables, and veterinary services, animal hospitals and breeding kennels.
- b) All other principal uses and structures and accessory uses and structures, as set forth in the Schedule of District Regulations, AOC and FOC District, of Chapter 188, Zoning, shall be permitted by right of parcels within the District.

B. Adjacent to the District. The establishment and existence of the District shall not subject any adjacent tracts to restrictions and/or regulations other than those already applicable through Chapter 188, Zoning, and Chapter 161, Subdivision of Land, and other land use ordinances and plans in effect. The LESA System shall be employed as a primary tool in the decision making process with respect to proposed rezonings and other proposed changes in land use for tracts adjacent to the District, including evaluating any applications for including additional lands in the District.

*§ 48-5. Withdrawal from District.*

[Amended 1998-03-17]

- A. During the term of the District, withdrawals for good and reasonable cause shall be permitted as follows:
- 1) For financial hardship approaching confiscation of property, such hardship to be documented in writing. In the case where a portion of the enrolled land is proposed to be subdivided and would not meet criteria for enrollment in the District, all minor subdivisions (1 or 2 lots) will be withdrawn during the Clarke County Agricultural and Forestal District regular renewal period. For all major subdivisions (3 or more lots), those proposed lots not meeting the District requirements for inclusion into the Agricultural and Forestal District, must be withdrawn from the District prior to subdivision approval by the approving authority.
  - 2) Upon death of a landowner of record, no less than an entire tract of record as it existed on the date of renewal of the District may be withdrawn.
- B. At the end of the term. At the expiration of the term, but prior to renewal, each landowner shall be allowed to withdraw from the district, for any reason, upon written application stating such reasons.

*§ 48-6. Notification to prospective purchaser.*

The owner of property in the District is advised to notify a prospective purchaser of the property that the property is located in the District.

*§ 48-7. List of parcels*

The Clarke County Agricultural and Forestal District shall include the list of parcels, a copy of which is on file in the County Planning Department.

## Amendments Chapter 48

1992-03-17

Adopted by the Board of Supervisors of Clarke County

1998-03-17

§ 48-2. Addition of lands to District. Remove 2-C-(3); Add to § 48-5-A-(1) subdivision requirements.

2004-03-16

Clarke County Agricultural renamed Clarke County Agricultural and Forestal District and add FOC throughout Chapter.

2010-03-16

County Code amended to include open space category with criteria for acceptance, criteria for boundary line adjustments and formal renaming of District from Agricultural District to Agricultural and Forestal District.

2016-02-16

Chapter amended throughout technical edits for clarity and consistency purposes; §48-1 Renewal add District; §48-2 Addition of lands to District, §48-4 Effects on land use, §48-6 Notification to prospective purchaser CC-2016-01

# Chapter 52 Alarm Systems

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## Chapter 52 Alarm Systems

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 01-19-1988 as Secs. 5-41 through 5-43 of the 1987 Code. Amendments noted where applicable.]

### General References

Chapter 93 Fire Prevention

Chapter 132 Peace And Good Order § 132-8. False alarms.

#### *§ 52-1. Purpose.*

The purpose of this chapter is to provide for the registration of automated fire and burglar alarm systems with the county Sheriff's Department in order to expedite the dispatch of law enforcement and fire protection personnel to scenes of fires and burglaries.

#### *§ 52-2. Registration; fee.*

All persons who reside in or own homes or businesses containing or who shall install automated fire and burglar alarm systems which are connected to or result in a call to the county central alarm facility shall register the same with the county Sheriff's Department upon appropriate forms to be provided by said department on or before July 1 of each year. There shall be a registration fee payable to the Treasurer for such registration.<sup>4F5</sup>

#### *§ 52-3. Renewal; termination.*

Notwithstanding any other provision in this chapter, nothing herein contained shall be construed to require the renewal of registration of any automated fire and burglar alarm system after said system has been registered in accordance with this chapter. However, upon termination, discontinuance, replacement and/or modification of any such system, such termination, discontinuance, replacement and/or modification shall be registered in the county Sheriff's Department upon appropriate forms to be provided for the same.

#### *§ 52-4. Violations and penalties<sup>6</sup>*

Penalties for violation of the provisions of this chapter shall be as provided in Chapter 1, General Provisions, Article I.

### References

<sup>5</sup> Editor's Note: The fees are on file in the office of the County Administrator.

<sup>6</sup> Editor's Note: Added at time of adoption of Code (See Ch. 1, General Provisions, Art. I)

# Chapter 56 County Road Naming, Property Numbering and Road Sign System

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# Chapter 56 County Road Naming, Property Numbering and Road Sign System

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## Code of Virginia

§ 15.2-2019. Localities may name streets, roads and alleys

§ 15.2-2024. Numbers to be displayed on buildings

### *§ 56-1 Purpose*

In order to provide for more efficient delivery of emergency and other services and to provide for uniformity in road naming and assignment of property numbers, there is hereby established a system for naming of roads and numbering of properties within Clarke County, Virginia.

### *§ 56-2 Authority*

Authority for the Board of Supervisors to name roads is found in Code of Virginia § 15.2-2019 and to require display of address numbers is found in Code of Virginia § 15.2-2024.

### *§ 56-3 Intent*

All roads within the county, which serve or are designed to serve three or more dwellings units or business structures, including both public and private roads, shall be named. Private roads, which serve less than three addressable structures, may be named if deemed necessary by the Planning Director for public safety. All dwelling units and business structures within the county shall be assigned property numbers.

### *§ 56-4 Official Address*

- a) The street name and number assigned to each property within the county shall be the official address of such property for all purposes.
- b) Requests for new addresses shall be made by the property owner or authorized representative.
- c) By requesting an official address, the property owner attests that they have the legal right to access their property at the location on the public or private road upon which the address will be assigned. Assignment of an official address by the County shall not be construed as official determination of a property owner's legal right to access their property at that location.
- d) An official address shall only be assigned to driveways constructed to permit ingress/egress by emergency response vehicles unless no other feasible alternatives exist.

- e) If a property owner moves the driveway access point after issuance of an official address, the County may assign a new official address to conform with the structure numbering system.

### *§ 56-5 Agent*

Under Code of Virginia § 15.2-2019. Localities may name streets, roads and alleys

The Planning Director or assignee is the designated agent for the purpose of assigning road names.

The Geographic Information Services (GIS) Administrator or assignee is the designated agent for assigning property addresses and for the development and maintenance of a manual and maps, as necessary

The GIS Administrator is also designated the agent for the purposes of establishing specifications, installation, and maintenance of road name signs.

### *§ 56-6 Road Naming and Structure Numbering Manual*

The GIS Administrator shall maintain a Road Naming and Structure Numbering Manual establishing:

- Criteria for naming of new public roads and private roads;
- The design of road signs;
- Standards for site preparation for road signs, and
- Standards for maintenance of road signs.

The criteria of road naming shall emphasize the use of traditional, historical, and/or geographic associations in Clarke County. The standards for the design, installation, and maintenance of road signs shall be provide for the best long-term, cost-efficient signage, taking into consideration their rural location and shall comply with all applicable State and Federal regulations.

### *§ 56-7 Road Names*

- a) New public road names shall be approved by the Planning Director or assignee in conjunction with approval of the subdivision plat or site plan approval. The selection of names shall be in accordance with the policies of the Road Naming and Structure Numbering Manual.
- b) New private road names shall be approved by the Planning Director or assignee. Such names shall be in accordance with the Road Naming and Structure Numbering Manual.

- c) The process of naming roads shall be limited to those who own property served by the road in question. For the purposes of this section, a property is “served” by a road if the property has the legal right to use the road.
- d) Where a road to be named serves several properties, the landowners shall be given the opportunity to propose a name. Requests to name roads shall be submitted in writing in the form of a petition to the Planning Director and shall include the following information:
  - a. A description of the road’s location giving the direction and approximate distance from the nearest intersection of two public roads.
  - b. A list of all landowners having property served by the road in question together with certification that all such landowners have been notified of the proposed name.
  - c. Signatures of landowners representing more than 50 percent of the parcels served by the road in agreement of a common road name.
- e) Upon validating that landowners of more than 50 percent of the parcels served by the road in question have signed the petition in favor of a common road name, and that the proposed name is otherwise consistent with the Road Naming and Structure Numbering Manual, the Planning Director or assignee shall approve the road name. In the event that the landowners cannot reach an agreement on a road name, the Planning Director shall assign a name that excludes the options presented by the landowners.

#### *§ 56-8 Road Type Designators*

- The road type designation HIGHWAY (HWY) shall be used for Primary Roads with more than 5,000 trips per day.
- The designation ROAD (RD) shall be used for Secondary Roads and Primary Roads with less than 5,000 trips per day.
- The designation LANE (LN) shall be used for dead-end Secondary Roads of less than one mile in length and for private roads.
- Other road type designations such as street, avenue, drive, court, etc. shall be reserved for use within incorporated towns and not be used in the unincorporated areas of the county.

#### *§ 56-9 Road Name Signs*

Road name signs shall display the name of each road within limits of the county, along with such other information required in the Road Naming and Structure Numbering Manual.

Standards and specifications for road name signs shall be established in the Road Naming and Structure Numbering Manual and shall conform to all applicable State and Federal regulations.

Signs shall be placed at each road intersection, and at other places as deemed necessary by the Planning Director assignee.

#### *§ 56-10 Road Name Sign Installation and Maintenance*

- a) The County is responsible for road sign installation for any public road or any private road/access easement serving three or more dwelling units or business structures.
- b) At the time of application, a subdivision or site plan applicant shall pay a fee established by the Board of Supervisors for road sign installation for any public road or private access easement approved, subsequent to adoption of this ordinance, as a part of any subdivision or site development plan. The county shall install road signs for new public roads or private lanes before a certificate of occupancy is issued for the first structure on the road or lane.
- c) After installation, the County shall maintain road signs.

#### *§ 56-11 Uniform Numbering System*

Two address numbers shall be assigned to each side of the road (odd and even) at intervals of 10.56 ft. (10ft.6.7in or 1/500th of a mile) so that at one mile the address would be 1000.

Odd numbers shall be applied on the left side and even numbers on the right side when standing at the beginning point of the road and facing the road.

- The beginning point for secondary roads and private lanes shall be the end of the road closest to the most likely origin of emergency service vehicles.
- For primary highways, the beginning point shall be at the highway's east end (Routes 7 & 50) or north end (Routes 340 & 522).

Except,

- the numbering system for the Towns of Berryville and Boyce shall be that established by the Towns,
- the numbering system for the Berryville Annexation Area and Route 7 Business shall be a continuation of the Berryville system, and
- the numbering system for Route 601 shall be that established by Loudoun County.

#### *§ 56-12 Structure Numbers*

The owner or other person responsible for each addressable structure in the county shall display the assigned number in a manner that is easily readable in accordance with standards set forth in the Road Naming and Structure Numbering Manual.

Addressable structures with a Building Permit issued after December 31, 1998 and served by a named road, shall not be issued an Occupancy Permit until the address number is displayed.

### *§ 56-13 Maps to Be Developed and Maintained*

The GIS Administrator or assignee shall prepare and maintain current maps showing all public and private roads, which are officially named under this ordinance within the county, the names of such road, and numbering of all properties.

### *§ 56-14 Enforcement*

Any person who willfully fails to comply with any requirements and associated regulations of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be subject to the general penalty set forth in section 1-6(a) of this Code, for each day after the first day that such violation shall continue.

In addition to the penalty specified above, the County Administrator or designee may invoke any other lawful procedure including injunction to correct or abate such violation.

## Amendments Chapter 56

1997-11-18

Chapter Adopted without number assigned. Number assigned by staff for consistency with other localities

1998-10-20

Amended to require a minimum traffic volume on a secondary route to be designated as a highway

1999-10-19

Amended to simplify procedure

2013-06-18

Updates to remove initial road naming process, add ongoing address system maintenance procedures, editorial changes CC-2013-01.

## Chapter 57 Special Events

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## Chapter 57 Special Events

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[Adopted 2022-10-18]

### *§ 57-1. Purpose and intent.*

This ordinance is enacted pursuant to Virginia Code § 15.2-1200 for the purpose of providing necessary regulation for the holding of outdoor events.

The purpose of this ordinance is to promote public safety and to ensure that peace and quiet is maintained in the unincorporated areas of Clarke County. To meet these goals, it is critical that notice of the intent to conduct potentially disruptive events be provided to appropriate County officials and that a management plan sufficient to protect the health and safety of the event participants and prevent unnecessary or unwanted impacts on the residents of the county be prepared and approved.

This ordinance shall not be construed in a manner that shall infringe on any person's right to free speech or assembly and shall therefore not affect bona fide protests or picketing.

### *§ 57.2. Definitions.*

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

**Adjacent Property Owner**---The owner of property or properties immediately contiguous to or directly across public rights of way, private access easements, railroad rights of way/easements, any streams, rivers, or lakes, and state or county political boundaries) from the tax map parcel containing the site of the proposed outdoor event.

**Administrator** — The County Administrator or his/her designee

**Attendance** – The cumulative total number of people entering the site of a Special Event on an Event Day, including all participants and spectators For Events with multiple consecutive Event Days, the Day with the greatest number of persons attending shall be used to determine whether an Event is Small, Medium, or Large.

**Board** — The Board of Supervisors

**Event Day** – Any day, or part thereof, during which the activity for which a permit has been issued occurs. General set up, and taking down of equipment, shall not count as an event day unless event activities are also occurring on those days.

**Permanent Enclosed Structure**—A building, intended to be permanently located at the site, being fully enclosed by roof and walls, with windows and doors that are constructed and operated during the duration of any event so as to insure that light and sound emanating from the structure do not extend unreasonably beyond the

boundaries of the site. Noise emitted from a permanent enclosed structure shall follow the regulations found in Clarke County Code § 120.

**Public Property**—property owned by or under the direct control of the United States, the Commonwealth of Virginia, or any political subdivision or agency thereof.

**Special Event**—

- a) Any assembly, attraction, ceremony, event, festival, gathering, circus, carnival, or show at which rides, games, competitions, attractions, music, dance, or other performing arts that are engaged in by participants or provided as entertainment by professional or amateur performers or by prerecorded means,
  - 1) Which involves the raising, charging, donating or re-couping of funds;
  - 2) Which is held at any place other than on property owned by the United States Of America, the Commonwealth of Virginia, or the County Of Clarke;
  - 3) Which is not held in a permanent enclosed structure;
  - 4) To which the public is invited or admitted;
  - 5) Which does not occur in the town of Berryville, the Berryville annexation area, or the town of Boyce, and
- b) Such an assembly shall not include demonstrations, parades, rallies, marches, or picketing activities.

**Small Special Event** – attendance of 150 to 499 persons. Small special events shall be located on a parcel of six (6) or more acres (or adjoining parcels with the same owner that have a total area of six (6) or more acres).

**Medium Special Event** – attendance of 500 to 999 persons. Medium special events shall be located on a parcel of twenty-five (25) or more acres (or adjoining parcels with the same owner that have a total area of twenty-five (25) or more acres).

**Large Special Event** –attendance of 1000 or more persons. Large special events shall be located on a parcel of fifty (50) or more acres (or adjoining parcels with the same owner that have a total area of fifty (50) or more acres).

**§ 57.3. Permit required.**

- a) No person or entity shall stage, promote, advertise, or hold any Special Event unless a permit has first been obtained from the County or unless exempted from obtaining a permit by other provisions of this ordinance.
- b) The permit required by this ordinance, or the exemptions provided herein, shall not eliminate or substitute for any requirement for any business license or any other



permit(s) which may be required by any federal, state, or local statutes, ordinances, rules, or regulations. Applicants are responsible for insuring that all such permits, licenses, and certificates are obtained from the appropriate authority.

- c) The Board shall review all special event applications.
- d) The maximum number of days special events may be permitted per calendar year on a parcel, including all parcels included in any special events permit, shall be five days. Property owners seeking to have more than five days of special events on a parcel should contact the Planning & Zoning office concerning a minor commercial public assembly

#### *§ 57.3.1. Exemptions from permit*

A permit shall not be required for an event with attendance less than 150 persons on a parcel of six (6) or more acres (or adjoining parcels with the same owner that have a total area of six (6) or more acres). Events not requiring a special events permit shall comply with Clarke County Code § 120.

Agritourism activities, permitted and defined in Clarke County Code § 200, are also not required to obtain a special events permit.

#### *§ 57.4. Application for permit.*

- a) Any party interested in organizing a special event shall review the requirements of this ordinance and all application materials provided by the County. Applicants are strongly encouraged to talk with their neighbors about the proposed special event. When the event location, size, date(s), and other details have been determined, the applicant shall contact the County Administrator and request an on-site agency review meeting.
- b) Upon receiving a request for an on-site agency review meeting, the County Administrator shall schedule such review meeting at the proposed special event's location with the applicant and the following agencies: Clarke County Building Official, Clarke County Sheriff, Clarke County Director of Fire, EMS, and Emergency Management, Clarke County Office of Planning & Zoning, Virginia Department of Health, and the Virginia Department of Transportation. Other agencies may be included at the discretion of County staff or as requested by the applicant.
- c) Following the mandatory on-site agency review meeting, the applicant may submit an application for a Special Event permit using the application forms provided by the County. Applications shall be submitted at least 60 days prior to the proposed special event. The application shall include:
  - 1) A description of the event, including the type and nature of any performances, shows, and/or other activities.
  - 2) A schedule of specific performances, shows, and/or other activities, including the dates and times.

- 3) A description, plan, and/or documentation of how the applicant will comply with each of the Special Event requirements set forth in §57.6.
  - 4) A signed statement from the owner of the property on which the event is to be held confirming that the owner has given permission for the specific Special Event to be held.
  - 5) If the proposed Special Event is to be held on property that is accessed by private road, a signed letter from all property owners on that private road noting their approval of the use of the private road for the Special Event is required.
  - 6) A scaled drawing depicting the following:
    - i. The areas for performances or activities and for grandstands or seats, showing the location of all aisles for pedestrian travel and other crowd-control measures.
    - ii. All physical facilities existing or to be constructed on the premises, including but not limited to fences, ticket booths, seating, tents, and stages.
    - iii. The location, capacity, and nature of all temporary lighting, sound, and public address facilities.
    - iv. The location, capacity, and nature of all temporary water, toilet, and all other public health-related facilities.
    - v. Vehicle ingress, egress, and parking plan, to include emergency vehicle access.
  - 7) Any other information required by the County Administrator or reviewing agency.
- d) The County Administrator, upon determining that a completed application and permit fee have been submitted, shall forward the application to the agencies that were invited to the mandatory on-site review meeting. Those agencies shall provide written comments to the County Administrator within ten (10) business days. The County Administrator shall provide these comments to the applicant. Failure of the agency to respond within ten (10) business days shall be deemed their approval of the proposed special event.
  - e) Upon receipt of all agency comments, the County Administrator shall place the application on the next available Board of Supervisors meeting evening session agenda for review and consideration. At the evening session the applicant will be given an opportunity to present their proposed application. The public will then be permitted to provide the Board comments on the proposed application following standard public comment protocols. The County Administrator shall also provide notice of the following to all adjacent property owners:

1. An application for a special events permit has been received.
  2. The location at which a copy of the application is available to view.
  3. The date and time at which the application will be presented to the Board of Supervisors for consideration.
- f) The County Administrator shall also place a sign at the proposed Special Event location informing the public that an event is planned on the property at least ten (10) days prior to the scheduled Board of Supervisors meeting informing the public that a special events permit has been requested for the property.
- g) The Board of Supervisors will make one of the following actions:
1. Approve the issuance of a Special Event Permit.
  2. Approve the issuance of a Special Event Permit subject to reasonable conditions.
  3. Defer action on the application to a later meeting.
  4. Deny the issuance of a Special Event Permit.
- h) The County Administrator shall send written notice of the Board's decision to the applicant and all adjacent property owners.

*§ 57.5. Permit Fee.*

A permit fee shall be paid at the time of submission of an application for a permit. The Board of Supervisors shall adopt a fee schedule for the various types of Special Events.

*§ 57.6. Special Event requirements.*

All Special Events shall comply with the following terms, conditions, and requirements, unless exception is requested and specifically granted by any permit issued. The Board of Supervisors may waive any of the following if deemed appropriate due to circumstances unique to the proposed event.

- a) **Event hours.** Unless specifically approved by the Board, no stage presentation, music, dance, or other performance or activity shall take place at a Special Event between the hours of 12:00 a.m. and 7:00 a.m.
- b) **Admission regulated.** The applicant shall regulate admission by admission ticket or other acceptable means, so as to insure that the number of persons attending an event does not exceed the number allowed by terms of the permit.
- c) **Limits to attendance.** The applicant shall not sell or distribute a greater number of tickets than the number that the permit allows for attendance. The applicant shall not admit any

persons to an outdoor event if such admission would result in a greater number of persons present than allowed by the permit.

- d) **Water supply.** The applicant shall provide an ample supply of potable water for drinking and sanitation purposes on the premises of the Special Event, as determined by the Health Department.
- e) **Toilet and/or lavatory facilities.** The applicant shall provide adequate toilet and/or lavatory facilities on the premises of the Special Event, as determined by the Health Department.
- f) **Waste management.** The applicant shall provide for adequate pickup and removal of refuse, trash, garbage, and rubbish from the site of the event, as determined by the Health Department. The applicant must clean up the premises and remove all trash and debris within 48 hours from the conclusion of the event.
- g) **Medical facilities.** The applicant shall provide adequate on-site medical facilities and emergency medical transport vehicles, as determined by the Health Department and the Director of Fire, EMS, and Emergency Management.
- h) **Fire protection.** The applicant shall provide for adequate fire prevention and protection, as determined by the Director of Fire, EMS, and Emergency Management.
- i) **Traffic and parking control.** The applicant shall provide for adequate ingress, egress, parking, and traffic control for the Special Event, as determined by the Sheriff, VDOT, and/or the State Police.
- j) **Security.** The applicant shall provide adequate on-site security, as determined by the Sheriff.
- k) **Food & Beverage.** The applicant shall provide for adequate preparation and provision of any food or beverage for consumption at the Special Event, as determined by the Health Department and, if alcoholic beverages are to be served, the Virginia Alcohol Beverage Control Board.
- l) **Illumination.** If outdoor lighting is to be utilized, such lights shall be located, and appropriately shielded or mitigated as to prevent unreasonable glow beyond the property on which the event is located. All necessary building permits shall be obtained before the event occurs.
- m) **Temporary Structures.** All necessary building permits shall be obtained before the event occurs for any temporary structures such as tents or amusement rides.
- n) **Sound.** Sound levels shall comply with the Clarke County Code § 120-9(d), which regulates amplified sound.

- o) **Communication system.** The applicant shall provide adequate means of communication with public safety and other government officials, as determined by the Sheriff and the Director of Fire, EMS, and Emergency Management.
- p) **Liability insurance.** The applicant shall provide evidence of adequate liability insurance. A certificate of insurance providing coverage in an amount of at least \$1 million dollars, naming the County of Clarke as an additional insured, and showing the date(s) of the event must be received by the County Administrator prior to the issuance of a Special Event Permit.
- q) **Setbacks.** The approving entity may establish setbacks from property lines, rights of way, and access easements to the site of public assembly or parking for participants or spectators for a Special Event as determined necessary by the approving entity depending on site characteristics, the type of event, the anticipated number of participants and spectators, and the impact on adjacent property owners.
- r) **Permission for Entry.** The applicant shall provide written permission allowing County staff and all duly constituted law enforcement officers to enter the property at any time during the Special Event in order to determine compliance with the approved permit and the provisions of this chapter.
- s) **Other laws and rules.** The applicant shall comply with all federal, state and local laws, ordinances and regulations, including zoning ordinance provisions and any applicable special use provisions.
- t) **Necessary Safety Services.** The operator of the Special Event shall provide any services necessary to provide appropriate levels of safety over and above what public agencies determine that they are able to provide.
- u) **Camping.** Camping associated with a special event shall only be permitted as allowed in the Clarke County Zoning Ordinance.

*§ 57.7. Deposit.*

As a condition of issuing the permit, the Board may require the payment of a deposit to cover anticipated public clean-up costs, law enforcement costs, and/or emergency services costs beyond what is usual and customary. The applicant shall be responsible for such costs in excess of any deposit, and the applicant shall be refunded any unused portion of a deposit.

*§ 57.8. Permit not transferable.*

No permit issued under the provisions of this chapter shall be transferable.

*§ 57.9. Revocation or suspension of permit.*

A permit issued under the provisions of this chapter may be revoked or suspended by the Board of Supervisors. The Sheriff or his/her designee may temporarily suspend the permit

pending consideration by the Board, of action to revoke or suspend a permit. Such action by the Board or the Sheriff or designee may be taken for any of the following reasons:

- a) Any violation of one or more of the requirements of this chapter or any violation of one or more of the terms and conditions of a permit issued hereunder.
- b) Any material misrepresentation in the application for a permit.
- c) Any change in the ownership of the location of the permitted event, unless there is provided a signed statement from the new owner to confirm that the new owner has given permission for the specific Special Event to be held.
- d) Any material change in the condition of the facilities or ability of contracted organizations to provide required services or equipment.
- e) Any state of emergency, disaster, hazardous weather condition, or other threat to the public health, safety, and welfare that has been declared or is anticipated to occur such that continuation of the event is deemed to be an undue or unnecessary risk to the participants, general public, or public safety providers.

Upon revocation or suspension of the permit, the permitted shall immediately cancel and/or terminate the event and provide for orderly dispersal of those in attendance.

*§ 57.10. Violations and Penalties*

Any person or entity that violates any provision of this chapter shall be guilty of a Class 1 misdemeanor. Each violation shall constitute a separate offense, and each day such violation may continue shall constitute a separate offense. The Board may bring suit in the Clarke County Circuit Court to restrain, enjoin, or otherwise prevent a violation of this chapter.

*§ 57.11. Effective Date*

This ordinance shall be effective on October 18, 2022. Any completed application submitted prior to October 18, 2022 may proceed under the ordinance in effect at the time of the application submittal.

## **Amendments Chapter 57**

2008-09-16

Chapter readopted with title change from Amusements to Special Events; Reference Updates in Chapter 78 Dance Halls; Chapter 97 Fireworks; Chapter 112 Littering; Chapter 124 Nuisances; Chapter 165 Taxation CC-07-01

2009-02-17

Chapter 57, Special Events; §57-2, Definitions, so as to change the definition of Special Events to include activities that occur 10 or more times in a calendar year,; §57-3, Permit Required, and §57-4, Application for Permit, so as to clarify the requirements for a permit and the criteria for a permit application, and; §57-6, Action on Applications, so as to allow the Board of Supervisors and the County Administrator to approve any number of Special Events for multiple years at the same location.CC-09-02

2010-01-19

§ 57-2. Amend definition of the term “Special Events”; § 57.4. Application for permit: so as to add the requirement to send written notice and remove the requirement to send the full application by certified mail; § 57.6. Action on applications: so as to remove the requirement of the County Administrator and/or Board to provide notice to applicant and adjacent property owners via certified mail. CC-10-01

2022-10-18

Chapter rewritten.

# Chapter 61 Animals

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## Chapter 61 Animals

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 01-19-1988 as Ch. 3 of the 1987 Code. Amendments noted where applicable.]

### General References

Chapter 1 General Provisions

Chapter 120 Noise

Chapter 124 Nuisances

### Code Of Virginia References

§ 3.2 Agriculture, Animal Care, and Food. Chapter 65. Comprehensive Animal Care

§ 3.2-6503. Care of companion animals by owner; penalty

§ 3.2-6503.1. Care of agricultural animals by owner; penalty

§ 3.2-6522. Rabid animals

§ 3.2-6537. Ordinances; penalties.

§ 3.2-6540. Control of dangerous dogs; penalties

§ 3.2-6554. Disposal of dead companion animals.

§ 3.2-6555. Position of animal control officer created

§ 3.2-6570. Cruelty to animals; penalty

§ 3.2-6587. Unlawful acts; penalties

§ 18.2-144. - Maiming, killing or poisoning animals or fowl

§ 18.2-403.1 et seq. - Offenses involving animals - Class 1 misdemeanors

§ 18.2-403.2 et seq. - Offenses involving animals - Class 3 misdemeanors.

§ 18.2-403.3. Offenses involving animals - Class 4 misdemeanors.

§ 18.2-510 - Burial or cremation of animals or fowls which have died.

§ 32.1-48.1 et seq. - Regulation of State Health Commissioner declaring existence of rabies; display and publication

§ 55-202 et seq. - Estray, or boat adrift, to be valued and described

§ 55-306. Damages for trespass by animals; punitive and double damages.

§ 55-308. - Impounding animals

§ 55-310 et seq. - How governing body of county may make local fence law.

## Article I General Provisions

### *§ 61-1. Violations and penalties.*

Except as otherwise provided in this chapter, any person who violates any provision of this chapter shall be guilty of a Class 4 misdemeanor.

### *§ 61-2. Position of Animal Warden created.*

The Board of Supervisors shall appoint an officer, to be known as the "Animal Warden," who shall have the power to enforce the comprehensive animal laws of the state, all ordinances enacted pursuant to those laws and all laws for the protection of domestic animals. The Board may also appoint one or more Deputy Animal Wardens to assist the Animal Warden in dog inspection activities and in dog law enforcement.

### *§ 61-3. Lawful fences declared; livestock running at large.*

Pursuant to the provisions of the Code of Virginia, § 55-310, the Board of Supervisors hereby declares that all fences and the boundary line of each lot or tract of land on each side of each public road in the county shall be lawful fences as to any or all of the animals mentioned in the Code of Virginia, § 55-306. It shall be unlawful for the owner or manager of any horse, mule, cattle, hog, sheep or goat to permit any such animal, as to which the fences or boundaries of lots or tracts of land are made lawful fences by this section, to run at large beyond the limits of his own lands within the county.

### *§ 61-4. Straying fowl and livestock.*

It shall be unlawful for any person to allow or permit any fowl or livestock of any description to stray to any highway or public property or private premises of another. All fowl and livestock shall be sufficiently confined or fenced up by the owner or person exercising control over such fowl and livestock,

### *§61-5. Maintenance of places where animals are kept.*

Each stable, pen, coop or other place where any animal or fowl is kept shall be maintained at all times in a safe and sanitary condition and so as not to constitute a nuisance.<sup>7</sup> Solid and liquid waste matter shall be removed as frequently as may be necessary to prevent offensive

odors or to prevent accumulations constituting a hazard to the health or safety of any person.

*§ 61-6. Dangerous animals<sup>8</sup>*

No person shall suffer or permit any animal belonging to him or under his control and known to be dangerous or reasonably suspected of being dangerous to go at large within the county. If the owner or such person having control, upon notice that such animal is at large, fails to take it into custody forthwith and its running at large creates a danger to the public or to any person or property, the animal shall be killed forthwith by order of the Sheriff when deemed necessary for public safety.

*§ 61-7. Cruelty.*

A. Any person who performs any of the following, causes any of the following or as the owner of an animal permits any of the following to be done by another shall be guilty of a Class 1 misdemeanor:

- 1) Overrides, overdrives, overloads, tortures, ill-treats, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation, cruelly or unnecessarily beats, maims, mutilates or kills any animal, whether belonging to himself or another.
- 2) Deprives any animal of necessary sustenance, food, drink or shelter.
- 3) Willfully sets on foot, instigates, engages in or in any way furthers any act of cruelty to any animal.
- 4) Carries in or upon any vehicle, vessel or otherwise any animal in a cruel, brutal or inhumane manner so as to produce torture or unnecessary suffering.

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

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

*§ 61-8. Abandonment.*

No person shall abandon any animal. "Abandonment" for the purposes of this section is defined as deserting, forsaking or intending to absolutely give up an animal without securing another owner or without providing the necessities set out in the Code of Virginia, § 3.2-6504.1 Violation of this section shall be punishable as a Class 3 misdemeanor.

*§ 61-9. Dead or infirm animals in public places; penalty.<sup>9</sup>*

If any person casts any dead animal or fowl into a road or knowingly permits any dead animal or fowl to remain unburied upon his property when offensive to the public or, having in custody any maimed, diseased, disabled or infirm animal or fowl, leaves it to lie or be in a street, road or public place, he shall be fined in accordance with the fines for a Class 3 misdemeanor.

*§ 61-10. Burial or cremation of dead animals.*

- A. When the owner of any animal or grown fowl which has died knows of such death, such owner shall forthwith have its body cremated or buried, and, if he fails to do so, any Judge of a general district court, after notice to the owner, if he can be ascertained, shall cause any such dead animal or fowl to be cremated or buried by an officer or other person designated for the purpose. Such officer or other person shall be entitled to recover from the owner of every such animal so cremated or buried the actual cost of the cremation or burial, not to exceed \$75, and of the owner of every such fowl so cremated or buried the actual cost of the cremation or burial, not to exceed \$5, to be recovered in the same manner as officers' fees are recovered, free from all exemptions in favor of such owner. Any person violating the provisions of this section shall be guilty of a Class 4 misdemeanor.
  
- B. Nothing in this section shall be deemed to require the burial or cremation of the whole or portions of any animal or fowl which is to be used for food or in any commercial manner.

**Article II Dogs**

[Added 07-18-1995]

*§ 61-11. Definitions.*

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

ANIMAL WARDEN	Includes the Animal Control Officer or any duly authorized representative of the Animal Control Officer.
DANGEROUS DOG	A canine or canine crossbreed which has bitten, attacked or inflicted injury on a person or companion animal, other than a dog, or killed a companion animal.

KENNEL	An enclosure wherein dogs are kept other than in a residential setting and from which they cannot escape.
OWN	To act, or to have the authority to act, as an owner.
OWNER	Any person having a right of property in a dog, any person who keeps or harbors a dog or has it in his care or who acts as its custodian and any person who permits a dog to remain on or about any premises occupied by him.
VICIOUS DOG	A canine or canine crossbreed which has killed a person; inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health or serious impairment of a bodily function; or continued to exhibit that behavior which resulted in a previous finding by a court that it is a dangerous dog, provided that its owner has been given notice of that finding.

*§ 61-12. Rights of owners.*

- A. All dogs in this county shall be deemed personal property and may be the subject of larceny and malicious or unlawful trespass. Owners may maintain any action for the killing of any such dogs or injury thereto or unlawful detention or use thereof as in the case of other personal property. The owner of any dog which is injured or killed contrary to the provisions of this chapter by any person shall be entitled to recover the value thereof or the damage done thereto in an appropriate action at law from such person.
- B. An Animal Warden or other officer finding a stolen dog or a dog held or detained contrary to law shall have authority to seize and hold such dog pending action before a general district court or other court. If no such action is instituted within seven days, the Animal Warden or other officer shall deliver the dog to its owner.
- C. The presence of a dog on the premises of a person other than its legal owner shall raise no presumption of theft against the owner of such premises, but it shall be his duty to notify the Animal Warden, who shall take such dog in charge and notify its legal owner to remove him. The legal owner of the dog shall pay a reasonable charge, established by ordinance, for the keeping of such dog while in the possession of the Animal Warden.

*§ 61-13. Unlawful acts.*

The following shall be unlawful acts and constitute Class 4 misdemeanors:

- A. Any person making a false statement in order to secure a dog license to which he is not entitled.
- B. Any dog owner failing to pay the license tax required by Article III of this chapter before February 1 for the year in which it is due. In addition, the court may order confiscation and the proper disposition of the dog.
- C. Any dog owner allowing a dog to run at large in violation of this article.
- D. Any person violating any other provision of this article, except as may be otherwise provided in this article.

*§ 61-14. Poisoning, injuring or killing.*

It shall be unlawful for any person to administer poison to any dog, expose poison where it may be taken by any dog, injure, disfigure, disable or kill any dog, except as otherwise provided in this article or state law.

*§ 61-15. Nuisances.*

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

PUBLIC NUISANCE DOG -- Any dog which:

- 1) Is repeatedly found running at large;
- 2) Damages the property of any person other than its owner;
- 3) Is vicious;
- 4) Causes unsanitary conditions or enclosures or surroundings;
- 5) Causes fouling of air by odors;
- 6) By loud, frequent or habitual barking or howling, causes annoyance and disturbs the peace and quiet of any person or neighborhood;
- 7) Molests passersby or passing vehicles;

- 8) Attacks other animals; or
- 9) Has been designated by the Animal Warden to be a public nuisance dog by virtue of causing a menace to the public health, safety or welfare.

PUBLIC NUISANCE DOG HOLDING FACILITY -- Any holding facility harboring a public nuisance dog.

- B. Public nuisance dogs or public nuisance dog holding facilities shall be unlawful.
- C. The Animal Warden may, on receipt of a written complaint or at his own discretion, declare a dog or dog holding facility to be a public nuisance. The owners or custodians of any dog or dog holding facility in violation of this section shall be guilty of a Class 4 misdemeanor.

*§ 61-16. Vicious dogs running at large.*

It shall be unlawful for the owner of any vicious dog to permit such dog to run at large. For the purposes of this section, every dog who is known to have bitten a person or viciously attacked a person shall be deemed a vicious dog.

*§ 61-17. Diseased or female dog at large.*

It shall be unlawful for:

- A. The owner of any dog with a contagious or infectious disease to permit such dog to stray from his premises if such disease is known to the owner.
- B. The owner of any female dog to permit such dog to stray from his premises while such dog is known to such owner to be in season.

*§ 61-18. Dangerous or vicious dogs.*

- A. Any Animal Warden who has reason to believe that a canine or canine crossbreed within his jurisdiction is a dangerous dog or vicious dog shall apply to a Magistrate of the jurisdiction for the issuance of a summons requiring the owner or custodian, if known, to appear before a general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. The Animal Warden or owner shall confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harbinger of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall order the animal's owner to comply with the provisions of this article. If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with the provisions of § 3.2-6562. Capturing, confining, and euthanizing



companion animals by animal control officers; approval of drugs used. of the Code of Virginia.

- B. No canine or canine crossbreed shall be found to be a dangerous dog or vicious dog solely because it is a particular breed, nor shall the local governing body prohibit the ownership of a particular breed of canine or canine crossbreed. No animal shall be found to be a dangerous dog or vicious dog if the threat, injury or damage was sustained by a person who was committing, at the time, a crime upon the premises occupied by the animal's owner or custodian; committing, at the time, a willful trespass or other tort upon the premises occupied by the animal's owner or custodian; or provoking, tormenting or physically abusing the animal; or can be shown to have repeatedly provoked, tormented, abused or assaulted the animal at other times. No police dog which was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog or a vicious dog. No animal which, at the time of the acts complained of, was responding to pain or injury or was protecting itself, its kennel, its offspring or its owner or owner's property shall be found to be a dangerous dog or a vicious dog.
- C. The owner of any animal found by a court to be a dangerous dog shall, within 10 days of such finding, obtain a dangerous dog registration certificate from the Animal Warden for a fee of \$50 in addition to other fees that may be authorized by law. The local Animal Warden shall also provide the owner with a uniformly designed tag which identifies the animal as a dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times. All certificates obtained pursuant to this subdivision shall be renewed annually for the same fee and in the same manner as the initial certificate was obtained.
- D. All certificates or renewals thereof required to be obtained under this section shall only be issued to persons 18 years of age or older who present satisfactory evidence of the animal's current rabies vaccination, if applicable, and that the animal is and will be confined in a proper enclosure or is and will be confined inside the owner's residence or is and will be muzzled and confined inside the owner's fenced-in yard until the proper enclosure is constructed. In addition, owners who apply for certificates or renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence that their residence is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property and the animal has been permanently identified by means of a tattoo on the inside thigh or by electronic implantation.
- E. While on the property of its owner, an animal found by a court to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults or other animals. The structure shall be designed to provide the animal with shelter from the elements of nature. When off its owner's property, an animal found by a court to be

a dangerous dog shall be kept on a leash and muzzled in such a manner so as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal.

- F. If the owner of an animal found by a court to be a dangerous dog is a minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this section.
- G. After an animal has been found by a court to be a dangerous dog, the animal's owner shall immediately, upon learning of the same, notify the local animal control authority if the animal is loose or unconfined; bites a person or attacks another animal; is sold, given away or dies; or has been moved to a different address.
- H. The owner of any animal which has been found by a court to be a dangerous dog who willfully fails to comply with the requirements of this section shall be guilty of a Class 1 misdemeanor.
- I. All fees collected pursuant to this section, less the costs incurred by the animal control authority in producing and distributing the certificates and tags required by this section, shall be paid into a special dedicated fund in the treasury of the county for the purpose of paying the expenses of any training course required under § 3.2-6557. Animal control officers and humane investigators; limitations; records; penalties. of the Code of Virginia.

## Article III Dog Licensing

### *§ 61-19. License required; exemptions; tags.*

- A. It shall be unlawful for any person to own a dog four months old or older in the county unless the dog is licensed pursuant to § 3.2-6524. Unlicensed dogs prohibited; ordinances for licensing cats. et seq. of the Code of Virginia and an annual fee has been paid for such dog or for a kennel at the office of the Treasurer. The owner shall submit evidence acceptable to the Treasurer when a dog has been neutered or spayed.<sup>10</sup>
- B. No such fee shall be levied on any dog that is trained and serves as a guide dog for a blind person or that is trained and serves as a hearing dog for a deaf or hearing impaired person. As used in this section, "hearing dog" means a dog trained to alert its owner by touch to sounds of danger and sounds to which the owner should respond.
- C. The Treasurer shall purchase necessary tags and receipt books to be paid for by the county, shall maintain necessary records and accounts and shall dispose of unsold tags when authorized by the Board of Supervisors. The tag shall be of such material and in such form as prescribed by the Treasurer and approved by the Board of Supervisors and shall be stamped or otherwise permanently marked with the words "Clarke County, Virginia," the sex of the dog, the calendar year for which issued and a serial number.

*§ 61-20. Application.*

- A. Any resident of this county may obtain a dog license by making oral or written application to the Treasurer, accompanied by the amount of the fee and a certificate of vaccination as required by this article. The Treasurer shall have authority to license only dogs of resident owners or custodians who reside within the boundary limits of this county and may require information to this effect from any applicant. Upon receipt of proper application, together with the amount of the fee and display of the certificate of vaccination as required by this article, the Treasurer shall issue a license receipt for the amount of the fee, on which he shall record the name and address of the owner or custodian, the date of payment, the year for which issued, the serial number of the tag and whether the license is for a male, unsexed female, female or kennel dog, and deliver the metal license tags or plates provided for in this article to such owner or custodian.
- B. B. The information received under Subsection A of this section shall be retained by the Treasurer, open to public inspection, during the period for which such license is valid. The Treasurer may establish substations in convenient locations in the county and appoint agents for the collection of the license tax and issuance of such licenses.

*§ 61-21. Certificate of inoculation or vaccination.*

No license tag shall be issued for any dog unless there is presented to the Treasurer at the time application for a license is made a certificate of inoculation or vaccination issued for such dog under the provisions of this article, which discloses that such dog is currently immune to rabies, or other evidence satisfactory to the Treasurer, showing that the dog has been inoculated or vaccinated against rabies by a currently licensed veterinarian. <sup>11</sup>

*§ 61-22. Payment of fee<sup>12</sup>*

- A. On or before January 1 and not later than January 31 of each year, the owner of any dog four months old or older shall pay the fee provided for in § 61-19.
- B. If a dog shall become four months of age or if a dog over four months of age unlicensed by this county shall come into the possession of any person in this county between January 1 and October 31 of any year, the fee for the current calendar year shall be paid forthwith by the owner.
- C. If a dog shall become four months of age or if a dog over four months of age unlicensed by this county shall come into the possession of any person in this county between November 1 and December 31 of any year, the fee for the succeeding calendar year shall be paid forthwith by the owner and shall protect the dog from the date of payment.

*§ 61-23. Effect of payment of fee subsequent to summons.*

Payment of the fee required in this article subsequent to a summons to appear before a court for failure to pay it within the time required shall not operate to relieve such owner from the penalties provided.

*§ 61-24. Disposition of fees; liability for claims.*

Fees collected by the Treasurer pursuant to the provisions of this article shall be paid by him into the general fund of the county treasury, and the limit of the county's liability for payment of claims that may arise against such fees in any fiscal year shall be the amount of revenue derived from such fees during the preceding fiscal year.

*§ 61-25. Receipts; wearing of tags required; exemptions.*

- A. Dog license receipts shall be carefully preserved by the licensees and exhibited promptly on request for inspection by any Animal Warden or other officer.
- B. <sup>13</sup>Dog license tags shall be securely fastened to a substantial collar by the owner or custodian and worn by such dog. It shall be unlawful for the owner to permit any licensed dog four months old or older to run or roam at large at any time without a license tag. The owner of the dog may remove the collar and license tag required by this section when the dog:
  - 1) Is engaged in lawful hunting;
  - 2) Is competing in a dog show;
  - 3) Has a skin condition which would be exacerbated by the wearing of a collar;
  - 4) Is confined; or
  - 5) Is under the immediate control of its owner.

*§ 61-26. Kennel dogs.*

The owner of a kennel shall securely fasten the license tag to the kennel enclosure in full view and keep one of the identification plates provided therewith attached to the collar of each dog authorized to be kept enclosed in the kennel. Any identification plates not so in use must be kept by the owner or custodian and promptly shown to any Animal Warden or other officer upon request. A kennel dog shall not be permitted to stray beyond the limits of the enclosure, but this shall not prohibit removing dogs therefrom temporarily while under the control of the owner or custodian for the purpose of exercising, hunting, breeding, trial or show. A kennel shall not be operated in such manner as to defraud the county of the license tax applying to dogs which cannot be legally covered thereunder or to in any manner violate other provisions of this article.

*§ 61-27. Unlawful acts.*

It shall be unlawful for any person:

- A. Except the owner or custodian, to remove a legally acquired license tag from a dog.
- B. To conceal or harbor any dog on which the license tax has not been paid, or to conceal a mad dog to keep it from being killed.

*§ 61-28. Effect of dog not wearing tag as evidence.*

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

*§ 61-29. Fees.*

Added 1993-04-20 <sup>14</sup>

The daily shelter fee, finder's fee and all license fees are on file in the office of the County Administrator.

## Article IV Rabies Control

[Amended at time of adoption of Code. (See Chapter 1 General Provisions)]

*§ 61-30. Vaccination or inoculation required.*

- A. It shall be unlawful for any person to own or harbor any dog or cat four months or more of age within the county unless such dog or cat shall have been vaccinated or inoculated, by a currently licensed veterinarian, against rabies with a serum and in a manner approved by the State Board of Health and such vaccination or inoculation is currently effective to produce immunity to rabies as determined by the State Board of Health by reason of the type and dose of such vaccination or inoculation.
- B. Any person bringing a dog or cat within the county to be kept within the county shall comply with the requirements of Subsection A of this section within 30 days.

*§ 61-31. Certificate of inoculation or vaccination.*

Upon the inoculation or vaccination of a dog or cat by a currently licensed veterinarian under the provisions of this article, the veterinarian shall issue to the person procuring such inoculation or vaccination a certificate bearing the signature of the veterinarian and stating that he is a veterinarian currently licensed by the state and setting forth the name and

address of the owner or custodian of the dog or cat, a brief description of the dog or cat, the type and dose of inoculation or vaccination used, the date of inoculation or vaccination and the period of time thereafter during which such dog or cat is deemed to be immune to rabies. The veterinarian shall retain a duplicate or carbon copy of such certificate for so long as the immunity to rabies caused by such inoculation or vaccination is deemed to be effective.

*§ 61-32. Impoundment, redemption and disposal of dog or cats at large without inoculation tags.*

- A. Any dog or cat four months or more of age found off the premises of its owner and not under the immediate control of a responsible person shall be impounded by the Animal Warden, and such dog or cat shall be held for a period of seven days. The dog or cat may be returned to its owners upon proof of ownership, vaccination of the dog or cat or proof of prior vaccination currently effective, procurement of a dog license if not currently licensed, payment of an impounding fee and payment of the costs of care and feeding of the dog or cat while impounded.
- B. At the expiration of the seven-day period, any dog or cat not so claimed by the owner may be disposed of by giving it into possession of any person who will have the dog or cat inoculated or vaccinated pursuant to this article and, if such dog does not wear a license tag, will obtain a dog license pursuant to this article, and, if not so disposed of, such dog or cat shall be disposed of as authorized by the Code of Virginia, § 3.2-6546. County or city public animal shelters; confinement and disposition of animals; affiliation with foster care providers; penalties; injunctive relief. , by the Animal Warden or other person designated for such purpose.

*§ 61-33. Rabies emergencies.*

- A. Whenever, in the judgment of the Health Officer serving this county, a rabies emergency exists in the county or in any area thereof, the Health Officer shall issue a proclamation declaring such emergency to exist throughout all or a defined area of the county; and such proclamation shall require that all dogs or cats within the county or such defined area of the county be confined to the premises of their owners or custodians or, if held on leash by responsible persons, that they be securely muzzled; and it shall be unlawful for any person to violate any provisions of such proclamation while it is in force.
- B. Each proclamation issued pursuant to this section shall be published as soon as possible in a newspaper of general circulation within the county, and copies thereof shall be provided to radio and television stations within the county. The original proclamation shall be filed in the office of the Health Officer.
- C. When, in the judgment of the Health Officer serving this county, a proclaimed emergency ceases to exist, the Health Officer shall so proclaim, and the foregoing provisions of this section shall apply as to publication, release to radio and television stations and filing.

## Amendments Chapter 61

1995-07-18

Article II Dogs -Added 7-18-1995

### References

<sup>7</sup> Editor's Note: See Ch. 124, Nuisances.

<sup>8</sup> Editor's Note: See Art. II, Dogs, of this Chapter.

<sup>9</sup> Editor's Note: Amended at time of adoption of Code (See Ch. 1, General Provisions, Art. I).

<sup>10</sup> Editor's Note: Amended at time of adoption of Code (See Ch. 1, General Provisions, Art I).

<sup>11</sup> Editor's Note: See Art IV, Rabies, of this chapter.

<sup>12</sup> Editor's Note: Amended at time of adoption of Code (See Ch. 1, General Provisions, Art. I).

<sup>13</sup> Editor's Note: Amended at time of adoption of Code (See Ch. 1, General Provisions, Art. I).

<sup>14</sup> Editor's Note Amended at time of adoption of Code (See Ch. 1, General Provisions, Art. I).

# Chapter 67 Brush, Grass And Weeds

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## Chapter 67 Brush, Grass And Weeds

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[HISTORY: Adopted by the Board of Supervisors of Clarke County as indicated in article histories. Amendments noted where applicable.]

### General References

Chapter 124 Nuisances

### Code Of Virginia References

§ 3.2. Agriculture, Animal Care, and Food Chapter 8. Noxious Weeds

§ 15.2-902. Authority of locality to control certain noxious weeds

### Article I Control of Johnson Grass

[Adopted 1-19-1988 as Secs.10-86 through 10-92 of the 1987 Code]

#### *§ 67-1. Statutory authority.*

The provisions of this article are in accordance with the Code of Virginia, § 15.2-902.

#### *§ 67-2. Nuisance declared.*

The existence of growth of a species of grass, *Sorghum halepense*, commonly known as "Johnson grass," as well as other *Sorghum* species with perennial rhizomes (includes perennial sweet Sudan grass, *Sorghum alnum* and hybrids derived therefrom), is hereby declared to be a public nuisance in the county.

#### *§ 67-3. Agreements.*

The Board of Supervisors may enter into an agreement with the State Department of Agriculture and Consumer Services for the purpose of the control of Johnson grass within the county and may accept funds from the Department as agreed upon.

#### *§ 67-4. Johnson Grass Control Committee.*

There is hereby established a Johnson Grass Control Committee composed of eight members, each to be appointed by and to serve at the pleasure of the Board of Supervisors. Said Committee shall appoint all individuals responsible for a Johnson Grass Program and approve all expenditure of funds and administer the Johnson Grass Control Program.

*§ 67-5. Duties of Committee.*

The Johnson Grass Control Committee or its representatives:

- a) Shall conduct surveys to determine the location and amount of infestations of Johnson grass within the county.
- b) Shall provide the necessary technical and other assistance to landowners in a cooperative control or eradication program.
- c) May effect a program of spraying or other control practices on road rights-of-way, drainage ditch banks, parks, playgrounds, utility rights-of-way and other public or private lands.

*§ 67-6. Duties of landowners.*

It shall be unlawful for any person to knowingly allow Johnson grass to set seed on any land in the county. It shall be the duty of each landowner to mow, fallow, treat with herbicides or use such other practices as maybe approved by the Johnson Grass Control Committee as effective in preventing seed set on all Johnson grass or other perennial Sorghum species on his property. However, a landowner or lessee may enter into a written compliance agreement with the Johnson Grass Control Committee or its designee, specifying terms and conditions of a control program, and so long as all the terms and conditions are being complied with, there is no violation of this article.

*§ 67-7. Importation.*

It shall be unlawful to import Johnson grass into the county or to transport Johnson grass within the county in any form capable of growth or to knowingly contaminate any uninfested land with Johnson grass through the movement of rootstocks, plant parts, seed, soil, mulch, nursery stock, farm machinery or other media.

*§67-8. Violations and penalties.*

Penalties for violation of the provisions of this chapter shall be as provided in Chapter 1, General Provisions, Article I.

# Chapter 71 Building Construction

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## Chapter 71 Building Construction

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 01-19-1988 as Secs. 4-2 through 4-6 of the 1987 Code. Amendments noted where applicable.]

### General References

Chapter 24 Officers And Employees, Article III Building Official/Department

Chapter 93 Fire Prevention

Chapter 148 Soil Erosion And Sedimentation Control

Chapter 161 Subdivision Of Land

Chapter 188 Zoning

### Code Of Virginia References

§ 15.2-906. Authority to require removal, repair, etc., of buildings and other structures.

§ 19.2-393 et seq. - Inspection warrants, definitions

§ 36-81. - Industrialized building safety requirements

§ 36-97 et seq. - Uniform Statewide Building Code

#### *§ 71-1. Standards adopted by reference.*

The Virginia Uniform Statewide Building Code is hereby adopted by reference for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, equipment, use and occupancy, location and maintenance of buildings and structures, including permits and penalties. The whole thereof, except such portions as are deleted, modified or amended by this chapter, of which not fewer than two copies are filed in the office of the County Administrator for inspection during regular business hours, is hereby incorporated herein as fully as if set out at length herein. The code adopted by this section shall be known and may be cited as the "Building Code."

#### *§ 71-2. Fire limits.*

Due to the absence of areas of highly congested business, commercial, manufacturing and industrial uses, as well as the absence of areas in which residences, retail stores, business and amusement centers exist or are developing in such manner as to present any significant fire hazard, the Board of Supervisors finds that the designation of any Fire District No. 1 or Fire District No. 2 is unnecessary; and the Board of Supervisors hereby designates the area of the whole county to constitute the outside fire limits of the county.

*§ 71-3. Permit fees.*

The Board of Supervisors may, by ordinance or resolution, establish and from time to time amend a schedule of fees for the issuance and amendment of building permits required by the Building Code; and no such permit for which a fee has been so established shall be issued or amended until such fee has been paid to the Treasurer of the county, provided that during any period of time when an agreement is in effect by and between the county and another governmental body or private agency as authorized in Chapter 24, Officers and Employees, Article III, Building Official/Department, the fees shall be paid to such governmental entity or private agency as may be specified in such agreement.

*§ 71-4. Removal or repair of dangerous buildings or structures.*

- A. Owners of property within the county shall, whenever prescribed by ordinance or resolution of the Board of Supervisors, remove, repair or secure any building, wall or any other structure which might endanger the public health or safety of other residents of the county.
- B. The Board of Supervisors, through its own agents or employees, may remove, repair or secure any building, wall or any other structure which might endanger the public health or safety of other residents of the county when the owner of such property, after reasonable notice and a reasonable time to do so, has failed to remove, repair or secure such building, wall or other structure.
- C. In the event that the Board of Supervisors, through its own agents or employees, removes, repairs or secures any building, wall or any other structure after complying with the notice provisions of this section, the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the county as taxes and levies are collected.
- D. Every charge authorized by this section with which the owner of any such property shall have been assessed and which remains unpaid shall constitute a lien against such property.

*§71-5. Violations and penalties.<sup>16</sup>*

Any person who shall fail, refuse or neglect to comply with or otherwise violate the provisions of this chapter, which includes the Building Code, shall be punished as provided in § 36-105. Enforcement of Code; appeals from decisions of local department; inspection of buildings; inspection warrants, of the Code of Virginia.

*§71-6. Shrink/Swell Soil Testing*

### A. Testing Requirements

- 1) Prior to the approval of a building permit, soil testing to determine soil expandability shall be performed if the building site is located within 500 feet of soils shown on the Clarke County Shrink Swell Soil Map (Clarke County Planning Department) as having moderate or high potential for shrink/swell. The Building Official may require permit applicants to submit a copy of the soils analysis at the time of filing the application. Copy of this ordinance and information concerning the potential damage from shrink/swell soils shall be available through the office of the Building Official.
- 2) Building permits for the following activities shall be exempt from shrink/swell soil testing requirements:
  - a. decks
  - b. detached structures smaller than 600 square feet without habitable areas
  - c. above ground swimming pools
  - d. for detached structures smaller than 600 square feet or additions to existing residences, where a soils report with recommendations has previously been issued, is acceptable to the Building Official, and a proposed construction design is presented in accordance with previously submitted report.
  - e. stoops
  - f. manufactured homes (as defined in § 9-B113 of the Zoning Ordinance)
  - g. detached structures constructed to the following standard:
    - i. Dwellings on crawl space:

Foundations for the structure to be extended to bear a minimum of four feet below final outside grade. Foundation concrete can then be placed to bear at this level or the footing excavation can be backfilled to original design bearing elevation, with lean-mix concrete having a minimum of 1500 PSI or greater;
    - ii. Dwellings on Basement:

Foundations for the structure to be extended to bear a minimum of four feet below final outside grade. Foundation concrete can then be placed to bear at this level or the footing excavation can be backfilled to original design bearing elevation, with a lean-mix concrete having a minimum of 1500 PSI or greater. Slab sub-grade soils shall be undercut with a minimum of six-inch thick layer of well-graded aggregate VDOT 21B;

Backfill material (drainage media) shall consist of a minimum 18-inch thick zone of free-draining aggregate (#57) separated from the fill by a filter fabric. The aggregate should be carried within one foot of the final outside grade. The final one foot of backfill shall consist of relatively impermeable clay soils. The final backfill surface shall be sloped away from the dwelling.

- h. Engineered in-ground swimming pools, and additions, detached garages, carports, accessory buildings greater than 600 square feet, where the property owner signs a "LETTER OF WAIVER" provided by the Clarke County Building Department.
- 3) In all cases, the Building Official's reading of the shrink/swell map shall be conclusive, and soil testing may be required, regardless of the shrink/swell map identification, if in his/her professional opinion site conditions warrant. All sites shall be evaluated by and soil tests shall be performed by a competent soil professional. As used herein, soils professional means a Virginia licensed professional engineer, a Virginia certified soil scientist (CPSS), or a Virginia certified professional geologist.

#### *B. Soil Sampling*

All soil tests performed pursuant to this Policy shall be performed upon samples collected in the following manner from the site of the proposed construction: A minimum of two soil borings or test pits shall be taken at opposite corners of the proposed structure at a depth of at least five feet and at least two feet below the bottom of the recommended footing depth or to refusal of the auger or backhoe.

#### *C. Soil Test Methodology*

Selected soil samples shall be subjected to laboratory testing that will provide the appropriate information for soil classification in accordance with ASTM D-2487. The soils professional shall determine the appropriate test(s) to be performed in all cases based on the soil characteristics and any other known factors relating to the site and the proposed construction. Laboratory tests shall, as a minimum, include one sieve or grain size analysis and one Atterburg limits test using current ASTM test procedures.

#### *D. Reporting*

The professional report shall include:

- 1) Soil bore logs from the site;
- 2) (2) A site sketch to scale which identifies bore or test pit locations at the building site;
- 3) (3) Soil laboratory test results;

- 4) (4) The original signature(s) and professional seal(s) of the soil professional(s) who performed and/or supervised the soil sampling, conducted the laboratory testing and/or evaluation, and prepared the report (laboratory test procedures shall as a minimum, contain one set of index parameters which are performed using ASTM test procedures or Atterburg Limits; soil types need to be identified per the Unified Soil Classifications).
- 5) (5) A qualitative determination of the shrink/swell potential for all soil samples, the basis for the qualitative shrink/swell potential, and recommendations.
- 6) (6) Identification of other soil conditions such as wetness or differential depth to bedrock that may effect foundation or footer design.

*E. Construction in Moderately or Highly Expandable Soils*

For construction proposed on soils identified through testing and/or evaluation as moderately or highly expandable, a design for the footing and foundation shall be prepared by a Virginia licenses professional engineer or a Virginia licensed architect, who shall sign and seal the design, and shall be submitted to the Building Official for review prior to the approval of a building permit.

*F. Creation of database and review of ordinance*

The Building Official, with the assistance of county staff shall create a database of soils in the county with the information made available as the result of the policy adopted herein. A report shall be prepared describing said database and evaluating the effectiveness of the policy adopted herein, and submitted to the Board of Supervisors approximately one year after adoption of the ordinance.



## Amendments Chapter 71

1999-10-19

§ 71-6. Shrink/Swell Soil Testing: Adopted.

2000-07-20

§ 71-6. Shrink/Swell Soil Testing: Amended by the Board of Supervisors on July 20, 2000 to allow builders to construct foundations to an increased standard designed to protect against the impact of shrink/swell soils, as an alternative to performing soil tests.

## References

<sup>16</sup> Editor's Note: Amended at time of adoption of Code (See Ch. 1, General Provisions, Art. I).

# Chapter 72 Conservation Easement Purchase Program

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## **Chapter 72 Conservation Easement Purchase Program**

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[HISTORY: Adopted by the Board of Supervisors of Clarke County June 18, 2002; Amended October 19, 2004]

### *§ 72-1 Purpose*

The general purpose of the Clarke County Easement Purchase Program (CEP Program) is to protect and preserve land with significant agricultural, natural, scenic, and historic resources. In furtherance of the general purpose, the specific purposes of the CEP Program include, but are not limited to:

- A. Protection of quality farmland;
- B. Preservation of open-space and the rural character of Clarke County;
- C. Protection of environmentally sensitive areas important to water quality, plant life, and wildlife;
- D. Protection of historic resources;
- E. Protection of natural and scenic resources;
- F. Promotion of tourism; and
- G. Protection of water resources.

### *§ 72-2 Conservation Easement Purchases - General*

Conservation easements shall be acquired pursuant to the provisions of this chapter and shall be in conformity with the Clarke County Comprehensive Plan. Any conservation easement acquired pursuant to this chapter shall be voluntarily offered by the owner.

### *§ 72-3 Conservation Easement - Definition*

For purposes of this chapter, “conservation easement” shall mean a non-possessory interest in real property of one or more qualified easement holders under § 72-9 of this chapter, acquired pursuant to the Virginia Open-Space Land Act (§ 10.1-1700, et seq., Code of Va.) and this CEP Program, imposing limitations or affirmative obligations for the purpose of retaining or protecting natural or open-space values of the parcel or parcels, assuring availability for agricultural, forestry, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, or archaeological aspects of the parcel or parcels.

#### *§ 72-4 Administration*

The CEP Program shall be administered by the Clarke County Conservation Easement Authority (Authority). The county Planning Administrator shall serve as Clerk to the Authority, and the county Planning Department shall serve as staff to the Authority.

#### *§ 72-5 Selection Criteria/Property Resource Score*

Easements shall be purchased based upon a Property Resource Score and such other factors deemed applicable by the Authority. The Property Resource Score shall include criteria, established by resolution by the Board of Supervisors, which includes the following factors for each property:

- A. agricultural value;
- B. area;
- C. number of dwelling unit rights;
- D. location in regard to water resources or unique topographic features;
- E. location in regard to significant publicly owned open space;
- F. presence of threatened or endangered plant or animal species;
- G. location in regard to primary and scenic highways;
- H. location in regard to areas of scenic vistas; and
- I. presence of historic or cultural resources.

#### *§ 72-6 Income Criteria*

Criteria for evaluating income of property owners (Income Criteria) shall be adopted by resolution by the Board of Supervisors to implement the purpose of focusing the expenditure of county funds in the CEP Program toward lower and middle-income property owners.

#### *§ 72-7 Procedures*

[Amended 2004-10-19]

- A. Any interested property owner may submit an application to offer a conservation easement for acquisition by the county. The application shall be submitted on a form provided by the Authority, and shall include the information and documents called for in the application. In addition, the property owner shall submit thereafter such additional

information or documents deemed necessary by the Authority to consider the application.

- B. The Authority shall rank the application in accordance with the Property Resource Score.
- C. Based on the ranking determined by the Property Resource Score, the Authority shall select proposed easements to be purchased.
  - 1. If the Authority determines that an appraisal of the easement is necessary, it shall commission an appraisal of the easement. Using the Property Resource Score, the Income Criteria, and such other factors deemed applicable by the Authority, the Authority shall determine the maximum amount of County funds that would be offered to the property owner (Purchase Price) for the purchase of the easement.
  - 2. If the Authority determines that an appraisal of the easement is not necessary, using the Income Criteria, the Property Resource Score, such valuation methodology as established by the Authority, and such other factors that may be determined by the Authority, the Authority shall determine the maximum amount of County funds that would be offered to the property owner (Purchase Price) for the purchase of the easement.
- D. Using the appraised value of the proposed easement, the Income Criteria, the Selection Criteria score of a property, and such other factors that may be determined by the Authority, the Authority shall determine the maximum amount of county funds that would be offered to the property owner (Purchase Price) for the purchase of the easement. [amended 2004-10-19]
- E. For each easement which the Authority proposes to submit to the Board of Supervisors for consideration of purchase, the Authority shall invite the property owner to submit a written offer, on a form provided by the Authority, to sell the easement to the county for the Purchase Price, and to donate to the county the balance, if any, of the fair market value of the easement, subject to the terms and conditions of the proposed deed of easement, which proposed deed of easement shall be prepared by the Authority and provided to the property owner. Nothing herein shall compel the property owner to submit an offer to sell.
- F. After receipt of a written offer to sell, the Authority shall forward the offer to the Board of Supervisors for consideration and approval.
- G. Upon formal approval by the Board of Supervisors of the purchase of an easement, the Authority shall arrange for a closing on the transaction and the recordation of the deed of easement in the Office of the Clerk of the Circuit Court of Clarke County.

- H. The county shall pay all closing costs associated with the purchase of an easement to include, without limitation, site assessments, appraisals and surveys commissioned by the Authority, grantee's recording costs, and grantor's tax (if any); provided, however, the county shall not pay fees incurred by the property owner for independent appraisals, or legal, financial, or other professional advice or services to the property owner, or fees and costs in connection with the release and/or subordination of liens to the easement purchased.
- I. A property owner whose proposed easement is not purchased may reapply in the next fiscal year.

### *§ 72-8 Duties of the Authority*

In administering the CEP Program, the Authority's duties shall include, but not be limited to:

- A. Developing and proposing Property Resource Score criteria for adoption by the Board of Supervisors;
- B. Developing and proposing Income Criteria for adoption by the Board of Supervisors;
- C. Publicizing the CEP Program in Clarke County;
- D. Identifying properties that would have high Property Resource Scores and target information to the owners of those properties;
- E. Soliciting and receiving voluntary applications from property owners;
- F. Ranking applications in accordance with the Property Resource Scores;
- G. Selecting proposed easements to be appraised and commissioning appraisals;
- H. Determining the Purchase Price for selected parcels using the appraised value of the proposed easement and the Income Criteria;
- I. Establishing a methodology for valuation of proposed easements not appraised to determine the Purchase Price;
- J. Submit written offers to sell to the Board of Supervisors for approval;
- K. Complete closings on purchases and record deeds of easement;
- L. Apply for and pursue grants, other funding, and gifts from the Virginia Land Conservation Fund, other state or federal agencies, and private persons or entities;
- M. Monitor properties to determine compliance with the terms of easements purchased, and take action to enforce compliance;

- N. Have prepared application forms, written offer to sell forms, and other documents used in the administration of the CEP Program;
- O. Have deeds of easement prepared;
- P. Establish procedures consistent with the provisions of this chapter for the receiving and processing of applications and for the administration of the CEP Program;
- Q. Conduct periodic reviews of the CEP Program to determine if its purposes are being met; and
- R. Provide training programs for Board of Directors members and for staff.

### *§ 72-9 Deeds of Easement*

- A. Each conservation easement shall conform with the requirements of the Virginia Open-Space Land Act and this chapter.
- B. The Board of Supervisors and the Authority shall be co-holders of all easements acquired under the CEP Program. In addition, where advisable the Authority shall seek an additional public body, as defined in the Virginia Open-Space Land Act, or, as permitted by law, other federal or state agency or private organization, to be an additional co-holder.
- C. The deed of easement shall be perpetual.
- D. The deed of easement shall be in a form approved by the county's attorney, shall include standard restrictions contained in conservation easements pertaining to uses and activities allowed on the parcel, and shall include, without limitation, restrictions pertaining to: (1) the maximum number of dwelling unit rights which may be utilized on the parcel on which the easement is located; (2) a prohibition against the accumulation of trash and junk, mining, and commercial activities, but shall not prohibit agricultural, silviculture, horticulture, or home occupations (as defined in the Clarke County Zoning Ordinance); (3) the right of the Authority to conduct periodic inspections; and (4) the right of any one or more of the co-holders of the easement to enforce the easement.
- E. In addition, the Authority may include in the deed of easement restrictions or provisions that deal with the specific public values (agriculture, water resources, historic resources, scenic resources, etc.) being protected by the easement.

### *§ 72-10 Funding*

The CEP Program may be funded annually by the Board of Supervisors in the county budget or by special appropriation.

### *§ 72-11 Non-Exclusive*

The CEP Program is a non-exclusive means for the county to acquire conservation easements, and shall not limit the county or the Authority in acquiring, receiving, or holding conservation easements by other methods or under other programs. This chapter shall not limit the ability of property owners to establish conservation easements or other self-imposed limitations on land use or development, and shall not be construed in any way as a limitation on the county's authority to acquire land for public purposes.

*§ 72-12 Five -Year Review*

On or about July 1, 2007, and every five years thereafter, the Authority shall submit to the Board of Supervisors a report of the Authority's review of the CEP Program and its effectiveness in fulfilling its purposes.



## Amendments Chapter 72

2004-10-19

§72-7, D, Procedures for the Clarke County Conservation Easement Authority, so that the Authority will use the Selection Criteria Score of a property and such other factors that it may be determined (in addition to the appraised value of the proposed easement, and the Income Criteria for property owners) when determining the maximum amount of county funds that would be offered to a property owner (Purchase Price) for the purchase of an easement. CC-04-05

2009-11-17

§ 72-5 Selection Criteria, so as to add reference to the Property Resource Score; 72-7 Procedures and 72-8 Duties of the Authority, so as to reference and reflect the proposed purchase policy; 72-12 Five Year Review, so as to provide a summary of the Authority's accomplishments to the Board every five years. CC-09-08

# Chapter 74 County Owned Property

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## Chapter 74 County-Owned Property

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 1-19-1988 as Secs. 2-2, 2-3, 9-6 and 9-7 of the 1987 Code. Amendments noted where applicable.]

### General References

Chapter 152 Smoking

### Code Of Virginia References

§ 15.2-1412. Reproductions of records and documents and legal status thereof; destruction of originals.

§ 18.2-137 et seq. - Injuring, etc., any property, monument, etc.

§ 18.2-138 et seq. - Injuries to public buildings

#### *§ 74-1. Use of county-owned personal property for private purposes.*

- A. Trucks, machinery and other items of personal property owned by the county shall not be loaned or leased to any person, provided that the Board of Supervisors may by resolution provide rules and regulations whereby the County Administrator may authorize specified items of county-owned personal property to be used for private purposes when such use would not interfere with or delay any county work or project, upon the payment of specific charges and subject to such terms and conditions as may be stipulated by the County Administrator. If and when any such resolution is in effect, the provisions thereof and the provisions of this subsection shall be deemed to be incorporated in and made a part of any authorization made thereunder by the County Administrator, and all persons for whose benefit any county-owned personal property is used shall be bound thereby and shall likewise be bound by the stipulations of the County Administrator.
- B. This section shall not be construed so as to limit the authority of the Board of Supervisors to authorize the use of county-owned personal property by municipalities or agencies of the commonwealth under mutually agreed upon terms and conditions.

#### *§ 74-2. Unauthorized use of personal property.*

No person shall, without proper authority, knowingly use, tamper with, render inoperative, destroy, damage, remove, deface, molest or otherwise interfere with any books, records, furniture, equipment, gear, apparatus, tools or other items of personal property belonging to, leased to or used by the county or any agency thereof.

#### *§ 74-3. Unauthorized use of real property.*

No person shall, without proper authority, knowingly destroy, damage, deface, molest or otherwise interfere with or trespass upon any real property belonging to, leased to or used by the county or any agency thereof.

*§ 74-4. Protection of records and other papers.*

- A. No book, record, document or paper belonging to the county or any department, office, board, commission or other agency of the county shall be removed from the office of the custodian thereof without his permission, and then only upon the giving of a receipt therefore, except as may be provided otherwise by law in any case or except upon order of the Board of Supervisors or its Chairman or in compliance with a valid subpoena duces tecum issued by a court or officer having jurisdiction in the premises.
- B. No person shall, without proper authority, destroy, tamper with, deface or otherwise damage or alter any book, record, document or paper belonging to the county or any department, office, board, commission or other agency of the county or fail to return any such item of property to its proper custodian after having taken it from its place of custody as authorized in Subsection A of this section.

*§ 74-5. Violations and penalties<sup>17</sup>*

Penalties for violation of the provisions of this chapter shall be as provided in Chapter 1 General Provisions Article I.

References

<sup>17</sup> Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

# Chapter 78 Dance Halls - Repealed

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## **Chapter 78 Dance Halls – REPEALED**

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 01-19-1988 as § 9-8 of the 1987 Code. Amendments noted where applicable. Repealed by the Clarke County Board of Supervisors 10-19-2021]

### **Amendments Chapter 78**

2021-10-19

Chapter 78 Dance Halls was repealed by the Clarke County Board of Supervisors. Previous versions can be requested from County Administration.

# Chapter 84 Emergency Operations Plan

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## **Chapter 84 Emergency Operations Plan**

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The Emergency Operations Plan is on file in the Office of the County Administrator.

### **Amendments Chapter 84**

1994-09-20

Adopted

2003-11-18

Updated Emergency Operations Plan



# Chapter 86 Explosives

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## Chapter 86 Explosives

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### Article I Prospect Hill Spring

#### *§ 86-1. Purpose*

Prospect Hill Spring is the public water source for the Town of Boyce and the communities of Millwood, Waterloo, and White Post. Use of explosives is hereby limited within the area of Prospect Hill Spring so as to protect the quality and quantity of spring water.

#### *§ 86-2. Definition*

For the purpose of this ordinance “explosive” shall be as defined in § 59.1-137. Explosives Definition, Code of Virginia.

#### *§ 86-3. Prohibited Area*

Use of explosives is prohibited within the Spring Conservation Overlay District as described in § 3-E-2 of the Clarke County Zoning Ordinance.

#### *§ 86-4. Limited Area*

Within the area described below and outside the Spring Conservation Overlay District, the use of explosives is allowed after submission and approval by the Clarke County Board of Supervisors (the Board) of a Blasting Plan that addresses the potential impact of the proposed blasting activity on the geology within this area:

- Beginning at the intersection of Virginia Route 620 and the Norfolk Southern Railroad right of way near the intersection of Virginia Route 620 with US Route 340;
- thence southwest along the south boundary of the Norfolk Southern Railroad right of way to Virginia Route 723;
- thence southeast along the northeast boundary of Virginia Route 723 to the intersection of Route 723 with the southeast boundary of present Tax Parcel 29-A-16A;
- thence northeast along the southeast boundary of Tax Parcel 29-A-16A to its eastern corner;
- thence in a straight line from the east corner of Parcel 29-A-16A to the corner of the intersection of the boundaries of present Tax parcel 30-A-1B and present Tax Parcel 30-A-7;
- thence northeast along the common boundary of Parcels 30-A-1B and 30-A-7 to Virginia Route 620;

- thence north along the west boundary of Virginia Route 620 to the point of beginning.

#### *§ 86-5. Blasting Plan*

The Blasting Plan shall include the following elements:

- a. Demonstration that the proposed improvements, including construction of buildings, earthwork operations, road construction, utility installation, and storm drainage/storm water management facilities, for which blasting is to occur are located and designed so as to require the least intensive degree of blasting necessary and that it is necessary to remove the rock rather than relocating development improvements, changing elevations, etc.;
- b. Geotechnical investigation evaluating the impact of the proposed blasting on the quantity and quality of groundwater recharging Prospect Hill Spring. The investigation shall include electrical resistivity and/or seismic refraction testing to show the limits, hardness and characteristics of rock, location of voids, groundwater levels, etc. Test pit evaluation where improvements are planned may be required by the Board after its initial review and approval;
- c. A program for a pre-blast survey of existing water quality and quantity of Prospect Hill Spring and public utilities within the area defined in section 4 above;
- d. A blasting schedule identifying the location, size, and time period of blasting activities;
- e. A statement indicating that:
  - i. all blasting shall be done by licensed blasters and the contractor shall conform to all federal, state, and local laws and regulation regarding transportation, storage, and use of explosives; and
  - ii. the contractor shall be fully responsible and liable for all damage incurred to publicly owned facilities as a result of the contractor's use of explosives and blasting operations regardless of whether or not the contractor had complied with such federal, state, or local laws and regulations.
- f. A monitoring plan conducted by a independent third party,
- g. Blasting work shall be performed in the presence of a licensed blaster;
- h. Other requirements that in the opinion of the Board ensures protection of Prospect Hill Spring.

#### *§ 86-6. Insurance*

The contractor shall take out and maintain, during the period of blasting operations plus 30 days, special liability and property damage insurance for all personal and property damage incurred as a result of the contractor's use of explosives and blasting operations. The Board shall approve the coverage and amount of such insurance. No explosives shall be delivered to the site until proof of such insurance coverage is delivered to the Board. If the coverage or amount of insurance is not deemed sufficient, a special bond covering the blasting operations may be required by the Board and the bond's costs shall be paid by the contractor.

#### *§ 86-7. Notice*

All governmental agencies as required by law, including the Board, shall be notified before the period of blasting commences.

#### *§ 86-8. Review Costs*

The Contractor shall pay the county's costs for professional consultant review of the Blasting Plan.

### Article II County-wide

#### *§ 86-9. Purpose*

More than 3,000 existing dwellings in Clarke County rely on private wells and septic systems for their water source and sewage disposal systems. In addition, portions of public water and sewer systems traverse areas of the county outside of town corporate limits. Use of explosives is hereby limited near:

- a. private wells so as to protect the quality and quantity of private well water,
- b. private septic systems so as to insure their effectiveness in processing sewage and the potential contamination of the groundwater, and
- c. public waterworks and sewer system and treatment works so as to ensure such facilities are not damaged.

#### *§ 86-10. Definitions*

For the purpose of this ordinance "explosive" shall be as defined in § 59.1-137. Explosives Definition, Code of Virginia. For the purpose of this ordinance "perennial spring" shall be as defined in § 143 and § 184 of the Code of Clarke County

#### *§ 86-11. Prohibited Area*

Except in incorporated towns and the Berryville Annexation Area, use of explosives is prohibited within 100 feet of private wells, public waterworks, private sewage disposal systems, public sewerage system and treatment works, and perennial springs.

*§ 86-11. Limited Area*

Between 100 feet and 500 feet of private wells, public waterworks, private sewage disposal systems, public sewerage system and treatment works, and perennial springs the use of explosives is allowed only after submission and approval by the Clarke County Board of Septic and Well Appeals (the Board) of a Blasting Plan that addresses the potential impact of the proposed blasting activity on such facilities.

*§ 86-12. Blasting Plan*

The Blasting Plan shall include the following elements:

- a) Demonstration that the proposed improvements, including construction of buildings, earthwork operations, road construction, utility installation, and storm drainage/stormwater management facilities, for which blasting is to occur are located and designed so as to require the least intensive degree of blasting necessary and that it is necessary to remove the rock rather than relocating development improvements, changing elevations, etc.;
- b) A program for a pre-blast survey of all existing above and below ground facilities within 500 feet of the site proposed for the use of explosives;
- c) A blasting schedule identifying the location, size, and time period of blasting activities;
- d) A statement indicating that:
- e) all blasting shall be done by licensed blasters and the contractor shall conform to all federal, state, and local laws and regulation regarding transportation, storage, and use of explosives; and
- f) the contractor shall be fully responsible and liable for all damage incurred to publicly owned facilities as a result of the contractor's use of explosives and blasting operations regardless of whether or not the contractor had complied with such federal, state, or local laws and regulations.
- g) A statement that blasting work shall be performed in the presence of a licensed blaster;
- h) Other requirements that in the opinion of the Board ensures protection of wells, water works, drain fields, and sewage disposal systems.

*§ 86-13. Insurance*

The contractor shall take out and maintain, during the period of blasting operations plus 30 days, special liability and property damage insurance for all personal and property damage incurred as a result of the contractor's use of explosives and blasting operations. The Board shall approve the coverage and amount of such insurance. No explosives shall be delivered to the site until proof of such insurance coverage is delivered to the Board. If the coverage or amount of insurance is not deemed sufficient, a special bond covering the blasting operations may be required by the Board and the bond's costs shall be paid by the contractor.

*§ 86-14. Notice*

All governmental agencies as required by law, including the Board, shall be notified before the period of blasting commences.

*§ 86-15. Review Costs*

The Contractor shall pay the county's costs for professional consultant review of the Blasting Plan.

**Amendments Chapter 86**

2003-04-08

Adopted Article I Prospect Hill Spring Explosives Ordinance. Chapter number assigned by staff.

2003-12-16

Added Article II County-wide Explosives Ordinance. Number assigned by staff.

# Chapter 93 Fire Prevention

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## Chapter 93 Fire Prevention

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[HISTORY: Adopted by the Board of Supervisors of Clarke County as indicated in article histories. Amendments noted where applicable.]

### General References

Chapter 16 Fire Companies, Volunteer

Chapter 52 Alarm Systems

Chapter 71 Building Construction

Chapter 97 Fireworks

### Article I Open Burning Restrictions

[Adopted 01-19-1988 as § 5-1 of the 1987 Code]

#### *§ 93.1. Open Burning Restrictions.*

- a. The Board of Supervisors shall impose such restrictions as it shall deem necessary to limit or prohibit open burning that will be offensive or objectionable due to smoke or odor emissions or when atmospheric conditions or local circumstances make such fires hazardous.
- b. The Board of Supervisors may delegate to the County Administrator the authority to promulgate, impose, or rescind, any such regulations or permits as may be consistent with the Board's action in limiting or banning open burning.
- c. Violation of any restriction, regulation or ban imposed by this section shall be considered a Class 1 misdemeanor.

### Amendments Chapter 93

1999-10-19

§ 93.3. Open Burning Restrictions. Added

2014-10-21

Chapter 93 Article I Conduct at Fire Scenes rename to Open Burning Restrictions, Delete § 93-1. Obedience to and authority of officers and § 93-2. Authority of Fire Marshal, Renummer § 93.3. Open Burning Restrictions to § 93.1. Delete Code of Virginia References. CC-2014-3



# Chapter 97 Fireworks

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## Chapter 97 Fireworks

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 1-19-1988 as Secs. 5-16 through 5-23 of the 1987 Code. Amendments noted where applicable.]

### General References

Chapter 57 Special Events

Chapter 93 Fire Prevention

### Code of Virginia References

§ 15.2-974. - Permits for display of fireworks; use and exhibitions.

#### *§ 97-1. Purpose.*

The purpose of this chapter is to provide for the issuance of permits to fair associations, amusement parks and organizations and groups of individuals for the display of fireworks and to regulate the use and display of fireworks upon the granting of permits.

#### *§ 97-2. Application for permit.*

- A. Written application for a permit to display fireworks shall be made in triplicate to the County Administrator, stating the time, place, type of fireworks and circumstances under which they are proposed to be displayed.
- B. Each such application shall name at least one person who shall participate in displaying the fireworks who has had experience in displaying the type of fireworks proposed to be displayed.

#### *§ 97-3. Approval of application; start of thirty-day period approved for storage.*

Upon approval of an application for a permit to display fireworks, the County Administrator shall write across such application the wording "Approved," and the application shall be dated and signed by him, which date shall constitute the beginning of a thirty-day storage permitted for such fireworks as provided in § 97-7, and all fireworks covered by such permit shall be displayed or discharged within such thirty-day period.

#### *§ 97-4. Disposition of permit and copies.*

One copy of each application for a permit to display fireworks shall be kept on file by the County Administrator until after the date the fireworks are displayed, and two copies, after being approved as aforesaid, which will then become a permit to display fireworks, shall be returned to the applicant, who shall keep one copy on file for 60 days after displaying such

fireworks, and one copy shall be in the possession of the person in charge of displaying the fireworks at the time and place they are being displayed.

*§ 97-5. Supervision of display.*

Permits under this chapter shall provide that fireworks be displayed under the supervision of a peace officer of the county, who shall be present at the time such fireworks are displayed.

*§ 97-6. Persons authorized to conduct display.*

Not more than three persons, in addition to the officer mentioned in § 97-5, shall participate in displaying fireworks at one time, and all shall be persons over the age of 18 years.

*§ 97-7. Storage of fireworks.*

Prior to the use of fireworks pursuant to a permit, they shall be stored in a metal container in a building of masonry, concrete or other firm construction so that members of the public cannot have access to them. Such fireworks shall not be stored in the county for a period in excess of 30 consecutive days.

*§ 97-8. Proximity of spectators.*

No spectator or member of the public other than those who are participating in displaying or discharging fireworks shall be closer than 50 feet to the place where such fireworks are being displayed or discharged.

*§ 97-9. Violations and penalties.<sup>19</sup>*

Any person who violates any provision of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, be punished by confinement in jail not to exceed 12 months, or by a fine not exceeding \$1,000, or both such fine and imprisonment.

## References

<sup>19</sup> Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

# Chapter 106 Hunting And Firearms

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## Chapter 106 Hunting And Firearms

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[HISTORY: Adopted by the Board of Supervisors of Clarke County as indicated in article histories. Amendments noted where applicable.]

### General References

Chapter 1 General Provisions

### Code of Virginia References

§ 15.2-915.2. Regulation of transportation of a loaded rifle or shotgun.

§ 15.2-1209.1. Counties may regulate carrying of loaded firearms on public highways.

§ 29.1-520. Times for hunting

§ 29.1-523. - Killing deer by use of certain lights; acts raising presumption of attempt to kill

§ 29.1-526. Counties and cities may prohibit hunting or trapping near primary and secondary highways

### Article I Hunting

[Adopted 01-19-1988 as Secs. 9-13 and 9-14 of the 1987 Code]

#### *§ 106-1. Prohibited areas for hunting and trapping.*

- A. It shall be unlawful for any person to hunt or attempt to hunt with a firearm any game bird or game animal while the hunting or attempting to hunt is on or within 100 yards of any primary or secondary highway in the county.
- B. It shall be unlawful to trap or attempt to trap any game animal or fur bearer within 50 feet of the shoulder of any primary or secondary highway in the county without the written permission of the landowner.
- C. For the purpose of this section, the terms "hunt," "attempt to hunt," or "trap" shall not include the necessary crossing of such highways for the bona fide purpose of going into or leaving a lawful hunting or trapping area.

#### *§ 106-2. Use of artificial light; exception.*

- A. It shall be unlawful for any person to throw or cast the rays of a flashlight, spotlight, headlight or other artificial light in any manner so as to shine directly upon or illuminate any field, forest, woodland, poultry range or building for the purpose of hunting game; and the doing of any such act by any person then in possession of a firearm or other

weapon for the discharge of missiles, without good cause, shall raise a presumption of an attempt to hunt game in violation of this section.

- B. The provisions of Subsection A of this section shall not apply to the headlights of any motor vehicle being operated on a public roadway in the usual and ordinary manner of travel; nor shall they apply to landowners upon their own land, their agents or persons in their employ or under their control.

*§ 106-3. Violations and penalties.20*

Any person who violates this article shall be guilty of a Class 3 misdemeanor.

**Article II Firearms**

[Adopted 01-19-1988 as Secs. 9-15 and 9-16 of the 1987 Code]

*§ 106-4. Transporting loaded rifle or shotgun.*

- A. It shall be unlawful for any person to transport, possess or carry a loaded shotgun or loaded rifle in any vehicle on any public street, road or highway within the county; provided, however, that the foregoing shall not apply to duly authorized law enforcement officers nor military personnel in the performance of their lawful duties nor to any person who reasonably believes that a loaded rifle or shotgun is necessary for his personal safety in the course of his employment or business.
- B. All law enforcement officers authorized to act as such within the county shall have the power to enforce this section, including but not limited to all duly appointed and Acting Game Wardens.
- C. A "loaded rifle or shotgun," as used in this section, is defined as a rifle or shotgun with ammunition within the action chamber, magazine or clip.

*§ 106-5. Carrying loaded firearm on highway.*

- A. It shall be unlawful for any person to carry or have in his possession while on any part of a public highway within this county for the purpose of hunting a loaded rifle or shotgun when such person is not authorized to hunt on the private property on both sides of the highway along which he is standing or walking.
- B. All law enforcement officers authorized to act as such within the county shall have the power to enforce this section, including but not limited to all duly appointed and Acting Game Wardens.
- C. A "loaded rifle or shotgun," as used in this section, is defined as a rifle or shotgun with ammunition within the action chamber, magazine or clip.
- D. The provisions of this section shall not apply to persons carrying loaded firearms in moving vehicles nor to persons acting at the time in defense of persons or property or for purpose other than hunting.

*§ 106-6. Violations and penalties.*

The penalty for violation of the provisions of this Article shall be a fine of not more than \$100.

*§ 106-7. Fingerprinting Applicants for Concealed Handgun Permits.*

[Amended 2007-01-16; Repealed 2012-08-21]

The repeal of this section shall be effective July 1, 2012.

The remaining sections and subsections of Chapter 106 of the Code of Clarke County not amended hereby shall remain in effect as previously enacted.

## Chapter 106 Amendments

1999-02-16

§ 106-7. Section added for fingerprinting applicants for concealed handgun permits

2007-01-16

§ 106-7. Hunting and Firearms § 106-7 Fingerprinting Applicants for Concealed Handgun Permits Add C. If an applicant possesses a current, valid concealed handgun permit and applies for a renewal of said permit, fingerprints shall not be taken nor required as part of said renewal process. CC-06-04.

2012-08-21

Hunting and Firearms Article II Firearms 106.7 Fingerprinting Applicants for Concealed Handgun Permits; Repeal section effective July 1, 2012 an ordinance amending Chapter 106 of the Code of Clarke County, Virginia, entitled "Hunting and Firearms," Article II, Entitled "Firearms," by repealing Section 106-7, consistent with recently amended Virginia code section 18.2-308, which removes the option for a locality to require that an applicant for a concealed handgun permit submit fingerprints as part of the application.

2019-12-17

§ 106-05, 106-6 Amend Chapter 106 Hunting and Firearms so that penalties cannot be interpreted to exceed what is authorized by Virginia Code § 15.2-915.2 and 15.2-1209.1

## References

<sup>20</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

# Chapter 112 Littering

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## Chapter 112 Littering

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 1-19-1988 as Ch. 10, Art. II, of the 1987 Code. Amendments noted where applicable.]

### General References

Chapter 57 Special Events, § 57.7. Special Event requirements.

Chapter 71 Building Construction

Chapter 124 Nuisances

Chapter 137 Property Maintenance

### Code of Virginia References

§ 10.1-1408.1. - Permit required; open dumps prohibited

§ 10.1-1414 Definitions

§ 10.1-1415 et seq. - Litter Control Program.

§ 10.1-1424. - Allowing escape of load material; penalty.

§ 33.1-346. - Dumping trash, penalty

§ 15.2-901. Locality may provide for removal or disposal of trash, cutting of grass and weeds; penalty in certain counties.

§ 19.2-76.2. - Mailing of summons in certain cases.

### Article 1 General Provisions

#### *§ 112-1. Definitions.*

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

INSTITUTION	Any public or private establishment which educates, instructs, treats for health purposes or otherwise performs a service or need for the community, region, state or nation.
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LITTER	All waste materials, including but not limited to bottles, glass, crockery, cans, scrap metal, paper, plastic, rubber, garbage, offal, waste building material at construction sites, disposal packages or containers thrown or deposited as prohibited herein, but not including the properly disposed waste of the primary processes of mining, logging, sawmilling, farming or manufacturing.
LITTER RECEPTACLE	A container with a capacity of not less than 10 gallons, constructed and placed for use as a depository for litter.
PERSON	Any natural person, corporation, partnership, association, firm, receiver, guardian, trustee, executor, administrator, fiduciary or representative or group of individuals or entities of any kind.
PRIVATE PROPERTY	Property owned by any person, including but not limited to yards, grounds, driveways, entrances or passageways, parking areas, storage areas, any body of water, vacant land and recreation facilities.
PUBLIC PROPERTY	Any area that is used or held out for use by the public, whether owned or operated by public or private interests, including but not limited to highways, streets, alleys, parks, recreation areas, sidewalks, parking lots, medians, lakes, rivers, streams, ponds or other bodies of water.
VEHICLE	Every device capable of being moved upon a public highway or public waterway and in, upon or by which any person or property may be transported or drawn upon a public highway or public waterway, and shall also include any watercraft, boat, ship, vessel, barge or other floating craft, except devices moved by human power or used exclusively upon stationary rails or tracks or used exclusively for agricultural purposes and not licensed pursuant to state law which are not

operated on any public highway for purposes other than crossing such public highway or along such highway between two tracts of the owner's land.

*§ 112-2. Enforcement; prosecution; presumption.*

- A. Sworn deputies of the county Sheriff's Department are hereby empowered to issue citations to or arrest persons violating any provision of this chapter and may serve and execute all warrants and other process issued by the court in enforcing the provisions of this chapter. In addition, mailing by registered mail of such process to his last known place of residence shall be deemed as personal service upon the person charged, for the purposes of this chapter.
- B. Prosecution for a violation of any provision of this chapter may be initiated by any law enforcement officer who witnesses such offense or who discovers an article of litter bearing a person's name or address on the property of another, on any public highway or upon any other public property except property that is designated for solid waste disposal. Such prosecution may be initiated by any private citizen who witnesses an offense or discovers evidence.
- C. Any article of litter bearing a person's name or address found on the private property of another or on any public property as designated herein shall be presumed to be the property of such person whose name or address appears thereon and that such person placed or caused to be placed such article of litter; provided, however, that such presumption shall be rebuttable by competent evidence.

*§ 112-3. Litter receptacles required at institutions.* <sup>21</sup>

It shall be the duty of any person owning or operating any institution to provide litter receptacles adequate to contain the litter generated at said institution.

*§ 112-4. Use of receptacles.* <sup>22</sup>

It shall be unlawful to deposit any item or items except litter in any receptacle placed for public use as a depository for litter.

*§ 112-5. Cleanup of premises by county.*

- A. Ten days after due notice is given to any owner, agent, occupant or lessee of any private property to remove litter from the premises, the county is authorized to clean up said private property and bill the owner or his agent for the costs thereof.

- B. If the bill has not been paid within 30 days, execution may be issued by the county against the property for the amount expended in the cleaning work, and such execution shall constitute a lien on the property until the claim has been satisfied. Execution of the notice to remove litter shall be in writing.

*§ 112-6. Violations and penalties.* <sup>23</sup>

Penalties for violation of the provisions of this chapter shall be as provided in Chapter 1, General Provisions, Article I.

## Article II Moving Violations

*§ 112-7. Littering prohibited.* <sup>24</sup>

- A. It shall be unlawful for any person to drop, deposit, discard or otherwise dispose of litter in or upon any public or private property within the county, including but not restricted to any street, sidewalk, park, body of water or vacant or occupied lot, except in public receptacles or in authorized private receptacles provided for public use or in an area designated by the State Department of Waste Management as a permitted disposal site.
- B. When a violation of the provisions of this section has been observed by any person and the matter dumped or disposed of in the highway, right-of-way, property adjacent to such highway or right-of-way or private property has been ejected from a motor vehicle, the owner or operator of such motor vehicle shall be presumed to be the person ejecting such trash, garbage, refuse or other unsightly matter; provided, however, that such presumption shall be rebuttable by competent evidence.

*§ 112-8. Allowing escape of load material.*

- A. No vehicle shall be driven or moved on any highway unless such vehicle is constructed or loaded to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom; provided, however, that sand or any substance for increasing traction during times of snow and ice may be dropped for the purpose of securing traction or water or other substance may be sprinkled on a roadway in the cleaning or maintaining of such roadway by the state or local government agency having that responsibility.
- B. Subsection A shall not apply to:
  - 1. Any motor vehicle which is used exclusively for agricultural purposes and which is not operated on or over any public highway for any other purpose other than for the purpose of operating it across a highway or along a highway from one point of the owner's land to another part thereof, irrespective of whether or not the tracts adjoin.

2. Any agricultural vehicle, tractor or other vehicle exempted from registration and licensing requirements pursuant to the Code of Virginia, § 46.2-303. Licenses not required for operating road roller or farm tractor. et seq.<sup>25</sup>
  3. Any motor vehicle transporting poultry or livestock.
- C. No vehicle used to transport litter or other items likely to fall or be blown from such vehicle shall be driven or moved, stopped or parked on any highway unless such vehicle is covered to prevent its contents from blowing, dropping or falling from such vehicle.
  - D. Any person operating a vehicle from which any glass or objects have fallen or escaped which could constitute an obstruction or damage a vehicle or otherwise endanger travel upon such public highway shall immediately cause the highway to be cleaned of all glass or objects and shall pay any costs therefore.

### Article III Stationary Violations

#### *§ 112-9. Areas surrounding commercial establishments and institutions.*

It shall be the duty of each proprietor and each operator of any business, industry or institution to keep the adjacent and surrounding area clear and free of litter. These areas include, but are not restricted to, public and private sidewalks, roads and alleys; grounds; parking lots; loading and unloading areas; and all vacant lots which are owned or leased by said establishment or institution.

#### *§ 112-10. Keeping residential property clean.<sup>26</sup>*

It shall be the duty of each residential property owner and tenant to keep all exterior private property free of litter. These areas shall include, but not be restricted to, sidewalks, alleys and driveways; yards and grounds, fences, walls and property lines; drainages; and vacant lots in residential areas.

#### *§ 112-11. Sweeping litter into streets.*

It shall be unlawful to sweep or push litter into streets. Such litter shall be deposited in a proper receptacle, which shall be covered to prevent scattering by wind and animals.

#### *§ 112-12. Construction and demolition sites.*

- A. It shall be unlawful for any owner, agent or contractor to permit the accumulation of litter before, during or after completion of any construction or demolition project.
- B. It shall be the duty of the owner, agent or contractor in charge of a construction or development site to furnish litter receptacles and to collect and contain same to prevent scattering other bulk litter on a daily basis. All litter shall be removed from such site not less than once a week.

*§ 112-13. Handbills and advertising material.*

It shall be unlawful for any person distributing commercial handbills, leaflets, flyers or any other advertising and information material to distribute material in such a manner that it litters either public or private property.

*§ 112-14. Indiscriminate dumping or discarding of litter and solid waste.*

- A. It shall be unlawful for any person to discard or dump along any street or road, on or off the right-of-way, any household or commercial solid waste, rubbish, refuse, junk, vehicle or vehicle parts, rubber tires, appliances, furniture and any other material or equipment on public or private property, except by written consent of the owner of said private property or except in receptacles provided for public use for the deposit of said material or except in an area designated by the State Department of Waste Management as a permitted disposal site.
- B. Any article of litter bearing a person's name or address found on the private property of another or on any public property shall be presumed to be the property of such person whose name or address appears thereon and that such person placed or caused to be placed such article of litter; however, such presumption shall be rebuttable by competent evidence.

**References**

<sup>21</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

<sup>22</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

<sup>23</sup> Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

<sup>24</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

<sup>25</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

<sup>26</sup> Editor's Note: See Ch. 137, Property Maintenance.

# Chapter 120 Noise

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## Chapter 120 Noise

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[HISTORY: Adopted by the Board of Supervisors of Clarke County as indicated in article histories. Amendments noted where applicable.]

### General References

Chapter 57 Special Events, § 57.7. Special Event requirements

Chapter 61 Animals, § 61-15 Barking or howling dogs

Chapter 78 Dance Halls

Chapter 132 Peace And Good Order

### Code Of Virginia References

§ 15.2-919. Regulation of motorcycle noise

§ 46.2-113. Violations of this title; penalties

§ 46.2-1047. Muffler cutout, etc., illegal

### Article I Noise

[Adopted 01-19-1988 as § 8-10 of the 1987 Code]

The Board of Supervisors hereby finds and declares that excessive or unwanted sound is a serious hazard to the public health, safety, welfare, and quality of life, and that the inhabitants of Clarke County have a right to and should be free from an environment of excessive or unwanted sound. Therefore, it is the policy of the County and the purpose and intent of this article to prohibit such excessive or unwanted sound as provided herein.

State law reference—Va. Code § 15.2-1200.

#### *§ 120-1. Administration and enforcement.*

(a) The Sheriff is hereby designated the agent of the Board of Supervisors in the administration and enforcement of this article. Employees of the Building Department, Planning Department, and other officers and employees of the County may assist the Sheriff in the enforcement of this article.

(b) Nothing in this Section shall preclude a private citizen from obtaining a magistrate's summons based on a probable cause determination by the magistrate's office.

State law reference—Va. Code § 15.2-1200.



### *§ 120-2. Applicability.*

This article shall apply to sound generated within the County, regardless of whether the complainant or the receiving property is within or without the County. This article shall be in addition to any sound or noise regulations set forth in the County Zoning Ordinance.

State law reference –Va. Code § 15.2-1200.

### *§ 120-3. Definitions.*

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

*A-weighted sound level* means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

*Audible and discernable* means the sound can be heard by the human ear, and the sound is sufficiently distinct such that its source can be clearly identified.

*Background noise level* shall mean the aggregate of all sound sources impacting at the place where a specific sound generation is measured or evaluated, excluding the specific sound generation itself.

*Decibel (dB)* means a unit for measuring the volume of a sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals (twenty (20) micronewtons per square meter).

*Emergency* means any occurrence or set of circumstances involving actual or imminent physical injury or illness or property damage that requires immediate action.

*Emergency work* means any work performed for the purpose of preventing or alleviating the physical injury or illness or property damage threatened or caused by an emergency.

*Gross vehicle weight rating (GVWR)* means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle shall be used.

*Instrument, machine or device* means and refers to any musical instrument, radio, phonograph, compact disc player, cassette tape player, amplifier or any other machine or device for producing, reproducing or amplification of sound.

*Motor carrier vehicle engaged in interstate commerce* means any vehicle for which regulations apply pursuant to section 18 of the Federal Noise Control Act of 1972 (P.L. 92-574), as amended, pertaining to motor carriers engaged in interstate commerce.

*Motorcycle* means any motor vehicle designed to travel on not more than three (3) wheels in contact with the ground and any four-wheeled vehicle weighing less than five hundred (500) pounds and equipped with an engine of less than six (6) horsepower, excepting farm tractors.

*Motor vehicle* means any self-propelled device or device designed for self-propulsion, upon or by which any person or property is or may be drawn or transported upon a street or highway, except devices moved by human power or used exclusively upon stationary wheels or tracks.

*Noise* means any audible sound which disturbs or tends to disturb humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

*Public area* means any real property owned by the government, including, but not limited to, public rights-of-way, sidewalks, parks, and buildings.

*Residential dwelling* means any building or other structure in which one or more persons resides on a permanent or temporary basis, including, but not limited to, houses, apartments, condominiums, hotels, and motels.

*Restaurant* means any building or structure where in the normal course of business food or drink is available for eating on the premises, in consideration for payment. For purposes of this chapter, the term restaurant includes, but is not limited to, bars, lounges, taverns, coffee shops, and cafes.

*Sound* means an oscillation in pressure, particle displacement, particle velocity, or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity, and frequency.

*Sound generation* means any conduct, activity, or operation, whether human, mechanical, electronic, or other, and whether continuous, intermittent, or sporadic, and whether stationary or ambulatory in nature, which produces or results in an audible sound.

*Sound level* means the weighted sound pressure level obtained by the use of a sound level meter and the A-frequency weighting network, as specified in American National Standards Institute specifications for sound level meters.

*Sound level meter* means an instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and weighting networks used to measure sound pressure levels.

*§ 120-4. Violations.*

- (a) Any person who violates any provision of this article shall be deemed to be guilty of a Class 3 misdemeanor for a first offense. Any person who violates a provision of this article within one (1) year after a previous conviction under this article shall be guilty of a Class 2 misdemeanor.
- (b) The person operating or controlling a noise source shall be guilty of any violation caused by that source. If that cannot be determined, any owner, tenant, resident, or manager physically present on the property where the violation is occurring is rebuttably presumed to be operating or controlling the noise source.
- (c) In addition to and not in lieu of the penalties prescribed in this section, the County may apply to the circuit court for an injunction against the continuing violation of any of the provisions of this article and may seek any other remedy authorized by law.

*§ 120-5. Use of sound level meters.*

The decibel level of any noise regulated on a decibel basis by this article shall be measured by a sound level meter. The test results shall be prima facie evidence if administered in accordance with Virginia Code § 19.2-270.7. In order to implement and enforce this article effectively, the Sheriff shall promulgate standards and procedures for using and testing sound level meters used in the enforcement of this article.

*§ 120-6. Maximum Sound Levels/Residential Dwellings.*

- (a) Nighttime. No person shall permit, operate, or cause any source of sound to create a sound level that can be heard in another person's residential dwelling during the hours between 10:00 p.m. and 7:00 a.m. in excess of 55 dBA when measured inside the residence at least four (4) feet from the wall nearest the source, with doors and windows to the receiving area closed.
- (b) Daytime. No person shall permit, operate or cause any source of sound to create a sound level in another person's residential dwelling during the hours between 7:00 a.m. and 10:00 p.m. in excess of 65 dBA when measured inside the residence at least four (4) feet from the wall nearest the source, with doors and windows to the receiving area closed.
- (c) Measurements in multifamily dwellings or mixed use structures. In a structure used as a multifamily dwelling or a mixed use structure, the Sheriff's Office may take measurements to determine sound levels from indoor common areas or other dwelling units within the structure, when requested to do so by a residential occupant in possession and control thereof. Such measurement shall be taken at a point at least four (4) feet from the wall, ceiling, or floor nearest the noise source, with doors and windows to the receiving area closed.

(d) Exemptions. The following activities or sources of noise shall be exempt from the daytime prohibition set forth in subsection (b) of this section:

1. Band performances or practices, athletic contests or practices, and other school-sponsored activities on the grounds of public or private schools, colleges, or universities.
2. Athletic contests and other officially sanctioned activities in County parks or facilities.
3. Activities related to the construction, repair, maintenance, remodeling or demolition, grading, or other improvement of real property.
4. Gardening, lawn care, tree maintenance or removal, and other landscaping activities.
5. Agricultural activities.
6. Church bells, carillons, or calls to worship by other sound-producing devices.
7. Religious or political gatherings to the extent that those activities are protected by the First Amendment to the United States Constitution.
8. Public transportation, refuse collection and sanitation services.
9. Sounds generated from the lawful discharge of a firearm. Sport shooting ranges shall also be exempt from these regulations to the extent the range is exempt from these noise regulations pursuant to Va. Code § 15.2-917.

*§ 120-7. Motor Vehicle Maximum Sound Levels; Amplified Sound from Vehicles.*

(a) No person shall operate or cause to be operated a public or private motor vehicle or motorcycle on a public right-of-way at any time in such a manner that the sound level emitted by the operation of the motor vehicle or motorcycle, when measured at a distance of one-hundred (100) feet or more is audible and discernable or exceeds the level set forth in the following table:

Vehicle Class	Sound level in dBA	
	Speed limit 35 MPH or less	Speed limit over 35 MPH
All motor vehicles of GVWR or GCWR of 6,000 lbs. or more	86	90

Any motorcycle	82	86
Any other motor vehicle or any combination of vehicles towed by any motor vehicle	76	82

- (b) This section shall not apply to any motor carrier vehicle engaged in interstate commerce.
- (c) Notwithstanding any other provisions of this section or article, it shall be unlawful for any person to play or operate, or permit the playing, use or operation of, any radio, tape player, compact disc player, loud speaker, or other electronic device used for the amplification of sound, which is located within a motor vehicle being operated or parked on public or private property within the County, including any public or private street or alley, in such a manner as to be audible and discernable at a distance of one hundred (100) or more feet from the vehicle in which it is located.

The provisions of this subsection shall not apply to motor vehicles driven in a duly authorized parade, nor to motor vehicle alarms or other security devices, nor to the emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.

*§ 120-8. Sound Levels/Restaurants.*

No person shall permit, operate or cause any source of sound to create a sound level emanating from a restaurant during the hours between 7:00 a.m. and 11:00 p.m. in excess of eighty (80) dB(A), or between 11:00 p.m. and 7:00 a.m. in excess of seventy-five (75) dB(A) when measured from any public area including, but not limited to, any public streets or sidewalks, or other private property.

*§ 120-9. Specific Prohibitions.*

The following acts are declared to be violations of this article. This enumeration shall not be construed to limit, in any way, the general prohibitions contained in section 120-6:

- (a) Vehicle horns, signaling devices and similar devices. Sounding any horn, signaling device, or similar device on any automobile, motorcycle or other vehicle on any right-of-way or in any public space continuously or intermittently for more than ten (10) consecutive seconds, except when the sounding of any such device is intended as a danger warning.
- (b) *Nonemergency signaling devices.* Sounding or permitting the sounding of any amplified signal continuously or intermittently from any bell, chime, siren, whistle, or similar device intended primarily for nonemergency purposes from any one location for more than ten (10) consecutive seconds in any hourly period; provided, however, that this

subsection shall not apply to the sounding of such devices by religious users or by public bodies or agencies for testing, traffic control, or other public purposes.

- (c) *Emergency signaling devices, security, burglar and fire alarms, etc.* Sounding or permitting the continuous or intermittent sounding outdoors of any emergency signaling device, or any security, burglar or fire alarm, siren, whistle, or similar device, including without limitation any motor vehicle security alarm, *siren*, whistle, or similar device, for a period in excess of ten (10) minutes in any residential area and fifteen (15) minutes in any other area, except in response to a burglary, attempted burglary, fire, or other emergency.
- (d) *Audio and audio-visual devices, musical instruments, amplified sound etc., excluding those in motor vehicles.* The playing or operation of any television, boombox, stereo, phonograph, radio, tape player, compact disc player, MP3 player, video player, musical instrument, drum, amplifier or any other device that *produces*, reproduces or amplifies sound except for those located in motor vehicles, where the sound, when measured in any public area including but not limited to any public street or sidewalk, or from other private property between the hours of 7:00 a.m. and 11:00 p.m. exceeds eighty (80) dB(A), or between the hours of 11:00 p.m. and 7:00 a.m. exceeds seventy-five (75) dB(A); provided, however that the provisions of this subsection shall not apply to any outdoor performance, parade, gathering, dance, concert, show, sporting event, or other event sponsored by the County or for which the County has granted a permit.
- (e) *Noise-sensitive areas.* The making of any unreasonably loud and raucous noise within two hundred (200) feet of any *school*, place of worship, court, hospital, nursing home, or assisted-living facility while the same is being used as such, that substantially interferes with the workings of the institution.
- (f) *Construction equipment.* The operation of any bulldozer, crane, backhoe, front loader, pile driver, *jackhammer*, pneumatic drill, or other construction equipment between the hours of 9:00 p.m. and 7:00 a.m.

#### § 120-10. *General Exceptions.*

No provisions of this article shall apply to (1) the emission of sound for the purpose of alerting persons to the existence of an emergency; (2) the emission of sound in the performance of emergency work; (3) activities sponsored by the County; or (4) activities for which the regulation of noise has been preempted by federal law.

#### § 120-11. *Severability.*

A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part of this article shall not affect the validity of the remaining parts thereto.

## Amendments Chapter 120

2009-02-17

Chapter 120 Noise, so as to delete the current text in its entirety and adopt new text so as to update and clarify these provisions. CC-09-01

2011-12-20

Chapter 120 Noise § 120-6. Exempt sounds. c) Construction, demolition and/or maintenance activities. Add, except that the aforesaid time limitations shall not apply to the construction or maintenance of public roads. CC-11-05

2019-12-17

Amend Chapter 120 Noise § 120-8. Violation and penalty so that penalties are not more stringent than its enabling statute Virginia Code § 14T15.2-98014T. CC-19-02

2022-05-17

Complete rewrite of Chapter 120 Noise Ordinance.

# Chapter 124 Nuisances

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## Chapter 124 Nuisances

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 01-19-1988 as Secs. 9-36 th

### General References

Chapter 57 Special Events

Chapter 61 Animals

Chapter 67 Brush, Grass And Weeds, Article I Control of Johnson Grass

Chapter 112 Littering

Chapter 132 Peace And Good Order

Chapter 137 Property Maintenance

Chapter 171 Vehicles, Abandoned

Chapter 180 Water And Wastewater, Article I Sewage Disposal

### Code of Virginia References

§ 19.2-59. - Search without warrant prohibited

§ 32.1-25. - Right of entry of health officials

§ 48-1 et seq. - Investigation of complaint by special grand jury

§ 48-7 et seq. - Houses and contents are nuisances subject to abatement

§ 15.2-900 - Abatement or removal of nuisances by localities; recovery of costs.

§ 18.2-347 - Keeping, residing in or frequenting a bawdy place; "bawdy place" defined.

#### *§ 124-1. Supplemental nature of chapter.*

This chapter is supplemental to other provisions of this Code in which nuisances are defined and prohibited. The provisions of this chapter relating to the abatement of nuisances shall be alternative methods and procedures for the abatement of nuisances in those instances where other methods and procedures for abatement are not provided.

#### *§ 124-2. Nuisances prohibited.*

It shall be unlawful for any person to cause, harbor, commit or maintain or to suffer to be caused, harbored, committed or maintained any nuisance as defined by the statute or common law of this state or as defined by this Code or other ordinance of the Board of Supervisors at any place within the county.

*§ 124-3. Nuisances enumerated.*

- A. The following acts when committed or conditions when existing within the county are hereby defined and declared to be nuisances:
1. An act done or committed or aided or assisted to be done or committed by any person or any substance, being or thing kept, maintained, placed or found in or upon any public or private place which is injurious or dangerous to the public health or safety.
  2. All buildings, bridges or other structures of whatever character kept or maintained or which are permitted by any person owning or having control thereof to be kept or maintained in a condition unsafe, dangerous, unhealthy, injurious or annoying to the public.
  3. All trees and other appendages to realty kept or maintained or which are permitted by any person owning or having control thereof to be kept or maintained in a condition unsafe, dangerous, unhealthy, injurious or annoying to the public.
  4. All ponds or pools of stagnant water and all foul or dirty water or liquid when discharged through any drain, pipe or spout or thrown into or upon any street, public place or lot to the injury or annoyance of the public.
  5. All obstructions caused or permitted on any street or sidewalk to the danger or annoyance of the public and all stones, rubbish, dirt, filth, slops, vegetable matter or other article thrown or placed by any person on or in any street, sidewalk or other public place which in any way may cause any injury or annoyance to the public.<sup>27</sup>
  6. All sidewalks, gutters or curbstones permitted to remain in an unsafe condition or out of repair.
  7. All stables, cattle yards, hog, sheep or cow pens or yards for poultry permitted by the owner thereof or the person responsible therefor to be in such a condition as to become offensive, annoying or injurious to the public.<sup>28</sup>
  8. All structures and places where explosive or combustible substances, liquids or gases are stored or used in such manner as to constitute a hazard to the safety or health of persons or a hazard to property.

- B. The nuisances described in this section shall not be construed as exclusive, and any act of commission or omission and any condition which constitutes a nuisance by statute or common law of the state, when committed, omitted or existing within the county, is hereby declared to constitute a nuisance.

*§ 124-4. Offensive or unhealthy substances.*

No persons owning or in possession of any lot, house, building or enclosure shall allow or suffer to exist in or upon such premises any stagnant water, animal or vegetable matter or other substance liable to become putrid, offensive, annoying or unhealthy. Persons owning or in possession of any real estate shall provide proper and adequate drainage therefore so that no offensive, baneful or disagreeable liquids shall flow or seep into any street. Any violation of this section is hereby declared to be a nuisance.

*§ 124-5. Responsibility of property owners, tenants and occupants.*

Each owner, lessee, tenant, occupant or person in charge of any real property within the county and each agent or representative of any such person shall maintain and use such real property in such manner that no use of or activity or condition upon or within such real property shall constitute a nuisance. All such persons shall comply with all of the provisions of this chapter, but such responsibility shall not be construed to permit any other person not charged with such responsibility to commit or maintain any nuisance upon or within any real property in the county.

*§ 124-6. Inspections, investigations and complaints.*

The Sheriff and the Health Officer, each within the scope of his official responsibility, shall cause inspections to be made from time to time of all portions of the county to determine whether any condition exists or activity is being practiced which constitutes a nuisance. Each such officer shall cause an investigation to be made upon complaint made by any responsible person.

*§ 124-7. Right to enter private premises; reasonable notice; duty of occupants.*

The Sheriff and his deputies and the Health Officer and his assistants shall have the right to enter upon private premises for the purposes specified in § 124-6, upon compliance with all applicable provisions of law. Unless it appears probable that advance warning would defeat the purpose of such entry, occupants of premises to be entered shall be given reasonable notice in advance, and in any case it shall be unlawful for any owner or occupant to prevent such entry which is sought to be made in compliance with law.

*§ 124-8. Notice to cease and desist.*

If at any time the Sheriff or the Health Officer shall find an activity or practice which constitutes a nuisance, he shall promptly and by the most expeditious means notify the violator to cease and desist forthwith.

*§ 124-9. Notice to abate; appeal; imminent hazard.*

- A. If at any time the Sheriff or the Health Officer shall find a condition which constitutes a nuisance, he shall give notice in writing to the owner, occupant or person in charge of the premises upon which such condition exists, stating therein the condition which constitutes a nuisance and directing such addressee to remedy the condition within the time stated in such notice, which shall be not more than 10 days.
- B. It shall be unlawful for any such owner, occupant or person in charge to fail to comply with the terms of such notice, provided that any owner, occupant or person in charge may, within two days from the service thereof, appeal to the Board of Supervisors, in which case the terms of such notice shall be stayed pending action of the Board, which shall be final.
- C. If the Sheriff or the Health Officer shall state in such notice that the condition which constitutes a nuisance is an imminent hazard to the health, safety or welfare of the public or any person within or near the premises upon which such nuisance exists, then the addressee shall comply with the terms of such notice.

*§ 124-10. Recourse when notice to abate nuisance is ignored.*

- A. Upon the failure of any person to whom notice has been given pursuant to § 124-9 to comply with the terms of such notice or with the terms imposed by the Board of Supervisors on appeal, as the case may be, the Sheriff or the Health Officer shall forthwith cause the remedying of the condition which is the subject of such notice, and the expense incurred in so doing shall be charged to the addressee of such notice, to be collected in the same manner as county taxes or in any other manner authorized by law.
- B. Independently, or in cooperation with the Health Officer, the county may cause the remedying of nuisances. It may obtain injunctive relief in an appropriate court in cases of noncompliance. The county may collect its costs, expenses and other appropriate fees from the owner of the property affected.
- C. Abatement of any condition which constitutes a nuisance and reimbursement to those entitled thereto of expenses incurred thereby shall not bar prosecution for maintenance of a nuisance.

*§ 124-11. Violations and penalties.* <sup>29</sup>

Penalties for violation of the provisions of this chapter shall be as provided in Chapter 1, General Provisions, Article I.

## References

<sup>27</sup> Editor's Note: See also Ch. 157, Streets and Sidewalks, Art. I, Obstructions by Vehicles.

<sup>28</sup> Editor's Note: See also Ch. 61, Animals, Art. I, General Provisions.

<sup>29</sup> Editor's Note: Added at time of adoption of Code (See Ch. 1, General Provisions, Art. 1)

# Chapter 132 Peace And Good Order

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## Chapter 132 Peace And Good Order

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 01-19-1988 as Secs. 9-1, 9-3, 9-4, 9-5, 9-9, 9-10, 9-11, 9-12, 9-17 and 9-18 of the 1987 Code. Amendments noted where applicable.]

### General References

Chapter 52 Alarm Systems

Chapter 57 Special Events

Chapter 74 County-Owned Property

Chapter 78 Dance Halls

Chapter 120 Noise

Chapter 124 Nuisances.

### Code of Virginia References

§ 15.2-925. Regulation, etc., of assemblies or movement of persons or vehicles under certain circumstances

§ 18.2-18 et seq. - Principals and accessories

§ 18.2-57 et seq. - Assault and battery

§ 18.2-119 et seq. - Trespass to realty

§ 18.2-137 et seq. - Injuring, etc., any property, monument, etc.

§ 18.2-174 et seq. - Impersonating officer

§ 18.2-178 et seq. - False pretenses

§ 18.2-325 et seq. - Gambling

§ 18.2-388. - Profane swearing and intoxication in public; penalty; transportation of public inebriates to detoxification center

§ 18.2-404 et seq. - Obstructing free passage of others

§ 18.2-415. - Disorderly conduct in public places

§ 18.2-460 et seq. - Obstructing justice

*§ 132-1. Violation or avoidance of provisions.*

- A. It shall be unlawful for any person to attempt to commit any act which is prohibited by this Code or other ordinance or by any rule, regulation, order or notice duly promulgated or given pursuant to authority thereof; and it shall be unlawful for any person to aid or abet the commission or attempted commission of any act which is prohibited by this Code or other ordinance or by any rule, regulation, order or notice duly promulgated or given pursuant to authority thereof.
- B. It shall be unlawful for any person to attempt to avoid the doing of any act which is required by this Code or other ordinance or by any rule, regulation, order or notice duly promulgated or given pursuant to authority thereof; and it shall be unlawful for any person to aid or abet the avoidance or attempted avoidance of any act which is required by this Code or other ordinance or by any rule, regulation, order or notice duly promulgated or given pursuant to authority thereof.
- C. Every person who attempts to violate this Code shall be punishable by the same punishment prescribed for the offense the commission of which was the object of the attempt.

*§ 132-2. Interference with officers and employees.*

No person shall carelessly or willfully interfere with, hinder or obstruct any officer or employee of the county who is engaged in, en route to or returning from the performance of official duty, whether such interference, hindrance or obstruction is by threat, assault or otherwise.

*§ 132-3. Impersonation of officers or employees.*

No person shall falsely represent himself to be an officer or employee of the county or, without proper authority, wear or display any uniform, insignia or credential which identifies any county officer or employee; nor shall any person without proper authority assume to act as an officer or employee of the county, whether to gain access to premises, obtain information, perpetrate a fraud or for any other purpose, provided that nothing in this section shall be construed to prevent a private citizen from making a lawful citizen's arrest for felony or breach of the peace committed in his presence.

*§ 132-4. Courtesy to and from officers and employees.*

- A. County officers and employees shall be courteous in their official transactions with the public, and they shall conduct themselves in the performance of their official duties so as to not knowingly deprive any person, at the time and under the circumstances then and there existing, of any lawful right or benefit to which such person may be entitled. Any person who feels aggrieved by the conduct of any county officer or employee in violation of this section may bring such matter to the attention of the Chairman of the Board of



Supervisors, without prejudice to any other recourse to which such aggrieved person may be entitled.

- B. Members of the public shall be courteous in their transactions with county officers and employees, and it shall be unlawful for any person to knowingly taunt, deride, jeer or otherwise debase or insult, whether by act, word or gesture, any county officer or employee at any time or place while such county officer or employee is lawfully engaged in the performance of official duty.
- C. Any person who violates this section shall be guilty of a Class 3 misdemeanor.<sup>30</sup>

*§ 132-5. Acts constituting disorderly conduct.*

- A. Any person who shall do or engage in any of the following shall be guilty of the offense of disorderly conduct:
  - 1) Act in a violent or tumultuous manner toward another whereby any person is placed in danger of safety of his life, limb or health.
  - 2) Act in a violent or tumultuous manner toward another whereby public property or property of any other person is placed in danger of being destroyed or damaged.
  - 3) Endanger lawful pursuits of another by acts of violence or threats of bodily harm.
  - 4) Cause, provoke or engage in any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another or public property.
  - 5) Assemble or congregate with another or others and cause, provoke or engage in any fight or brawl.
  - 6) Assemble in bodies or in crowds and engage in unlawful activities.
  - 7) Assemble or congregate with another or others and engage or attempt to engage in illegal gaming.
  - 8) Frequent any public place and obtain money from another by an illegal and fraudulent scheme, trick, artifice or device, or attempt to do so.
  - 9) Assemble with another or others and engage in any fraudulent scheme, device or trick to obtain any valuable thing in any place or from any person, or attempt to do so.
  - 10) Utter, in a public place or any place open to the public, any obscene words or epithets.

- 11) Frequent any place where illegal gaming or the illegal sale or possession of alcoholic beverages or narcotics or dangerous drugs is practiced, allowed or tolerated.
- 12) Use fight-provoking words directed towards any person who becomes outraged and thus creates turmoil.
- 13) Assemble or congregate with another or others and do bodily harm to another.
- 14) Congregate with another or others in or on any public way so as to halt the flow of vehicular or pedestrian traffic and refuse to clear such public way when ordered to do so by a peace officer or other person having authority.
- 15) Damage, defoul or disturb public property or the property of another so as to create a hazardous, unhealthy or physically offensive condition.
- 16) Conduct himself in a noisy, boisterous or tumultuous manner to the disturbance of the peace of the county or the peace and quiet of the neighborhood or of any lawful assembly of people; or to be intoxicated to such a degree as to be noisy or annoying to a neighborhood or any of the inhabitants thereof.
- 17) Conduct himself upon any street or other public place in any manner which shall harass another; or to willfully shove, injure, obstruct or hinder any person passing along or upon any sidewalk or street.
- 18) Engage in any conduct of a disorderly nature or to engage in any conduct tending toward a breach of the peace. The causing or making of any unnecessary loud noise or shouting or yelling shall be considered disorderly conduct.
- 19) Be in any of the places mentioned in this section and there engage in any brawl, quarrel, loud or offensive talking or engage another in any dispute or argument, the effect of which is to draw a crowd and block or partially block any of such places for public use and travel.
- 20) Act in any manner that is in violation of the Code of Virginia, § 18.2-415. Disorderly conduct in public places.

B. Any person who violates Subsection A shall be guilty of the following classes of misdemeanors:

- 1) Subsection A(10) or (16), Class 4.
- 2) Subsection A(14), Class 3.
- 3) Any other subsection, Class 1.

*§ 132-6. Disorderly conduct in public conveyance.*

It shall be unlawful for any person, whether a passenger or not, while in or on any public conveyance to behave in a riotous or disorderly manner or to engage in conduct having a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct is directed. The person in charge of such public conveyance may require such person to discontinue his riotous or disorderly conduct, and if he refuses to do so may eject him with the aid, if necessary, of any persons who may be called upon for such purpose (Code of Virginia 1974, § 11-10. Compromise by creditor with co-obligor, etc.).

*§ 132-7. Disorderly conduct in other public places.*

No person shall behave in a riotous or disorderly manner in any street, highway, public building or any other public place, other than those mentioned in § 132-5, or cause any unnecessary disturbance in or on any public conveyance by running through it, climbing through windows or upon the seats, failing to move to another seat when lawfully requested to so move by the operator or otherwise annoy passengers or employees therein.

*§ 132-8. False alarms.* <sup>31</sup>

- A. No person shall knowingly give or cause to be given any false alarm of fire.
- B. No person shall knowingly give or cause to be given any false alarm of explosion or impending danger of explosion.
- C. No person shall knowingly give or cause to be given any false alarm of the need for police protection or assistance or any false report to the Sheriff's Department.
- D. No person shall knowingly give or cause to be given any false alarm of the need for an ambulance or medical assistance.
- E. In addition to other penalties, any person who violates this section shall pay a fee. <sup>32</sup>

*§ 132-9. Interference with personal property.*

No person shall, knowingly and without proper authority, use, tamper with, render inoperative, destroy, damage, remove, deface, molest or otherwise interfere with any personal property of another.

*§ 132-10. Interference with real property.*

No person shall, knowingly and without proper authority, destroy, damage, deface, molest or otherwise interfere with or trespass upon any real property of another.

*§ 132-11. Violations and penalties.* <sup>33</sup>

Penalties for violation of the provisions of this chapter shall be as provided in Chapter 1, General Provisions, Article I.

## References

<sup>30</sup> Editor's Note: See Ch. 1, General Provisions, Art. I.

<sup>31</sup> Editor's Note: See also Ch. 52, Alarm Systems.

<sup>32</sup> Editor's Note: Fees are on file in the office of the County Administrator.

<sup>33</sup> Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

# Chapter 137 Property Maintenance

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## Chapter 137 Property Maintenance

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 01-19-1988 as Secs. 10-1 through 10-4 of the 1987 Code. Amendments noted where applicable.]

### General References

Chapter 67 Brush, Grass And Weeds, Article I Control of Johnson Grass

Chapter 71 Building Construction

Chapter 112 Littering

Chapter 124 Nuisances

Chapter 171 Vehicles, Abandoned.

### Code of Virginia References

§ 3.2. Agriculture, Animal Care, and Food Chapter 8. Noxious Weeds

§ 10.1-1415 et seq. - Litter control program

§ 15.2-901. Locality may provide for removal or disposal of trash, cutting of grass and weeds; penalty in certain counties.

§ 15.2-903. Ordinances taxing and regulating "automobile graveyards," "junkyards," and certain vacant and abandoned property."

#### *§ 137-1. Prohibited disposition of wastes.*

It shall be unlawful for any person to dispose of any garbage, trash, litter, refuse, rubbish or other waste matter, whether liquid or solid, in any well, spring, reservoir, watercourse or body of water or upon any street, sidewalk or public grounds other than grounds designated by the Board of Supervisors for such purpose, and then only in the manner provided by regulations relating thereto.

#### *§ 137-2. Disposal of waste upon property of another person.*

It shall be unlawful for any person to dispose of any garbage, trash, litter, refuse, rubbish or other waste matter, whether liquid or solid, upon the property of another without the consent of the owner, occupant or person in charge of such property, and then only in such manner that it will not endanger the health or safety of persons or be subject to scattering by the elements of nature or otherwise constitute a nuisance.

### *§ 137-3. Maintenance of premises.*

It shall be the duty of each owner, occupant and person in charge of any real property in the county to maintain such property at all times free from any accumulation of garbage, trash, litter, refuse, rubbish or other waste matter, whether liquid or solid, which might endanger the health or safety of residents of the county or otherwise constitute a nuisance and to provide for the cutting thereon of grass, weeds and other foreign growth as often as may be necessary to prevent breeding and harboring places for insects, reptiles and rodents and to prevent other hazards to the health or safety of residents of the county or other nuisances.

### *§ 137-4. Investigation and notice.*

The Sheriff or the Health Officer may, and upon complaint by any responsible person that conditions exist on any real property in violation of § 137-3 shall,

- Investigate conditions existing on real property in the county at any time; and
- Upon determination by either such officer, following investigation, that the owner, occupant or person in charge of any real property in the county stands in violation of his duty as provided in § 137-3, such officer shall give written notice to the owner of record of such property and to the person primarily responsible, if different from the owner, stating the facts which constitute violation of § 137-3 and
- Directing him to take such action as may be necessary to rectify such conditions within such time, not more than 10 days, as shall be stated in the notice.

### *§ 137-5. Failure to comply; abatement of conditions; cost to become a lien.*

- A. If 10 days after the service of any notice under § 137-4 the directive thereof has not been complied with, the officer giving such notice shall proceed to have such work done as may be necessary to abate any condition which might endanger the health or safety of residents of the county or otherwise constitute a nuisance, and all expenses resulting therefrom shall be chargeable to and paid by the owner of such property and may be collected by the county as taxes and levies are collected, and all charges not so collected shall constitute a lien against such property.
- B. Independently, or in cooperation with the Sheriff or the Health Officer, the county may cause the abatement of conditions described in this chapter. It may obtain injunctive relief in an appropriate court in cases of noncompliance. The county may collect its costs, expenses and other appropriate fees from the owner of the property affected.

# Chapter 143 Septic Systems

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## Chapter 143 Septic Systems

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[HISTORY: Adopted by the Board of Supervisors of Clarke County as indicated in article histories. Amendments noted where applicable.]

### General References

Chapter 71 Building Construction

Chapter 161 Subdivision of Land

Chapter 180 Water and Wastewater, Article I Sewage Disposal

Chapter 184 Wells

Chapter 188 Zoning

### Code of Virginia References

§ 15.2-1200 General Powers of Counties

§ 15.2-2157. Septic tanks and sewage disposal when sewers not available

§ 32.1-163 et seq. - Sewage disposal

### Article I Intent, Definitions

[Adopted 1-19-1988 as Secs. 12-46 through 12-49 of the 1987 Code]

#### *§ 143-1. Intent; State Regulations.*

The intent of this article is to minimize the potential for groundwater contamination resulting from improper siting and construction of onsite sewage systems in Clarke County. Clarke County has Karst topography and fragile hydrogeology and has the potential for depletion and contamination of water sources and the potential for hazards to public health, safety and welfare as a result. To protect the health, safety and welfare of the general public, the standards as set forth hereafter in this chapter are established for all onsite sewage systems constructed or installed in the County. Pursuant to these goals, the Board of Supervisors hereby exercises its power, as granted by Sections 15.2-1200 and 15.2-2157 of the Code of Virginia (1950, as amended), to protect groundwater by regulating onsite sewage systems.

To the extent that any provision of this Chapter 143 conflicts with any other provision of State or local law, the more stringent provision shall apply; provided, however that, to the extent that any provision of Chapter 143 as applied to an alternative onsite sewage systems (AOSS) is deemed to be additional to or more stringent than the requirements and

standards for alternative onsite sewage systems of the State Board of Health, then this chapter shall apply to the greatest extent possible and the said State requirements and standards shall apply if (i) sewers or sewerage disposal facilities are not available in the area of the subject property, and (ii) the alternative onsite sewage system used on the subject site has been approved by the State Board of Health for use in the particular circumstances and conditions in which it is to be operating.

To that end, standards and procedures for soil evaluation, system siting and system design and installation are addressed herein, followed by conditions for obtaining a variance to the provisions of this article and the penalties associated with the violation of this article. Definitions of technical terms contained herein are addressed in § 143-2.

This Ordinance shall be administered and enforced by the Zoning Administrator and the Health Department who shall have all necessary authority on behalf of the governing body to administer and enforce the Ordinance, including the ordering in writing of the remedying of any condition found in violation, and the bringing of legal action to compel compliance with the Ordinance or provide for the imposition of the penalties hereinafter provided.

*§ 143-2 Definitions.*

Definitions of terms contained in this article shall be those given in the Sewage Handling and Disposal Regulations, Virginia Department of Health (VDH), as amended, except as noted herein. The following definitions shall apply:

<b>Alternative discharging sewage system</b>	Any device or system which results in a point source discharge of treated sewage for which the State Board of Health may issue a permit authorizing construction and operation when such system is regulated by the State Water Control Board pursuant to a general Virginia Pollutant Discharge Elimination System (VPDES) permit issued for an individual single family dwelling with flows less than or equal to 1,000 gallons per day.
<b>Alternative onsite sewage system (AOSS)</b>	A treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.
<b>Approved method of the disposal of sewage</b>	Water carriage disposal of sewage to an approved public or private sewage treatment system; water carriage disposal of sewage to an approved onsite sewage treatment system; or non-water carriage disposal of human excrement only to an approved pit privy, portable toilet, or other approved privy facility.
<b>Conventional onsite sewage system (COSS)</b>	A treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield.

<b>County</b>	Clarke County, Virginia.
<b>Cr horizon</b>	Weathered or soft bedrock and is used to indicate root restrictive layers of bedrock.
<b>Drainage way</b>	The concave portion of the landscape in which surface water or rain water runoff gathers intermittently to flow to a lower elevation.
<b>Electrical Resistivity tests Investigation (ERI)</b>	A test used to determine if there are voids or other anomalies located beneath the proposed soil treatment area.
<b>Enhanced flow distribution</b>	A pumping system designed to have a minimum capacity of 36 gallons per minute at system head per 1200 linear feet of percolation piping.
<b>Floodplain</b>	Any land area susceptible to being inundated by water from any source.
<b>Flood Plain Overlay District</b>	Lands zoned Flood Plain (FP) Overlay District as described in the Clarke County Zoning Ordinance (County Code Chapter 200), Section 4.2.1.
<b>Floodplain, Ten-Year</b>	The floodplain that is at or below the ten-year flood elevation, that is, the area which has a minimum statistical probability of one in ten of being flooded in any given year. The ten-year floodplain shall be regulated as delineated in the Clarke County Floodplain Study prepared by Dewberry and Davis (September 1, 1997).
<b>Geotechnical Engineer/Engineering Geologist" (GE/EG)</b>	A Virginia Certified Professional Engineer specializing in geotechnical engineering or a Virginia Certified Professional Geologist specializing in geotechnical engineering geology, either with a minimum of 5-years experience.
<b>Health Department</b>	The Virginia Department of Health (VDH) and its authorized employees and agents.
<b>Inspection</b>	The surveillance procedures as used by the Health Department to determine compliance with the provisions of this chapter and State regulations.
<b>Limiting Feature</b>	A feature of the soil that limits or intercepts the vertical movement of water, including seasonal, perched, or permanent water table, soil horizons having an estimated or measured percolation rate greater than 120 minutes per inch, soils having a high shrink-swell potential, fragipans or other pans, soil restrictions and impervious strata, soil horizons containing greater than 75% (by volume) coarse fragments, and pervious or impervious bedrock. The Soil Survey of Clarke County, Virginia, 1982

shall be consulted for soil characteristic information such as soil type, permeability, and high shrink-swell potential.

<b>Lithic Contact</b>	The boundary between soil and underlying bedrock that is sufficiently coherent when moist to make hand digging impractical. Cracks that can be penetrated by roots must be > 4 inches apart
<b>Lithic rock</b>	The partially weathered to unweathered rock material which cannot be bored using a standard, hand-operated three and one-quarter inch barrel auger and sixteen-inch cross handle, or upon which refusal is encountered when using a backhoe.
<b>Losing Stream</b>	A perennial or intermittent stream which loses flow volume into its bed due to the presence of sub-channel (hyporheic) solution cavities or conduits.
<b>Natural outlet</b>	Any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water. Open throat sinkholes, swallets, and losing streams are considered natural outlets into the groundwater.
<b>Onsite Sewage Treatment System</b>	A complete system for the collection, treatment and disposal of sewage constructed on the property it serves or by easement on another parcel. This includes conventional, alternative and alternative discharging systems.
<b>Onsite soil evaluator (OSE)</b>	A person licensed or certified under Chapter 23 (§ 54.1- 2300 et seq.) of Title 54.1 of the Code of Virginia.
<b>Paralithic rock</b>	Weathered rock material that may be found above lithic rock and below the natural soil.
<b>Parapet</b>	The discernable outer edge or perimeter of a sinkhole
<b>Percolation test</b>	A standardized water test used to determine the rate of water absorption by soil.
<b>Pit privy</b>	A pit for receiving non-water carriage of human waste, over which is placed a privy house with seats.
<b>Point source discharge</b>	Any discernible, confined, and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water run-off.

<b>Portable Toilet</b>	A manufactured, portable structure maintained by a licensed operator containing chemicals to neutralize odors, and made specifically for the use of waste disposal.
<b>Professional Engineer (PE)</b>	A person licensed or certified under Chapter 4 (§ 54.1-400 et seq.) as a professional engineer.
<b>Restrictive strata</b>	Soil or soil materials with an estimated or measured percolation rate in excess of 120 minutes per inch, including fragipans or other pans, lithic rock, paralithic rock and Cr horizons.
<b>Sanitary sewer or public sewer</b>	A carriage system specifically for transporting sewage from houses and commercial buildings through pipes to a public sewage treatment plant.
<b>Seasonal water table</b>	The minimum depth to seasonal water table. As used herein, “seasonal water table” means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray iron depletions, solid gray or black masses or concretions, or other low chroma redoximorphic depletions as described in the Munsell soil color charts. The depth in the soil at which these conditions first occur is termed “seasonal water table”.
<b>Septage</b>	The mat of grease and scum on the surface of septic tanks, the accumulated sludge at the bottom of tanks and the sewage present at the time of pumping.
<b>Septic tank</b>	A settling tank in which part of the heavy solids are settled and the organic solids decompose by anaerobic bacterial action.
<b>Sewage</b>	Human excrement and the liquid wastes derived from dwellings, business establishments, institutions and other structures or places used for human habitation, employment or congregation, exclusive of those wastes derived from industrial processes.
<b>Sinkhole</b>	A basin- or funnel-shaped hollow or depression in limestone, dolostone or other soluble bedrock, ranging in diameter from less than a few feet up to a several hundred feet and in depth from a few to several hundred feet. Some sinkholes are gentle grassy hollows or depressions; others are rocky cliff-bounded basins. A distinction may be made by direct solution of the limestone surface zone (solution sinkholes), and those formed by collapse over a cave (collapse sinkholes), but it is generally not possible to establish the origin of individual examples.

<b>Sinking Stream/Swallet</b>	A perennial or intermittent stream whose bed and bank disappear entirely underground, usually through an open throat sinkhole or cave entrance.
<b>Site and Soil Verification</b>	A full level 2 review prior to submittal of the application for a new sewage onsite system application. A Level 2 review (field check or quality assurance check) is a detailed onsite evaluation of the site conditions.
<b>Slope</b>	The incline surface of a hill, mountain, etc., or any part of the surface of the earth or the angle at which such surfaces deviate from the horizontal, commonly expressed in percent.
<b>Soil/site evaluation</b>	A systematic approach to evaluation of soil conditions by a Commonwealth of Virginia Department of Professional and Occupational Regulation (DPOR) licensed onsite soil evaluator.
<b>Soil absorption area or soil absorption system</b>	A physical location in the naturally occurring soil medium where final treatment and dispersal of effluent occurs.
<b>Spring</b>	<p>A natural issue of water from the earth or a rock formation or fracture onto the land or into a body of water via defined channel, the place of issuance being relatively restricted in size; or</p> <ol style="list-style-type: none"> <li>1) shown as a spring on the USGS 7 1/2-Inch Quadrangle Map (incomplete) or, Virginia Division of Mineral Resources Publication 102, Map of Hydrogeologic Components for Clarke County, Virginia Plate 2 (incomplete); or</li> <li>2) identified as a spring in the USGS Water-Resources Investigations Report 90-413, Ground-Water Hydrology and Quality in the Valley and Ridge and Blue Ridge Physiographic Provinces of Clarke County, Virginia; or</li> <li>3) which is currently used as a domestic drinking water source, but is not a well; or,</li> <li>4) which is currently used as a source of water for watering animals, but is not a pond or stream; or,</li> <li>5) which feeds a pond or lake less than 500 feet from where the spring issues; or,</li> <li>6) which has been designated as a significant hydrologic feature by the Clarke County Board of Supervisors prior to the filing of an application for an on-site waste disposal system (a list of such designated features is on file with the Clarke County Planning Department); or</li> <li>7) which by right may be used as a source of water by an adjoining property owner; or</li> </ol>

- 8) which has manmade features indicating past or present use as a water supply.

<b>Spring Conservation Overlay District</b>	Lands zoned Spring Conservation (SC) Overlay District as described in the Clarke County Zoning Ordinance (County Code Chapter 200), Section 4.2.2.
<b>Standard disinfection</b>	A disinfection process that results in a fecal coliform concentration of less than or equal to 200 colonies/100 ml.
<b>Streams, intermittent or perennial</b>	Any stream that is depicted as intermittent or perennial on the most recent U.S. Geological Survey 7½ minute topographic quadrangle (scale 1:24,000). A millrace or other such manmade flowing surface water shall be considered an intermittent stream. The Shenandoah River and Opequon Creek shall be considered perennial streams.
<b>Sullage</b>	Waste from household, sinks, showers and baths but not toilets.
<b>Time dose distribution</b>	A pumping system designed to dose effluent evenly throughout a given time period.
<b>Treatment level 2 effluent or TL-2 effluent</b>	Secondary effluent that has been treated to produce five-day biochemical oxygen demand BOD5 and total suspended solids TSS concentrations equal to or less than 30 mg/l each.
<b>Treatment level 3 effluent or TL-3 effluent</b>	Effluent that has been treated to produce BOD5 and TSS concentrations equal to or less than 10 mg/l each.
<b>Vault privy</b>	A watertight chamber for receiving non-water carriage of human waste, over which is placed a privy house with seats.
<b>Virginia pollutant discharge elimination system permit VPDES</b>	A permit issued by the State Water Control Board SWCB under the authority of the federal National Pollutant Discharge Elimination System NPDES program.

*§ 143-3. Approved Method of Sewage Disposal Required.*

- A. No person shall use or occupy, or rent or lease for use or occupancy, any house, trailer, mobile home, whether self-propelled or not, warehouse, public or private building or other structure or gathering place in which there is human habitation, employment or congregation, until such house, trailer, mobile home, warehouse, public or private building or other structure or gathering place is supplied with an adequate, approved method for the disposal of sewage as provided for in this chapter or by sanitary sewer. Septic tanks shall be inspected and approved by the Health Department before they are permitted to be used.

- B. Following the effective date of this chapter, no person shall construct a new dwelling unit unless and until it can be furnished with minimum sanitary facilities to include a toilet, hand lavatory, tub and/or shower and kitchen sink, inasmuch as these minimum facilities are necessary to proper sanitation. All such fixtures shall be supplied with hot and cold running water, with the exception of the flush toilet. In new units intended for purposes other than use as dwelling units where tubs and/or showers are not necessary for sanitation, minimum facilities shall consist of at least a toilet and hand lavatory with hot and cold running water.
- C. Alternative discharging systems are not permitted.
- D. Mass drainfields are not permitted.

*§ 143-4. Permit for Installation.*

It shall be unlawful for any person to install or have installed in the county an onsite sewage system without first obtaining a permit from the Health Department.

- A. Education Requirement. Prior to issuance of an operation permit for an Onsite Sewage System, the applicant shall be required to review educational material describing the operation and maintenance requirements for such system and demonstrate a basic understanding of the requirements by completing a short questionnaire provided by the Health Department.
- B. Conditional permits shall not be issued unless specifically requested by the Health Department and only if approved by the Board of Septic & Well Appeals.

*§ 143-5. License Requirements for Installers.*

- A. License. No person shall install, repair or contract to install or repair individual onsite sewage treatment systems or parts thereof without first obtaining a license therefor from the Virginia Department of Professional and Occupational Regulation (DPOR).
- B. Sewage Handling Permit. No person shall engage in the business of cleaning septic tanks, settling tanks and/or vaults designed to hold or retain solids and/or liquids in conjunction with any sewage disposal system, by whatever name called, without first obtaining a sewage handling permit from the Health Department.
- C. Disposition of sludge. It shall be unlawful for any person to dispose of the sludge and other material removed from septic tanks except by depositing it into a sewage treatment plant approved for such disposal.

*§ 143-6. Inspections of Existing Systems*

The Health Department shall inspect all existing system component replacements. Existing components include building sewers, distribution boxes, conveyance lines and header pipes. Contractors replacing existing system components shall submit for a County only permit



detailing the changes to the existing system for inspection, review and approval or denial by the Health Department.

In addition, the Health Department may inspect the entire system of sewage treatment maintained at all premises in the County for the purpose of determining if such is being operated and maintained in a sanitary manner. Such inspection shall be done at reasonable times and, whenever practical, in the company of the owner or occupant of the premises.

The Health Department shall make such inspections as may be deemed necessary during the construction of any sewage treatment system installed in the County to determine compliance with this chapter and State Board of Health regulations. No person shall use, allow to be used or cause to be used, any system until after the Health Department has inspected and approved the same in writing. No part of any system shall be covered until it is inspected and approved by the Health Department, and any such part which has been covered prior to inspection shall be uncovered for inspection upon order of the Health Department. In extraordinary circumstances, the Health Department may approve system installations when reasonable professional judgment indicates a revisit is not practical or feasible or an inspection has been conducted by an onsite soil evaluator or professional engineer.

#### *§ 143-7. Responsibility of Owner of System.*

No owner, tenant or lessee of any premises properly supplied with an approved method of disposal of sewage shall misuse or neglect such a system or any part thereof so as to cause it to cease functioning as designed in a sanitary manner. The issuance of a permit, subsequent installation and acceptance of the onsite sewage treatment system upon inspection by the Health Department does not denote or imply any guarantee of operation of such system, and it shall be the responsibility of the owner, or any subsequent owner of the system, to maintain, repair or replace any system which has ceased to function as designed in a sanitary manner. The system shall be maintained and operated by the property owner to conform to the requirements of the State Board of Health.

## Article II Determining Suitability of Soil/Sites for Onsite Sewage Treatment Systems

#### *§ 143-8. Inspection and Approval of Design and Location (New Systems).*

The Health Department, Onsite Soil Evaluator (OSE), and/or Professional Engineer (PE) shall determine whether the land available for the installation of an onsite sewage treatment system is adequate and satisfactory as to size, topography, characteristics of the soil, and the nature and location of the water supply. The Health Department, OSE, and/or PE shall be responsible for approving the system design and capacity and the location of the septic tank. The Health Department shall conduct a "Site and Soil Verification" of all proposed onsite sewage treatment system sites prior to submittal of an application.

*§ 143-9. Soil Evaluation Criteria; Field Testing.*

Minimal soil evaluation criteria for suitability of an onsite sewage system are established in this ordinance and the current Sewage Handling and Disposal Regulations, Virginia Department of Health (VDH), as amended. Backhoes are required for Health Department soil/site evaluations and verifications of private sector submitted soil/site evaluations unless waived by the Health Department. Soil characteristics shall be evaluated by the Health Department or by an OSE and/or PE and reviewed by the Health Department by "Site and Soils Verification".

- A. Closure of Onsite Inspection Pits. Any property owner causing or permitting inspection pits to be excavated for the purpose of determining soil suitability for the installation of a septic system shall have the pits filled within thirty days of final determination of suitability of the site for installation of a system. "Final determination" shall be defined as the latter of the following: the date of determination of suitability or unsuitability by the Health Department; the date of a determination of suitability by a licensed Onsite Soil Evaluator, or, the date of any decision by any appellate board or court having review jurisdiction.
- B. The Health Department, OSE, or PE and excavation contractors providing service relating to the investigation of suitability of any site for the installation of an onsite sewage system shall inform property owners of this requirement of the Clarke County Code. Failure of any of the above to so notify the property owner shall not be a defense against non-compliance.

*§ 143-10. Determining Suitability of Soil/Sites for Onsite Sewage Treatment Systems.*

A permit for construction of an onsite sewage treatment system on an individual lot or property shall be issued after completion of a satisfactory evaluation which indicates that such a system can be installed and is expected to perform in a sanitary manner so as not to create a health hazard.

- A. Evaluation. Soil evaluation reports submitted for onsite sewage treatment system approval shall contain detailed soil/site investigations, as described in subsection D. hereof. Evaluations shall indicate whether or not the soils meet the criteria specified herein for the installation of the type of on-site sewage treatment system proposed. In addition to information gathered during the soils and geotechnical investigation, the topography, available area, proximity to ground and drinking water supplies, proximity to bodies of water, rates of water absorption by the soil horizon proposed for use, or a combination of any of the above, shall also be considered in such evaluation. If absorption rate problems are suspected, percolation tests or other infiltration tests may be required, but their results shall not be presumptive, prima-facie or conclusive evidence as to the suitability for effluent absorption. Soil reports shall be field reviewed by the Health Department unless administratively denied or deemed approved.

- B. Site Sketch and Structure Identification. A sketch, prepared by the applicant, is to accompany all applications for permits to construct on-site sewage treatment systems and must show accurately:
1. The dimensions of the property.
  2. Proposed and/or existing structures and driveways.
  3. Underground utilities.
  4. Adjacent sewage treatment systems.
  5. Bodies of water.
  6. Drainageways and floodplains.
  7. Wells and springs within a 200-foot radius of the edge of the proposed onsite sewage treatment system, and springs within 500' if at a lower elevation than a proposed onsite sewage treatment system in Karst areas.
  8. Any surface karst features including sinkholes, cave entrances, losing streams or swallets, or any place where surface water is preferentially being absorbed into the subsurface at a higher rate than in the surrounding terrain

C. Soil Profiles

1. Depth of profile hole. The minimum depth of the profile hole shall be five feet, or deep enough to verify all stand offs unless prevented or made unnecessary by some physical feature of the soil, such as redoximorphic features, rock or when a potential horizon is found at a lesser depth. When a potential soil horizon is considered for use, the soil evaluation shall be extended below the soil horizon, with potential for use, to ensure that there is no interference with seasonal high water tables, lithic rock, paralithic rock or other impervious strata within the vertical offset limitation.
  2. Number and location of profile holes. A minimum of five holes is necessary to determine the design requirements of an area for the placement of any soil absorption area. Holes shall be evenly placed to bound the area under consideration with one hole installed in the center. If more than one area is required in which to install the soil absorption area, each area shall be evaluated with at least three profile holes. The actual area and number of profile holes necessary shall be determined on a case-by-case basis.
- D. Requirements for a detailed soil/site evaluation. Detailed soil-site evaluation reports generated for any proposed onsite sewage treatment system are required by and are to be submitted to the Health Department. A detailed investigation may also be required by the Health Director for specialized land use applications such as solid waste operations, composting facilities or other similar uses. The detailed soil/site evaluation report should include the following, where appropriate, unless determined by the

Health Director, at the request of the developer, to be inapplicable based upon sound engineering principals:

1. Results of field investigation.
  - a. A map, drawn to 1:2,400 scale (1 inch = 200 feet) and larger, as requested on a sheet twenty-four inches by thirty-six inches. Where small tracts are involved, an eight by eleven-inch sheet may be acceptable, provided it complies with all other requirements set forth herein.
  - b. Existing water supplies within 100 feet of the property and 200 feet of sewage treatment systems on the property.
  - c. The location of all backhoe pits. Test holes are to be numbered and located dimensionally, including surface elevations.
  - d. The location of all numbered proposed on-site soil absorption areas, if applicable. All soil absorption areas must be shown on contour and delineated by five pits.
  - e. The following items as they relate to the proposal, if applicable:
    - i. The landscape type and position, the slope, topography and the surface drainage.
    - ii. The soil morphology, including the texture, color, structure, consistency, depth, lithologic discontinuities, boundaries, etc.
    - iii. The permeability, internal drainage and perched water tables.
    - iv. The parent material and associated problems.
    - v. Restrictive strata.
  - f. The soil evaluation form.
2. The following items shall be required in the report when soil absorption areas are proposed:
  - a. Depth of installation, type of system, relative suitability and modifications.
  - b. The depth, thickness and description of each horizon, including paralithic and lithic contacts encountered.
  - c. Locations of all samples taken and analyses to be conducted on each sample.
  - d. The depth to perched water and/or the ground water table if observed (or if indicated by soil color patterns).
  - e. The name and title of the person responsible for the description and sampling.

*§ 143-11. System Siting*

- A. For Lots zoned Spring Conservation Overlay District (SC) as described in Section 4.2.2 of the Clarke County Zoning Ordinance:
  - 1. No new onsite sewage disposal systems shall be located within 1,000 feet of Prospect Hill Spring.
  - 2. Onsite sewage treatment systems shall be an alternative onsite sewage system (AOSS) designed to produce a minimum of treatment level 2 (TL-2) effluent, with soil absorption areas sized at (1.5 times the normal size)
  - 3. Alternative systems not utilizing pressurized dispersal methods must provide unsaturated soil conditions (enhanced flow) within the soil treatment area.
  - 4. A 100% reserve area shall be provided for each system.
  - 5. Installation of any onsite sewage treatment system shall be inspected and approved by the County's designated engineer or representative.
- B. In all cases, the soil and site evaluation shall determine if a Conventional Onsite Sewage System (COSS) can be designed to serve the proposed use. If so, the COSS shall be proposed, unless explicitly directed otherwise such as in the Spring Conservation Overlay District. If a COSS cannot be designed for the site, a statement must accompany the soil evaluation, signed by a licensed Onsite Soil Evaluator that states the site restrictions that restrict the site to an AOSS.
- C. Soil restrictions for Onsite Sewage Treatment Systems. The following Table 1 details the soil restrictions for soil absorption system installation. In all cases, systems shall be installed below the ground surface in naturally occurring in-situ (undisturbed) soils as indicated:

Table 1

		sidewalls (horizontal)	bottom (vertical)
Distance to rock/restrictive strata – Non-karst (COSS)		24"	24"
Distance to rock/restrictive strata – Karst (COSS)		24"	24"
	AOSS	TL-2	18"
	AOSS	TL-3	18"
Distance to seasonal water table (COSS)			20"
	AOSS	TL-2	18"
	AOSS	TL-3	18"

- 1. Alternative Onsite Sewage Systems must be installed a minimum depth of 3” below the ground surface in naturally occurring, undisturbed in-situ soil.
- 2. Conventional Onsite Sewage Systems must be installed a minimum of 18 inches below the ground surface in naturally occurring, in-situ soil.
- 3. Onsite Sewage Systems installed at less than 18” depth require at least 12 inches of soil cover in the soil treatment area.

4. Onsite Sewage System soil treatment areas, utilizing gravel less dispersal, shall have no reduced footprints.
5. Onsite Sewage Systems shall not be installed in soil horizons having “high shrink-swell potential”, soils classified as “poorly drained” or having “slow permeability”, or having known descriptions of pans of any type. A soil test is required to confirm the aforementioned characteristics. If the percolation rate is satisfactory, all vertical and horizontal siting requirements must also be satisfied.

D. Site Restrictions.

[Amended 2005-03-15; 2016-12-20]

Minimum distances between components of septic systems and site features are prescribed in the current Sewage Handling and Disposal Regulations, Virginia Department of Health, as amended.

Onsite sewage treatment system components shall be prohibited or restricted on sites as described in Table 2, Minimum Separation Distances.

Table 2: Minimum Separation Distances

Minimum Distance From

Structure or Topographic Features	Soil Treatment Area (feet)	Septic Tanks or Vault Privies (feet)	All Other Parts of the Septic System (feet)
Slopes greater than 25%	Not permitted	N/A	N/A
Flood Plain (Ten-Year)	Not permitted	Not permitted	Not permitted
Free flowing streams, natural lakes or impounded waters (measured from edge)	100	100	50
Intermittent stream	50	50	50

Table 2: Minimum Separation Distances

Minimum Distance From

Structure or Topographic Features	Soil Treatment Area (feet)	Septic Tanks or Vault Privies (feet)	All Other Parts of the Septic System (feet)
Drainageways (measured from low point)	50	50	N/A
Wells	100	100	50
Surface Rock Outcrops	Karst: 10' Non-karst: 2'	Karst: 10' Non-karst: 2'	N/A N/A
Parapet (visually discernible edge) of sinkholes and cave entrances	100	100	50
Springs at a lower elevation than the septic system	Karst: 500 Non-karst: 200*	Karst: 500 Non-karst: 200*	Karst: 100 Non-karst: 100
Springs at a higher elevation than the septic system	Karst: 200 Non-karst: 100	Karst: 200 Non-karst: 100	Karst: 100 Non-karst: 100
Utility Easement (edge of)			
Upslope	10	10	10
Downslope	25	25	10

Table 2: Minimum Separation Distances

Minimum Distance From

Structure or Topographic Features	Soil Treatment Area (feet)	Septic Tanks or Vault Privies (feet)	All Other Parts of the Septic System (feet)
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N/A = Not applicable.

\*Refer to Item (6) below.

NOTE: In the event that there is disagreement between an OSE and/or PE and the Health Department regarding whether a natural outflow of water from an underground supply to the ground surface is a spring or a seep, then it shall be determined by a licensed professional geologist or hydrologist.

1. The distance from the structure served by the onsite sewage treatment system to the nearest point of the soil treatment area shall not be greater than 500 feet.
2. Driveways and parking areas. Driveways and parking areas shall be a minimum of 10 feet from onsite sewage treatment systems except for sewer and conveyance lines crossing the area and soil absorption areas designed to be placed under paved surfaces.
3. Minimum Size. For onsite sewage treatment systems using trench dispersal, the size of the soil absorption area based on the square footage of the trench bottoms shall consist of a minimum of 600 square feet. Drip disposal systems or any systems installed shallower than 6" shall have a minimum square footage of 1200 sq. ft.
4. Reserve area. An onsite sewage system reserve area with a capacity at least equal to that of the primary area (100%) shall be provided in accordance with the provisions of this article regardless of parcel recordation date. If existing lots must be merged to create a satisfactory building lot, then a 100% reserve area is required.
5. Reserve area. An onsite sewage system reserve area with a capacity at least equal to that of the primary area (100%) shall be provided in accordance with the provisions of this article regardless of parcel recordation date. If existing lots must be merged to create a satisfactory building lot, then a 100% reserve area is required.
6. Setback distance exceptions for onsite sewage disposal areas in non-karst soil areas for lots of record in existence prior to November 17, 1987, the setback



distance from a spring at a lower elevation than a proposed onsite sewage system may be reduced below 200' provided:

- a. The spring location, the proposed onsite sewage disposal area, and the impact area between the two features shall be identified as Non-Karst soil areas.
  - b. The spring is not used as a domestic drinking water supply or identified as a developed spring by the Virginia Department of Health.
  - c. The minimum allowable setback is 100 feet.
  - d. The proposed onsite sewage disposal system disperses at least a "TL-3 effluent" standard as defined by the Virginia Department of Health Regulations for Alternative Onsite Sewage Systems as effluent that has been treated to produce BOD5 and TSS concentrations equal to or less than 10 mg/l each.
  - e. A detailed public health and safety narrative report shall be provided by a licensed Onsite Soil Evaluator. This report shall include:
    - i. Explanation of the site conditions and design of the septic system.
    - ii. Assurance that all conditions noted in this section are satisfied.
    - iii. An affidavit stating that an onsite sewage disposal system is unable to be located on the property meeting this requirement and that the location of the proposed onsite sewage system meets this requirement to the greatest extent possible being located as far from the spring as is feasible.
    - iv. A listing of recommendations to mitigate any potential degradation of and effect on the groundwater.
    - v. The proposed onsite sewage disposal system meets all State and County requirements.
- E. Explosives or pneumatic hammers. The use of explosives or pneumatic hammers (other than hand-held pneumatic hammers) shall not be permitted for the excavation associated with septic tanks or onsite sewage treatment systems or within 50 feet of any soil treatment areas.
- F. Easements. Easements for off-site installation of onsite sewage systems are not permitted:
1. Except for residences constructed prior to December 15, 1987.
  2. Except for commercial uses:
    - a. Located in a commercial zoning district.

3. Provided that such off-site onsite sewage systems for such qualifying commercial uses:
  - a. Do not constitute a mass drain field (a sewage disposal system or systems which will discharge effluent to a single absorption area or multiple absorption areas with or without combined flows, such that the loading rate applied to any acre, as determined by the department, exceeds 1,200 gallons per day.
  - b. Have a one-hundred percent reserve area.
  - c. Have a maintenance program which includes pumping out of the septic tank every five years at a minimum.
  - d. Need not be located in a commercial zoning district.
  - e. Shall be shown on an approved site plan and placed under an easement, recorded in the land records of Clarke County within six months of site plan approval. Such easement shall allow the land area encompassing the septic facilities, provide means of access and state the party responsible for the maintenance of the septic system.
  - f. Shall be abandoned if public sewer service becomes available to the property being served by the off-site septic system easement. Hookup to the public sewer system is required and the requirement for an easement shall terminate.

*§ 143-12. Subsurface Investigations.*

This section is to establish review procedures and performance standards for non-invasive subsurface investigations designed to identify the potential for voids beneath primary and reserve onsite sewage system soil treatment areas so as to avoid locating in areas where subsidence may occur.

- A. Site Review. Whenever an application is filed for an onsite sewage treatment system permit or certification letter with the Health Department, except for emergency repair applications as determined by the Health Department, in any region underlain with limestone, dolomite, calcareous shale, or marble, specifically described as areas containing soils derived from these materials, which include soil types (4, 5B, 5C, 10, 15B, 15C, 17B, 18, 23, 24, 30B, 31B, 32B, 33B, 35B, 35C, 36B, 36C, 37B, 38B, 38C, 38D2, 39B, 39C, 39D2, 43C, 44B, 45B, 46B, 47B, 47C, 48B, 51B, 55D, 56, 57C2, and 57D2, as identified in the Clarke County Soil Survey, 1982), the applicant will hire a Geotechnical Engineer (GE) to conduct Electrical Resistivity Investigation (ERI) to determine if voids or other anomalies are located beneath the proposed soil treatment area. NOTE: If the area evaluated is shown as the soil types listed above, however based on field conditions observed by the OSE and/or PE it is determined to be a non-karst soils area, then the Health Department can be asked to review the site for the final determination. In the event that there is disagreement between an OSE and/or PE and the Health

Department regarding karst or non-karst soils, then it shall be determined by a licensed professional geologist.

- B. ERI Testing. The ERI testing shall be performed by an individual with a 4-year degree in geology or engineering with a minimum of 2-years' experience conducting resistivity testing;

Testing shall utilize dipole-dipole resistivity surveying array;

Testing shall consist of a minimum of two lines laid out through the soil treatment area (two lines each primary and reserve area, unless contiguous), perpendicularly to the strike of the bedrock, and extending a minimum distance beyond the drain field area of 60 feet so as to provide a minimum depth of penetration of 20 feet at the edge of the field, and allow for movement of the field should irregularities be identified;

Testing shall include use of a minimum of 24 electrodes per 100 feet of line, so as to provide a minimum of 200 soundings;

Testing shall provide minimum reading depth of 40 feet;

Electrode contact resistance shall be less than 5000 ohms, if not a salt-water mix shall be poured over the soil where electrodes are placed;

Lines shall be clearly marked at each end with stakes or other identifiable markers;

The results of the ERI testing shall be evaluated and reported upon by an individual with a 4 year degree in geology or geotechnical engineering and a masters degree in geophysical studies or equivalent. (Equivalent shall consists of not less than 5 years experience in interpreting the results of geophysical investigations, in particular ERI.

Results of test shall be included in a report which includes, in part, the following, to be provided to the county Natural Resource Planner:

1. summary of methods,
2. resistivity described in Ohm-meters,
3. electrode spacing,
4. directional orientation,
5. plan maps describing the line layout and in relation to onsite system soil treatment areas
6. color image profiles detailing the results and identifying any hazards, images shall maintain a consistently applied color scale ranging from blue-green-yellow-red, and indicate the location of the soil treatment area relative to the profile. The Ohm-m scale shall range from 0 to 4000 to provide consistency between consultants. Hazards shall be labeled on the profile so as to indicate the type of irregularity as described below,

7. irregularities in the profile shall include pinnacle/cutter topography, float rocks, soft zones, voids, mud-filled voids, extreme fracturing, and any other such anomaly,
8. the amount of overburden,
9. surface elevations shall be integrated with ER profiles,
10. discuss the significance of the geologic structure,
11. quantify qualitative terms such as “low”, “moderate” or “high” risk
12. implications of findings, i.e. should drain fields be located as proposed, and if so why, and
13. discuss the possible benefits if any of relocating a soil treatment area;

If the profiles show anomalies, and the ERI testing engineer/geologist recommends use of the site, then air track drilling is recommended to explore rock discontinuities or anomalies. In questionable soil (like cutters) conventional test borings are preferable. In either case the drilling/test shall be conducted to determine the extent and significance of the anomaly. The location of drilling or borings shall be documented and the findings of each described in detail, including a summary of the implications of the feature, if the site continues to be recommended for use, and why the feature is inconsequential;

If evidence of voids is documented beneath the proposed soil treatment area, or if anomalies encompass 20% or more of the proposed site, or the implications of findings recommend avoidance of the site, then the soil treatment area shall be relocated and the new area evaluated as described above; and

Subdivision plats and onsite sewage system permits shall include the following statement:

“Subsurface investigations have been conducted for the onsite sewage system sites on the parcels identified herein. Reports detailing the findings are available at the Clarke County Planning Department.”

*§ 143-13. Design and Installation.*

- A. Removal of vegetation. Vegetation, such as maples, willows and other plant species with extremely hydrophilic (water loving) root systems, shall be removed at least ten feet from the actual absorption areas. All trees should be removed from the absorption area.
- B. Onsite sewage systems that provide unsaturated soil conditions (enhanced flow) within the soil treatment area shall be required in the following soils:
  1. Soils that have an estimated or measured percolation rate of 16 or less minutes per inch.

2. Soils that have an estimated or measured percolation rate of 91 to 120 minutes per inch.
  3. Soil horizons containing between 50% and 75% (by volume) coarse fragments
- C. Privies. The Health Department shall issue permits for portable privies within the floodplain of the Shenandoah River. Portable privies in areas outside of the floodplain shall no require permits.
1. Portable privies are allowed only for use in association with government owned facilities or for temporary activities such as construction sites, entertainment events or agricultural or forestry activities.
  2. Within the Flood Plain Overlay District as described in Section 4.2.1 of the Clarke County Zoning Ordinance, portable privies:
    - a. Require a permit from the Health Department.
    - b. May not be located on a parcel for more than 15 consecutive days between October 1 and April 30.
    - c. Shall be located at least two feet above the elevation of the annual floodplain.
    - d. Shall be removed from the floodplain of the Shenandoah River when flooding of the river is predicted by the National Weather Service.
    - e. Shall submit a maintenance contract with the waste hauler, indicating that the privy will be pumped when the tank is 3/4 full, with the permit application.

*§ 143-14. Reutilization of Existing System.*

This section is to establish review procedures and performance standards for:

- A. The reutilization of existing on-site sewage disposal systems in the event of replacement of a structure having been lost by fire or other circumstances, or
- B. When the applicant desires to substantially modify an existing structure, which is defined as:
  1. doubling the square footage of the structure; or
  2. the construction value (as determined by the Building Department) is more than the assessed value (Commissioner of the Revenue), or
- C. When the applicant proposes a change of use, or
- D. When an existing system's use has been discontinued or utilized under design capacity.

A County official will determine the need for and must request an existing system review by the Health Department. Reviews are generally requested by the Building Department when there is a potential for well or septic encroachments.

In order to be considered for reutilization the following criteria must be met, as determined by the Health Department:

- A. The system must have no known history of failure or malfunction either since installation or previously authorized repair or replacement.
- B. Adequate information about the system must exist or be determined in order to make a judgment as to its adequacy for the proposed use. This information may include, but is not limited to, the following:
  - 1. system location, landscape, setbacks, etc.
  - 2. tank size and integrity
  - 3. size of the absorption system
  - 4. construction and materials
  - 5. design plan
- C. The system shall be of a nature previously or presently approved by the Health Department.
- D. The owner shall supply evidence that the septic tank has been pumped within the last 5 years.
- E. The structure that the system is proposed to serve must have been in recent and continuous service, as determined by the Health Department. Any structure not in use for the previous two years must meet current standards for a new system.
- F. A reserve area shall be provided as described in Section 143-11-C-4.

#### System Evaluation

In cases where Health Department records are insufficient, the following procedures shall be completed in order to determine the adequacy of the system:

- A. If needed, hold a preliminary fact-finding meeting with the applicant to discuss status of the existing system and requirements for completing a soil evaluation report, as-built drawings, and an inspection report.
- B. Conduct a physical walkover of the site to insure that there is no evidence of ponding on the ground surface. Also the perimeters of the site shall be checked to ensure that there are no discharges of sewage or gray water.
- C. Put dye in suspicious systems (possible straight pipes, wet spots, etc.) and conduct follow up visits as needed to ensure proper system operation.

- D. Note any structures, driveways, trees, etc. built over system components and make recommendations for removal as needed.
- E. Confirm the footprint of any new proposed addition conforms with current separation distances to sewage disposal system(s) and well(s).
- F. Any proposal for an increase in waste-loading rate more than the design will require a standard site and soil evaluation to pursue a septic system construction permit for expansion.
- G. At a minimum, all distribution boxes, both lids of the septic tank(s), and the end of the last line shall be uncovered by the owner for further evaluation.
- H. Check number of outlet ports and attempt to estimate size.

### Reporting

The Health Department shall:

- A. Forward a letter to the County official requesting the evaluation that describes the system and any recommendations.
- B. A disclaimer shall be attached to the report stating, "This report is only intended to address the above referenced request. This report is not intended for use as part of a real estate transfer or any other unauthorized use. There is no implied guarantee of future system performance based on this report. In the event of sewage disposal malfunction, the owner will be responsible for any repairs or other actions deemed necessary to correct the situation."

### *§ 143-15. Appeals and Variances.*

[Amended 1999-08-17; 2000-04-17, 2002-02-19, 2004-02-17; 2005-08-16; 2022-12-21]

- A. Board of Septic and Well Appeals
  - 1. Appeals of administrative interpretations of this article, and applications for variances, shall be heard by a Board of Septic and Well Appeals ("The Board").
  - 2. The Board of Septic and Well Appeals shall consist of three members:
    - a. a member of the Board of Supervisors, with any other member of the Board designated as his/her alternate.
    - b. a member of the of Planning Commission with any other member of the Planning Commission designated as his/her alternate, and
    - c. a member of the public, who is a resident of the county with a member of the Planning Commission designated as his/her alternate.

All members shall be appointed by the Board of Supervisors at their first regular meeting of each year. [Added 1999-08-17, Amended 2004-02-17]

3. The Board shall have the following powers and duties:
  - a. To hear and decide appeals from any order, requirement, decision or determination made by the Clarke County Health Department in the administration or enforcement of this article.
  - b. To hear and decide applications for variances in accordance with the provisions of this section.

#### B. Appeals

1. Any appeal shall be filed within 30 days of the issuance date of the order, requirement, decision, or determination.
2. Any person seeking an appeal shall apply in writing to the Board. Such application shall include:
  - a. A citation to the order, decision, determination or regulation to which an appeal of interpretation or application is requested;
  - b. Any relevant analytical results, including results of tests conducted pursuant to the requirements of this article;
  - c. Other information, if any, deemed pertinent by the applicant; and
  - d. Such other information as the Board may require.
3. The Board shall act on any appeal request within 60 calendar days from the Board's first review.
4. All appeals shall be consistent with the intent of this article. The Board may attach reasonable conditions consistent with the intent of this article in granting appeals.
5. No appeal may be heard except after notice and hearing as required by § 15.2-2204, Code of Virginia and in accordance with the requirements of Section 10-E of the Clarke County Zoning Ordinance.
6. An appeal of a decision of the Board shall be made within 30 days to the Board of Supervisors. Any appeal of the decision of the Board of Supervisors shall be made within 30 days to the Circuit Court of Clarke County.
7. The concurring vote of two members shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer, or to decide in favor of the applicant on any matter upon which the Board is required to pass under this Ordinance, or to effect any variance from the Ordinance.

#### C. Variances

1. Variance Criteria.



- a. In order to be eligible for a variance, the system for which the variance is requested serves or is planned to serve one of the following:
  - i. An existing single-family dwelling or structure serving an existing business
  - ii. An existing single-family dwelling or structure serving an existing business that has been destroyed by circumstances beyond the control of the owner or occupant of the building within one year of the variance application.
  - iii. A building that is eligible to be on the Virginia Landmarks Register or the National Register of Historic Places or is eligible to be a contributing property in an historic district listed in the Virginia Landmarks Register or the National Register of Historic Places.
  - iv. The variance is requested so as to provide for septic systems or water supply systems replacing existing septic systems or water supply systems that are more consistent with the regulations of this article. An existing single-family dwelling or structure serving an existing business must be located on the property with the existing septic system or water supply system.
  - v. The entire parcel of land has been placed under a permanent conservation easement.
2. Variances shall be approved to alleviate a clearly demonstrable hardship approaching confiscation involving existing single-family dwellings or structure serving an existing business as distinguished from a special privilege or self-imposed (elective) convenience or option sought by the applicant.
3. Variance Procedure. If the proposed variance involves a request to locate a soil treatment area farther than 500 feet from the single family dwelling or structure serving an existing business, the applicant must provide an affidavit signed by the soil consultant stating that no suitable area could be found within the 500 feet radius. Attached to the affidavit shall be a written report detailing the reasons why no site could be found, including but not limited to soil test pit locations and profiles, site conditions such as topography, and/or setback restrictions.
  - a. Any person seeking a variance shall apply in writing to the Board. Such application shall be in writing and shall include:
    - i. A citation to the order, decision, determination or regulation from which a variance is requested.

- ii. Identification of which of the variance criteria in paragraph C.(1) applies;
  - iii. The nature of the variance requested.
  - iv. Any relevant analytical results, including results of tests conducted pursuant to the requirements of this article.
  - v. Statements or evidence why the public health and welfare as well as the groundwater resources would not be degraded if the variance were granted.
  - vi. Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on public health and welfare or groundwater resources.
  - vii. Other information, if any, deemed pertinent by the applicant.
  - viii. Such other information as the Board may require.
- b. The Board of Septic And Well Appeals shall act on any variance request within 60 calendar days of receipt of the request.
  - c. The Board may attach reasonable conditions consistent with the intent of this article in granting variances. Compliance with conditions shall be required for the life of the system for which the variance is issued, unless specified otherwise by the Board.
  - d. No variance may be granted except after notice and hearing as required by §15.2-2204, Code of Virginia. Posting and notification of adjacent property owners are waived for existing failed systems requiring emergency repairs, which alter the configuration of the existing system as determined by the county Health Department.
  - e. A denial of a variance, or an appeal from the terms and conditions set forth in the variance, shall be made within 30 days to the Board of Supervisors. Any appeal of the decision of the Board of Supervisors shall be made within 30 days to the Circuit Court of Clarke County.
  - f. Each variance shall be attached to the onsite sewage disposal system permit to which it is granted and shall remain in effect so long as the permit is valid. Each variance is revoked when the permit to which it is attached is revoked.

*§ 143-16. Fees.*

The Board of Supervisors shall set by resolution such fees as it deems necessary and reasonable to defray the cost of permits and/or licenses, inspections and testing as are required to be issued under this article.

*§ 143-17. Violations and Penalties.*

Penalties for violation of the provisions of this article shall be as provided in Clarke County Code Chapter 1, General Provisions, Article I.

**Amendments Chapter 143**

2021-12-21 Complete rewrite of Chapter 143. Previous versions can be found in County Administration or Planning & Zoning.

# Chapter 148 Soil Erosion and Sediment Control

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## Chapter 148 Soil Erosion and Sediment Control

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### § 148-1. Title Purpose and Authority

- A. This ordinance shall be known as the ‘Erosion and Sediment Control Ordinance of Clarke County.’ The purpose of this ordinance is to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources of Clarke County by establishing requirements for the effective control of soil erosion, sediment deposition and non-agricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.
- B. This ordinance is authorized by § 62.1-44.15:54 of the Code of Virginia.

### § 148-2. Definitions

As used in the ordinance, unless the context requires a different meaning:

<b>AGREEMENT IN LIEU OF A PLAN</b>	A contract between the County and the owner that specifies conservation measures that must be implemented to comply with the requirements of this ordinance for the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent; this contract may be executed by Clarke County in lieu of formal site plan.
<b>APPLICANT</b>	Any person submitting an erosion and sediment control plan for approval in order to obtain authorization for land-disturbing activities to commence.
<b>BOARD</b>	The State Water Control Board.
<b>CERTIFIED INSPECTOR FOR ESC</b>	An employee or agent of the VESCP authority who (i) holds a certificate of competence from the department in the area of project inspection or (ii) is enrolled in the department’s training program for project inspection and successfully completes such program within one year after enrollment.
<b>CERTIFIED PLAN REVIEWER FOR ESC</b>	An employee or agent of the VESCP authority who (i) holds a certificate of competence from the department in the area of plan review, (ii) is enrolled in the department’s training program for plan review and

successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, landscape architect, land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia, or professional soil scientist as defined in § 54.1-2200.

**CERTIFIED PROGRAM ADMINISTRATOR FOR ESC**

An employee or agent of the VESCP authority who holds a certification from the department in the classification of program administrator or (ii) is enrolled in the department's training program for program administration and successfully completes such program within one year after enrollment.

**CLEARING**

Any activity, which removes the vegetative ground cover including, root mat removal or topsoil removal.

**COUNTY**

The County of Clarke.

**DEPARTMENT**

The Virginia Department of Environmental Quality.

**DISTRICT OR**

Refers to the Lord Fairfax Soil and Water Conservation District.

**SOIL AND WATER CONSERVATION DISTRICT**

**EROSION AND SEDIMENT CONTROL PLAN OR**

**PLAN**

A document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

**EROSION IMPACT AREA**

An area of land that is not associated with a current land-disturbing activity but is subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes.

**ESC**

Erosion and sediment control.

<b>FARM BUILDING OR STRUCTURE</b>	The same as that term is defined in § 36-97 of the Code of Virginia and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400, and any related impervious surfaces including roads, driveways, and parking areas.
<b>EXCAVATING</b>	Any digging, scooping or other methods of removing earth materials.
<b>FILLING</b>	Any depositing or stockpiling of earth materials.
<b>GRADING</b>	Any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.
<b>LAND DISTURBANCE OR LAND-DISTURBING ACTIVITY</b>	A man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including the clearing, grading, excavating, transporting, and filling of land.
<b>LAND-DISTURBING PERMIT OR APPROVAL</b>	A permit or an approval allowing a land-disturbing activity to commence issued by the County after the requirements of § 62.1-44.15:55 of the Code of Virginia have been met.
<b>NATURAL CHANNEL DESIGN CONCEPTS</b>	The utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.
<b>OWNER</b>	Means the same as provided in § 62.1-44.3 of the Code of Virginia. For a land-disturbing activity that is regulated under Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia and this ordinance, "owner" also includes the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.
<b>PEAK FLOW RATE</b>	The maximum instantaneous flow from a prescribed design storm at a particular location.

<b>PERCENT IMPERVIOUS</b>	the impervious area within the site divided by the area of the site multiplied by 100.
<b>PERMITEE</b>	the person to whom the permit is issued.
<b>PERSON</b>	any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.
<b>RESPONSIBLE LAND DISTURBER OR RLD</b>	an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved erosion and sediment control plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the erosion and sediment control plan or permit as defined in the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) as a prerequisite for engaging in land disturbance. The RLD must be designated on the erosion and sediment control plan or permit as defined in this ordinance as a prerequisite for engaging in land disturbance.
<b>RUNOFF VOLUME</b>	the volume of water that runs off the land development project from a prescribed storm event.
<b>SINGLE-FAMILY DETACHED RESIDENTIAL STRUCTURE</b>	a noncommercial dwelling that is occupied exclusively by one family.
<b>SOIL EROSION</b>	the movement of soil by wind or water into state waters or onto lands in the Commonwealth.
<b>STATE WATERS</b>	all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.
<b>TRANSPORTING</b>	any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the



buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

**VIRGINIA EROSION AND  
SEDIMENT CONTROL  
PROGRAM OR**

**VESCP**

A program approved by the department that is established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, policies and guidelines, technical materials, and requirements for plan review, inspection, and evaluation consistent with the requirements of the Erosion and Sediment Control Law (ESCL).

**VIRGINIA EROSION AND  
SEDIMENT CONTROL  
PROGRAM AUTHORITY OR**

**VESCP AUTHORITY**

For purposes of this ordinance means the County that has been approved by the department to operate a Virginia Erosion and Sediment Control Program in accordance with Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1, the State Water Control Law, of Title 62.1 of the Code of Virginia.

**VESCP PLAN-APPROVING  
AUTHORITY**

Means the County Building Inspections Department responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.

**VPDES PERMIT**

A General VPDES (Virginia Pollutant Discharge Elimination System) Permit for Discharges of Stormwater from Construction Activities, 9VAC25-880, issued by the department pursuant to § 62.1-44.15 of the Code of Virginia for stormwater discharges from a land-disturbing activity.

*§ 148-3. Local Erosion and Sediment Control Program*

Pursuant to § 62.1-44.15:54 of the Code of Virginia, the County hereby establishes a Virginia Erosion and Sediment Control Program (VESCP) and adopts the regulations promulgated by the Board (for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources) for all areas of the County except those properties located within the Town of Berryville.

In accordance with § 62.1-44.15:52 of the Code of Virginia, any plan approved prior to July 1, 2014 that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

- A. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements for natural and man-made channels shall be satisfied by compliance with water quantity requirements specified 9VAC25-875-600, unless such land-disturbing activities are in accordance with the grandfathering provisions of 9VAC25-875-490.
- B. Pursuant to § 62.1-44.15:53 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer for ESC. Inspections of land-disturbing activities shall be conducted by a certified inspector for ESC. The Erosion and Sediment Control Program of the County shall contain a certified program administrator for ESC, a certified plan reviewer for ESC, and a certified inspector for ESC (who may be the same person.)
- C. The County hereby designates the Building Inspections Department as the VESCP plan-approving authority. Plan review may be conducted by a certified third party under contract of the County.
- D. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the Building Official.

#### *§ 148-4. Regulated Land-Disturbing Activities*

Land-disturbing activities that meet the criteria below are regulated as follows:

1. Land-disturbing activity that disturbs 10,000 square feet or more, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V of the Virginia Erosion and Stormwater Management Regulation (Regulation).

*§ 148-5. Activities Not Required to Comply With the ESCL*

A. Notwithstanding any other provisions of the Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program (ESCL), the following activities are not required to comply with the ESCL unless otherwise required by federal law:

1. Disturbance of a land area of less than 10,000 square feet in size;
2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;
3. Installation, maintenance, or repair of any individual service connection;
4. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
6. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;
7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163 of the Code of Virginia;
8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the United States Army

Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the ESCL and the regulations adopted pursuant thereto;

10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESCP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsections 1.6, 1.7 and 1.8 of this ordinance are required within 30 days of commencing the land-disturbing activity;
11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity; and
12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

*§148-6. Submission and Approval of Plans; Contents of Plans*

- A. Except as provided herein, no person may engage in any regulated land-disturbing activity until he or she has submitted to the County an erosion and sediment control plan for the regulated land-disturbing activity and such plan has been approved by the County. No approval to begin a land disturbing activity will be issued unless evidence of VPDES permit coverage is obtained where it is required. Where the land-disturbing activity results from the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP plan-approving authority.
- B. The standards contained within the "Virginia Erosion and Stormwater Management Regulation (9VAC25-875)" is to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The VESCP plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the Virginia Erosion and Stormwater Management Regulation shall take precedence.
- C. The VESCP plan-approving authority shall review erosion and sediment control plans submitted to it and grant written approval within 45 days of the receipt of the plan if it determines that the plan meets the requirements of the Erosion and Sediment Control

Law for Localities not Administering a Virginia Erosion and Stormwater Management Program and 9VAC25-875, and if the person responsible for carrying out the plan certifies that he or she will properly perform the erosion and sediment control measures included in the plan and will comply with the provisions of this ordinance. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of the responsible land disturber to the VESCP authority, as required by 9VAC25-875-300 and 9VAC25-875-550 , who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of the responsible land disturber, prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.

However, the VESCP plan-approving authority may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan for construction of a single-family detached residential structure. If a violation occurs during the land-disturbing activity associated with the construction of the single-family detached residential structure, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of the responsible land disturber to the VESCP authority. Failure to provide the name of the responsible land disturber shall be a violation of this ordinance.

- D. When the plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.
- E. The County shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.
- F. The County may require changes to an approved plan when:
  - 1. The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
  - 2. The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the VESCP plan-approving authority and the person responsible for carrying out the plans.

- G. The VESCP plan-approving authority may waive or modify any of the standards that are deemed to be inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:
1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the VESCP plan-approving authority shall be documented in the plan.
  2. During construction, the person responsible for implementing the approved plan may request a variance in writing from the VESCP plan-approving authority. The VESCP plan-approving authority shall respond in writing either approving or disapproving such a request. If the VESCP plan-approving authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.
  3. The County shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.
- H. In order to prevent further erosion, the County may require approval of a plan for any land identified in the local program as an erosion impact area.
- I. When a land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.
- J. As an alternative to submitting soil erosion control and stormwater management plans pursuant to § 62.1-44.15:34 of the Code of Virginia to the County, any person engaging in more than one jurisdiction in the creation and operation of a wetland mitigation or stream restoration bank that has been approved and is operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of (i) a wetlands mitigation or stream restoration bank, pursuant to a mitigation banking instrument signed by the Department, the Marine Resources Commission, or the U.S. Army Corps of Engineers, or (ii) a stream restoration project for purposes of reducing nutrients or sediment entering state waters may submit standards and specifications for Department approval that describe how land-disturbing activities shall be conducted.

*§148-7. Erosion and Sediment Control Plan; Contents of Plans*

- A. An erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall be consistent with the criteria, techniques, and methods in 9VAC25-875-560. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and sediment control plan may include:
  - 1. Appropriate maps;
  - 2. An appropriate soil and water plan inventory and management information with needed interpretations; and
  - 3. A record of decisions contributing to conservation treatment.
- B. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the VESMP authority. The VESMP authority may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-44.15:34 or § 62.1-44.15:55 of the Code of Virginia.
- C. If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an "Agreement in Lieu of a Plan" signed by the property owner.
- D. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA, ESCL, or this ordinance if the total land-disturbing activity in the development is equal to or greater than 10,000 square feet.

*§148-8. Permits; Fees; Security for Performance*

- A. Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities shall not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan, certification that the plan will be followed and evidence of VPDES permit coverage where it is required.
- B. No person may engage in any land-disturbing activity until he or she has acquired a land-disturbing permit (unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance), has paid the fees and has posted the required bond.

- C. An administrative fee set by the Board of Supervisors shall be paid to the County at the time of submission of the erosion and sediment control plan.
- D. No land-disturbing permit shall be issued until the applicant submits with his or her application an approved erosion and sediment control plan or agreement in lieu of an approved erosion and sediment control plan and certification that the plan will be followed.
- E. Applicants for permits may be required to provide to the County a performance bond with surety, cash escrow, or an irrevocable letter of credit acceptable to the Building Official, to ensure that measures could be taken by the County at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him or her by the approved plan as a result of his land-disturbing activity.

The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the County to take such conservation action, the County may collect from the applicant any costs in excess of the amount of the surety held. Within sixty (60) days of adequate stabilization, as determined by the Building Official in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

#### *§148-9. Monitoring, Reports, and Inspections*

- A. The responsible land disturber, as provided by § 62.1-44.15:52, shall be in charge of and responsible for carrying out the land-disturbing activity and provide for periodic inspections of the land-disturbing activity. The person responsible for carrying out the plan shall monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.
- B. The County shall periodically inspect the land-disturbing activity in accordance with 9VAC25-875-330 to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan



shall be given notice of the inspection and shall such inspection in accordance with § 62.1-44.15:60 and the land-disturbing permit.

If the Building Official determines that there is a failure to comply with the plan, notice to comply may be served upon the permittee or person responsible for carrying out the plan. Such notice shall be served by delivery by facsimile, e-mail, or other technology; by mailing with confirmation of delivery to the address specified in the permit application or in the plan certification, if available, or in the land records of the locality; or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

The notice to comply shall specify the measures needed to comply with the land-disturbance approval conditions or shall identify the plan approval or land-disturbance approval needed to comply with this article and shall specify a reasonable time within which such measures shall be completed. Upon failure to comply within the specified time, any plan approval or land-disturbance approval may be revoked and the permittee or person responsible for carrying out the plan shall be subject to the penalties provided by this ordinance.

- C. Upon issuance of an inspection report denoting a violation of § 62.1-44.15:55 of the Code of Virginia, the Building Official may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

If land-disturbing activities have commenced without an approved plan, the Building Official may issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan, such a stop work order may be issued without regard to whether the alleged violator has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the alleged violator has failed to comply with such a notice to comply.

The stop work order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the County or permit holder for appropriate relief to the Circuit Court of Clarke County. The County shall serve such order for disturbance without an approved plan upon the owner by mailing with confirmation of delivery to the address specified in the land records. The order shall be posted on the site where the disturbance is occurring,

and shall remain in effect until permits and plan approvals are secured, except in such situations where an agricultural exemption applies.

If the alleged violator has not obtained an approved plan within seven days from the date of service of the stop work order, the Building Official may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan has been obtained. Such an order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the plan or the land records of Clarke County.

The owner may appeal the issuance of an order to the Circuit Court of Clarke County.

Any person violating or failing, neglecting or refusing to obey an order issued by Building Official may be compelled in a proceeding instituted in the Circuit Court of Clarke County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

Upon completion and approval of corrective action or obtaining an approved plan, the order shall immediately be lifted.

Nothing in this section shall prevent the Building Official from taking any other action authorized by this ordinance or other applicable laws.

#### *§148-10. Penalties, Injunctions, and Other Legal Actions*

- A. Any person who has violated or failed, neglected, or refused to obey any order, notice, or requirement of the County, any condition of a land-disturbance approval, or any provision of this ordinance shall, upon a finding of the District Court of Clarke County, be assessed a civil penalty. The civil penalty for any one violation shall be not less than \$100 nor more than \$1,000, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.
- B. The Building Official, or the owner or property which has sustained damage, or which is in imminent danger of being damaged, may apply to the Circuit Court of Clarke County to enjoin a violation or a threatened violation of §§ 62.1-44.15:55 or 62.1-44.15:58 of the Code of Virginia, without the necessity of showing that an adequate remedy at law does not exist.

However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

- C. In addition to any criminal or civil penalties provided under this ordinance, any person who violates any provision of the Erosion and Sediment Control Law may be liable to the County in a civil action for damages.
- D. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the County.

Any civil penalties assessed by a court shall be paid into the treasury of the County, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

- E. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, or order of the Building Official the County may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection D of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection A or D.
- F. The Commonwealth's Attorney shall, upon request of the County, take legal action to enforce the provisions of this ordinance.

#### *§148-11. Appeals and Judicial Review*

- A. Final decisions of the County under this ordinance shall be subject to review by the Clarke County Circuit Court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

## Amendments Chapter 148

2004-02-17

§ 148-4 Definitions add “or drilling of a water well to Agreement In Lieu of a Plan; Add to J. excluding water wells to Land Disturbing Activity

2005-06-21

§ 148-4. Definitions. Erosion And Sediment Control Sketch Plan [05-06-21] Add Erosion and Sediment Control Sketch Plan, G. remove ponds, § 148-6 add F. and renumber/modify G and H

2008-12-16

§ 148 Soil Erosion and Sedimentation Control, so as to update this section and bring it into conformance with the Code of Virginia

2017-10-17

§ 148 Soil Erosion and Sedimentation Control. The purpose of the amendment is to bring the Chapter into conformance with recent changes to State law regarding erosion and sediment control by replacing the current provisions of the Chapter with new provisions. The proposed new provisions are drafted to be consistent with the Virginia Department of Environmental Quality’s Erosion and Sediment Control Model Ordinance (revised December 5, 2014).

2024-06-18

Complete rewrite Chapter 148 Erosion & Sediment Control approved, effective date 07-01-2024.

# Chapter 152 Smoking

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## Chapter 152 Smoking

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 11-21-1989. Amendments noted where applicable.]

### General References

Chapter 74 County-Owned Property.

### Code of Virginia References

§ 15.2-2801. Statewide regulation of smoking

#### *§ 152-1. Statement of intent.*

Because smoking of tobacco or any other weed or plant is a positive danger to the health of the inhabitants of the County of Clarke, Virginia, and is further a material annoyance, inconvenience, discomfort and a health hazard to those who are present in confined spaces in which smoking occurs, and in order to serve the public health, safety and welfare, the declared purpose of this chapter is to prohibit the smoking of tobacco or any weed or plant in certain public places as defined herein, except in designated smoking areas.

#### *§ 152-2. Definitions.*

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

COUNTY BUILDING	Any portion of a building owned or leased by and exclusively managed and controlled by the government of the County of Clarke or any of its component departments, offices and agencies which is open to the public or in which the public is invited or permitted.
SMOKE or SMOKING	The act of smoking or carrying a lighted or smoldering cigar, cigarette or pipe of any kind or the lighting of a cigar, cigarette or pipe of any kind.

#### *§ 152-3. Smoking prohibited in county buildings.*

It shall be unlawful for any person to smoke in any of the following facilities: county buildings.

*§ 152-4. Exceptions.*

The prohibition of this chapter shall not apply to the following:

- A. Lawfully designated smoking areas.
- B. Private offices.

*§ 152-5. Designated smoking area.*

The person or entity in charge of any building in which smoking is prohibited may designate separate rooms or areas in which smoking is permitted, provided that:

- A. Designated smoking rooms or areas shall be reasonably separate from the rooms or areas entered by the public in the normal course of business or use of the facilities and shall be indicated by sign(s) in the area.
- B. In designated smoking areas, existing physical barriers and/or ventilation systems shall be used when possible to minimize the toxic effect of smoke in adjacent nonsmoking areas. In any event, it shall be the responsibility of the person or entity in charge of such to provide smoke-free areas for nonsmokers within the building.

*§ 152-6. Posting of signs.*

- A. The person or entity in charge of any building in which smoking is prohibited shall post conspicuous sign(s) at least five inches in height, which shall read as follows:

NO SMOKING  
COUNTY ORDINANCE  
PROHIBITS THE CARRYING  
OF LIGHTED TOBACCO  
PRODUCTS OF ANY KIND  
\$25.00 FINE

- B. The letters in the words "No Smoking" on the sign required by this section shall be at least 1-1/2 inches in height.

*§ 152-7. Violations and penalties.*<sup>37</sup>

Penalties for violation of the provisions of this chapter shall be as provided in Chapter 1, General Provisions, Article I.

## References

<sup>37</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).



# Chapter 154 Stormwater Management – REPEALED

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## **Chapter 154 Stormwater Management – REPEALED**

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[HISTORY: Adopted by the Board of Supervisors of Clarke County August 17, 2010. Amendments noted where applicable. Repealed by the Clarke County Board of Supervisors of Clarke County September 20, 2016.]

### **Amendments Chapter 154**

2010-08-17

Adopted Chapter 154 Stormwater Management 08-17-2010

2011-03-15

Chapter 154: §154-4-B Water Quality Criteria Requirements, so as: To clarify that the total phosphorus load of a project occurring on prior developed lands not within Urban Development Areas shall be 20% less than the existing load from the site or 0.28 pounds per acre per year, whichever is less stringent and to modify the paragraph headings to more clearly differentiate the regulations for development in and not in urban development areas and To state for development on prior developed lands within Urban Development Areas (land subject to County ordinance in the Berryville Annexation Area): The total phosphorus load of a project occurring on prior developed lands shall be 20% less than the existing load from the site or 0.45 pounds per acre per year, whichever is less stringent. CC-11-02; 03-15-2011.

2016-09-20

Repeal Chapter 154, Stormwater Management, of the Code of Clarke County. The purpose of the amendment is to comply with recent changes to the Stormwater Management Act (Code of Virginia §62.1-44.15:24 et seq.) which only allow localities that are Virginia Stormwater Management Program (VSMP) authorities to adopt stormwater ordinances that are more stringent than State requirements. Clarke County has chosen to opt-out of operating a local VSMP. The proposed amendment also avoids duplicitous local regulation of stormwater management by allowing the Virginia Department of Environmental Quality (DEQ) to serve as the sole regulatory authority for stormwater management in Clarke County. CC-2016-04 2016-09-20

# Chapter 157 Streets And Sidewalks

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## Chapter 157 Streets And Sidewalks

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[HISTORY: Adopted by the Board of Supervisors of Clarke County as indicated in article histories. Amendments noted where applicable.]

### General References

Chapter 112 Littering, § 112-11. Sweeping litter into streets.

Chapter 171 Vehicles, Abandoned

Chapter 175 Vehicles And Traffic

### Article I Obstructions by Vehicles

[Adopted 01-19-1988 as § 8-4 of the 1987 Code]

#### *§ 157-1. Washing or greasing vehicle on highway or sidewalk.*

No person shall wash, polish or grease a vehicle upon a highway or sidewalk, nor shall the owner of a vehicle permit it to be washed, polished or greased upon a highway or sidewalk.

#### *§ 157-2. Violations and penalties. 38*

- A. It shall be unlawful for any person to violate any of the provisions of this article.
- B. Unless otherwise stated, every person convicted of a violation of any of the provisions of this article shall be guilty of a traffic infraction punishable by a fine of not more than \$200.

### References

<sup>38</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

## Chapter 161 Subdivision Of Land – Repealed

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## Chapter 161 Subdivision Of Land – Repealed

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The Clarke County Subdivision of Land Ordinance is on file in the office of the County Administrator.]

### General References

Chapter 48 Agricultural and Forestal District

Chapter 148 Soil Erosion And Sedimentation Control

Chapter 165 Taxation

Chapter 165 Taxation § 165-32. Assessment of new buildings substantially completed.

Chapter 165 Taxation, Article VII Special Assessment for Land Preservation [Adopted 1-19-1988 as § 11-23 of the 1987 Code]

Chapter 188 Zoning

### Amendments Chapter 161

2021-08-17

Repeal of Chapter 161, Subdivision Of Land, of the Code of Clarke. The purpose of the amendment is to comply with the recent complete rewrite of Chapter 200, Zoning And Subdivision Ordinances of Code of Clarke County, which the Board of Supervisors adopted on August 17, 2021. Chapter 200 can be found at:

[www.clarkecounty.gov/government/planning-zoning](http://www.clarkecounty.gov/government/planning-zoning)

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## Chapter 165 Taxation

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[HISTORY: Adopted by the Board of Supervisors of Clarke County as indicated in article histories. Amendments noted where applicable.]

### General References

Chapter 57 Special Events

Chapter 61 Animals § 61-19. License required; exemptions; tags.

Chapter 175 Vehicles And Traffic

### Code Of Virginia References

§ 58.1-1800 et seq. - Enforcement, collection, refund, remedies and review of state taxes

§ 58.1-3900 et seq. - Enforcement, collection, refunds, remedies and review of local taxes

## Article I Business Licenses

[Adopted 04-20-2022]

### *§ 165-1. Intent.*

The purpose of this article is to require a license be obtained for all persons or entities engaged in business or professional services conducted in the unincorporated areas of the County, to impose a license fee thereon, provide for the collection thereof, and to impose penalties for failure to comply with the provisions hereof.

### *§ 165-2. Definitions*

For the purposes of this Article, unless otherwise required by the context, the following definitions shall apply:

<b>Business</b>	A course of dealing which requires the time, attention, and labor of the person or is engaged in 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.
<b>Definite place of business</b>	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.
<b>Entity</b>	A business organization, other than a sole proprietorship, that is a corporation, limited liability company, limited partnership, or limited liability partnership duly organized under the laws of the Commonwealth or another state.
<b>Itinerant Merchant</b>	Any person who engages in, does, or transacts any temporary or transient business in any locality and who, for the purpose of carrying on such business, occupies any location for a period of less than one year.

**License Year** The calendar year for which a license for the privilege of engaging in business is issued.

<b>Peddler</b>	Any person who shall carry from place to place any goods, wares or merchandise and offer to sell or barter the same, or actually sell or barter the same. The definition of peddler shall not include a peddler at wholesale or to those who sell or offer for sale in person or by their employees ice, wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables, fruits, or other family supplies of a perishable nature or farm products grown or produced by them and not purchased by them for sale.
<b>Professional Services</b>	Services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and no others, as the Department of Taxation may list in the BPOL guidelines promulgated pursuant to Code of Virginia (1950) § 58.1-3701, as amended. The Department shall identify and list each occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used in its practical application to the affairs of others, either advising, guiding, or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.
<b>Wholesale Merchant</b>	Any person who sells to others for resale or sells at wholesale to institutional, commercial, or industrial users.

*§ 165-3. License requirements.*

- A. Every person or entity engaging in a business or profession within the county shall apply annually for a license therefor, if
  - 1. the person or entity has a definite place of business in the county;
  - 2. there is no definite place of business anywhere and the person resides in the county; or
  - 3. there is no definite place of business in the county but the person or entity operates amusement machines or is classified as an itinerant merchant, peddler,

carnival, circus, contractor subject to Code of Virginia (1950) §58.1-3715, as amended, or public service corporation.

- B. A separate license shall be required for each definite place of business and for each business.

*§ 165-4. Due dates and penalties.*

- A. Each person or entity subject to a license shall apply for said license prior to beginning business or no later than March 1 of the license year, if a license had been issued for the preceding year. The application shall be on forms provided by the Commissioner of the Revenue.
- B. Under the authority of Code of Virginia (1950) §15.2-1429, as amended, the county hereby imposes the penalty of a class 3 misdemeanor and a fine of not more than \$500.00 for operating a business without a business license within the county.
- C. A penalty of ten percent of the fee may be imposed upon the failure to file an application or the failure to pay the fee by the appropriate date.
- D. If the failure to file or pay was not the fault of the license holder, the penalty shall not be imposed, or if imposed, shall be abated by the Commissioner of the Revenue. In order to demonstrate lack of fault, the license holder must show that he acted responsibly and that the failure was due to events beyond his control.

"Acted responsibly" means that: (i) the license holder exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business; and (ii) the license holder undertook significant steps to avoid or mitigate the failure, such as 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.

"Events beyond the license holder'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 fee compliance; or the license holder's reasonable reliance in good faith upon erroneous written information from the commissioner of the revenue who was aware of the relevant facts relating to the license holder's business when he provided the erroneous information.

- E. Any person assessed with a local license tax as a result of an audit may apply within 90 days from the date of such assessment to the assessor 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 assessment, the grounds

upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The assessor 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 assessor 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 jurisdiction (e.g., the name and address to which an application should be directed.)

- F. Any person assessed with a local license tax as a result of an audit may apply within 90 days of the determination by the assessing official or an application to the tax commissioner for a correction of such assessment. The tax commissioner shall issue a determination to the taxpayer within 90 days of receipt of taxpayer's application. The application shall be treated as an application pursuant to Code of Virginia (1950) §58.1-1821, as amended, and the tax commissioner may issue an order correcting such assessment pursuant to Code of Virginia §58.1-1822, as amended. Following such as order, either the taxpayer or the assessing official may apply to the appropriate circuit court pursuant to Code of Virginia, § 58.1-3984.

#### *§ 165-5. Rate of License Fee*

- A. The fee for the issuance of a business license shall be \$30.00 each year.
- B. No business license under this article shall be issued until the applicant has produced satisfactory evidence that all delinquent business license fees, personal property, meals, and transient occupancy taxes owed by the business to the county have been paid.

#### *§ 165-6. Exemptions.*

No license fee shall be imposed:

- A. On any public service corporation, or any motor carrier, common carrier, or other carrier of passengers or property formerly certified by the Interstate Commerce Commission or presently registered for insurance purposes with the Surface Transportation Board of the United States Department of Transportation, Federal Highway Administration, except as provided in Code of Virginia (1950) § 58.1-1-3731, as amended, or as permitted by other provisions of law;
- B. For selling farm or domestic products or nursery products, ornamental or otherwise, or for the planting of nursery products, as an incident to the sale thereof, outside the



regular market houses and sheds of the county, provided such products are grown or produced by the person offering such products for sale;

- C. Upon the privilege or right of printing or publishing any newspaper, magazine, newsletter or other publication issued daily or regularly at average intervals not exceeding three months; provided the publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating or conducting any radio or television broadcasting station or service;
- D. On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacturer. For purposes of this subdivision, this shall include a manufacturer that is also a defense production business selling manufacturing, rebuilding, repair, and maintenance services at the place of manufacture (i) to the United States or (ii) for which consent of the United States is required;
- E. On a person engaged in the business of severing minerals from the earth for the privilege of selling the severed mineral at wholesale at the place of severance, except as provided in Code of Virginia (1950) §58.1-3712 and §58.1-3713, as amended;
- F. Upon a wholesaler for the privilege of selling goods, wares and merchandise to other persons for resale unless such wholesaler has a definite place of business or store in the county This subdivision shall not be construed as prohibiting the county from imposing a local license fee on a peddler at wholesale pursuant to Code of Virginia (1950) §58.1-3718, as amended;
- G. Upon any person, firm or corporation for engaging in the business of renting, as the owner of such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, campgrounds, bed and breakfast establishments, lodging houses, rooming houses and boarding houses;
- H. On or measured by receipts for management, accounting or administrative services provided on a group basis under nonprofit cost-sharing agreement by a corporation which is an agricultural cooperative association under the provisions of Code of Virginia (1950), Title 13.1, Chapter 3, Article 2 (§ 13.1-312 et seq.), as amended, or a member or subsidiary or affiliated association thereof, to other members of the same group. This exemption shall not exempt any such corporation from such license fee or other tax to be measured by receipts from outside the group;
- I. On or measured by receipts or purchases by an entity which is a member of an affiliated group of entities from other members of the same affiliated group. This exclusion shall not exempt affiliated entities from such license or other tax measured by receipts or

purchases from outside the affiliated group. This exclusion shall not preclude the county from levying a wholesale merchant's license on an affiliated entity on those sales by the affiliated entity to a nonaffiliated entity, notwithstanding the fact that the wholesale merchant's license tax would be based upon purchases from an affiliated entity. Such tax shall be based on the purchase price of the goods sold to the nonaffiliated entity. As used in this subdivision, the term "sales by the affiliated entity to a nonaffiliated entity" means sales by the affiliated entity to a nonaffiliated entity where goods sold by the affiliated entity or its agent are manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated entity;

- J. Any insurance company subject to taxation under Code of Virginia (1950), Title 58.1, Chapter 25 (§ 58.1-2500 et seq.), as amended, or on any agent of such company;
- K. Any bank or trust company subject to taxation in Code of Virginia (1950), Title 58.1, Chapter 12 (§ 68.1-1200 et seq.), as amended;
- L. Any taxicab driver, if the county has imposed a license fee upon the taxicab company for which the taxicab driver operates;
- M. Any blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired, or a nominee of the Department, as set forth in Code of Virginia (1950), §51.5-98, as amended;
- N. On an accredited religious practitioner in the practice of the religious tenets of any church or religious denomination. "Accredited religious practitioner" shall be defined as one who is engaged solely in praying for others upon accreditation by such church or religious denomination;
- O. On or measured by receipts of a nonprofit organization described in Internal Revenue Code §501(c)(3) or 501(c)(19), except to the extent the organization has receipts from an unrelated trade or business the income of which is taxable under Internal Revenue Code §511 et seq. For the purposes of this subdivision, "nonprofit organization" means an organization that is described in Internal Revenue Code §501(c)(3) or 501(c)(19), and to which contributions are deductible by the contributor under Internal Revenue Code §170, except that educational institutions exempt from federal income tax under Internal Revenue Code §501(c)(3) shall be limited to schools, colleges, and similar institutions of learning;
- P. On or measured by gifts, contributions, and membership dues of a nonprofit organization. For the purpose of this subdivision, "nonprofit organization" means an organization exempt from federal income tax under the Internal Revenue Code §501 other than the nonprofit organizations described in the previous subdivision;

- Q. 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 by the locality in which the real estate is located, provided the locality is otherwise authorized to tax such business and rental of real estate;
- R. On total assessments paid by condominium unit owners for common expenses. “Common expenses” and “unit owner” have the same meanings as in Code of Virginia (1950) §55.1-1900, as amended;
- S. On or measured by receipts of a qualifying transportation facility, directly or indirectly owned or title to which is held by the Commonwealth or any political subdivision thereof, or by the United States as described in Code of Virginia (1950) §58.1-3606.1, as amended, and developed and/or operated pursuant to a concession under the Public-Private Transportation Act of 1995 (Code of Virginia (1950) §33.2-1800 et seq.), as amended, or similar federal law.

*§ 165-7 to § 165-14 Reserved for future use.*

*Amendments Chapter 165-Article I*

2022-04-11

Various updates based on the Code of Virginia; places a new requirement that applicants for a business license must prove all delinquent business license fees, personal property, meals, and transient occupancy taxes have been paid.

## Article II Public Utilities License Tax <sup>42</sup>

[Adopted 01-19-1988 as Secs. 6-31 through 6-33 of the 1987 Code]

### *§ 165-15. Imposition.*

This article hereby exercises the rights of the Board of Supervisors to impose a local license tax as provided by:

- § 58.1-2690. No state or local tax on intangible personal property or money; local levies and license taxes;
- § 58.1-3703. Counties, cities and towns may impose local license taxes and fees; limitation of authority; and
- § 58.1-3731. Certain public service corporations; rate limitation of the Code of Virginia.

### *§ 165-16. Amount.*

The county shall impose a license tax for the privilege of doing business within the county of 1/2 of 1% of the gross receipts of business accruing to the following corporations from certain business in the county, to wit: Any person engaged in the sale of telegraph, telephone, natural gas and/or electric power service.

### *§ 165-17. Payment.*

The public utilities license tax imposed by this article shall be due and payable on the first day of March of the year following the year for which such tax is assessed, imposed or levied.

## Article III Vehicle License Tax <sup>43</sup>

[Adopted 01-19-1988 as Secs. 8-31 through 8-37 of the 1987 Code]

### *§165-18. Violations and penalties.*

Amended 1993-01-19; 1993-04-20; 1997-05-20; 2018-03-20

The owner or operator of any motor vehicle, trailer or semitrailer who fails to obtain and display any required local license or who displays upon a motor vehicle, trailer or semitrailer any license of the county after its expiration date shall, upon conviction, be punished by a fine not to exceed that of a Class 4 misdemeanor, provided that a violation of this section may not be discharged by payment of a fine except upon presentation of satisfactory evidence that the required license has been obtained.

Amended 01-19-1993; 04-20-1993; 05-20-1997; 03-20-2018: Provide for penalties for failure to obtain and display the required local license.

### *§ 165-19. Persons and vehicles subject to tax; presentation of Virginia vehicle registration cards.*

[Amended 2018-03-20]

- A. All motor vehicles, trailers, semitrailers and other vehicles normally garaged, stored or parked in the county shall be subject to the provisions of this article. When such normal location of a vehicle cannot be determined and the domicile of its owner is in this county, the vehicle shall also be subject to the provisions of this article.
- B. Subsection A shall not apply to any vehicle exempted by the Code of Virginia, § 46.2-755. Limitations on imposition of motor vehicle license taxes and fees, or other law. <sup>44</sup>
- C. All persons subject to the provisions of this article who have been issued state vehicle licenses shall present their state registration cards to the Commissioner of the Revenue for issuance of a county vehicle license.

### *§ 165-20. Annual tax imposed; when and to whom tax payable.*

[Amended 1993-04-20; 2018-03-20]

There is hereby levied, assessed and charged an annual vehicle license tax on motor vehicles, trailers and semitrailers owned by residents of the county, payable to the Treasurer annually during the period January 1 through February 15, as fixed from time to time by resolution of the Board.

### *§ 165-21. Proration of tax.*

[Amended 1993-04-20; 2018-03-20]

With respect to any motor vehicle, trailer or semitrailer first garaged, stored or parked within the county after July 1, the county vehicle license tax shall be 1/2 of the annual tax.

*§ 165-22. Specifications for licenses; issuance and attachment to vehicles; procurement by county for issuance to vehicle owners.*

[Amended 2007-07-17; 2018-03-20]

- A. One permanent vehicle decal or other sticker with a number, the words "Clarke County" inscribed thereon shall be issued for each vehicle licensed and shall be attached to such vehicle in this manner: The permanent decal or other sticker shall be securely attached to such vehicle in such a manner that it will be clearly visible from the rear thereof, except on any vehicle with a windshield, in which case the decal or other sticker shall be placed on the windshield to the right of and adjacent to the state inspection sticker, no higher than three inches from the bottom of the windshield of such vehicle.
- B. The Treasurer shall procure the decals or other stickers and forms for the administration of this article, payment thereof to be appropriated from the general county fund.

*§ 165-23. Payment of personal property tax required.*

[Amended 2018-03-20]

No vehicle shall be licensed by the county unless and until the applicant for such license shall have produced satisfactory evidence that all property taxes have been paid which have been properly assessed or are assessable against the applicant by the county.

*§ 165-24. Fee for transfer or reissuance.*

[Amended 2018-03-20]

A fee shall be charged for the transfer or reissue of any county vehicle license.

*§ 165-25. License period of validity.*

[Added 2007-07-17; Amended 2018-03-20]

The license tax year under the terms of this Article shall commence on the first day of January and shall expire on the thirty-first [31] of December of the calendar year. The permanent license shall be valid as long as:

- (1) the vehicle is normally garaged, stored, or parked in the county and owned by the licensee, and
- (2) all license taxes assessed against the vehicle owner pursuant to this article have been paid. Display of an invalid license on a motor vehicle shall be deemed a

violation of this Article and subject to the penalties set forth in section 165- 18 above.

Amendments Chapter 165-Article III

2007-07-17

165-22 Amend and 165-25 The Clarke County Board of Supervisors proposes this ordinance be adopted amending Chapter 165 Article III Vehicle License Tax changing § 165-22. Specifications for licenses; issuance and attachment to vehicles; procurement by county for issuance to vehicle owners to state permanent decal and adding § 165-25. License period of validity setting forth the requirements for validity to become effective January 1, 2008.

2018-03-20

Chapter 165 Article III Vehicle License Tax complete rewrite removing decal requirement.

## Article IV Tangible Personal Property <sup>45</sup>

[Adopted 01-19-1988 as Secs. 11-1 through 11-4 of the 1987 Code]

### *§ 165-27. Exemption of household goods and personal effects.*

Household goods and personal effects, as defined by the Code of Virginia, § 58.1-3504. Classification of certain household goods and personal effects for taxation; governing body may exempt, are hereby exempt in whole from taxation.

### *§ 165-28. Exemption of farm animals.*

[2007-07-19]

Farm animals, including horses, mules and other kindred animals, cattle, sheep, goats, hogs and poultry, are exempt in whole from personal property taxation.

### *§ 165-26. Penalty and interest on delinquent taxes.*

[Amended 1991-03-19; 1991-06-27; 1993-04-20; 1994-09-20; 2007-07-19; 2014-06-17]

- A. Tax payments for real estate, tangible personal property, machinery and tools and merchants' capital shall be due and payable to the Treasurer of the county during the year for which the same are assessed in two approximately equal installments: 1/2 on or before June 5 and the remainder on or before December 5 of each tax year, provided that the personal property tax levied on motor vehicles, trailers and boats which shall have acquired a situs within the county after the tax day shall be due 30 days from the date of the tax bill. Such tax shall be prorated on a monthly basis, a period of more than 1/2 month counted as a full month and a period of less than 1/2 month shall not be counted, and shall be collected in the same manner as herein prescribed.
- B. A penalty of 10% of the taxes past due shall be assessed on the day after the payment of taxes is due. Interest on said delinquent taxes and penalty at the rate of 10% per annum shall commence on the first day of the month following the month in which such taxes are due, and said interest shall be added to any late tax payment and paid. For the second and subsequent years of delinquency, such interest shall be at the rate established pursuant to Section 6621 of the Internal Revenue Code of 1954, as amended, or 10% annually, whichever is greater.
- C. In the event an attorney (including, but not limited to, the County Attorney) or collection agency is employed by the Treasurer for the collection of delinquent taxes, penalties and interest, an additional fee equal to 20% of the taxes and other charges due and owing shall be imposed and added to cover administrative costs and reasonable attorney's or collection agency's fees actually contracted for.45F46

### *§ 165-29. Returns of tangible personal property.*



[2007-07-19]

- A. This section is enacted pursuant to authority granted in § 58.1-3916. Counties, cities and towns may provide dates for filing returns, set penalties, interest, etc.; § 58.1-3516. Proration of personal property tax; and § 58.1-3518.1. Alternative method of filing returns for motor vehicles, trailers and boats of the Code of Virginia. 46F47
- B. The annual returns of taxable tangible personal and business/farm property, and machinery and tools, for the county shall be filed with the Commissioner of the Revenue in the following manner:
- (1) Tangible business/farm property and machinery and tools; on or before the 15th of February of each year;
  - (2) Motor vehicles, trailers or boats which have acquired situs within the county and have been previously reported to the Commissioner of the Revenue, and have had no change in situs or status, and there has been no change in the address of the owner, will be exempt from the requirement of the annual report by the owner;
  - (3) In the case of motor vehicles, trailers or boats which shall have acquired a situs within the county, the owner shall file a report or return with the Commissioner of the Revenue within 30 days of the date of acquisition or establishment of situs.
- C. A penalty for failure to file such return on or before the 15th of February of each year for returns for business/farm property or machinery and tools or, on motor vehicles, trailers and boats which shall have acquired a situs within the county before 30 days have elapsed, shall be charged at the rate of 10% of the tax assessable or due on such property or the sum of \$10, whichever shall be the greater.

*§ 165-30. Payment of administrative costs.*

[Added 1993-08-17; 2007-07-19]

In addition to all penalties and interest, delinquent taxpayers shall pay a fee to cover the administrative costs associated with the collection of delinquent taxes. Such fee shall be \$20 for taxes collected subsequent to the filing of a warrant or other appropriate legal document but

*§ 165-31. Relief from prorated tax and refunds.*

[2007-07-19]

- A. When any motor vehicle, trailer or boat loses its situs within the county, the owner thereof shall be relieved from personal property taxation and receive a refund for personal property tax already paid, prorated on a monthly basis for that portion of the

tax period remaining, except as otherwise provided herein. Any motor vehicle, trailer or boat legally assessed a personal property tax for any tax year or portion thereof by another jurisdiction in the commonwealth, which tax has been paid, shall be exempt from personal property taxation by the county for such tax year or portion thereof.

- B. No refund shall be made if the motor vehicle, trailer or boat acquires a situs within the commonwealth in a non-prorating locality.
- C. When any person sells or otherwise transfers title to a motor vehicle, trailer or boat with a situs in the county after tax day or the day on which it acquires a situs in the county, the tax shall be relieved, prorated on a monthly basis, and the appropriate amount of tax already paid shall be refunded or credited, at the option of the taxpayer, against the tax due on any motor vehicle, trailer or boat owned by the taxpayer during the same tax year. Such refund shall be made within 30 days of the date such tax is relieved.
- D. No refund of less than \$5 shall be issued to a taxpayer unless specifically requested by the taxpayer.
- E. Any person who moves from a non-prorating locality to the county in a single tax year shall be entitled to a property tax credit in the county if the person was liable for personal property taxes on a motor vehicle, trailer or boat and has paid those taxes to a non-prorating locality and the owner replaces for any reason the original vehicle upon which taxes are due to the non-prorating locality for the same tax year. The county shall provide a credit against the total tax due on the replacement motor vehicle, trailer or boat in an amount equal to the tax paid to the non-prorating locality for the period of time commencing with the disposition of the original vehicle and continuing through the close of the tax year in which the owner incurred tax liability to the non-prorating locality for the original motor vehicle, trailer or boat.
- F. All taxpayers entitled to a refund or credit shall make application therefor to the Commissioner of the Revenue, provided that application is made within three years from the last day of the tax year during which the motor vehicle, trailer or boat lost situs, was sold or had its title transferred.

*§ 165-31.1. Other Classifications of Tangible Personal Property*  
[Adopted 1997-09-16; 2007-07-19]

Adopted 1997-09-16 Add section for separate classification of motor vehicles owned by active members of volunteer fire and/or rescue companies.

The property set forth below is declared to be a separate class of property and shall constitute a classification for local taxation separate from other classifications of tangible personal property provided in this chapter.

- A. One motor vehicle which is owned by each volunteer rescue squad member or volunteer fire department member, or leased by each volunteer rescue squad member or volunteer fire department member if the member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle, is separately classified under this section, provided the volunteer rescue squad member or volunteer fire department member regularly responds to emergency calls or regularly performs other duties for the rescue squad or fire department. The volunteer shall furnish the commissioner of revenue with a certification by the chief or head of the volunteer organization, that the volunteer is a member of the volunteer rescue squad or fire department who regularly responds to calls or regularly performs other duties for the rescue squad or fire department, and the motor vehicle owned or leased by the volunteer rescue squad member or volunteer fire department member shall be identified. The minimum eligibility and participation requirements and the form of the certificate required by this ordinance shall be approved by the Board of Supervisors and shall be the same for all volunteer rescue squads or volunteer fire departments within the county. The certification shall be submitted by January 31 of each year to the commissioner of revenue: however, the commissioner of revenue shall be authorized, in his discretion, and for good cause shown and without fault on the part of the member, to accept a certification after the January 31 deadline. A replacement vehicle may be certified and classified pursuant to this section when the vehicle certified as of the immediately prior January date is transferred during the tax year.
- B. One motor vehicle which is owned by each auxiliary volunteer rescue squad or auxiliary volunteer fire department member, or leased by each auxiliary volunteer rescue squad member or auxiliary volunteer fire department member if the auxiliary member is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle is separately classified under this section, provided the auxiliary volunteer rescue squad member or auxiliary volunteer fire department member regularly performs duties for the rescue squad or fire department and uses the vehicle for that purpose. The volunteer shall furnish the commissioner of revenue with a certification by the chief or head of the volunteer organization, that the volunteer is an auxiliary member of the volunteer rescue squad or volunteer fire department who regularly performs duties for the rescue squad or fire department, and the motor vehicle owned or leased by the volunteer rescue squad auxiliary member or volunteer fire department auxiliary member and regularly used for such purpose shall be identified. The minimum eligibility and participation requirements and the form of the certificate required by this ordinance shall be approved by the Board of Supervisors and shall be the same for all volunteer rescue squads or volunteer fire departments within the county. The certification shall be submitted by January 31 of each year to the commissioner of revenue: however, the commissioner of revenue shall be authorized, in his discretion, and for good cause shown and without fault on the part of the auxiliary member, to accept a certification after the January 31 deadline. A replacement vehicle may be certified and classified pursuant to this section when the vehicle certified as of the immediately prior January date is transferred during the tax year.

- C. If a volunteer rescue squad member or volunteer fire department member and auxiliary volunteer rescue squad member or auxiliary volunteer fire department member are members of the same household, that household shall be allowed only one special classification under this ordinance.

### *§165-32 Personal Property Tax Relief Act of 1998*

[Adopted 2005-12-20; Amended 2007-07-19; 2008-04-15]

The Personal Property Tax Relief Act of 1998, Va. Code §§ 58.1-3523 et seq. (“PPTRA”), has been substantially modified by the enactment of Chapter 1 of the Acts of Assembly, 2004 Special Session I (Senate Bill 5005), and the provisions of Item 503 of Chapter 951 of the 2005 Acts of Assembly (the 2005 revisions to the 2004-06 Appropriation Act, hereinafter cited as the “2005 Appropriations Act”).

These legislative enactments require the County of Clarke to take affirmative steps to implement these changes, and to provide for the computation and allocation of relief provided pursuant to the PPTRA as revised.

These legislative enactments provide for the appropriation to the County of Clarke, commencing in 2006, of a fixed sum to be used exclusively for the provision of tax relief to owners of qualifying personal use vehicles that are subject to the personal property tax (“PPT”) on such vehicles, and provide the opportunity for the County of Clarke to fashion a program of tax relief that serves the interests of its citizenry.

#### *§ 1. Purpose: Definitions; Relation to other Ordinances.*

- a) The purpose of this Ordinance is to provide for the implementation of the changes to PPTRA effected by legislation adopted during the 2004 Special Session I and the 2005 Regular Session of the General Assembly of Virginia.
- b) Terms used in this Ordinance that have defined meanings set forth in PPTRA shall have the same meanings as set forth in Va. Code § 58.1-3523, as amended.
- c) To the extent that the provisions of this Ordinance conflict with any prior Ordinance or provision of the Code of Clarke County, this Ordinance shall control.

#### *§ 2. Method of Computing and Reflecting Tax Relief.*

- a) For tax years commencing in 2006, the County of Clarke adopts the provisions of Item 503.E of the 2005 Appropriations Act, providing for the computation of tax relief as a specific dollar amount to be offset against the total taxes that would otherwise be due but for PPTRA and the reporting of such specific dollar relief on the tax bill.
- b) The Board of Supervisors shall annually, by resolution, set the rate of tax relief at such a level that is anticipated to fully exhaust PPTRA relief funds provided to the County of

Clarke by the Commonwealth in the year for which the tax relief rate is being set.  
[Amended 2008-04-15 CC-08-02]

- c) Personal property tax bills shall set forth on their face the specific dollar amount of relief credited with respect to each qualifying vehicle, together with an explanation of the general manner in which relief is allocated.

*§ 3. Allocation of Relief among Taxpayers.*

- a) Allocation of PPTRA relief shall be provided in accordance with the general provisions of this section, as implemented by the specific provisions of the County's annual budget relating to PPTRA relief.
- b) Relief shall be allocated in such a manner as to eliminate personal property taxation of each qualifying vehicle with an assessed value of \$1,000 or less.
- c) Relief with respect to qualifying vehicles with assessed values of more than \$1,000 shall be provided at a rate, annually fixed in the County budget and applied to the first \$20,000 in value of each such qualifying vehicle, that is estimated fully to use all available state PPTRA relief. The rate shall be established annually as a part of the adopted budget for the County.

*§ 4. Transitional Provisions.*

- a) Pursuant to authority conferred in Item 503.D of the 2005 Appropriations Act, the County Treasurer is authorized to issue a supplemental personal property tax bill, in the amount of 100 percent of tax due without regard to any former entitlement to state PPTRA relief, plus applicable penalties and interest, to any taxpayer whose taxes with respect to a qualifying vehicle for tax year 2005 or any prior tax year remain unpaid on September 1, 2006, or such date as state funds for reimbursement of the state share of such bill have become unavailable, whichever earlier occurs.
- b) Penalty and interest with respect to bills issued pursuant to subsection (a) of this section shall be computed on the entire amount of tax owed. Interest shall be computed at the rate provided in § 165-25 of the Code of Clarke County from the original due date of the tax.

*Amendments Chapter 165-Article IV*

1997-09-16

165-30.1. Other Classifications of Tangible Personal Property Adopted 97-09-16 Add section for separate classification of motor vehicles owned by active members of volunteer fire and/or rescue companies

2005-12-20

165-31 Personal Property Tax Relief Act of 1998 Article IV Tangible Personal Property To Provide For The Implementation Of The 2004-2005 Changes To The Personal Property Tax Relief Act Of 1998 CC-05-05

2008-04-15

165-32 Personal Property Tax Relief Act of 1998 Amended 165-32.2-b to read The Board of Supervisors shall annually, by resolution, set the rate of tax relief at such a level that is anticipated to fully exhaust PPTRA relief funds provided to the County of Clarke by the Commonwealth in the year for which the tax relief rate is being set.

2014-06-17

Chapter 165 Article IV Tangible Personal Property §165-26 Penalty and interest on delinquent taxes add Item C as follows *In the event an attorney (including, but not limited to, the County Attorney) or collection agency is employed by the Treasurer for the collection of delinquent taxes, penalties and interest, an additional fee equal to 20% of the taxes and other charges due and owing shall be imposed and added to cover administrative costs and reasonable attorney's or collection agency's fees actually contracted for.* CC-2014-01

Article V Assessment of New Buildings <sup>48</sup>  
[Adopted 01-19-1988 as § 11-21 of the 1987 Code]

*§ 165-32. Assessment of new buildings substantially completed.*

[2007-07-19]

All new buildings substantially completed or fit for use and occupancy prior to November 1 of the year of completion shall be assessed when so completed or fit for use and occupancy, and the Commissioner of the Revenue of such county shall enter in the books the fair market value of such building. No partial assessment as provided herein shall become effective until information as to the date and amount of such assessment is recorded in the office of the official authorized to collect taxes on real property and made available for public inspection. The total tax on any such new building for that year shall be the sum of:

- A. The tax upon the assessment of the completed building, computed according to the ratio which the portion of the year such building is substantially completed or fit for use and occupancy bears to the entire year; and
- B. The tax upon the assessment of such new building as it existed on January 1 of that assessment year, computed according to the ratio which the portion of the year such building was not substantially complete or fit for use and occupancy bears to the entire year.

*§ 165-34. Extension of time for payment.*

[2007-07-19]

With respect to any assessment made under this article after September 1 of any year, the penalty for nonpayment by December 5 shall be extended to February 5 of the succeeding year.

Article VI Exemption for Elderly and Disabled Persons <sup>49</sup>

[Adopted 01-19-1988 as § 11-22 of the 1987 Code]

§ 165-35. *Definitions.*

[2007-07-19]

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

NET COMBINED FINANCIAL WORTH	All assets of the owners of the dwelling and of the spouse of any owner who resides therein, including equitable interests, excluding the value of the dwelling and the land in an amount not to exceed one acre upon which it is situated.
QUALIFYING TAXPAYER	A permanently and totally disabled person or any person who reaches the age of 65 years or older on or before December 31 of the year immediately preceding the taxable year.
TAXABLE YEAR	The calendar year, from January 1 through December 31, for which exemption is claimed.

§ 165-36. *Eligibility.*

[2007-07-19]

[Amended 02-21-1989; 10-17-1995; 04-18-2006]

A qualifying taxpayer who owns or partially owns and occupies a dwelling house as his sole dwelling shall be eligible and may apply for an exemption or partial exemption of real estate taxes on such dwelling and the land on which it is situated in an amount not to exceed one acre, provided that:

- A. The net combined financial worth as of December 31 of the immediately preceding calendar year does not exceed \$250,000; and
- B. The total combined income from all sources during the immediately preceding calendar year of the owners of the dwelling living therein and of the owner's relatives living in the dwelling does not exceed \$55,000, subject to the following schedule, with the exception that the first \$8,000 of a relative not a spouse living with the owner(s) may be exempted from the qualifying amount.



Schedule

Income	Relief
Less Than 20,000	100%
20,001 to 25,000	80%
25,001 to 30,000	60%
30,001 to 35,000	50%
35,001 to 55,000	10%

*§ 165-37. Application for exemption; affidavit.*

[2007-07-19]

Application for exemption shall be made not later than May 1 of each taxable year for which exemption is sought to the Commissioner of the Revenue on forms to be provided by that office.

Such application shall be accompanied annually by an affidavit setting forth the names of related persons occupying such real estate and stating the net combined financial worth and the total combined income from all sources as specified in § 165-35.

The Commissioner of the Revenue may require an applicant to answer questions under oath as to his requirements under this article and/or to produce for inspection certified federal income tax returns for the preceding three years to establish the total combined income or net combined financial worth as hereinbefore defined.

*§ 165-38. Changes in ownership, income or financial worth.*

[2007-07-19]

Any change in respect to total combined income, net combined financial worth, ownership of the dwelling exempted or other factors which occur during the taxable year for which the

affidavit is filed and which have the effect of exceeding or violating the limitations and conditions of this article shall nullify any exemption for the then-current taxable year and the taxable year immediately following.

*§ 165-39. Amount of exemptions.*

[2007-07-19]

Real estate described in § 165-35. Eligibility shall be exempt from taxation for any taxable year as provided from time to time by resolution of the Board of Supervisors.

*§ 165-40. Certification to Treasurer.*

[2007-07-19]

The Commissioner of the Revenue shall certify to the Treasurer of the county annually those persons who qualify under this article for an exemption and the amount thereof.

The Treasurer shall deduct the amount of the exemption from the applicant's real estate tax bill for that year.

*§ 165-41. Violations and penalties.*

[2007-07-19]

Any false statement made in connection with the filing of this application shall constitute a Class 3 misdemeanor.

*Amendments Chapter 165-Article VI*

2002-10-15

§ 165-34. Eligibility. Amend from \$65,000 to \$75,000 and \$22,000 to \$28,000

2006-04-18

§ 165-34. Eligibility. Amend A. from \$75,000 to \$250,000 and B. from \$28,000 to \$55,000, subject to the following schedule and \$6,500 to \$8,000 and add schedule

## Article VII Special Assessment for Land Preservation <sup>50</sup>

[Adopted 01-19-1988 as § 11-23 of the 1987 Code]

### *§ 165-42. Findings; tax imposed.*

[2007-07-19]

The county finds that the preservation of real estate devoted to agricultural, horticultural, forest and open space uses within its boundaries is in the public interest and, having adopted a land use plan, hereby taxes such real estate in accordance with the provisions of 58.1 Taxation, Chapter 32 Real Property, Article 4 Special Assessment for Land Preservation of the Code of Virginia and of this article.

### *§ 165-43. Filing of application; fee.*

[2007-07-19]

- A. The owner of any real estate meeting the criteria set forth in § 58.1-3230 Special classifications of real estate established and defined and § 58.1-3233(2) Determinations to be made by local officers before assessment of real estate under ordinance of the Code of Virginia may, on or before November 1 of each year, apply to the Commissioner of the Revenue for the classification, assessment and taxation of such property for the next succeeding tax year on the basis of its use, under the procedures set forth in § 58.1-3236. Valuation of real estate under ordinance of the Code of Virginia. Such application shall be on forms provided by the State Department of Taxation and supplied by the Commissioner of the Revenue and shall include such additional schedules, photographs and drawings as may be required by the Commissioner of the Revenue.
- B. The owner of any real estate meeting the criteria set forth in § 58.1-3230. Special classifications of real estate established and defined in § 58.1-3233. Determinations to be made by local officers before assessment of real estate under ordinance (2) of the Code of Virginia may, between November 2 and December 31 of each year, apply to the Commissioner of the Revenue for the classification, assessment and taxation of such property for the next succeeding tax year on the basis of its use, under the procedures set forth in § 58.1-3236. Valuation of real estate under ordinance of the Code of Virginia provided a late filing fee of \$100 per parcel is paid in addition to any application fees otherwise imposed. Such application shall be on forms provided by the State Department of Taxation and supplied by the Commissioner of the Revenue and shall include such additional schedules, photographs and drawings as may be required by the Commissioner of the Revenue.
- C. Applications received by the Commissioner of the Revenue after November 1 of each year without the required late filing fee and all applications received by the Commissioner of the Revenue after December 31 of each year shall not be accepted.

- D. A separate application shall be filed for each use for which qualification is sought.
- E. A fee payable to the Treasurer of the county shall be charged and collected for each application filed hereunder.
- F. The owner of qualifying property shall file an annual proof of qualification form with the Commissioner of the Revenue.

*§ 165-44. Qualification of property.*

[2007-07-19]

- A. Promptly upon receipt of any application, the Commissioner of the Revenue shall determine whether the subject property meets the criteria for taxation hereunder. If the Commissioner of the Revenue shall determine that the subject property does meet such criteria, he shall determine the value of such property for its qualifying use, as well as its fair market value.
- B. In determining whether the subject property meets such criteria, the Commissioner of the Revenue may request an opinion from the Director of the State Department of Conservation and Historic Resources or the State Commissioner of Agriculture and Consumer Services. Upon the refusal of such State Director or Commissioner to issue an opinion or in the event of an unfavorable opinion which does not comport with standards set forth by him, the Commissioner of the Revenue may seek relief from any court of record wherein the real estate in question is located. If the court finds in his favor, it may issue an order which shall serve in lieu of an opinion for the purposes of this section.

*§ 165-45. Use value and fair market value.*

[2007-07-19]

The use value and fair market value of any qualifying property shall be placed on the landbook before delivery to the Treasurer, and the tax for the next succeeding tax year shall be extended from the use value.

*§ 165-46. Rollback tax.*

[2007-07-19]

- A. There is hereby imposed a rollback tax in such amount as may be determined under Code of Virginia, § 58.1-3237. Change in use or zoning of real estate assessed under ordinance; roll-back taxes, upon any property as to which the use changes to a non-qualifying use.
- B. The owner of any real estate liable for rollback taxes shall report to the Treasurer, on forms to be prescribed, any change in the use of such property to a non-qualifying use

and shall pay the rollback tax then due. On failure so to report and pay within 60 days following such change in use, such owner shall be liable for an additional penalty equal to 10% of the amount of the rollback tax, which penalty shall be collected as a part of the tax. In addition to such penalty, there is hereby imposed interest of 1/2% of the amount of the rollback tax for each month or fraction thereof during which the failure continues.

*§ 165-47. Penalty for misstatement of fact.*

[2007-07-19]

Any person making a material misstatement of fact in any application filed pursuant hereto shall be liable for all such taxes in such amounts and at such times as if such property had been assessed on the basis of fair market value as applied to other real estate in the taxing jurisdiction, together with interest and penalties thereon. If such material misstatement was made with the intent to defraud the county, he shall be further assessed with an additional penalty of 100% of such unpaid taxes.

*§ 165-48. Application of state tax law.*

[2007-07-19]

The provisions of Title 58.1 Taxation of the Code of Virginia applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation hereunder mutatis mutandis, including, without limitation, provisions relating to tax liens, boards of equalization and the correction of erroneous assessments, and for such purposes the rollback taxes shall be considered to be deferred real estate taxes.

*Amendments Chapter 165-Article VII*

2000-10-17

§ 165-41. Filing of application; fee. Add new B, C providing for filing of land use taxation applications for a 30-day period after 11/01 deadline upon payment of a late filing fee and renumber D,E,F

2010-03-16

§ 165-43. Filing of application; fee. so to extend the late filing date for land use taxation from between November 2 and December 1 to between November 2 and December 31 as allowed by State Code 58.1-3234.

Article VIII General Retail Sales Tax <sup>51</sup>  
[Adopted 01-19-1988 as § 11-41 of the 1987 Code]

*§ 165-49. Statutory authority; tax rate.*

[2007-07-19]

Pursuant to authority contained in § 58.1-605 To what extent and under what conditions cities and counties may levy local sales taxes; collection thereof by Commonwealth and return of revenue to each city or county entitled thereto of the Code of Virginia, a county general retail sales tax at the rate of 1%, to provide revenue for the general fund of the county, is hereby levied. Such tax shall be added to the rate of the state sales tax imposed by Code of Virginia, § 58.1-603. Imposition of sales tax and § 58.1-604 Imposition of use tax. It shall be subject to all the provisions of Title 58.1 Taxation, Chapter 6 Retail Sales and Use Tax, of the Code of Virginia, and the rules and regulations published with respect thereto.

*§ 165-50. Administration and collection.*

[2007-07-19]

Pursuant to the provisions of § 58.1-605 of the Code of Virginia, the county general retail sales tax levied by § 165-49. Statutory authority; tax rate. of this article will be administered and collected by the State Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax, with the adjustments required by § 58.1-628.2 Adjustment to the rate of tax imposed under this chapter.

Article IX Wills and Grants of Administration Tax <sup>52</sup>  
[Adopted 01-19-1988 as § 11-42 of the 1987 Code]

*§ 165-51. Tax on wills and grants of administration; fee in lieu of probate tax* <sup>53</sup>

[2007-07-19]

- A. There is hereby imposed a county tax on the probate of every will or grant of administration not exempt by law, including real, personal and mixed property, equal to 1/3 of the tax imposed for state purposes by § 58.1-1712. Levy; rate of tax of the Code of Virginia, provided that the tax imposed by this section shall not apply to estates of decedents of \$15,000 or less in value.
- B. There is hereby charged a \$25 county fee on the recordation of a list of heirs pursuant to Virginia Code § 64.1-134 or an affidavit pursuant to Virginia Code § 64.1-135 unless a will has been probated for the decedent or there has been a grant of administration on the decedent's estate.

Amendments Chapter 165 Article IX

2010-08-17

Chapter 165 Article IX – Wills and Grants of Administration Tax: The Clarke County Board of Supervisors will consider amending §165-51 to reflect a 2010 change in the Code of Virginia §§58.1-1717.1, 58.1-1718, and 58.1-3805 allowing counties to charge a \$25 fee for the filing of a list of heirs or affidavit when a will has not been probated and there has been no grant of administration and to reflect the current minimum estate value CC-10-05.

## Article X Recordation Tax <sup>54</sup>

[Adopted 09-1988 as § 11-43 of the 1987 Code]

*§ 165-52. Statutory authority; tax rate.*

[2007-07-19]

Pursuant to the authority of § 58.1-3800. et seq. Levy of the Code of Virginia, there is hereby imposed a recordation tax on each taxable instrument recorded in the county in the amount of 1/3 of the amount of the state recordation tax collectible for the state on the first recordation of each taxable instrument in the county, excepting such instruments as are exempted by § 58.1-3800 et seq. of the Code of Virginia. This tax will be collected by the Clerk of the Circuit Court for the county and paid monthly to the Treasurer of the county, pursuant to law.



## Article XI Use Tax<sup>55</sup>

[Adopted 01-19-1988 as § 11-44 of the 1987 Code]

*§ 165-53. Statutory authority; tax rate.*

[2007-07-19]

Pursuant to § 58.1-606. To what extent and under what conditions cities and counties may levy local use tax; collection thereof by Commonwealth and return of revenues to the cities and counties, of the Code of Virginia, there is hereby imposed a county use tax at the rate of 1% to provide revenue for the general fund of the county. Such county use tax shall be added to the rate of the state use tax imposed by Title 58.1 Taxation, Chapter 6 Retail Sales and Use Tax, of the Code of Virginia and shall be subject to all the provisions of that chapter and the rules and regulations published with respect thereto.

Article XII Consumer Utility Tax <sup>56</sup>  
[Adopted 01-19-1988 as § 11-45 of the 1987 Code]

*§ 165-54. Definitions.*

[Amended 1990-07-11; 1993-04-20; 2000-10-17; 2007-07-19]

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

COMMERCIAL OR INDUSTRIAL USER	The owner or tenant of property used for commercial, industrial and all other purposes who pays for utility service for such property.
CCF	The volume of gas at standard pressure and temperature in units of 100 cubic feet.
KILOWATT HOURS [KWH] DELIVERED	One thousand watts of electricity delivered in a one-hour period by an electric provider to an actual consumer, except that in the case of eligible customer-generators (sometimes called “co-generators”), as defined in Virginia Code § 56-594, it means KWH supplied from the electric grid to such customer-generators, minus the KWH generated and fed back to the electric grid by such customer-generators.
PURCHASER	Every person who purchases a utility service.
RESIDENTIAL USER	The owner or tenant of private residential property who pays for utility service in or for such property.
SELLER	Every person who sells or furnishes a utility service.
UTILITY SERVICES	Local exchange telephone service and electrical and natural gas service furnished within the county.

*§ 165-55. Imposition and computation of taxes collected monthly.*

[2000-10-17; 2007-07-19]

1. Electric utility consumer tax.

- A. Effective with the first bill for electric energy rendered for meter readings on or after January 1, 2001, the rate of tax on the electric energy delivered to an ultimate consumer shall be as follows:
- Residential customer: \$0.01500 per kilowatt hour [kwh] plus a minimum tax of \$1.40 per month with a maximum tax of \$3.00 per month.
  - Commercial and Industrial customers: \$0.014167 per kilowatt hour [kwh] on the first 5,300 kilowatt hours [kwh] delivered then \$0.00283 on the balance plus a minimum tax of \$2.29 per month.
- B. In the case of any apartment house or other multiple-family dwelling using electric service through a master meter, the tax shall be the sum of \$3 multiplied by the number of dwelling units served.
- G. Bills shall be considered monthly bills if submitted 12 times per year for periods of approximately one month each.
1. Natural gas utility consumer tax.
- A. Effective with the first bill for natural gas rendered for meter readings on or after January 1, 2001, the rate of tax on the volume of natural gas delivered to an ultimate consumer shall be as follows:
- Residential customer: a minimum tax of \$1.50 per month plus \$0.169 per CCF up to a maximum tax to \$3.00 per month.
  - Commercial and Industrial customers: a minimum tax of \$2.00 per month plus \$0.161 per CCF on the first 80 CCF delivered, and \$0.032 on all CCF delivered in excess of 80 CCF.
- B. In the case of any apartment house or other multiple-family dwelling using gas service through a master meter, the tax shall be the sum of \$3 multiplied by the number of dwelling units served.
- C. Bills shall be considered monthly bills if submitted 12 times per year for periods of approximately one month each.
3. Telephone service utility consumer tax.
- a) There is hereby imposed and levied upon each purchaser of a telephone utility service a tax in the amount of 20% of the charge (exclusive of any federal tax thereon) made by the seller against the purchaser with respect to each telephone utility service, which tax in every case shall be collected by the seller from the purchaser and shall be paid by the purchaser to the seller for the use of the county at the time the purchase price or such charge shall become due and payable under

the agreement between the purchaser and the seller, provided that in case any monthly bill submitted by any seller for residential service shall exceed \$15 for a residential user, there shall be no tax computed on so much of such bill as shall exceed \$15.

- b) In case any monthly bill submitted by any seller for commercial or industrial service shall exceed \$75, the tax computed on so much of such bill as shall exceed \$75 shall be 4%.
- c) Bills shall be considered monthly bills if submitted 12 times per year for periods of approximately one month each.

*§ 165-56. Computation and maximum amounts of tax collected other than on monthly basis.*

[Amended 1990-07-17; 1993-04-20; 2000-10-17; 2007-07-19]

A. Electric utility consumer tax

In all cases where the seller collects the price for utility services other than on a monthly basis, the tax imposed and levied by this article may be computed as follows for a bimonthly bill (approximately 60 days):

1. The KWH will be divided by 2;
2. A monthly tax will be calculated using the rates set forth in § 165-54 1.A.;
3. The tax determined by No. 2 above shall be multiplied by 2;
4. The tax in No. 3 above may not exceed twice the monthly maximum tax.

B. Natural gas utility consumer tax

In all cases where the seller collects the price for utility services other than on a monthly basis, the tax imposed and levied by this article may be computed as follows for a bimonthly bill (approximately 60 days):

1. The CCF will be divided by 2;
2. A monthly tax will be calculated using the rates set forth in § 165-54 2.A.;
3. The tax determined by No. 2 above shall be multiplied by 2;
4. The tax in No. 3 above may not exceed twice the monthly maximum tax.

C. Telephone Service

In all cases where the seller collects the price for utility services other than on a monthly basis, the tax imposed and levied by this article may be computed on the aggregate amount of purchases during the period billed for, provided that the amount of tax to be collected shall be the nearest whole cent to the amount computed and that such tax shall not exceed the sum of \$3 for each residential user of telephone service or \$15 plus 4% of the amount billed in excess of \$75 for commercial and industrial users, multiplied by the number of months or portions of months covered by the bill.

*§ 165-57. Duty of seller to collect and remit; reports to Commissioner of the Revenue.*

[2007-07-19]

It shall be the duty of every seller, in acting as the tax collecting medium or agency for the county, to collect from the purchaser for the use of the county the tax hereby imposed and levied at the time of collecting the purchase price charged.

The taxes collected during each calendar month shall be reported by each seller to the Commissioner of the Revenue, and each seller shall remit the amount of tax shown by such report to have been collected to the county Treasurer on or before the last day of the first calendar month thereafter, together with the name and address of any purchaser who has refused to pay his tax.

The required reports shall be in the form prescribed by the Commissioner of the Revenue.

*§ 165-58. Records; inspection.*

[2007-07-19]

Each seller shall keep complete records showing all purchases in the county, which reports shall show the price charged against each purchaser with respect to each purchase, the date of billing and the date of payment of such bill and the amount of tax imposed under this article.

Such records shall be kept open for inspection by the duly authorized agents of the county at reasonable times, and the duly authorized agents of the county shall have the right, power and authority to make transcripts thereof.

*§ 165-59. Exemption for governmental agencies.*

[2007-07-19]

The United States of America, the state and the political subdivisions, boards, commissions and authorities of the state are hereby exempted from the payment of the tax imposed and levied by this section with respect to the purchase of utility services used by such governmental agencies.

*§ 165-60. Exemption for local calls using coin-operated telephones.*

[2007-07-19]

The tax imposed and levied by this section on purchases with respect to local exchange telephone service shall apply to all charges made for local exchange telephone service, except local messages, which are paid for by inserting coins in coin-operated telephones.

Amendments Chapter 165-Article XII

2000-10-17

Chapter 165 Article XII - Amend the Consumer Utility Tax Ordinance to change the basis upon which the tax on natural gas service is calculated from a dollar amount to a cubic foot to comply with the provisions of Sec. 58.1- 3814 of the Code of Virginia, providing that all such taxes are to be based on volume measured in CCF including customer charges and amend the Consumer Utility Tax Ordinance to change the basis upon which the tax on electrical service is calculated from a dollar amount to a kilowatt hour basis to comply with the provisions of Sec. 58.1- 3814 of the Code of Virginia, providing that all such taxes are to be based on kilowatt hours delivered including customer charges.

Article XIII Exemption for Rehabilitated Historic Real Estate  
[Adopted 07-17-1990]

*§ 165-61. Partial exemption granted.*

[Amended 1994-08-16; 2007-07-19]

A partial exemption from taxation shall be provided for real estate on which there exists a structure not less than 50 years of age that has been rehabilitated so as to increase its assessed value by at least 40%.

Such real estate shall be a registered Virginia landmark or determined by the Department of Historic Resources to contribute to the significance of a registered historic district and be located in an historic overlay district established in accord with § 15.2-2306, Preservation of historical sites and architectural areas, of the Code of Virginia.

*§ 165-62. Amount of partial exemption.*

[2007-07-19]

The partial exemption shall not exceed an amount equal to the increase in assessed value resulting from the rehabilitation or renovation of the structure as determined by the county Assessor.

The amount of the partial exemption shall not exceed \$250,000 for rehabilitations for residential uses or \$500,000 for rehabilitations for commercial or industrial uses.

The exemption shall commence on January 1 of the year following completion of the rehabilitation and shall run with the real estate for a period of 10 years.

*§ 165-63. Limitations on nature of renovation.*

[2007-07-19]

Rehabilitations for residential uses cannot replace the original structure and cannot increase the square footage of the original structure by more than 15%.

Rehabilitations for commercial or industrial uses cannot replace the original structure but may increase the square footage of the original structure without limit.

*§ 165-64. Eligibility.*

[Amended 1994-08-16; 2007-07-19]

No property shall be eligible for such exemption unless the appropriate certificates of appropriateness and building permits have been acquired and the county Assessor has verified that the rehabilitation indicated on the application has been completed.

Such rehabilitation shall be completed within two years of issuance of the building permit for the work.

The Commissioner of the Revenue may extend the deadline for completion of the rehabilitation for up to two additional years if he/she determines reasonable progress has been made towards completion of the project.

*§ 165-65. Fee*<sup>57</sup>

[2007-07-19]

[Amended 8-16-199457F58]

A fee as provided by the Board of Supervisors from time to time shall be assessed for processing an application requesting the exemption.



Article XIV Motor Vehicle License Tax Exemption <sup>59</sup>

[Adopted 09-18-1990]

*§ 165-66. Exemption granted to active volunteer rescue squad or Fire Dept. members.*

[2007-07-19]

The county Treasurer shall issue a license without charging a tax for one motor vehicle that is regularly used by each active volunteer rescue squad member or active volunteer fire department member to respond to calls or to perform other duties for the rescue squad or fire department, provided that all other requirements of the article are met and that such active volunteer shall furnish to the Treasurer a certification by the chief or head of the volunteer organization that said active volunteer is an active member of the volunteer rescue squad or volunteer Fire Department who regularly responds to calls or regularly performs other duties for the rescue squad or Fire Department, and the motor vehicle is identified as regularly used for such purposes.

*§ 165-67. Eligibility.*

[2007-07-19]

Such volunteer organization must be one which receives annual financial support from the County of Clarke. For purposes of this article, an "active volunteer member" shall be defined as one meeting specific eligibility standards for such designation as approved by the Clarke County Board of Supervisors.

*§ 165-68. Application deadline.*

[Amended 1993-10-19; 2007-07-19 ]

Application by an active volunteer for such tax-exempt license shall be made between January 1 and February 15 or within 30 days of registration with the Commonwealth of Virginia.

The Treasurer shall not issue such tax-exempt licenses to applicants who fail to apply within this prescribed period.

Article XV Courthouse Maintenance Fee <sup>60</sup>  
[Adopted 07-21-1992]

*§ 165-69. Amount of fee; purpose.*

[2007-07-19]

The Clerk of the Circuit Court, Clerk of the General District Court and Clerk of the Juvenile and Domestic Relations Court shall assess a fee in the amount of \$2 in each civil, criminal or traffic case in a district or circuit court to be remitted to the Treasurer of Clarke County.

Said fee is to be held by said Treasurer subject to disbursements by the governing body for the construction, renovation or maintenance of courthouse or jail and court-related facilities and to defray increases in the cost of heating, cooling, electricity and ordinary maintenance.

*§ 165-70. Additional nature of fee.*

[2007-07-19]

The assessment provided for herein shall be in addition to any other fees prescribed by law.

Article XVI Enhanced 911 Telephone Service Tax<sup>61</sup>

§ 165-71. Definitions.

[2007-07-19]

The following terms, whenever used in this article, shall have the following meanings:

E-911 SYSTEM	A telephone service which utilizes a computerized system to automatically route emergency telephone calls placed by dialing the digits "911" to the proper public safety answering point serving the jurisdiction from which the emergency telephone call was placed. An E-911 system includes selective routing of telephone calls, automatic telephone number identification and automatic location identification performed by computers and other ancillary control center communications equipment.
LOCAL EXCHANGE TELEPHONE SYSTEM	As it applies to an E-911 system, "local telephone service" shall mean switched local exchange access service.
PUBLIC SAFETY ANSWERING POINT	A communications facility operated on a twenty-four-hour basis which first receives E-911 calls from persons in an E-911 service area and which may, as appropriate, directly dispatch safety services or extend, transfer or relay E-911 calls to appropriate public safety agencies.
PURCHASER	Every person who purchases a local exchange telephone service within the county.
SELLER	Every person who sells or furnishes local exchange telephone service within the county.
UTILITY SERVICE	Local exchange telephone service furnished within the corporate limits of the county.

§ 165-72. Amount of tax; purpose.

[2007-07-19]

Pursuant to the authority set forth in § 58.1-3813.1. Local tax for enhanced 911 service; definitions of the Code of Virginia there is hereby imposed and levied by the county upon each purchaser of local exchange telephone service a tax in the amount of \$3 per telephone line per month. This tax shall be paid by the purchaser to the seller of local exchange telephone service for the use by the county to pay the initial capital, installation and maintenance costs and recurring maintenance costs of its E-911 system.

*§ 165-73. Exemptions.*

[2007-07-19]

The following persons shall be exempt from the payment of the tax provided for herein:

- A. The United States of America, the commonwealth and all political subdivisions, boards, agencies, commissions and authorities of the state.
- B. Purchasers or lessees of local exchange telephone service who utilize coin-operated telephones.

*§ 165-74. Collection and remittance by seller.*

[2007-07-19]

It shall be the duty of every seller in acting as the tax collection agency for the county to collect from the purchaser for the use of the county the tax hereby imposed and levied at the time of collecting the purchase price charged, and the taxes imposed, levied and collected during each calendar month shall be reported and paid by each seller to the Treasurer on or before the 15th day of the second calendar month thereafter, together with the name and address of any purchaser who has refused to pay the tax. The required report shall be in a form prescribed by the County Administrator.

*§ 165-75. Records of seller.*

[2007-07-19]

Each seller shall keep complete records showing all purchases in the county, which shall show the price charged against each purchaser with respect to each purchase, the date thereof, the date of payment thereof and the amount of tax imposed hereunder. Such records shall be kept open for inspection by the county, and the county shall have the right to make transcripts thereof during such time as it may desire.

*Amendments Chapter 165-Article XVI*

1995-05-20

§ 165-70. Amount of tax; purpose. Increase tax from \$1 to \$2 per line.

2004-04-04

§ 165-70. Amount of tax; purpose. Increase tax from \$2 to \$3 per line

## Article XVII Transient Occupancy Tax<sup>62</sup>

[Adopted 04-16-1996]

### *§ 165-76. Tax levied; amount of tax.*

[2007-07-19]

Amended 04-19-2022 to increase the amount of tax collected from 3.5% to 5% effective January 1, 2023.

Amended 04-06-2021 to increase the amount of tax collected from 2% to 3.5% effective July 1, 2021.

Pursuant to authority contained in § 58.1-3819 Transient occupancy tax of the Code of Virginia a transient occupancy tax is hereby levied on:

- Hotels,
- Motels,
- Boardinghouses,
- Travel campgrounds and
- Other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days.

Such tax shall be 5% of the amount of charge for the occupancy of any room or space occupied.

### *§ 165-77. Exceptions.*

[2007-07-19]

The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days in hotels, motels, boardinghouses, travel campgrounds and other facilities offering guest rooms.

### *§ 165-78. Collection and remittance.*

[2007-07-19]

Each such hotel, motel, boardinghouse, travel campground and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days:

- Shall collect the tax levied herein, and;

- Shall by the 20th day of each month account for and remit to the Treasurer all such taxes collected the previous month;
- Provided, however, that in any month in which the total of all taxes previously collected but not remitted is less than \$25, there shall be no report or remitting of collections required.

*§ 165-79. Commission.*

[2007-07-19]

Each such hotel, motel, boardinghouse, travel campground or other facility collecting and remitting the tax by the due date shall:

- Be entitled to a commission of 3% of the tax collected and remitted by the due date.
- No commission shall be allowed if the amount due is delinquent.

*§ 165-80. Collections held in trust.*

[2007-07-19]

All transient occupancy tax collections shall be deemed to be held in trust for the county.

*Amendments Chapter 165-Article XVII*

2021-04-06

§ 165-76. Amount of tax; increase the transient occupancy tax from 2% to 3.5% effective July 1, 2021.

2022-04-19

§ 165-76. Amount of tax; increase the transient occupancy tax from 3.5% to 5% effective January 1, 2023.

## Article XVIII Assessment of Court Costs for Courthouse Security

*§ 165-81. Fee imposed; collection; use.*

[Added 2002-06-18, Amended 2007-07-17, 2020-07-21]

Pursuant to § 53.1-120. Sheriff to provide for courthouse and courtroom security; designation of deputies for such purpose; assessment (D) of the Code of Virginia there is hereby assessed a fee of \$20 as part of the costs in each criminal or traffic case which is tried in either one of the district courts of the County of Clarke or in the Circuit Court of the County of Clarke and which results in conviction of any statute or ordinance.

This fee shall be collected by the Clerk of the Court in which the case is heard, remitted to the Treasurer of Clarke County, and held by the Treasurer subject to appropriation by the Board of Supervisors to the Sheriff of Clarke County for the funding of courthouse security personnel.

### Amendments Chapter 165-Article XVIII

2002-06-18

Add Article XVIII Assessment of Court Costs for Courthouse Security § 165-79. Fee imposed; collection; use.

2007-07-17

Chapter 165 Article XVIII Assessment of Court Costs for Courthouse Security § 165-79. Fee imposed; collection; use - in accordance with action taken by the General Assembly amending Section 53.1-120 of the Code of Virginia to allow for the increase of court security fee for persons convicted in Clarke County District or Circuit Court from \$5 to \$10 effective upon passage.

2020-07-21

Chapter 165 Article XVIII Assessment of Court Costs for Courthouse Security § 165-79. Fee imposed; collection; use - in accordance with action taken by the General Assembly amending Section 53.1-120 of the Code of Virginia to allow for the increase of court security fee for persons convicted in Clarke County District or Circuit Court from \$10 to 20 effective upon pass CC 2020-01.



## Article XIX Assessment of Jail Processing Fee

*§ 165-82. Fee imposed; collection; use.*

[2007-07-19]

Pursuant to § 15.2-1613.1. Processing fee may be imposed on certain individuals, of the Code of Virginia there is hereby imposed a processing fee of \$25 on any individual admitted by either one of the district courts of the County of Clarke or the Circuit Court of the County of Clarke to any county, city, or regional jail following conviction of any offense.

The fee shall be ordered by the court as a part of the individual's costs of court, and it shall be collected by the Clerk, deposited into the account of the county Treasurer, and shall be used by the Sheriff of Clarke County to defray the costs of processing arrested persons into any of said jails.

### Amendments Chapter 165-Article XIX

2002-06-18

Add Article XIX Assessment of Jail Processing Fee § 165-79. Fee imposed; collection; use.

## Article XX Assessment of court costs to support the implementation and maintenance of an Electronic Summons System

### *§ 165-83. Fee imposed; collection; use.*

- a. As authorized by section 17.1-279.1. Code of Virginia (1950), as amended: A local fee of five dollars (\$5.00) to support the implementation and maintenance of an electronic summons system is hereby imposed in every case in which costs are assessable pursuant to section(s) 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, 17.1-275.9, 17.1-275.10, 17.1-275.11, 17.1-275.11:1, or 17.1-275.12, Code of Virginia (1950), as amended.

The clerks of the district and circuit courts shall charge and collect this assessment as a part of the fees taxed as costs.

- b. After collection by the clerk of the court in which the case is heard, the assessment shall be remitted to the County Treasurer and held in an interest bearing account subject to appropriation by the Board of Supervisors.

The Electronic Summons System assessment and interest derived shall be held in a separate account outside of the general fund and shall not revert to the general fund at the end of the fiscal year.

- c. The retained assessment and any interest shall be administered by the Office of the Sheriff and shall be used solely to fund software, hardware, and associated equipment costs necessary for the implementation and maintenance of an Electronic Summons System as selected by the Office of the Sheriff in accordance with the record keeping and reporting requirements formulated by the Supreme Court of the Commonwealth of Virginia.
- d. The assessments imposed by this section shall be in addition to all other costs prescribed by law, but shall not apply to any action in which the state or any political subdivision therefore or the federal government is a party and in which the costs are assessed against the state, a political subdivision thereof or the federal government.

### Amendments Chapter 165-Article XX

2015-09-15

Add Article XX Assessment of court costs to support the implementation and maintenance of an Electronic Summons System.

## Article XXI Cigarette Tax

[Adopted 04-06-2021]

Amended 04-19-2022 to increase the amount of tax collected from \$0.20 to \$0.40 per package containing 25 or fewer cigarettes effective January 1, 2023.

### § 165-84. Definitions

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

CIGARETTE	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.
DEALER	Every manufacturer, manufacturer's representative, self-wholesaler, wholesaler, retailer, vending machine operator, public warehouseman or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the County, excluding those located or delivering within, the corporate boundaries of the Town of Berryville.
PACKAGE	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.
PURCHASER	Every person to whom title to any cigarettes is transferred by a seller within the County, excluding those located within the corporate boundaries of the Town of Berryville.
SALE	Every act or transaction, irrespective of the method or means employed, including the use of vending machines and other mechanical devices, whereby title to any

cigarettes shall be transferred from the seller to any other person within the County, excluding those within the corporate boundaries of the Town of Berryville.

**SELLER** means every person who transfers title to any cigarettes, or in whose place of business title to any cigarettes is transferred, within the County, excluding those located within the corporate boundaries of the Town of Berryville, for any purpose other than resale. The term shall be synonymous with the term Retail Dealer.

**STAMP** A small heat set of paper or decalomania to be sold by the Treasurer and to be affixed to every package of cigarettes sold.

**TREASURER** The Treasurer of the County of Clarke, Virginia.

*§ 165-85. Tax levied; amount of tax*

In addition to all other taxes and fees of any kind now or hereafter imposed by law, and pursuant to authority contained in § 58.1-3830 and § 58.1-3832 of the Code of Virginia, there is hereby imposed and levied a tax equivalent to \$0.40 per each package containing 25 or fewer cigarettes. 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 County shall be paid but once.

*§ 165-86. Method of collection*

The tax imposed by this article shall be evidenced by the use of a stamp and shall be paid by each dealer or other person liable for the tax at the time the stamps are purchased from the Treasurer. The Treasurer may require each dealer to register using forms provided by the Treasurer before stamps can be purchased. 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. Nothing in this section shall prohibit the Treasurer from entering into an agreement with a vendor to provide stamps directly to dealers.

The Treasurer is authorized to enter into an agreement with the Virginia Department of Taxation to allow a dealer who is a tobacco wholesaler to use a stamp to evidence the payment of both the County and the state cigarette tax. The Treasurer shall have the authority to determine the procedures by which such an arrangement may be agreed upon by the County and Department of Taxation.

The Treasurer is authorized, following an affirmative vote by the Board of Supervisors approving such agreement, to enter into an agreement pursuant to the provisions of §15.2-1300 for the administrative and enforcement authority of this article.

*§ 165-87. Method of payment*

The tax imposed by this article shall be paid by affixing or causing to be affixed a stamp or stamps, of the proper denominational or face value, to each and every package of cigarettes sold within the county, excluding those sold within the corporate limits of the Town of Berryville, in the manner and at the time or times provided for in this article. Every dealer and every seller in the county, once registered, shall have the right to buy such stamps from the county treasurer and to affix the same to packages of cigarettes as provided in this article.

The treasurer may permit the payment in advance of the tax levied and imposed by this article by the method of placing imprints of the stamps upon original packages by the use of meter machines, in lieu of the method of paying such tax by the purchase and affixing of gummed stamps, and may prescribe and enforce the necessary regulations setting forth the method to be employed and the condition to be observed in the use of such meter machines.

*§ 165-88. Preparation and sale of stamps*

For the purpose of making stamps available for use, the treasurer shall sell stamps of such denominations and in such quantities as may be necessary for the payment of the taxes imposed by this article. In the sale of such stamps, the county treasurer shall allow a discount of five (5%) of the denominational or face value of the stamps to cover the costs incurred in affixing the stamps to packages of cigarettes.

*§ 165-89. General duties of dealers and sellers with respect to stamps*

Every dealer in cigarettes is hereby required and it shall be his duty to purchase such stamps, at the office of the county treasurer, as shall be necessary to pay the tax levied and imposed by this article, and to affix or cause to be affixed a stamp or stamps of the monetary value prescribed by this article to each package of cigarettes prior to delivery or furnishing of such cigarettes to any seller. Nothing herein contained shall preclude any dealer from using a stamp meter machine in lieu of gummed stamps to effectuate the provisions of this article.

Every seller shall examine each package of cigarettes prior to exposing the same for sale, for the purpose of ascertaining whether such package has the proper stamps affixed thereto or imprinted thereon, as provided by this article. If, upon such examination, unstamped or improperly stamped packages of cigarettes are discovered, the seller, where such cigarettes were obtained from a dealer, shall immediately notify such dealer, and upon such notification, such dealer shall forthwith either affix to or imprint upon such unstamped or

improperly stamped packages the proper amount of stamps, or shall replace such packages with others to which stamps have been properly affixed or imprinted thereon.

Should a seller obtain or acquire possession of, from any person other than a dealer, any unstamped or improperly stamped cigarettes, such seller shall forthwith, before selling or offering or exposing such cigarettes for sale in the county, purchase and affix or cause to be affixed to such packages of cigarettes the proper stamps, or the markings of a meter machine, covering the tax imposed by this article.

In the event any seller elects to purchase and affix stamps or imprints of a meter machine, before offering cigarettes for sale, any dealer delivering and furnishing cigarettes to such seller shall not be required to purchase and affix such stamps or imprints to such cigarettes so sold or furnished; provided that any such dealer shall, on the day after such delivery and furnishing, file with the treasurer a copy of the delivery memorandum showing the name and address of the seller and the quantity and type of cigarettes so delivered and furnished.

#### *§ 165-90. Visibility of stamps or meter markings*

Stamps or the printed markings of a meter machine shall be placed upon each package of cigarettes in such manner as to be readily visible to the purchaser.

#### *§ 165-91. Altering design of stamps*

The treasurer may, from time to time, and as often as he or she may deem advisable, provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design.

#### *§ 165-92. Refund for unused stamps or meter imprints*

Should any person, after acquiring from the treasurer any stamps provided for in this article, cease to be engaged in a business necessitating the use thereof, or should any such stamps become mutilated and unfit for use, other than by cancellation as provided in this article, such person shall be entitled to a refund of the denominational or face amount of any stamps so acquired and not used by him, less five (5) percent of the denominational or face amount thereof, upon presenting such stamps to the treasurer and furnishing the treasurer with an affidavit showing, to his satisfaction, that such stamps were acquired by such person and have not in any manner been used and the reason for requesting such refund. In the case of any authorized meter machine, should any imprints of such machine theretofore paid for not be used, such person shall, upon furnishing the treasurer with a similar affidavit, be entitled to a refund of the denominational or face amount thereof, less five (5) percent of the denominational or face amount of such imprints of such machine not so used.

All refunds for unused and mutilated stamps and for nonuse of imprints of stamps by meter machines provided for under this section are hereby authorized to be made on vouchers

approved by the treasurer and, when made, the same shall be charged against the sums collected for the sale of such stamps and for the use of such imprints.

*§ 165-93. Seizure and sale of unstamped cigarettes*

Whenever the treasurer shall discover cigarettes in quantities of more than six (6) cartons within the county which are subject to the tax imposed by this article and upon which the tax has not been paid or upon which stamps have not been affixed or evidence of such tax shown thereon by the printed markings of an authorized meter machine, as this article requires, such cigarettes shall be conclusively presumed for sale or use within the county and the treasurer may forthwith seize and confiscate such cigarettes, if:

- A. They are in transit, and are not accompanied by a bill of lading or other document indicating the true name and address of the cosigner or seller and of the cosigner or purchaser, and the brands and quantity of cigarettes so transported; or are in transit and accompanied by a bill of lading or other document which is false or fraudulent in whole or in part; or
- B. They are in transit and are accompanied by a bill of lading or other documents indicating:
  - (1) 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, and unless the tax of the state or district of destination has been paid and the said products bear the tax stamp of that state or district; or
  - (2) A consignee or purchaser in the Commonwealth but outside the county who does not possess a Virginia sales and use tax certificate, a Virginia retail cigarette license and where applicable, both a business license and retail tobacco license issued by the local jurisdiction of destination; or
  - (3) They are not in transit and the tax has not been paid, nor have approved arrangements for payment been made, provided that this subsection shall not apply to cigarettes in the possession of distributors or public warehouses which have filed notice and appropriate proof with the treasurer that those cigarettes are temporarily within the county and will be sent to consignees or purchasers outside the county in the normal course of business.

All cigarettes seized and confiscated according to this section shall thereupon be deemed to be forfeited to the county and may be sold within a reasonable time thereafter, after proper notice of such seizure is given to the known holders of property interests in the cigarettes. Such notice shall be given to known holders of property interests, if any, by certified mail and by written notice posted on the bulletin board of the court house of the county at least seven (7) days before the date of sale. Such notice shall contain the time and place at which the sale is to

occur and procedures for administrative appeal as well as affirmative defenses which may be asserted by such holders. All moneys collected under this section shall be paid to the county treasurer and treated as other taxes collected under this article. No credit from any sale or other disposition shall be allowed toward any tax or penalties owed.

*§ 165-94 Seizure and sale of coin-operated vending machines and counterfeit stamp or impression devices.*

Any coin-operated vending machine, in which any cigarettes are found, stored or possessed bearing a counterfeit or false tobacco tax stamp or impression or any unstamped cigarettes, or any cigarettes upon which the tax has not been paid, may be declared contraband property and be subject to confiscation and sale as provided in section 165-93. When any such vending machine is found containing such cigarettes, it shall be presumed that such cigarettes were intended for distribution, sale or use therefrom. In lieu of immediate seizure and confiscation of any vending machine used in an illegal evasion of the tax, it may be sealed by appropriate enforcement authorities to prevent continued illegal sale or removal of any cigarettes, and may be left unmoved until other civil and criminal penalties are imposed or waived. Notice requirements shall be the same as if the machine had been seized. Such seal may be removed and the machine declared eligible for operation only by authorized enforcement authorities. Nothing in this section shall prevent seizure and confiscation of a vending machine at any time after it is sealed.

Any counterfeit stamps or counterfeit impression devices found may also be seized and confiscated.

*§ 165-95. Dealers' and sellers' records*

It shall be the duty of every dealer and seller to maintain and keep, for a period of two (2) years, such records of cigarettes sold and delivered by him as may be required by the treasurer and to make all such records available for examination by such treasurer, upon demand, at any and all reasonable times.

*§ 165-96. Rules and regulations for enforcement and administration of article; examination of books, records, etc.*

The treasurer may prescribe, adopt, promulgate and enforce rules and regulations relating to the method and means to be used in the cancellation of stamps and to all other matters pertaining to the administration and enforcement of the provisions of this article. It shall be unlawful for any person to fail, neglect or refuse to comply with such rules and regulations.

The treasurer may examine books, records, invoices, papers and any and all cigarettes in and upon any premises where the same are placed, stored, sold, offered for sale or displayed for sale by a seller or dealer.



*§ 165-97. Violations of article—Generally*

Any person violating any of the provisions of this article shall be guilty of a Class 1 misdemeanor. In addition, any person who shall perform any fraudulent act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article shall be required to pay a penalty in the amount of fifty (50) percent and interest not to exceed three quarters of one percent per month upon any tax found to be overdue and unpaid. Conviction and payment of a fine for such violation shall not relieve any person from the payment of any tax imposed by this article.

Each violation of, or noncompliance with, any of the provisions of this article shall be and constitute a separate offense and shall subject every person convicted thereof to the penalties prescribed.

*§ 165-98. Same—Prohibited acts enumerated*

It shall be unlawful and a violation of this article for any person:

To perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article or of any part thereof; or for any dealer or seller, with intent to violate any provision of this article, to fail or refuse to perform any of the duties imposed upon him under the provisions of this article or to fail or refuse to obey any lawful order which the treasurer may issue under this article.

To falsely or fraudulently make, forge, alter or counterfeit any stamp or the printed markings of any meter machine or to procure or cause to be made, forged, altered or counterfeited any such stamp or printed markings of a meter machine or to knowingly and willfully alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps or printed markings of a meter machine.

To sell any cigarettes upon which the tax imposed by this article has not been paid and upon which evidence of payment thereof is not shown on each package of cigarettes.

To reuse or refill with cigarettes any package from which cigarettes, for which the tax imposed has been theretofore paid, have been removed.

To remove from any package any stamp or the printed markings of a meter machine with intent to use or cause the same to be used after the same have already been used, or to buy, sell or offer for sale or give away any used, removed, altered or restored stamps or printed markings of a meter machine to any person, or to reuse any stamp or printed markings of a meter machine which had theretofore been used for evidence of the payment of any tax prescribed by this article, or, except as to the county treasurer, to sell or offer to sell any stamps or printed markings of a meter machine provided for in this article.

*§ 165-99. Same—Presumption of violation by seller*

In the event any package of cigarettes is found in the possession of a seller, without the proper stamps being affixed thereto or without authorized printed markings of a meter machine thereon, and the seller shall be unable to submit evidence establishing that he received such package within the immediately preceding forty-eight (48) hours and that he has not offered the same for sale, the presumption shall be that such package is being kept by such seller in violation of the provisions of this article and shall subject him to the penalties provided for such violation.

Any cigarettes placed in any coin-operated vending machine located within the county shall be presumed for sale within the county. Any vending machine located within the county containing cigarettes upon which the stamp has not been affixed or containing cigarettes placed so as not to allow visual inspection of the stamp through the viewing areas as provided for by the vending machine manufacturer shall be presumed to contain untaxed cigarettes in violation of this article.

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

In lieu of seizure, the treasurer may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of the seal from a vending machine by any unauthorized person shall be in violation of this article. Nothing in this article 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 the machine.

#### Amendments Chapter 165-Article XXI

2022-04-19

§ 165-85 Amount of tax; increase cigarette tax from \$0.20 to \$0.40 per package containing 25 or fewer cigarettes effective January 1, 2023.

## Article XXII Food and Beverage Tax

[Adopted 04-06-2021]

Amended 04-19-2022 to increase the amount of tax collected from 2% to 4% effective January 1, 2023

### *§ 165-100. Definitions*

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

CATERER	A business or person who furnishes meals on the premises of another.
COMMISSIONER	The Commissioner of Revenue of the County of Clarke, Virginia.
FOOD	Any food, beverage, 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. Included in the term “food” are prepared foods ready for human consumption sold by grocery stores and convenience stores at a delicatessen, for that portion of the grocery store or convenience store selling such items.
FOOD ESTABLISHMENT	Any place in or from which food or food products are prepared, packaged, sold, or distributed in Clarke County, except those establishments located in the Town of Berryville corporate limits, including but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionary, bakery, eating house, eatery, drugstore, ice cream/yogurt shop, 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.

PURCHASER	Any person who purchases a meal.
SALE	The final sale to the ultimate customer.
SELLER	Any food establishment or caterer selling food, or the person operating such business.
TREASURER	The Treasurer of the County of Clarke, Virginia.

*§ 165-101. Tax levied; amount of tax*

In addition to all other taxes and fees of any kind now or hereafter imposed by law, and pursuant to authority contained in § 58.1-3833 of the Code of Virginia, there is hereby imposed and levied on purchasers a tax equivalent to 4% of the amount paid for food sold by a seller.

*§ 165-102. Payment and collection of tax*

In every case the tax shall be collected by the seller and paid by the purchaser at the time of the charge for the food becomes due and payable, whether payment is to be made in cash, check, or on credit by means of a credit card or otherwise. The seller shall add the tax to the amount charged for the meal, and shall pay the taxes collected to the County as provided in this article.

*§ 165-103. Collections in Trust for County*

All amounts collected as taxes under this article shall be deemed to be held in trust by the seller collecting them, until remitted to the County as provided in this article.

*§ 165-104. Reports and remittances*

The Commissioner may require all prospective sellers of food licensed to do business in the County to register for collection of tax imposed by this article. Every seller shall make a report for each calendar month, showing the amount of charges collected for meals and the amount of tax required to be collected.

The monthly reports shall be made on forms prescribed by the Commissioner and shall be signed by the seller. They shall be delivered to the Commissioner on or before the 20th day of the calendar month following the month being reported. Each report shall be accompanied by a remittance of the amount of tax due, made payable to the Treasurer. The Commissioner shall promptly transmit all taxes received to the Treasurer.

*§ 165-105. Penalty and interest for failure to pay tax when due*

There shall be a penalty of 10% added to all food taxes imposed under the provisions of this article that are unpaid on the due dates as provided in this article.

In addition to such penalty, interest at the rate of 10% per annum shall accrue and be added to all due and unpaid taxes and penalties beginning with the first day following the imposition of the penalty; provided, however, that the second and subsequent years of delinquency, such interest shall be at the rate established pursuant to Section 6621 of the United States Internal Revenue Code of 1986, 26 U.S.C. § 6621, as amended, or its successor statute(s), but not less than 10%. 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.

*§ 165-106. Failure to collect or remit tax*

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this article or to make timely report and remittance thereof, or if the Commissioner has reasonable cause to believe that an erroneous statement has been filed, the Commissioner shall proceed in such manner as is practicable to obtain facts and information on which to base an estimate of the tax due the County and, in connection therewith, shall make such investigations and take such testimony and other evidence as may be necessary; provided, however, that notice and opportunity to be heard shall be given any person who may become liable for the amount owing prior to any determination by the Commissioner.

As soon as the Commissioner has procured whatever facts and information may be obtainable upon which to base the assessment of any tax payable by any person who has failed to collect, report or remit such tax, the Commissioner shall proceed to determine and assess against such person the tax, penalty and interest provided in this article and shall notify the person, by certified or registered mail sent to his or her address listed on the registration required in 165-104 or the last known address, of the amount of such tax, penalty and interest. The total amount thereof shall be payable 10 days after the date such notice is given.

*§ 165-107. Preservation of Records*

It shall be the duty of every person liable for collection and remittance of the taxes imposed by this article to keep and preserve, for a period of two years, records showing all purchases taxable under this article, the amount charged the purchaser for each purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this article. The Commissioner shall have the power to examine such records at reasonable times and without unreasonable interference from the business of such person, for the purpose of administering and enforcing the provisions of this article and to make transcripts or copies of all or any parts thereof.

*§ 165-108. Duty of person going out of business*

Whenever any person required to collect and remit to the County any tax imposed by this article, 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 a report and remittance thereof.

*§ 165-109. Advertising payment or absorption of tax unlawful*

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

*§ 165-110. Tips and service charges*

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

*§ 165-111. Exemptions*

The following classes of food shall not be subject to the tax under this article:

Food and beverage sold through vending machines.

Alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption.

Food purchased for off-premise human 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.

Provided by boardinghouses that do not accommodate transients.

Provided by cafeterias operated by industrial plants for employees only.

Provided by restaurants to their employees as part of their compensation when no charge is made to the employee.

Provided by volunteer fire departments and volunteer emergency medical services agencies, nonprofit churches or other religious bodies, or educational, charitable, fraternal, benevolent organizations, or churches that serve meals for their members as a regular part of their religious observances.

Provided by public or private elementary or secondary schools or institutions of higher education to their students or employees.

Provided by hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof.

Provided by day care centers.

Provided by homes for the aged, infirm, handicapped, battered woman, narcotic addicts, or alcoholics.

Provided by 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.

Provided by sellers at local farmers' markets and roadside stands.

Also, the tax shall not be levied on food when used or consumed and paid by the Commonwealth, any political subdivision of the Commonwealth, or the United States, or 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 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.

### *§ 165-112. Enforcement*

It shall be the duty of the Commissioner to ascertain the name of every person operating a food establishment in the County liable for the collection of the tax imposed by this article who fails, refuses or neglects to collect such tax or make the reports and remittances required by this article. The Commissioner may have a summons issued for such person, and the summons shall be served upon such person by any County Sheriff or Deputy Sheriff in the manner provided by law. One return of the original summons shall be made returnable to the General District Court for the County.

In the event that the purchaser of any food refuses to pay the tax imposed by this article, the seller may call upon the Sheriff's Office 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.

### *§ 165-113. Violations*

Any person violating or failing to comply with any of the provisions of this article shall, upon conviction thereof, be guilty of a Class 3 misdemeanor punishable by a maximum fine of

\$500. Conviction shall not relieve any person from the payment, collection, or remittance of the tax as provided in this article. Each violation or failure shall be a separate offense.

*§ 165-114. Commissioner of Revenue*

It shall be the duty of the Commissioner to ascertain the name of every person operating a business in the County liable for the collection of the tax levied in this article.

The Commissioner shall have the power to adopt rules and regulations not inconsistent with the provisions of this article for the purpose of carrying out and enforcing the payment, collection, and remittance of the tax herein levied, and a copy of such rules and regulations shall be on file and available for public examination in the Commissioner's office. Failure or refusal to comply with any rules and regulations promulgated under this article shall be deemed a violation of this article.

*§ 165-115. Commission for Collection*

Every seller who collects, accounts for and remits taxes imposed herein to the County shall receive a commission at the rate of five percent (5%) of the amount of the tax due and accounted for by the seller. Said commission shall be paid in the form of a deduction from the tax so remitted. No commission shall be paid to any operator in the event that the amount due from said seller, or any part thereof, is delinquent under the provisions of this article.

*Amendments Chapter 165-Article XXII*

2022-04-19

§ 165-101 Amount of tax; increase food and beverage tax from 2% to 4% effective January 1, 2023.



## References

- <sup>39</sup> Editor's Note: See ~ 58.1-3700 et seq. of the Code of Virginia, License Taxes.
- <sup>40</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
- <sup>41</sup> Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
- <sup>42</sup> Editor's Note: See ~ 58.1-2600 et seq. of the Code of Virginia, Taxation of Public Service Corporations.
- <sup>43</sup> Editor's Note: See ~ 46.2-752 of the Code of Virginia, authority for assessment of taxes and license fees. See also Art. XIV, Motor Vehicle License Tax Exemption.
- <sup>44</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
- <sup>45</sup> Editor's Note: See ~ 58.1-3500 et seq. of the Code of Virginia, Tangible Personal Property, Machinery and Tools, and Merchants' Capital.
- <sup>46</sup> Editor's Note: Pursuant to 58.1-3958
- <sup>47</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
- <sup>48</sup> Editor's Note: See ~ 58.1-3292 of the Code of Virginia, for statutory authority.
- <sup>49</sup> Editor's Note: See ~ 58.1-3210 et seq. of the Code of Virginia, Exemptions for Elderly and Handicapped.
- <sup>50</sup> Editor's Note: See ~ 58.1-3230 et seq. of the Code of Virginia, Special Assessment for Land Preservation.
- <sup>51</sup> Editor's Note: See ~ 58.1-600 et seq. of the Code of Virginia, Virginia Retail Sales and Use Tax.
- <sup>52</sup> Editor's Note: See ~ 58.1-1718 and 58.1-3805 of the Code of Virginia, Tax on Wills and Administrations.
- <sup>53</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
- <sup>54</sup> Editor's Note: See ~ 58.1-814 and 58.1-3800 et seq. of the Code of Virginia, Recordation Tax.
- <sup>55</sup> Editor's Note: See ~ 58.1-600 of the Code of Virginia, Retail Sales and Use Tax.
- <sup>56</sup> Editor's Note: See ~ 58.1-3812 et seq. of the Code of Virginia, Consumer Utility Taxes.
- <sup>57</sup> Editor's Note: Fees are on file in the office of the County Administrator.

<sup>58</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

<sup>59</sup> Editor's Note: See §46.2-752 of the Code of Virginia, authority for exemption from tax.

<sup>60</sup> Editor's Note: See § 14.1-133.

<sup>61</sup> Editor's Note: See § 58.1-3813 of the Code of Virginia, local tax for enhanced telephone service.

<sup>62</sup> Editor's Note: See § 58.1-3819 of the Code of Virginia, transient occupancy tax.

# Chapter 171 Vehicles, Abandoned

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## Chapter 171 Vehicles, Abandoned

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[HISTORY: Adopted by the Board of Supervisors of Clarke County at time of adoption of Code (see Ch. 1, General Provisions, Art. I). Amendments noted where applicable.]

### General References

Chapter 157 Streets And Sidewalks Article I Obstructions by Vehicles Obstructions

#### *§ 171-1. Adoption of standards by reference.*

The provisions of § 46.2-1200 et seq. Abandoned, Immobilized, Unattended and Trespassing Vehicles; Parking , of the Code of Virginia, pertaining to the disposition of abandoned vehicles, are hereby adopted by reference.

#### *§ 171-2. Removal and storage of vehicles.*

The Board of Supervisors shall take into custody any abandoned motor vehicle and provide for its removal, preservation and storage in accordance with the provisions of § 46.2-1200 et seq. of the Code of Virginia.

# Chapter 175 Vehicles And Traffic

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## Chapter 175 Vehicles And Traffic

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 01-19-1988 as Secs. 8-1, 8-2, 8-3, 8-8, 8-9, 8-11, 8-13, 8-14, 8-15, 8-56, 8-60 and 8-62 of the 1987 Code. Amendments noted where applicable.]

### General References

Chapter 120 Noise, Article I Noise

Chapter 171 Vehicles, Abandoned

### Code of Virginia References

§ 46.2-600. - Owner to secure registration and certificate of title or certificate of ownership.

§ 46.2-888. - Stopping on highways; general rule.

§ 46.2-1212. - Authority to provide for temporary removal and disposition of vehicles involved in accidents.

§ 46.2-1221 Authority of county to regulate parking on county-owned or leased property or on county highways; parking meters; presumption as to violation of ordinances.

§ 46.2-1224. - County ordinances prohibiting certain parking in streets and highways.

§ 46.2-1231. - Ticketing, removal, or immobilization of trespassing vehicles by owner or operator of parking or other lot or building; charges

§ 46.2-1234. - Liability of persons furnishing free parking accommodations as to motor vehicles and property left therein.

§ 46.2-1300 et seq. - Powers of local authorities generally; erection of signs and markers; maximum penalties.

### Article I Administration and Enforcement

#### § 175-1. *Violations and penalties.*

- A. It shall be unlawful for any person to violate any of the provisions of this chapter.
- B. Unless otherwise stated, every person convicted of a violation of any of the provisions of this chapter shall be guilty of a traffic infraction punishable by a fine of not more than \$200.

[Amended 03-16-1993]

*§ 175-2. Adoption of state law by reference.*

[Amended 08-21-1990; 06-18-1991]

Pursuant to the authority of § 46.2-1313 of the Code of Virginia, all of the provisions and requirements of the laws of the state contained in Title 46.2 Motor Vehicles and in Title 18.2 Crimes and Offenses

Generally, Chapter 7 Crimes Involving Health and Safety, Article 2 Driving Motor Vehicle, etc., While Intoxicated of the Code of Virginia, except those provisions and requirements the violation of which constitutes a felony and except those provisions and requirements which by their very nature can have no application to or within the county, are hereby adopted mutandis and incorporated herein by reference and made applicable within the county. References to "highways of the state" contained in such provisions and requirements hereby adopted shall be deemed to refer to the streets, highways and other public ways within the county. Such provisions and requirements are made a part of this chapter as fully as those set forth at length herein, and it shall be unlawful for any person within the county to violate or fail, neglect or refuse to comply with the provisions of Titles 46.2 Motor Vehicles or of Title 18.2 Crimes and Offenses Generally, Chapter 7 Crimes Involving Health and Safety, Article 2 Driving Motor Vehicle, etc., While Intoxicated, which are adopted by this section, provided that in no event shall the penalty imposed for the violation of any provision or requirement hereby adopted exceed the penalty imposed for a similar offense under 46.2 Motor Vehicles or under Title 18.2 Crimes and Offenses Generally, Chapter 7 Crimes Involving Health and Safety, Article 2 Driving Motor Vehicle, etc., While Intoxicated, of the Code of Virginia.

*§ 175-3. Power of Sheriff to establish parking regulations; violations deemed unlawful.*

- A. The Sheriff may, with reference to county-owned property and with reference to county-maintained roads and streets, classify vehicles with reference to parking and may designate the time, place and manner such vehicles may be allowed to park on county-owned property and on county-maintained roads and streets and may make and enforce such additional rules and regulations as parking conditions may require. When any parking regulation is established pursuant to this section, the Sheriff shall cause to be erected appropriate signs or markers so that an ordinarily observant person who may be affected by such regulation will be aware of such regulation.
- B. When any regulation is made pursuant to this section and when appropriate signs or markers have been erected as required by this section, it shall be unlawful for any person to violate any such regulation.

*§ 175-4. Regional Compact for Cross-Jurisdictional Enforcement of Local Motor Vehicle Licensing*

Pursuant to § 46.2-752. (K) Taxes and license fees imposed by counties, cities, and towns; limitations on amounts; disposition of revenues; requiring evidence of payment of personal



property taxes and certain fines; prohibiting display of licenses after expiration; failure to display valid local license required by other localities; penalty of the

*Requirements.*

[Added 1995-04-16]

Code of Virginia, Clarke County shall be a member of the Regional Compact for Cross-Jurisdictional Enforcement of Local Motor Vehicle Licensing Requirements with the County of Frederick, the City of Winchester and the Towns of Berryville, Boyce, Middletown and Stephens City.

## Article II Traffic Regulations

### *§ 175-5. Boarding or alighting from moving vehicles.*

No person shall board or alight from any vehicle while such vehicle is in motion.

### *§ 175-6. Unlawful riding.*

No person shall ride on any vehicle upon any portion thereof not designed or intended for the use of passengers. This provision shall not apply to an employee engaged in the necessary discharge of a duty or to persons riding within truck bodies in space intended for merchandise.

### *§ 175-7. Tailgates on vehicles.*

It shall be unlawful for the operator of any truck, trailer or other vehicle equipped with a tailgate to lower or open the tailgate thereon or to suffer or permit such tailgate to be lowered or opened while the vehicle is in operation on any public road in the county, except during the time the load on the vehicle necessitates a lowered or opened tailgate as a support for the load. It shall be the duty of the operator of any such vehicle to see that the tailgate on such vehicle is kept closed or raised, except during the times hereinbefore specified.

### *§ 175-8. Backing.*

The operator of a vehicle in the county shall not back such vehicle unless such movement can be made with safety and without interfering with other traffic.

### *§ 175-9. Blocking intersection.*

No operator of a vehicle shall enter an intersection or a marked crosswalk unless there is sufficient space beyond such intersection or crosswalk in the direction in which such vehicle is proceeding to accommodate the vehicle without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indication to proceed.

*§ 175-10. Temporary removal and disposition of vehicles involved in accidents.*

Whenever a motor vehicle, trailer or semi-trailer involved in an accident is found upon a highway or street in the county and is so located as to impede the orderly flow of traffic, the police may at no cost to the owner or operator remove such motor vehicle, trailer or semi-trailer from the highway or street to some point in the vicinity where such motor vehicle, trailer or semi-trailer will not impede the flow of traffic.

*§ 175-11. Reimbursement of Expenses Incurred in Response to DUI and Other Traffic Incidents*

(Pursuant to VA. Code Ann. §15.2-1716 [Added 2007-07-17; Amended 2010-11-16])

- A. A person convicted of violating any of the following provisions Reimbursement of Expenses Incurred In Responding to DUI and Other Traffic Incidents (pursuant to Va. Code Ann. §15.2-1716 [Added 2007-07-17; Amended 2010-11-16]) shall, at the time of sentencing or in a separate civil action, be liable to the county or to any responding volunteer fire or rescue squad, or both, for restitution of reasonable expenses incurred by the county for responding law enforcement, firefighting, rescue and emergency services, including by the county Sheriff's Department, or by any volunteer fire or rescue squad, or by any combination of the foregoing, when providing appropriate emergency response to any accident or incident related to such violation or when issuing any related arrest warrant or summons:
1. The provisions of Virginia Code §18.2-36.1; 18.2-51.4; 18.2-266; 18.2-266.1; 29.1-738; 29.1-738.02; or 46.2-341.24; or a similar county ordinance, when such operation of a motor vehicle, engine, train or watercraft while so impaired is the proximate cause of the accident or incident;
  2. The provisions of Article 7 (Virginia Code §46.2-8.52 et seq.) of Chapter 8 of Title 46.2 of the Virginia Code, as amended, relating to reckless driving, when such reckless driving is the proximate cause of the accident or incident; and
  3. The provisions of Article 1 (Virginia Code §46.2-300 et seq.) of Chapter 3 of Title 46.2 of the Virginia Code, as amended, relating to driving without a license or driving with a suspended or revoked license; and
  4. The provisions of Virginia Code §46.2-894 relating to improperly leaving the scene of an accident.
- B. Personal liability under subsection A for reasonable expenses of an appropriate emergency response shall not exceed \$1,000 in the aggregate for a particular accident or incident occurring in the county.

In determining the "reasonable expenses," the county may bill a flat fee of \$350 or a minute-by-minute accounting of the actual costs incurred.

As used in this section, “appropriate emergency response” includes all costs of providing law-enforcement, firefighting, rescue and emergency medical services.

The court may order as restitution the reasonable expenses incurred by the county for responding law enforcement, fire-fighting, rescue and emergency medical services.

The provisions of this section shall not preempt or limit any remedy available to the Commonwealth, to the county or to any volunteer rescue squad to recover the reasonable expenses of an emergency response to an accident or incident not involving impaired driving, operation of a vehicle or other conduct as set forth herein.

## Amendments Chapter 175-Article II

2007-07-17

Chapter 175 Vehicle and Traffic Article II Add §175-11 Reimbursement of Expenses Incurred In Responding to DUI and Other Traffic Incidents to become effective upon passage. Renumber 175-11 thru 13 to 175-12 thru 14.

2010-11-16

Chapter 175 Vehicles and Traffic 175-11 Reimbursement of Expenses Incurred in Responding to DUI and other Traffic Incidents Correct content and typographical errors, to more closely track the language of the enabling legislation, and to update the flat fee amount from \$250 to \$350.

## Article III Stopping, Standing and Parking

### *§ 175-12. Parking vehicles without state license on highway.*

Except as otherwise provided by law, it shall be unlawful for any person to park any vehicle having no current state license on any highway in the county.

### *§ 175-13. Parking on private property.*

No person shall stand or park a vehicle on any private lot or lot area without the express or implied consent of the owner thereof.

### *§ 175-14. Parking in No Parking Area*

No person shall park a vehicle, except in compliance with directions of a law enforcement officer, in an area on a Commonwealth of Virginia right away posted with a Virginia Department of Transportation "No Parking" sign or sign with the letter "P" enclosed in a circle with a diagonal line going through the "P".

### *§ 175-15. Issuance of citation for parking violation*

Whenever any motor vehicle without driver is found parked, stopped, or standing in violation of any of the provisions of this Article or other ordinances of this County, the law enforcement officer finding such vehicle shall:

- Take its registration number, make, and model of the vehicle and any other information displayed on the vehicle which may identify its user; and,
- Shall conspicuously affix to such vehicle a parking citation for the driver to answer the charge against him within five days, during the hours and at a place specified in the citation.
- The law enforcement officer shall deliver one copy of such citation to the County Treasurer.

### *§ 175-16. General penalty for parking violation*

Unless otherwise provided, any person violating the provisions of this Article shall be guilty of a traffic infraction and punished as prescribed in section 175-1; provided however, that any such violation may be satisfied, in full, by payment to the County Treasurer of thirty dollars (\$30.00) within five (5) days of such violation.

All uncontested parking citations paid under this section shall be accounted for by the County Treasurer.

### *§175-17. Procedure for delinquent parking citation*

The Sheriff shall cause a summons to be issued for delinquent parking citations; provided, however, before any summons shall issue for the prosecution of a violation of this Article or other ordinance or regulation of the County regulating parking, the violator shall have been first notified by mail at his last known address or at the address shown for such violator on the records of the Department of Motor Vehicles that he may pay the fine provided by law for such violation within five (5) days of receipt of such notice, and the Treasurer shall notify the Sheriff if the violator has failed to pay such fine within such time.

The notice to the violator, required by the provisions of this section, shall be contained in an envelope bearing the words "Law Enforcement Notice" stamped or printed in the face thereof in type at least one-half inch in height.

*§ 175- 18. Presumption in prosecution of parking violation.*

In any prosecution charging a violation of any parking regulation contained in this article, proof that the vehicle described in the complaint, summons, parking ticket citation, or warrant was parked in violation of such regulation, together with proof that the defendant was at the time of such parking violation the registered owner of the vehicle, as required by Title 46.2 Motor Vehicles, Chapter 6 Titling and Registration of Motor Vehicles of the Code of Virginia, shall constitute in evidence a rebuttable presumption that such registered owner of the vehicle was the person who parked the vehicle at the place where and for the time during which such violation occurred.

Amendments Chapter 175-Article III  
2018-01-16

Chapter 175: Vehicle and Traffic Article III Complete rewrite.

Article IV Solicitation activities on public highways, roadways, and medians prohibited.

*§ 175- 19. Code of Virginia References*

§ 46.2-931. Localities may prohibit or regulate distribution of handbills, etc., solicitation of contributions, and sale of merchandise or services on highways within their boundaries or on public roadways and medians.

*§ 175- 20. Solicitation activities on public highways, roadways, and medians*

- A. For purposes of this section, "highway" 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 county, including the streets and alleys, and, the entire width between the boundary lines of all private roads or private streets that have been specifically designated highways by ordinance.

- B. When any of the following activities interfere with the safe and free passage of pedestrian and/or vehicle traffic, it shall be unlawful for any person standing, sitting, walking, or otherwise located on a highway within the county to:
- 1) Distribute handbills, leaflets, bulletins, literature, advertisements or similar material to the occupants of motor vehicles.
  - 2) Solicit contributions of any nature from the occupants of motor vehicles.
  - 3) Sell or attempt to sell merchandise or services to the occupants of motor vehicles.
- C. Any person violating the provisions of this section shall, upon conviction, be guilty of a traffic infraction, punishable by a fine of:
- One hundred dollars (\$100.00) for the first offense; and,
  - Two hundred fifty dollars (\$250.00) for any subsequent offense.
  - Each separate violation shall be considered a new offense.

#### Amendments Chapter 175-Article IV

2019-04-16

Chapter 175 Article IV Solicitation activities on public highways, roadways, and medians prohibited. New article.

# Chapter 180 Water And Wastewater

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## **Chapter 180 Water and Wastewater**

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[HISTORY: Adopted by the Board of Supervisors of Clarke County as indicated in article histories. Amendments noted where applicable.]

### **General References**

Chapter 34 Sanitary Authority

Chapter 124 Nuisances

Chapter 143 Septic Systems

Chapter 161 Subdivision Of Land

### **Code of Virginia References**

§ 15.2-5100. et seq. - Virginia Water and Waste Authorities Act.

## Article I Sewage Disposal

[Adopted 01-19-1988 as Secs. 12-31 through 12-34 of the 1987 Code]

### *§ 180-1. Prohibited arrangement for disposal of human excrement.*

No person shall construct, maintain or permit on any premises owned by him or in his charge any arrangement for the disposal of human excrement which may endanger a source of food or drinking water or which allows flies to have access to the human excrement or drainage from which escapes onto the surface of the ground on his or adjoining property or which, in the opinion of the Health Officer, gives rise to a nuisance.

### *§ 180-2. Sanitary disposal devices required.*

Every house used as a human habitation, every warehouse, every public building and every other place where human beings congregate or are employed in the county shall be provided by the owner thereof with a sanitary toilet, privy or other sanitary device for the disposal of human excrement. If any outside privy is used, it must be built and maintained in accordance with the specifications and requirements of the State Board of Health and the Code of Clarke County.

### *§ 180-3. Approved sewage disposal methods required.*

All homes and other places in which flush toilets are installed shall be provided by the owners with methods of sewage disposal approved by the Health Officer or his representative.

### *§ 180-4. Deposition of human excrement.*

No person shall deposit any human excrement upon the surface of the ground or in any place where it may endanger a source of food or drinking water or be accessible to flies or animals.

The term "Human Excrement" does not include "biosolids", as defined by the Virginia Department of Health, which are a treated human waste product.

## Amendments Chapter 180-Article I

2000-01-25

§ 180-4. Deposition of human excrement: add the term "Human Excrement" does not include "biosolids", as defined by the Virginia Department of Health, which are a treated human waste product.

§ 180-5. Subsurface conventional septic tank and soil treatment area systems required; alternative systems: Change from Board of Supervisors to Board of Well & Septic Appeals

2010-06-15

Chapter 180, Water and Wastewater, so as to delete Section 180-5 Subsurface conventional septic tank and soil treatment area systems, required; alternative systems; CC-10-04

2023-06-20

§180-2 add “and the Code of Clarke County”; CC2023-01

## Article II Sinkholes

[Adopted 01-19-1988 as § 12-66 through 12-72 of the 1987 Code]

### § 180-6. Definitions.

When used in this article, the following terms have the meanings given to them:

<b>OWNER OF LAND or LANDOWNER</b>	Any person who holds title to or is in possession of any land lying within the county, whether as owner, lessee or otherwise.
<b>PERSON</b>	Any natural person, any state, municipality or other political subdivision or other public agency or instrumentality, any public or private corporation, any partnership, firm, association or other organization, any receiver, trustee, assignee, agent or other legal representative of any of the foregoing and any other entity.
<b>POLLUTANTS</b>	Anything which, when introduced into water, alters the chemical, physical, biological or radiological properties of water.
<b>SINKHOLE</b>	Any depression in the surface of the ground, with or without collapse of adjacent rock, which provides a means through which surface water can enter the ground and thereby come into contact with subsurface water. Sinkholes are divided into Class 1 sinkholes and Class 2 sinkholes. A. Class 1 sinkhole. Any sinkhole which presents a significant subsurface water pollution hazard if, due to the drainage pattern of the land surrounding the sinkhole or the nature of the substances or objects in the sinkhole, the sinkhole may permit the entry of pollutants into subsurface water.

**SUBSTANCES AND OBJECTS**

B. Class 2 sinkhole. Any sinkhole which is not a Class 1 sinkhole for reasons pertaining to the sinkhole characteristics for transporting pollutants into the subsurface.

**SUBSURFACE WATER**

All substances and objects, whether or not manmade and whether in liquid, solid or gaseous form.

Any water below the surface of the ground, including but not limited to water in the saturated and unsaturated zones.

*§ 180-7. Intent.*

The county relies on a clean supply of subsurface water to foster and protect human health and welfare. Clean water resources are essential for the economic and social development of the county. The karst geomorphology of the county creates high contamination potential for subsurface water associated with pollutants in or around sinkholes. Therefore, it is declared to be the policy of the county to protect human health and the public welfare by establishing land use controls to abate and mitigate the subsurface water pollution potential by prohibiting the movement of pollutants to the subsurface water through sinkholes.

*§ 180-8. Administration.*

The office of the county Planning Administrator and the county Health Department shall have the duty and responsibility to implement and enforce the provisions of this article.

*§ 180-9. Placing substances and objects in sinkholes.*

No person shall place or cause to be placed any substances or objects other than those approved by the county in any sinkhole.

*§ 180-10. Class 1 sinkholes.*

A. The county shall take the steps necessary to identify Class 1 sinkholes located in the county and prescribe corrective and protective measures deemed reasonable and necessary to minimize and, if possible, eliminate the entry of pollutants into subsurface water through such sinkhole. Such corrective and protective measures include, but are not limited to:

- (1) Buffer zones covered with grass or other appropriate vegetation.
- (2) Installation of diversion methods or structures.

- (3) Installation of concrete or plastic liners.
  - (4) Termination of the activity which creates the pollution hazard.
  - (5) Removal of substances and objects from the sinkhole.
- B. Before prescribing corrective and protective measures with respect to a particular Class 1 sinkhole, the county shall meet with landowners involved and discuss with them the reasons the sinkhole presents a significant subsurface water pollution hazard and the need for corrective and protective measures to minimize and, if possible, eliminate the entry of pollutants into subsurface water through the sinkhole.
  - C. In prescribing corrective and protective measures, the county shall consider all relevant factors, including but not limited to the expense of implementing such measures and the effect which implementing will have upon the use by the landowner(s) of their land; provided, however, that economic hardship alone shall not prevent the prescription of corrective and protective measures. The corrective and protective measures prescribed, together with the date by which such measures must be completed, shall be set forth in writing and sent to the landowner(s) involved by return receipt mail.
  - D. The owner of land upon which a Class 1 sinkhole is located shall take the corrective and protective measures prescribed by the county.
  - E. The owner of land over, through or under which pollutants travel to a Class 1 sinkhole which is located on another landowner's land shall take the corrective and protective measures prescribed by the county.

*§ 180-11. Civil enforcement.*

- A. Any person may submit to the county a verbal or written complaint alleging a violation of this article or the existence of a Class 1 sinkhole with respect to which corrective and protective measures have not been prescribed.
- B. Upon receipt of a complaint, the county shall proceed pursuant to § 180-10A, B and C.
- C. Based upon a determination that there is a violation of this article, the county shall notify the violator by mail of the violation. The notice shall include:
  - (1) A statement of the violation.
  - (2) With respect to a violation of § 180-9, a statement that the county may remove from the sinkhole involved the offending substances and objects and that the violator will be obligated to the county for the reasonable cost of such removal.

- (3) With respect to a violation of § 180-10D, a statement that the county may take the already prescribed corrective and protective measures and the violator will be obligated to the county for the reasonable cost of such action.
- D. If after taking the above steps and after a period of 30 days following the mailing of the notice of the violation the county, in good faith, determines that the violator is unwilling to take the corrective actions prescribed, the county shall again notify the violator by mail of the violation.
- E. With respect to a violation of § 180-9, 10 days after the mailing of the second notice, the county may remove from the sinkhole involved the offending substances and objects and bill the violator for the reasonable cost of such action.
- F. With respect to a violation of § 180-10D or E, 10 days after the mailing of the second notice of violation, the county may take the already prescribed corrective and protective measures it deems necessary to minimize and, if possible, eliminate the entry of pollutants into subsurface water through the sinkhole and bill the violator for the reasonable cost of such action.

*§ 180-12. Criminal enforcement.*

In lieu of proceeding under § 180-11, a person who is alleged to have violated § 180-9 may be prosecuted for the commission of a misdemeanor.



## Article III Cross-Connection and Backflow Prevention

[Adopted 04-18-1994]

### § 180-13. Definitions.

The following terms, whenever used or referred to in this article, shall have the respective meanings set forth below, unless the context clearly requires a contrary meaning or any such term is expressly defined to the contrary elsewhere in this article:

<b>AUTHORITY</b>	-- The Clarke County Sanitary Authority.
<b>BACKFLOW</b>	-- The flow of water or other liquids, mixtures or substances into the distributing pipes of a potable supply of water from any source other than its intended source.
<b>CROSS-CONNECTION</b>	-- Any physical connection between a potable water supply and any waste pipe, soil pipe, sewer drain or any unapproved source or system. Cross-connection includes any potable water supply outlet, which is submerged or can be submerged in wastewater and any other source of contamination.
<b>HEALTH HAZARD</b>	-- Any conditions, devices or practices in the water supply system and its operation, which create or, in the judgment of the Authority, may create a danger to the health and well-being of the water consumer.
<b>PLUMBING FIXTURE</b>	-- Installed receptacles, devices or appliances supplied with water or that receive or discharge liquids or liquid-borne wastes.
<b>POLLUTION</b>	-- The presence of any foreign substance (organic, inorganic, radiological or biological) in the water that tends to degrade its quality so as to constitute a hazard or impair the usefulness of the water.
<b>WATER, NONPOTABLE</b>	-- Water that is not safe for human consumption or that is of questionable potability.
<b>WATER, POTABLE</b>	-- Water free from impurities in amounts sufficient to cause disease or harmful physiological effects. Its bacteriological and chemical quality shall conform to the requirements of the Virginia Waterworks

Regulations of the State Department of Health and the requirements of the county Department of Utilities.

**WATER SYSTEM**

-- All structures, appliances and equipment owned and operated by the county and/or the Authority and used to collect, store, transport, purify and treat water for drinking or domestic use and the distribution of water to the public.

*§ 180-14. Pollution prevention measures required.*

Every building, premises or structure in the county shall be constructed, equipped and maintained in such a manner as to prevent the possibility of pollution of the county water supply by cross-connection or backflow of liquids.

*§ 180-15. Cross-connections prohibited.*

- A. The county potable water supply system shall be designed, installed and maintained in such a manner as to prevent contamination from non-potable liquids, solids or gases being introduced into the potable water supply through cross-connections or any other piping connections to the system.
- B. Cross-connections between the county potable water system and other systems or equipment containing water or other substances of unknown or questionable safety are prohibited except when and where, as approved by the Authority, suitable protective devices such as the reduced pressure zone backflow preventer or equal are installed, tested and maintained to ensure proper operation on a continuing basis.

*§ 180-16. Backflow and back-siphonage prohibited.*

The county potable water system shall be protected against backflow and back-siphonage by installing and maintaining at all fixtures, equipment and outlets where backflow or back-siphonage may occur a suitable backflow preventer as approved by the Authority.

*§ 180-17. Inspections by Authority; right of entry.*

- A. The Authority or its designated agent shall inspect all properties served by the water system where cross-connection with the water system is deemed possible. The frequency of these inspections shall be established by the Authority.
- B. The Authority or its designated agent shall have the right to enter, at any reasonable time, properties served by the water system for the purpose of inspecting for cross-

connection or backflow problems caused by improper installation, repair or maintenance, faulty equipment or other causes. Upon request, the owner or occupants of the property served by the water system shall furnish to the inspector pertinent information regarding the piping system on such property. Refusal to provide such information or refusal of access when required shall constitute a violation of this article.

*§ 180-18. Compliance with applicable rules and regulations.*

Any cross-connection or backflow prevention device or system shall be designed, installed and maintained in such a manner as to be in compliance with the Cross-Connection Control Manual, United States Environmental Protection Agency, Office of Water Programs, Water Supply Division, 1973; plumbing standards as set forth in the Virginia Uniform Statewide Building Code § 36-97 et seq. Code of Virginia; § 6.00 of the Virginia Waterworks Regulations entitled "Cross-Connection and Backflow Prevention Control in Waterworks"; and the Clarke County Cross-Connection and Backflow Prevention Control Regulations, copies of which are on file in the county office.

*§ 180-19. Notice of violation; protection of waterworks.*

- A. The Authority shall notify the owner or authorized agent of the owner of the building or premises in which there is found a violation of this article of such violation. The Authority shall set a reasonable time for the owner to have the violation removed or corrected. Upon failure of the owner to have the defect corrected by the end of the specified time interval, the Authority may, if in its judgment an imminent health hazard exists, cause the water service to the building or premises to be terminated or deny service to such premises.
- B. If it is found that the backflow prevention device has been removed or bypassed or if a cross-connection exists or if the pressure in the waterworks is lowered below 10 psi gauge, the Authority shall take positive action to ensure that the waterworks is adequately protected at all times.

*§ 180-20. Violations and penalties.*

The owner or authorized agent of the owner responsible for the maintenance of the plumbing systems in the building who knowingly permits a violation to remain uncorrected after the expiration of time set by the Authority shall be punished as provided in Chapter 1, General Provisions, Article I, for each violation. Each day of failure to comply with the requirements of this article, after the specified time set by the Authority, shall constitute a separate violation.

## Article IV Wastewater Disposal System Maintenance

[Adopted 06-20-1995]

### *§ 180-21. Pumping out of primary treatment tanks.*

All primary treatment tanks, including septic tanks, cesspools, and dry wells, shall be pumped out for maintenance purposes (serviced) once every seven years. Such pumping shall be performed by a Health Department approved service provider (pumper/hauler) and disposed at a treatment facility that is approved for such disposal.

### *§ 180-22. Scheduling of service; notification; receipts.*

Maintenance pumping and hauling shall be in accord with a schedule prepared by the county by which all systems shall be serviced on a repeating cycle of once every seven years. System owners shall be notified in advance of when their system is scheduled for servicing. System owners and the county shall be provided with receipts by the service provider for all maintenance services performed.

### *§ 180-23. Reserved.*

### *§ 180-24. Exemptions.*

- A. Wastewater disposal systems installed prior to 1965 and other systems that are not recorded with the Health Department are exempt from the requirements in § 180-21 if damage to the system would occur as a result of system maintenance.

### *§ 180-25. Reserved.*

### *§ 180-26. Failure to comply; performance of work by county; costs.*

- A. If the County Administrator or the official designated by him determines the owner of an on-site wastewater disposal system has failed to comply with the requirements of Article IV, he shall notify the owner of such address listed in the real estate tax records. Such notice shall also notify the owner that he is required to correct the violation as applicable.
- B. If the violation is not corrected within 30 days of receipt of such notice, the County Administrator or his designee may correct the violation using county forces or a private contractor. The cost of such correction, together with an administrative handling charge of \$150, shall be billed to the owner, and if not paid within 30 days, the cost of correction and handling charge shall be added to and collected in the same manner as the real estate tax on such property. In addition, the County Administrator or his designee shall certify to the Clerk of the Circuit Court of the county that the cost and

charge is unpaid and the Clerk shall record such unpaid cost and charge in the judgment lien docket book.

## Amendments Chapter 180 Article IV

2023-06-20

§180-21 remove requirement that waste pumped out of primary treatment tanks be disposed of at a facility within the county.

§180-23, §180-24, §180-25 remove language related to annual fee

Article V Waterloo Commercial Area Exclusive Service Area  
[Added 2000-09-19]

*§ 180-27. Waterloo Commercial Area*

The contiguous properties, containing, in the aggregate, 49.1 acres, more or less, located at or near the intersection of U. S. Route 340 and U. S. Route 50 at Waterloo, and which are zoned Highway Commercial (HC) as of August 22, 2000, are hereby designated the “Waterloo Commercial Area” for purposes of this chapter.

*§ 180-28. Waterloo Commercial Area Sewage Collection System*

Sewage collection lines and facilities to be constructed between the Town of Boyce and the Waterloo Commercial Area, and in the Waterloo Commercial Area, for the transport of sewage to the Boyce Wastewater Treatment Plant, are hereby designated the “Waterloo Commercial Area Sewage Collection System” for purposes of this chapter.

*§ 180-29. Exclusive Service Area*

The Waterloo Commercial Area is hereby designated the exclusive service area for the Waterloo Commercial Area Sewage Collection System, and no property outside of the Waterloo Commercial Area shall be served by the Waterloo Commercial Area Sewage Collection System.

Amendments Chapter 180-Article V

2000-09-19

Add § 180-27. Waterloo Commercial Area; § 180-28. Waterloo Commercial Area Sewage Collection System; § 180-29. Exclusive Service Area

## Article VI Boyce Exclusive Service Area

[Added 2000-10-17]

### *§ 180-30. Exclusive Service Area*

[Amended 2002-05-21]

The properties located within the Town limits of the Town of Boyce, together with the properties comprising the Waterloo Commercial Area and the Millwood Sewer Exclusive Service Area, are hereby designated as the exclusive service area for the sewage collection lines and facilities located within the limits of the Town of Boyce for the transport of sewage to the Boyce Wastewater Treatment Plan, and no property outside of the limits of the Town of Boyce, the Waterloo Commercial Area, and the Millwood Sewer Exclusive Service Area shall be served by the sewage collection lines and facilities located within the limits of the Town of Boyce.

## Amendments Chapter 180 – Article VI

2000-10-17

Add § 180-30. Exclusive Service Area Town of Boyce

2002-05-21

Amend § 180-30.

## Article VII Millwood Exclusive Service Area

[Added 2002-05-21]

### *§ 180-31. Millwood Exclusive Service Area*

The contiguous properties located in or near the village of Millwood and which were identified on January 1, 2002, by the following Clarke County Tax Parcel identification are hereby designated the “Millwood Sewer Exclusive Service Area” for purposes of this chapter: (1) Block 29-A, parcels 16 and 17A and (2) Block 30A-A, parcels 1-34, 41-62, 64-76, 78-86, 88-92, 24A, 41A, 44A, 43A, 46A, 70A, and 92A.

### *§ 180-32. Millwood Sewer Exclusive Service Area Sewage Collection System*

Sewage collection lines and facilities to be constructed between the Town of Boyce and the Millwood Sewer Exclusive Service Area, and the Millwood Sewer Exclusive Service Area, for the transport of sewage to the Boyce Wastewater Treatment Plant, are hereby designated the “Millwood Sewer Exclusive Service Area Sewage Collection System” for the purposes of this chapter.

### *§ 180-33. Exclusive Service Area*

The Millwood Sewer Exclusive Service Area is hereby designated the exclusive service area for the Millwood Sewer Exclusive Service Area Sewage Collection System, and no property outside of the Millwood Sewer Exclusive Service Area shall be served by the Millwood Sewer Exclusive Service Area Sewage Collection System.

## Amendments Chapter 180-Article VII

2002-05-21

Add Article VII § 180-31. Millwood Exclusive Service Area, § 180-32. Millwood Sewer Exclusive Service Area Sewage Collection System, § 180-33. Exclusive Service Area



## Article VIII - Clarke County Sanitary Sewer Use

[Added 2004-07-20]

### A. General Provisions

#### *§ 180-34. Clarke County Sanitary Authority Sewer Use*

##### *§ 180-34.1. Purpose*

The purpose of this Ordinance is to provide for the beneficial public use of the Clarke County Treatment Works through regulation of sewer construction, sewer use, and wastewater discharges; to provide for equitable distribution of the costs of the Treatment Works; and to provide procedures for complying with the requirements contained herein.

##### *§ 180-34.2. Scope*

- a) The definitions of terms used in this Ordinance are found in Article II. The provisions of this Ordinance shall apply to the discharge of all wastewater to Treatment Works. This Ordinance provides for use of the county's Treatment Works, regulation of sewer construction, control of the quantity and quality of wastewater discharged, wastewater pretreatment, equitable distribution of costs, assurance that existing customers' capacity will not be preempted, approval of sewer construction plans, issuance of user Permits, minimum sewer connection standards and conditions, and penalties and other procedures in cases of violation of this Ordinance.
- b) This Ordinance shall apply to the Waterloo, Boyce, and Millwood Exclusive Sewer Service Areas as identified in Clarke County Code Chapter 180 Articles V, VI, & VII, or any other subsequently identified exclusive sewer service area, and referred to hereafter as the exclusive sewer service areas.

##### *§ 180-34.3. Administration*

Except as otherwise provided herein, the Clarke County Sanitary Authority Sanitation Engineer of the Treatment Works shall administer, implement, and enforce the provisions of this Ordinance.

##### *§ 180-34.4. Fees and Charges*

- a) All fees and charges payable under the provisions of this Ordinance shall be paid to the Clarke County Sanitary Authority. Such fees and charges shall be as set forth herein or as established in the latest edition of the Clarke County Sanitary Authority Schedule of Fees.

- b) All user fees, penalties and charges collected under this Ordinance and the Clarke County Sanitary Authority user charge fee schedule shall be used for the sole purpose of constructing, operating or maintaining the treatment works of the Clarke County Sanitary Authority, or the retirement of debt incurred for same.
- c) All fees and charges payable under the provisions of this Ordinance are due and payable upon the receipt of notice of charges. Unpaid charges shall become delinquent and shall be subject to penalty and interest charges as provided for in the latest edition of the Clarke County Sanitary Authority Schedule of Fees

#### *§ 180-34.5. Inspections*

- (a) The CCSA Sanitation Engineer, operator or authorized local, state or federal officials, bearing the proper credentials and identification, shall be permitted to enter all premises where an effluent source or treatment system is located at any reasonable time for the purposes of inspection, observation, measurement, sampling and/or copying records of the wastewater discharge to ensure that discharge to the treatment works is in accordance with the provisions of this Ordinance.
- (b) The CCSA Sanitation Engineer, bearing proper credentials and identification, shall be permitted to enter all private property through which the Town of Boyce or The County of Clarke holds an easement for the purposes of inspection, observation, measurement, sampling, repair, and maintenance of any of the Clarke County Sanitary Authority Treatment Works lying within the easement. All entry, and any subsequent work on the easement, shall be done in final accordance with the terms of the easement pertaining to the private property involved.
- (c) While performing any necessary work on private properties referred to in Sections 5(a) and (b) above, CCSA Sanitation Engineer, shall observe all safety and occupational rules established by the owner or occupant of the property and applicable to the premises.

#### *§ 180-34.6. Vandalism*

No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment which is a part of the Clarke County Treatment Works. Any person who violates this section shall be guilty of a misdemeanor and, upon conviction, is punishable by a fine in an amount not to exceed One Thousand Dollars (\$1,000.00).

#### *§ 180-34.7. Severability*

If any provision of these regulations, or the application of any provision of these regulations to any person or circumstances, is held invalid, the application of such provision to other persons or circumstances, and the remainder of the regulations, shall not be

affected thereby.

*§ 180-34.8. Amendments of the Ordinance*

Public notice shall be given in accordance with applicable provisions of the county charter, other county ordinances, State and Federal law, prior to adoption of any amendments of this Ordinance.

**B. Definitions**

*§ 180-34.9. Specific Definitions*

Unless the context of usage indicates otherwise, the meaning of specific terms in this Ordinance shall be as follows:

- "Act" shall mean the Federal Clean Water Act, 33. U.S.C. 1251 et seq.
- "Approval Authority" means the Executive Director or Director of the Department of Environmental Quality.
- "ASTM" shall mean the American Society for Testing and Materials.
- "Authorized Representative of Industrial User" shall mean:
- 1) A principal executive officer of at least the level of vice president, if the industrial user is a corporation; or
  - 2) A general partner or proprietor if the industrial user is a partnership or sole proprietorship respectively; or
  - 3) A duly authorized representative of the individual designated in #1 or #2, above, if such representative is responsible for the overall operation of the facility from which the discharge to the POTW originates. The authorization must be submitted to the Manager/licensed operator prior to or together with any reports to be signed by the authorized representative.
- "BOD" (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen used in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees C, expressed in milligrams per liter.
- "Building Sewer" shall mean the extension from a building wastewater plumbing facility to the treatment works.

“CCSA Sanitation Engineer”	shall mean the administrator of the Clarke County Treatment Works.
“Categorical Pretreatment Standard or Categorical Standard”	shall mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(a) & 307(c) of the Act, which apply to specific categories of industrial users which appear in 40 CFR Chapter I, Subchapter N, Parts 405 - 471.
“Combined Sewer”	shall mean a sewer intended to receive both wastewater and storm or surface water.
"Day"	shall mean the 24-hour period beginning at 12:01 a.m.
"Discharger"	shall mean person or persons, firm, company, industry or other similar sources of wastewater who introduce such into the POTW.
"Easement"	shall mean an acquired legal right for the specific use of land owned by others.
"EPA"	shall mean the United States Environmental Protection Agency.
"Establishment"	shall mean any industrial establishment, mill, factory, tannery, paper or pulp mill, mine, coal mine, colliery, breaker or coal processing operations, quarry, oil refinery, boat, vessel, and each and every other industry or plant or works the operation of which produces industrial wastes or other wastes or which may otherwise alter the physical, chemical or biological properties of any state waters.
“Existing Source”	shall mean any source of discharge, the construction or operation of which commenced prior to the publication of proposed categorical pretreatment standards which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.
"Garbage"	shall mean the solid animal and vegetable wastes resulting from the domestic or commercial handling, storage, dispensing, preparation, cooking, and serving of foods.
"Ground Water"	shall mean any water beneath the land surface in the zone of saturation.
“Indirect Discharge”	shall mean the introduction of (non-domestic) pollutants into the POTW from any non-domestic source regulated under Section 307(b) (c) or (d) of the Act.

“Industrial User or Significant Discharger”	means a source of indirect discharge, or a non-domestic discharge to a treatment works.
"Industrial Wastes"	shall mean liquid or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.
“Interference”	shall mean an inhibition or disruption of the POTW, its treatment processes or operation, or its sludge processes, which clearly causes, in whole or part, a violation of any requirement of the POTW’s VPDES permit, including those discharges that prevent the use or disposal of sludge by the POTW in accordance with any federal or state laws, regulations, permits or sludge management plans.
“Manager”	shall mean the CCSA Sanitation Engineer of the Clarke County Wastewater System(s) or designee authorized by the CCSA.
"May"	is permissible;
"Shall"	is mandatory.
"Municipality"	shall mean a city, county, town, district association, authority or other public body created under the law and having jurisdiction over disposal of sewage, industrial, or other wastes.
"Natural Outlet"	shall mean any outlet into a watercourse, pond, ditch, lake, or any other body of surface or groundwater.
“New Source”	shall have the same meaning as provided in 40 CFR Part 403.3(k) (1990).
“VPDES"	shall mean Virginia Pollutant Discharge Elimination System permit program, as administered by the Commonwealth of Virginia.
"Owner"	shall mean the Commonwealth or any of its political subdivisions, including, but not limited to, sanitation district commissions and authorities, and public or private institutions, corporations, associations, firms or companies organized or existing under the laws of this or any other state or country, or any person or group of persons acting individually or as a group.
“Pass-Through”	shall mean the discharge of pollutants through a POTW into State waters in quantities or concentrations which are a cause in whole or in part of a violation of any requirement of the POTW’s VPDES

	permit, including an increase in the magnitude or duration of a violation.
"Person"	shall mean any individual, firm, company, association, society, partnership, corporation, municipality, or other similar organization, agency or group.
"pH"	shall mean the logarithm of the reciprocal of the hydrogen ion concentration expressed in grams per liter of solution as determined by Standard Methods.
"Pollutant"	shall mean any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical waste, chemical waste, industrial waste, biological materials, radioactive material, heat wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial waste, and certain characteristics of the wastewater (i.e., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, odor).
"POTW, Publicly Owned Treatment Works"	shall mean any sewage treatment works that is owned by a State or Municipality. Sewers, pipes, or other conveyances are included in this definition only if they convey wastewater to a POTW providing treatment.
"Pretreatment"	shall mean the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to discharge to the Clarke County Treatment Works.
"Pretreatment Requirements"	shall mean any substantive or procedural requirement related to pretreatment imposed on an industrial user, other than a pretreatment standard.
"Pretreatment Standard"	shall mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act, which applies to Industrial users.
"Properly Shredded Garbage"	shall mean garbage that has been shredded to such a degree that all particles will be carried freely under flow conditions normally prevailing in the treatment works, with no particle greater than 1/2 inch in any dimension.
"Residential User (Class 1)"	shall mean all premises used only for human residency and which is connected to the treatment works.

“Sanitary Wastewater”	shall mean wastewater discharged from the sanitary conveniences of dwellings, office buildings, industrial plants, or institutions.
"Significant Industrial User"	shall be defined as follows: EITHER: <ul style="list-style-type: none"> <li>a) Has a process wastewater* flow of 25,000 gallons or more per average work day; (*Excludes sanitary, non-contact cooling and boiler blowdown wastewater)</li> <li>b) Contributes a process waste stream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW;</li> <li>c) Is subject to categorical pretreatment standards; or</li> <li>d) Has significant impact, either singularly or in combination with other significant dischargers, on the treatment works or the quality of its effluent.</li> </ul>
“Slug Load”	shall mean any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standard in Section 8 of this Ordinance or any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge.
"Standard Methods"	shall mean the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, Water Pollution Control Federation and American Water Works Association.
“State”	shall mean the Commonwealth of Virginia.
"Storm Sewer"	shall mean a sewer for conveying storm, surface, and other waters, which is not intended to be transported to a treatment works.
"Surface Water"	shall mean: <ul style="list-style-type: none"> <li>i. all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;</li> <li>ii. all interstate waters, including interstate "wetlands";</li> <li>iii. all other waters, such as inter/intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: <ul style="list-style-type: none"> <li>(1) which are or could be used by interstate or foreign travelers for recreational or other purposes;</li> </ul> </li> </ul>

- (2) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - (3) which are used or could be used for industrial purposes by industries in interstate commerce.
  - iv. all impoundments of waters otherwise defined as surface waters under this definition;
  - v. tributaries of waters identified in paragraphs (1) - (iv) of this definition;
  - vi. the territorial sea; and
  - vii. wetlands" adjacent to waters other than waters that are themselves wetlands, identified in paragraphs (i) - (vi) of this definition.
- "Suspended Solids" shall mean the total suspended matter that either floats on the surface of, or is in suspension in, water or wastewater as determined by Standard Methods.
- "Treatment Facility" shall mean only those mechanical power-driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).
- "Treatment Works" shall mean any devices and systems used for the storage, treatment, recycling and/or reclamation of sewage or liquid industrial waste, or other waste necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances, extensions, improvements, remodeling, additions, or alterations, and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment, or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.
- "Toxics" shall mean any of the pollutants designated by Federal regulations pursuant to Section 307 (a) (1) of the Act.
- "User" shall mean a source of wastewater discharge into a POTW.
- "User Permit" shall mean a document issued by the POTW to the User that permits the connection and/or introduction of wastes into the treatment works under the provisions of this Ordinance.



"Wastewater" shall mean a combination of liquid and water-carried wastes from residences, commercial buildings, industries, and institutions, together with any groundwater, surface water, or storm water that may be present.

"WPCF" shall mean the Water Pollution Control Federation.

### *§ 180-34.10. General Definitions*

Unless the context of usage indicates otherwise, the meaning of terms in this Ordinance and not defined in Section 1 above, shall be as defined in the Glossary: Water and Wastewater Control Engineering prepared by Joint Editorial Board of the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and Water Pollution Control Federation, Copyright 1969.

## C. Use of Clarke County Treatment Works & Treatment Facility

### *§ 180-34.11. Wastewater Discharges*

It is unlawful under State and Federal Law to discharge sewage without a VPDES permit to any natural outlet within the exclusive sewer service areas or in any area under the jurisdiction of the CCSA. Wastewater discharges to the Clarke County Treatment Works are not authorized unless permitted by the CCSA Sanitation Engineer in accordance with provisions of this Ordinance.

### *§ 180-34.12. Wastewater Disposal*

Except as provided in this Ordinance, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater.

### *§ 180-34.13. Connection to Treatment Works Required*

The owner of any new house, building, or property which is used for commercial, industrial and/or residential purposes, which is located within the exclusive sewer service areas is required at the owner's expense to install suitable toilet facilities therein, and to connect such facilities directly to the proper sewer in accordance with the provisions of this Ordinance, within twelve (12) months after notice that sewer service is available. This section shall not apply to any existing house, building, or property, which is used for commercial, industrial and/or residential purposes that is served by a functioning on-site sewage disposal system.

## D. Building Sewers and Connections

### *§ 180-34.14. Connection Permit*

- A. No person shall uncover, make any connections with, use, alter, or disturb any wastewater sewer or storm sewer without first obtaining a written permit from the CCSA Sanitation Engineer or authorized local official.
- B. There shall be two (2) classes of permits for connections to the Clarke County Treatment Works & Treatment Facilities.

CLASS I - residential

CLASS II – commercial/industrial

- C. In all cases, the owner shall make application for a permit to connect to the county's treatment works on a form furnished by the CCSA. The permit application shall be supplemented by wastewater information required to administer this Ordinance. A permit and inspection fee of (See CCSA Schedule of Fees) for a Class I, or (See CCSA Schedule of Fees) for a Class II connection permit shall be paid to the CCSA at the time the application is filed.

### *§ 180-34.15. Connection Costs*

The costs and expenses incidental to the building sewer installation and connection to the Clarke County Treatment Works shall be borne by the owner. The owner shall indemnify the county from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

### *§ 180-34.16. Separate Connections Required*

A separate and independent building sewer shall be provided for every building except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard, or driveway. When this occurs, the building sewer serving the front building may be extended to the rear building and the whole considered as one building sewer. The county assumes no obligation or responsibility for damage caused by or resulting from any single building sewer, which serves two buildings.

### *§ 180-34.17. Existing Building Sewers*

Existing building sewers may be used for connection of new buildings only when they are found, on examination and testing by the CCSA Sanitation Engineer to meet the requirements of this Ordinance.

*§ 180-34.18. Building Sewer Design*

The size, slope, alignment, construction materials, trench excavation and backfill methods, pipe placement, jointing and testing methods used in the construction and installation of a building sewer shall conform to the building and plumbing code or other applicable requirements of Clarke County. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM and WPCF shall apply.

*§ 180-34.19. Building Sewer Elevation*

Whenever practicable, the building sewer shall be brought to a building at an elevation below the basement floor. In buildings in which any building drain is too low to permit gravity flow to the county's treatment works, wastewater carried by such building drain shall be lifted by an approved means and discharged to a building sewer draining to the county's sewer.

*§ 180-34.20. Surface Runoff and Groundwater Drains*

- (a) No person shall connect roof, foundation, areaway, parking lot, roadway, or other surface runoff or groundwater drains to any sewer which is connected to a treatment works unless such connection is authorized in writing by the CCSA Sanitation Engineer. The connection of such drains shall conform to codes specified in Section 8 (a) or as specified by the manager as a condition of approval of such connection.
- (b) Except as provided in Section 7 (a) above, roof, foundation, areaway, parking lot, roadway, or other surface runoff or groundwater drains shall discharge to natural outlets or storm sewers.

*§ 180-34.21. Conformance to Applicable Codes*

The connection of a building sewer into the Treatment Works shall conform to the requirements of the building and plumbing code or other applicable requirements of the County of Clarke, or the procedures set forth in appropriate specifications of the Commonwealth of Virginia Sewerage Regulations, Uniform Building Code of Virginia, and American Society of Testing Materials. The connections shall be made gas-tight and water-tight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved in writing by the CCSA Sanitation Engineer before installation.

*§ 180-34.22. Connection Inspection*

The applicant for a building sewer or other drainage connection permit shall notify the CCSA Sanitation Engineer when such sewer or drainage connection is ready for inspection prior to its connection to the county Treatment Works. Such connection inspections and testing as

deemed necessary by the CCSA Sanitation Engineer shall be made by the CCSA Sanitation Engineer, or authorized local official.

*§ 180-34.23. Excavation Guards and Property Restoration*

Excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the County of Clarke.

*§ 180-34.24. Protection of Capacity for Existing Users*

The CCSA Sanitation Engineer shall not issue a permit for any class of connection to the county Treatment Works unless there is sufficient capacity, not legally committed to other users, in the Treatment Works and Treatment Facilities to convey and adequately treat the quantity of wastewater which the requested connection will add to the Treatment Works or Treatment Facility. The CCSA Sanitation Engineer may permit such a connection if there are legally binding commitments to provide the needed capacity.

**E. Conditions to Use the Clarke County Treatment Works**

*§ 180-34.25. Special Uses of Treatment Works*

All discharges of storm water, surface water, groundwater, roof runoff, subsurface drainage, or other waters not intended to be treated in the Treatment Facility shall be made to storm sewers or natural outlets designed for such discharges, except as authorized under Article IV, Section 7. Any connection, drain, or arrangement which will permit any such waters to enter any other sewer shall be deemed to be a violation of this section and this ordinance.

*§ 180-34.26. General Prohibition*

No user shall introduce any pollutants into the county sanitary collection system and Treatment Works which will pass through the Treatment Facilities or interfere with the operation or performance of the sanitary collection system or Treatment Facilities.

*§ 180-34.27. Restricted Discharges*

- (a) No person shall discharge or cause to be discharged to any of the county Treatment Works any substances, materials, waters, or wastes in such quantities or concentrations which do or are likely to:

- 1) Create a fire or explosion hazard including, but not limited to, gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas; waste stream with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using test methods specified in 40 CFR 261.21;
- 2) Cause corrosive damage or hazard to structures, equipment, or personnel of the wastewater facilities, but in no case discharges with the following properties:
  - i. having a pH lower than 5.0 or greater than 11.0
- 3) Cause obstruction to the flow in sewers, or other interference with the operation of treatment facilities due to accumulation of solid or viscous materials;
- 4) Constitute a rate of discharge or substantial deviation from normal rates of discharge, ("slug discharge"), sufficient to cause interference in the operation and performance of the treatment facilities;
- 5) Contain heat in amounts which are likely to accelerate the biodegradation of wastes, causing the formation of excessive amounts of hydrogen sulfide in the treatment works or inhibit biological activity in the treatment facilities, but in no case shall the discharge of heat cause the temperature in the Clarke County wastewater sewer to exceed 65 degrees C (150 degrees F) or the temperature of the influent to the Treatment Facilities to exceed 40 degrees C (104 degrees F) unless the facilities can accommodate such heat and the County of Clarke has obtained prior approval from the approval authority;
- 6) Contain more than 100 milligrams per liter of non-biodegradable oils of mineral or petroleum origin as analyzed by the approved EPA 1664A method or ASTM International Method D7066-04;
- 7) Contain polar floatable oils, fat, or grease of animal or vegetable origin that interfere with sanitary collection systems or Treatment Facilities, and contain more than 100 milligrams per liter of oil and grease as analyzed by an approved method in 40 CFR Part 136 for Total Recoverable Oil and Grease;
- 8) Contain noxious gases, vapors or fumes, malodorous gas or substance in quantities that may cause a public nuisance or cause acute human or safety problems;
- 9) Contain radioactive wastes in harmful quantities as defined by applicable State and Federal regulations;
- 10) Contain any garbage that has not been properly shredded;

- 11) Contain any odor or color producing substances exceeding concentration limits which may be established by the CCSA Sanitation Engineer for purposes of meeting the Clarke County VPDES permit.
  - 12) Petroleum oil, non-biodegradable cutting oil or products of mineral oil origin in amounts that will cause interference or pass through.
  - 13) Any trucked or hauled pollutants except at designated discharge points.
  - 14) No person shall discharge pollutants that exceed what the plant is designed to accept including but not limited to BOD's in excess of 250 mg/l.
- (b) If, in establishing discharge restrictions, discharge limits, or pretreatment standards pursuant to the Article, the CCSA Sanitation Engineer establishes concentration limits to be met by a user, the CCSA Sanitation Engineer in lieu of concentration limits, may establish mass limits of comparable stringency for an individual user at the request of such user. Upon approval by the State, such limits should become pretreatment standards, be consistently applied to all users, and be based on sewage influent levels established in the Treatment Facility permit.
- (c) The CCSA Sanitation Engineer shall, at the cost of the customer, test restaurants and other commercial entities in the business of preparing food for others at least twice a year for compliance with Sections 180-34.27(a)(6) and 180-34.27(a)(7). A failed test shall result in the issuance of a Notification of Violation in accordance with Section 180-34.48 and a \$500 fine. Subsequent test failures within a twelve month period will result in a \$1,000 fine for each failed test. In the event of a failed test, the CCSA Sanitation Engineer shall perform a series of unannounced tests, at the cost of the customer, until the CCSA Sanitation Engineer is satisfied corrections have been made and discharges are within the allowable limits set in Sections 180-34.27(a)(6) and 180-34.27(a)(7). Three failed tests within any three month period will result in an immediate suspension of wastewater treatment service as allowed in Section 180-34.46. In the event of a suspension of wastewater treatment service, the customer at their cost shall submit a corrective plan developed and stamped by a professional engineer. The corrective plan must be approved by the CCSA Sanitation Engineer, installed by the owner and inspected by the CCSA Sanitation Engineer before service will be restored.

*§ 180-34.28. Categorical Pretreatment Standards*

- (a) No person shall discharge or cause to be discharged to any treatment works wastewaters containing substances subject to an applicable Categorical Pretreatment Standard promulgated by EPA in excess of the quantity prescribed in such applicable pretreatment standards except as otherwise provided in this section. Compliance with such applicable pretreatment standards shall be within 3 years of the date the standard is promulgated, provided, however, compliance with a categorical pretreatment

standard for new sources shall be required upon commencement of discharge to the treatment works.

- (b) All persons subject to an applicable Categorical Pretreatment Standard shall comply with the provisions of this section and establish an enforceable compliance schedule for each.
- (c) No person shall discharge trucked or piped hazardous wastes to the Clarke County Treatment Works.

#### *§ 180-34.29. Special Agreements*

Nothing in this article shall be construed as preventing any agreement or arrangement between the CCSA and any user of the Treatment Works and Treatment Facility whereby wastewater of unusual strength or character (only in terms of BOD and/or Suspended Solids) is accepted into the system and specially treated subject to additional payments or user charges as may be applicable.

#### *§ 180-34.30. Water & Energy Conservation*

The conservation of water and energy shall be encouraged by the CCSA Sanitation Engineer. In establishing discharge restrictions upon users, the CCSA Sanitation Engineer shall take into account already implemented or planned conservation steps revealed by the user. Upon request of the CCSA Sanitation Engineer, each user will provide the CCSA Sanitation Engineer with pertinent information showing that the quantities of substances or pollutants have not been and will not be increased as a result of the user. Upon showing to the satisfaction of the CCSA Sanitation Engineer, he shall make adjustments to discharge restrictions, which have been based on concentrations to reflect the conservation steps.

#### *§ 180-34.31. Excessive Discharge*

No user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the Federal Categorical Pretreatment Standards, or in any other pollutant-specific limitation developed by the County of Clarke or State.

#### *§ 180-34.32. Accidental Discharges*

- (a) Each user shall provide protection from accidental discharge of prohibited materials or other substances regulated by this Ordinance. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner or user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the CCSA for review, and shall be approved by the CCSA before construction of the facility. No user who commences contribution to the

POTW after the effective date of this ordinance shall be permitted to introduce pollutants into the system until accidental discharge procedures have been approved by the CCSA. Review and approval of such plans and operating procedures shall not relieve the user from the responsibility to modify the user's facility as necessary to meet the requirements of this ordinance. In the case of an accidental discharge, it is the responsibility of the user to immediately telephone and notify the POTW of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.

- (b) Within five (5) days following an accidental discharge; the user shall submit to the CCSA Sanitation Engineer a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the treatment works and treatment facility, fish kills, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this article or other applicable law.
- (c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a dangerous discharge. Employers shall insure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.

## F. Industrial Dischargers

### *§ 180-34.33. Information Requirements*

- a) All industrial dischargers shall file with the CCSA wastewater information deemed necessary by the CCSA Sanitation Engineer for determination of compliance with this Ordinance, the Clarke County VPDES permit conditions, and State and Federal law. Such information shall be provided by completion of a questionnaire designed and supplied by the CCSA Sanitation Engineer and by supplements thereto as may be necessary. Information requested in the questionnaire and designated by the discharger as confidential is subject to the conditions of confidentiality as set out in Section 1 (c) of this article.
- b) Where a person owns, operates or occupies properties designated as an industrial discharger at more than one location, separate information submittals shall be made for each location as may be required by the CCSA Sanitation Engineer.
- c) Information and data on an Industrial User obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the User



specifically requests and is able to demonstrate to the satisfaction of the CCSA that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the User.

- d) When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this Ordinance, The Virginia Pollutant Discharge Elimination System (VPDES) Permit, State Disposal System permit and/or the Pretreatment Programs, provided, however, that such portions of a report shall be available for use by the State or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information. Information accepted by the CCSA as confidential, shall not be transmitted to any governmental agency or to the general public by the CCSA until and unless a ten-day notification is given to the User.

#### *§ 180-34.34. User Permits*

- a) All significant industrial users proposing to connect to or to contribute to the treatment works shall obtain a User Permit before connecting to or contributing to the treatment works. All existing significant industrial users connected to or contributing to the treatment works shall obtain a User Permit within (180) days after the effective date of this Ordinance.
- b) Significant Industrial Users required to obtain a Permit shall complete, and file with the CCSA, an application in the form prescribed by the CCSA, and accompanied by a fee of (See Fee Schedule). Existing significant industrial users shall apply for a Permit within (30) days after the effective date of this Ordinance, and proposed new significant industrial users shall apply at least (90) days prior to connecting to or contributing to the treatment works. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:
  - 1) Name, address, and location, (if different from address);
  - 2) SIC number according to the Standards Industrial Classification Manual, Bureau of the Budget, 1987, as amended;
  - 3) Wastewater constituents and characteristics including but not limited to those mentioned in Article V, Section 3 of this Ordinance as determined by an accredited analytical laboratory; sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to Section 304 (g) of the Act and contained in 40 CFR, Part 136, as amended;
  - 4) Time and duration of contribution;

- 5) Average daily and peak wastewater flow rates, including daily, monthly and seasonal variations, if any;
- 6) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections, and appurtenances by their size, location and elevation;
- 7) Description of activities, facilities and plant processes on the premises including all materials which are or could be discharged;
- 8) The nature and concentration of any pollutants in the discharge. A statement identifying the applicable pretreatment standards and requirements, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional O&M and/or additional pretreatment is required for the User to meet applicable Influent Treatment Standards;
- 9) If additional pretreatment and/or O&M will be required to meet the Pretreatment Standards, the shortest schedule by which the User will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard.

The following conditions shall apply to this schedule:

- i. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet the applicable Pretreatment Standards (e.g. hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).
- ii. No increment referred to in paragraph (i) shall exceed 9 months.
- iii. Not later than 14 days following each date in the schedule and the final date for compliance, the User shall submit a progress report to the CCSA Sanitation Engineer including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress; the reason for delay, and the steps being taken by the user to return the construction to the schedule established. In no event shall more than 1 year elapse between such progress reports to the CCSA Sanitation Engineer.

- 10) Each product produced by type, amount, process or processes and rate of production;
- 11) Type and amount of raw materials processed (average and maximum per day);
- 12) Number of types of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;
- 13) Any other information as may be deemed by the CCSA to be necessary to evaluate the user permit application.

The CCSA will evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished, the CCSA may issue a User Permit subject to terms and conditions provided herein.

- c) Within 9 months of the promulgation of a National Categorical Pretreatment Standard, the User Permit of Users subject to such standards shall be revised to require compliance with such standard if they are more restrictive than the local limits developed by the POTW within the timeframe prescribed by such standard. Where a User, subject to a National Categorical Pretreatment Standard, has not previously submitted an application for a User Permit as required by Section 2 (b), the User shall apply for a User Permit within 180 days after the promulgation of the Applicable National Categorical Pretreatment Standard. In addition, the User with an existing User Permit shall submit to the CCSA Sanitation Engineer, within 180 days after the promulgation of an applicable Federal Categorical Pretreatment Standard, the information required by paragraph (8) and (9) of Section 2b) of this Article.

d) Permit Conditions:

User Permits shall be expressly subject to all provisions of this Ordinance and all other applicable regulations, user charges and fees established by the CCSA. Permits may contain the following:

- 1) The unit charge or schedule of user charges and fees for the wastewater to be discharged to a community sewer;
- 2) Limits on the average and maximum wastewater constituents and characteristics (Permits must contain this item);
- 3) Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization. (Permits must contain this item);
- 4) Requirements for installation and maintenance of inspection and sampling facilities;

- 5) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types and standards for tests and reporting schedule;
  - 6) Compliance schedules;
  - 7) Requirements for submission of technical reports or discharge reports - See Section 3 of this Article **(Permits must contain this item)**;
  - 8) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the CCSA, and affording the CCSA access thereto; (Permits must contain this item);
  - 9) Requirements for notification of the CCSA for any new introduction of wastewater constituents or any substantial change in volume or character of the wastewater constituents being introduced into the treatment works (Permits must contain this item);
  - 10) Requirements for immediate notification of slug discharges **(Permits must contain this item)**;
  - 11) Other conditions as deemed appropriate by the CCSA to ensure compliance with this ordinance.
  - 12) Statement of applicable remedies.
- e) User Permits shall be issued for a specified time period, not to exceed five (5) (optional) years. A permit may be issued for a period less than a year or may be stated to expire on a specific date. The user shall apply for permit reissuance a minimum of 180 days prior to the expiration of the user's existing permit. The terms and conditions of the permit may be subject to modification by the (county) during the term of the permit as limitations or requirements as identified in Section 2 are modified or other just cause exists. The user shall be informed of any proposed changes in his permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.
- f) User Permits are issued to a specific user for a specific operation. A User permit shall not be reassigned or transferred or sold by the User to a new owner, new user, different premises, or a new or changed operation without the approval of the CCSA. Any succeeding owner or user shall also comply with the terms and conditions of the existing permit in the interim prior to the issuance of the respective new permit.

*§ 180-34.35. Reporting Requirements for Permittee*

- A. Within 90 days following the date for final compliance with applicable Pretreatment Standards or, in the case of a New Source, following commencement of the introduction of wastewater into the wastewater treatment facilities, any User subject to Pretreatment Standards and Requirements shall submit to the Manager a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by Pretreatment Standards and Requirements and the average and maximum daily flow for these process units in the User facility which are limited by such Pretreatment Standards or Requirements.

The report shall state whether the applicable Pretreatment Standards or Requirements are being met on a consistent basis and, if not, what additional O&M and/or pretreatment is necessary to bring the User into compliance with the applicable Pretreatment Standards or Requirements. In addition, the report shall contain the results of any sampling and analysis of the discharge as specified in Article VI Section 3 (b) (2) below. This statement shall be signed by an authorized representative of the User, and certified to by a qualified professional.

- B. (1) Any User subject to a Pretreatment Standard, after the compliance date of such Pretreatment Standard, or, in the case of such Pretreatment Standard or in the case of a New Source, after commencement of the discharge into the treatment works, shall submit to the CCSA Sanitation Engineer during the months of June and December, unless required more frequently in the Pretreatment Standard or by the CCSA Sanitation Engineer, a report indicating the nature and concentration, of pollutants in the effluent which are limited by such Pretreatment Standards. In addition, this report shall include a record of all daily flows, which during the reporting period exceeded the average daily flow reported. At the discretion of the CCSA Sanitation Engineer and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the CCSA Sanitation Engineer may agree to alter the months during which the above reports are to be submitted.

**(Comment:** Where 40 CFR, Part 136 does not include a sampling or analytical technique for the pollutant in question, sampling and analysis shall be performed in accordance with sampling and analytical procedures approved by EPA and/or DEQ.)

### *§ 180-34.36. Provision for Monitoring*

- A. When required by the CCSA Sanitation Engineer, the owner of any property serviced by a building sewer carrying Class II wastewater discharges shall provide suitable access and such necessary meters and other devices in the building sewer to facilitate observation, sampling, and measurement of the wastewater. Such access shall be in a readily and safely accessible location and shall be provided in accordance with plans approved by the CCSA Sanitation Engineer. The access shall be provided and maintained at the owner's expense so as to be safe and accessible at reasonable times.

- B. The CCSA Sanitation Engineer shall consider such factors as the volume and strength of discharge, rate of discharge, quantities of toxic materials in the discharge, treatment facility removal capabilities, and cost effectiveness in determining whether or not access and equipment for monitoring Class II wastewater discharges shall be required.
- C. Where the CCSA Sanitation Engineer determines access and equipment for monitoring or measuring Class II wastewater discharges is not practicable, reliable, or cost effective, the CCSA Sanitation Engineer may specify alternative methods of determining the characteristics of the wastewaters discharge which will, in the CCSA Sanitation Engineer's judgment, provide a reasonably reliable measurement of such characteristics.
- D. Measurements, tests, and analyses of the characteristics of wastewater required by this Ordinance shall conform to 40 CFR, Part 136 and be performed by an EPA certified laboratory. When such analyses are required of a discharger, the discharger may, in lieu of using the Treatment Facility laboratory, make arrangement with any EPA certified laboratory, to perform such analyses.
- E. Fees for any given measurement, test, or analysis of wastewater required by this Ordinance and performed by the Treatment Facility shall be the same for all classes of dischargers, regardless of the quantity or quality of the discharge and shall reflect only direct cost. Costs of analyses performed by an independent laboratory at the option of discharger shall be borne directly by the discharger.

#### *§ 180-34.37. Costs of Damage*

If the drainage or discharge from any establishment causes a deposit, obstruction, or damage to any of the Clarke County Treatment Works or Treatment Facility, the CCSA Sanitation Engineer shall cause the deposit or obstruction to be promptly removed or cause the damage to be promptly repaired. The cost for such work, including materials, labor, and supervision shall be borne by the discharger or permittee causing such deposit, obstruction, or damage.

#### **G. Pretreatment**

#### *§ 180-34.38. Wastewaters with Special Characteristics*

- (a) While the CCSA Sanitation Engineer should initially rely upon the Federal Categorical Pretreatment Standards to protect wastewater facilities or receiving waters, if any wastewater which contains substances or possesses characteristics shown to have deleterious effect upon the treatment works or treatment facilities, processes, equipment, or receiving waters, or constitutes a public nuisance or hazard, is discharged

or is proposed for discharge to the wastewater sewers, the CCSA Sanitation Engineer may require any or all of the following:

- a. Pretreatment by the user or discharger to a condition acceptable for discharge to the treatment works;
  - b. Control over the quantities and rates of discharge;
  - c. The development of compliance schedules to meet any
- (b) applicable pretreatment requirements;
- a. The submission of reports necessary to assure compliance with applicable pretreatment requirements;
  - b. Carry out all inspection, surveillance, and monitoring necessary to determine compliance with applicable pretreatment requirements;
  - c. Obtain remedies for noncompliance by any user. Such remedies may include injunctive relief, the civil penalties specified in Article IX of this Ordinance, or appropriate criminal penalties; or
  - d. Reject the wastewater if evidence discloses that discharge will create unreasonable hazards or have unreasonable deleterious effects on the treatment works or treatment facilities.
- (c) When considering the above alternatives, the CCSA Sanitation Engineer shall assure that conditions of the County of Clarke's permit are met. The CCSA Sanitation Engineer shall also take into consideration cost effectiveness, the economic impact of the alternatives, and the willful noncompliance of the discharger. If the CCSA Sanitation Engineer allows the pretreatment the installation of the necessary facilities shall be subject to review. The CCSA Sanitation Engineer shall review and recommend any appropriate changes to the program, within (30) days of submittal.
- (d) Where pretreatment or flow-equalizing facilities are provided or required for any wastewater, they shall be maintained continuously in satisfactory and effective operation at the expense of the owner.

#### *§ 180-34.39. Compliance with Pretreatment Requirements*

Persons required to pretreat wastewater in accordance with Section 1 above shall provide a statement, reviewed by an authorized representative of the user and certified by such representative indicating whether applicable pretreatment requirements are being met on a consistent basis and, if not, describe the additional operation and maintenance or additional pretreatment required for the user to meet the pretreatment requirements. If

additional pretreatment or operation and maintenance will be required to meet the pretreatment requirements, the user shall submit a plan (including schedules) to the CCSA Sanitation Engineer as described in Article VI, Section 2 (b) (9). The plan (including schedules) shall be consistent with applicable conditions of the county's Permit or other local, State or Federal laws.

#### *§ 180-34.40. Monitoring Requirements*

Discharges of wastewater to the Clarke County Treatment Works from the facilities of any user shall be monitored in accordance with the provisions of the User's permit.

#### *§ 180-34.41. Effect of Federal Law*

In the event that the Federal government promulgates a regulation for a given new or existing user in a specific industrial subcategory that establishes pretreatment standards or establishes that such user is exempt from pretreatment standards, such Federal regulations shall immediately supersede Section I (a) of this article if they are more stringent.

#### *§ 180-34.42. Certification*

All reports and permit applications must be signed by the industrial user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis and if not, whether additional O&M and/or additional pretreatment is required to meet the pretreatment standards and requirements.

### H. Wastewater Service, Charges and Industrial Cost Recovery

#### *§ 180-34.43. Wastewater Service Charges*

Charges and fees for the use of the public Treatment Works and Treatment Facility shall be based upon the actual use of such system, or contractual obligations for a level of use in excess of current actual use. Property value may be used to collect the amount due as permitted by law.

#### *§ 180-34.44. Industrial Cost Recovery*

Users of the Clarke County Treatment Works and Treatment Facilities will also be assessed industrial cost recovery charges as required by law.



### *§ 180-34.45. Determination of System Use*

- (a) The use of the Clarke County Treatment Works and Treatment Facilities shall be based upon actual measurement and analysis of each user's wastewater discharge, in accordance with provisions of Article VI, Section 4 to the extent such measurement and analysis is considered by the CCSA Sanitation Engineer to be feasible and cost-effective.
- (b) Where measurement and analysis is considered not feasible, determination of each user's use of the Treatment Works and Treatment Facilities shall be based upon the quantity of water used whether purchased from a public water utility or obtained from a private source, or an alternative means as provided by Section (c) below.
- (c) The CCSA Sanitation Engineer, when determining actual use of the Clarke County Treatment Works and Treatment Facilities based on water use, shall consider consumptive, evaporative, or other use of water which results in a significant difference between a discharger's water use and wastewater discharge. Where appropriate, such consumptive water use may be metered to aid in determining actual use of the treatment works and treatment facilities. The meters used to measure such water uses shall be of a type and installed in a manner approved by the CCSA Sanitation Engineer.
- (d) The actual average water use by each residential user (Class I) during the three months of (January, February, and March) shall be used as the measure of each respective residential user's actual use of the sewer system throughout the year.)

## **I. Enforcement**

### *§ 180-34.46. Harmful Contributions*

The CCSA may suspend the wastewater treatment service and/or a User Permit when such suspension is necessary, in the opinion of the CCSA, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of humans, to the environment, causes interference to the treatment facilities or causes Clarke County to violate any condition of its VPDES Permit.

Any person notified of a suspension of the wastewater treatment service and/or the User Permit shall immediately stop or eliminate the contribution.

In the event of a failure of the person to comply voluntarily with the suspension order, the CCSA shall take such steps as deemed necessary, including immediate shutting off of water service or severance of the sewer connection and/or the seeking of legal and equitable relief in the circuit court, to prevent or minimize damage to the wastewater treatment facilities or endangerment to any individuals.

The CCSA shall reinstate the User Permit and/or the wastewater treatment service upon proof of the elimination of the non-complying discharge. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the CCSA within 15 days of the date of occurrence.

#### *§ 180-34.47. Revocation of Permit*

Any user who violates the following conditions of this Ordinance, or applicable State and Federal regulations, is subject to having his permit revoked in accordance with the procedures of Article VI of this Ordinance for:

- (a) Failure of a user to factually report the wastewater constituents and characteristics of his discharge;
- (b) Failure of the user to report significant changes in operations, or wastewater constituents and characteristics;
- (c) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or,
- (d) Violation of conditions of the permit.

#### *§ 180-34.48. Notification of Violation*

Whenever the CCSA finds that any User has violated or is violating this Ordinance, User Permit, or any prohibition or limitation of requirements contained herein, the CCSA may serve upon such person a written notice stating the nature of the violation. Within 30 days of the date of the notice, a plan for the satisfactory correction thereof shall be submitted to the CCSA by the user.

#### *§ 180-34.49. Show Cause Hearing*

- (a) The CCSA may order any user who causes or allows an unauthorized discharge to show cause why the proposed enforcement action should not be taken. Such hearings shall be preceded by a notice being served on the user specifying the time and place of the hearing, the reasons why the action is to be taken, the proposed enforcement action, and directing the user to show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation.
- (b) The CCSA Sanitation Engineer may conduct the hearing and take the evidence, or may designate any of its members or any officer or employee of the Sanitation Authority to:

- 1) Issue in the name of the CCSA Sanitation Engineer notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings;
  - 2) Take the evidence;
  - 3) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the CCSA Sanitation Engineer for action thereon.
- (c) At any hearing held pursuant to this ordinance, testimony taken must be under oath and recorded stenographically. The transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the transcript costs.
- (d) After the CCSA Sanitation Engineer has reviewed the evidence, he may issue an order to the user responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances have been installed and existing treatment facilities, devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate may be issued.

#### *§ 180-34.50. Legal Action*

If any person does anything contrary to the provisions of this Ordinance, applicable Federal or State Pretreatment Requirements, or any order of the County of Clarke or if any commercial user refuses access to the CCSA Sanitation Engineer or his designee for purposes of inspection, Clarke County may commence an action for appropriate legal and/or equitable relief in the Circuit Court.

#### *§ 180-34.51. Penalties*

The CCSA Sanitation Engineer shall have the authority to assess on any user who is found to have violated an Order of the CCSA or who failed to comply with any provision of this Ordinance and the orders, rules, regulations and permits issued hereunder a penalty of \$1,000.00 per day per violation. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense.

#### *§ 180-34.52. Falsifying Information*

Any person who knowingly makes any false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Ordinance, or User Permit, or who falsifies any monitoring device or method required under this ordinance, shall upon conviction, be guilty of a Class I misdemeanor and be subject to the penalties as prescribed by the Code of Virginia.

## J. Water Conservation / Drought Response

### *§ 180-34.53. Purpose*

The purpose of this Article is to provide for the voluntary and mandatory restriction on the nonessential use of ground water during declared water shortages or water emergencies.

### *§ 180-34.54. Scope*

This Article shall apply to all Clarke County residents and businesses which are served by well water. This Article shall not apply to those residents and businesses which are supplied by a public water supply system by the Town of Berryville or the Clarke County Sanitary Authority.

### *§ 180-34.55. Drought Response Plan*

The Board of Supervisors (Board) shall adopt by resolution the Regional Drought Response and Contingency Plan as stated in the Regional Water Supply Plan.

### *§ 180-34.56. Drought Indicators*

The indicators used to indicate drought severity shall be precipitation, streamflow, and groundwater levels. When at least two indicators exceed the threshold for drought stage determination, as set forth in Regional Drought Response and Contingency Plan as stated in the Regional Water Supply Plan, the Board may declare a specific drought stage.

### *§ 180-34.57. Drought Stages*

The drought stages shall be:

- Drought Watch,
- Drought Warning, and
- Drought Emergency,

as determined by the Board pursuant to the Regional Drought Response and Contingency Plan as stated in the Regional Water Supply Plan.

### *§ 180-34.58. Declaration*

Upon the Board finding that a drought stage exists, the Board may issue a declaration of a drought stage.

The County Administrator, upon the declaration of a drought stage by the Commonwealth of Virginia, may issue a declaration of a drought stage to be in effect until the next regular Board meeting.

*§ 180-34.59. Drought Stage Response*

Upon declaration by the Board or the County Administrator of a Drought Watch or Drought Warning, voluntary conservation measures will be requested of residents and businesses as set forth in the Regional Drought Response and Contingency Plan as stated in the Regional Water Supply Plan.

Upon declaration of a Drought Emergency, mandatory restrictions shall apply as set forth in the Regional Drought Response and Contingency Plan as stated in the Regional Water Supply Plan.

*§ 180-34.60. Waiver of Restrictions*

Upon prior written request by an individual, business, or other water user, the Board of Supervisors, or its designee, may permit less than full compliance with any drought restrictions if good cause can be shown, including evidence that the applicant is affected in a substantial manner not common to other businesses or persons generally.

No waiver shall be granted by the Board or its designee unless the Board or its designee determines that the public health, safety, and welfare will not be adversely affected by the waiver. All waivers granted by the Board or its designee shall be reported at the Board's next regular or special meeting.

*§ 180-34.61. Penalties.*

Any person who shall violate any of the provisions of this Article shall, upon conviction thereof, be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00). Each act or each day's continuation of the violation shall be considered a separate offense.

*Amendments Chapter 180-Article VIII*

2008-05-20

§ 180-34.53 thru § 180-34.61. Water Conservation / Drought Response CC-08-01

2011-09-27

§ 180-34.53 thru § 180-34.61. Water Conservation / Drought Response change title and add reference to the Regional Drought Response and Contingency Plan rather than the local Drought Plan CC-11-04

2023-06-20

§180-34.13 remove “construction or renovation (exceeding \$10,000) of an existing”; change “90 days” to “twelve (12) months” CC2023-01

§180-34.26 add “sanitary collection system and”, “the Treatment Facilities” and “sanitary collection system or” CC2023-01

§180-34.27(a)(6) add “as analyzed by the approved EPA 1664A method or ASTM International Method D7066-04” CC2023-01

§180-34.27(a)(7) add language to clarify definition of floatable oils, fats, and grease CC2023-01

Add §180-34.27(c) CC2023-01

§180-34.34(b)(3) change “reliable” to “accredited” CC2023-01

§180-34.46 add “shutting off of water service or” CC2023-01

Article IX - Double Tollgate Sewer Exclusive Service Area  
[added 2023-06-20]

*§ 180-35. Double Tollgate Sewer Exclusive Service Area*

The properties or portions of properties identified as the Double Tollgate Plan Area (Sub-Areas A, B, and C) in the 2022 Double Tollgate Area Plan adopted by the Board of Supervisors on January 17, 2023 are hereby designated the “Double Tollgate Sewer Exclusive Service Area” for the purposes of this chapter.

*§ 180-36. Double Tollgate Sewer Exclusive Area Sewage Collection System*

Sewage collection lines and facilities to be constructed in Clarke County to serve the Double Tollgate Sewer Exclusive Service Area for transport to a treatment facility in Frederick County are hereby designated the “Double Tollgate Sewer Exclusive Area Sewage Collection System” for the purposes of this chapter.

*§ 180-37. Exclusive Sewer Area*

The Double Tollgate Sewer Exclusive Service Area is hereby designated the exclusive service area for the Double Tollgate Sewer Exclusive Service Area Collection System, and no property outside of the Double Tollgate Sewer Exclusive Service Area shall be served by the Double Tollgate Sewer Exclusive Service Area Sewage Collection System. The Frederick County Sanitation Authority shall be permitted to construct, install, maintain, repair, replace, and operate a water system and sewer system within the Double Tollgate Sewer Exclusive Area by right.

# Chapter 184 Wells

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## Chapter 184 Wells

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[HISTORY: Adopted by the Board of Supervisors of Clarke County 03-20-1990, implemented 5-1-1991; amended through 10-18-1994. Subsequent amendments noted where applicable.]

### *General References*

Chapter 71 Building Construction

Chapter 143 Septic Systems

Chapter 180 Water And Wastewater

### *Code Of Virginia References*

§ 32.1-176.5. - Construction permit; local government authority to require analysis of water.

§ 62.1-254 et seq. - Ground Water Management Act of 1992

### *§ 184-1. Definitions.*

[Amended 2003-08-03; 2004-04-20; 2005-03-15; 2008-12-16]

When used in this chapter, the following terms shall have the meanings given to them:

**ADEQUATE WATER**

The water supply system shall be capable of supplying water in an adequate quantity for its intended usage and meet the standards in Appendix III. <sup>66</sup>

**ALTERNATIVE WATER SUPPLY SYSTEM**

A water supply system which is not a well as defined by this chapter. This includes but is not limited to cisterns, springs and surface waters.

**APPROVED WATER SUPPLY**

A system in which an application to construct or repair has been submitted to the Clarke County Health Department and a permit for construction issued; construction/repairs made according to Virginia Waterworks Regulations and the Virginia Private Well Regulations and/or this chapter; inspections performed; supply found to meet all

applicable regulations; construction found to meet all applicable standards; final approval (record of inspection) issued by Clarke County Health Department to owner of supply.

**BORED WELL**

A well that is excavated by means of a soil auger (hand or power), as distinguished from one that is dug or drilled.

**CONFINED GROUNDWATER**

A body of groundwater overlain by material sufficiently impervious to sever free hydraulic connection with overlying groundwater.

**CONTAMINATION**

The addition of sewage, industrial waste, chemicals or other material harmful to water, whether intentional or not. Sources of sewage may be privies, sanitary sewers, septic tanks, subsurface irrigation or soil treatment areas, seepage pits, sink drains, barnyard wastes, chemical storage tanks, fertilizer stockpiles and like sources by whatever name.

**COUNTY**

The County of Clarke, Virginia.

**DRILLED WELL**

A well that is excavated wholly or in part by means of a drill (percussion or rotary) operated by cutting or abrasion or by use of a water jet.

**DRIVEN WELL**

A well that is constructed by driving a casing, at the end of which there is a drive point and screen, without the use of any drilling, boring or jetting device.

**DUG WELL**

A well that is excavated by means of picks, shovels or other hand tools or by means of a power shovel or other dredging or trenching machinery, as distinguished from one put down by a drill or auger.

**FLOODWAY**

The ten-year floodway.

**FOUNDATION**

Any structural support that includes masonry footings or pier construction, such as for use to support decks and buildings.

**FREE GROUNDWATER**

Groundwater in the zone of saturation extending down to the first impervious barrier.

**GROUND-SOURCE HEAT PUMP WELL  
– [Added 03-08-03]**

Closed-looped: a ground-source heating/cooling pump system that utilizes a sealed pipe buried in the ground that circulates an antifreeze solution with no discharge.

Open-looped: a ground-source heating/cooling pump system that transfers heat to and from ground water pumped from a conventional well after which the water is discharged into a water body, drainage ditch, or directly onto the ground.

**GROUND WATER**

Subsurface water occupying the zone of saturation. (NOTE: Clarke County exhibits karst geomorphology, and surface water and groundwater rapidly interact.)

**HEALTH DEPARTMENT**

The same as Health Director for the Clarke County Health Department.

**HEALTH DIRECTOR**

The Director of the Lord Fairfax Health District or his/her duly authorized agent. The county Health Officer (Environmental Health Specialist) is a duly authorized agent. In all subsequent sections this person will be referred to as the "Agent".

**NEGATIVE COLIFORM TEST**

A negative test as described in the latest edition of Standard Methods for Examination of Water and Wastewater.

**PERSON**

Any individual, firm, corporation, partnership or other entity, singular or plural.

**PITLESS ADAPTER**

A mechanical, gasketed device which is attached through a hole drilled or cut in the

well casing, connecting the pressure tank influent pipe to the pump drop pipe, which is approved for such use by the Water Systems Council, Pitless Adaptor Standard No. 1 (PAS-1), or the National Sanitation Foundation.

**POTABLE WATER**

Water that is safe for human consumption and culinary purposes, free from pathogenic bacteria, protozoa, cysts and other disease producing organisms and free from physiologically harmful chemical and mineral substances.

**PRIVATE WATER SUPPLY SYSTEM**

A water supply system from which water is not available to the public, its location and outlets being on private property and serving not more than one single family dwelling and one dwelling less of than 600 square feet, or an agricultural unit. For the purpose of this chapter, an agricultural unit shall be comprised of the main dwelling, tenant houses for the farm employees and other related farm buildings. Commercial and industrial units referred to herein are those employing fewer than 25 persons where water is not available to the public.

**PUBLIC INDIVIDUAL WELL**

A well serving one commercial or industrial unit.

**PUBLIC WATER SUPPLY SYSTEM**

A water supply system serving three or more dwellings, commercial, agricultural or industrial units, or any system serving more than 25 persons or the public.

**SAFE WATER**

Potable water meeting the quality standards included and described as primary maximum contaminant levels in the Virginia Waterworks Regulations, Virginia Department of Health, as specified in Appendix II (as evidenced by analytic test results certified by a laboratory approved to conduct such tests by the Virginia Department of Health).<sup>67</sup>

<b>SPRING</b>	Refer to Chapter 143 Septic Systems § 143-7. Definitions.
<b>TERMINUS CAP</b>	A well terminus cap which is approved for such use by the Water System Council, Pitless Adaptor Standard No. 1 (PAS-1), or the National Sanitation Foundation.
<b>UNCONSOLIDATED FORMATIONS</b>	A formation composed of mud, silt, clay, soft shale sand or gravel or creviced rock.
<b>WATER SERVICE CONNECTION</b>	The water service connection of a public water supply and shall be considered the effluent connection of the water meter or the effluent pipe of the pressure tank where there is no water meter. The water service connection of a private water supply shall be considered the effluent pipe of the pressure tank.
<b>WATER SUPPLY SYSTEM</b>	The source, works and auxiliaries for collection, treatment and distribution of potable water from the source of supply to the water service connection.
<b>WELL</b>	An artificial excavation that derives water from the interstices of the rocks or soil that it penetrates. Wells referred to are "shallow" or "deep" depending upon whether they derive water from free or confined groundwater respectively. However, wells of depths greater than 50 feet in unconsolidated formations shall be classified as deep wells. Any exploration, testing or production well for whatever purpose constructed is considered a water well and is subject to this chapter, since improper construction can lead to groundwater contamination.
<b>WELL GROUTING</b>	The filling of the annular space between the well casing and the natural earth or rock with a mixture of neat portland cement or bentonite clay and water applied under

pressure from the lower terminus of the grouting to the top of the well.

**WELL LOT**

A parcel of land extending at least 100 feet in a radius about the well location, attached in fee simple and protected by covenants running with the land for the life of the structure the well serves.

*§ 184-2. Applicability; responsibility for compliance; more stringent requirements to prevail.*

- A. The requirements of this chapter shall apply to all new water supply systems, both private and public, and they shall also apply to repairs to, replacements of or additions to existing systems.
- B. Building contractors, plumbers, well diggers, well drillers, property owners and all persons constructing and/or repairing new or existing water supply systems shall be responsible for compliance with applicable sections of this chapter.
- C. Where requirements of this chapter are more stringent than those of the State Health Department, the requirements of this chapter shall prevail.

*§ 184-3. Permit required for all repairs; exemption and criteria for approval.*

- A. As of the effective date of this chapter, no person shall be allowed to repair a new or existing water supply without a written permit from the Clarke County Health Department. The location, source and construction of water supply systems shall conform to the requirements of this chapter and specifications therein pertinent to the type of supply.
- B. Water supply systems for which application for construction permits to the Clarke County Health Department had been made prior to the effective date of this chapter (May 1, 1991) shall be exempt under this provision.
- C. Systems permitted and under construction on or prior to the effective date of this chapter shall be approved based on criteria in effect on the date of construction permit issuance. Repairs to or replacements of these water supply systems, however, are not exempt from this chapter, and the owner must apply for and receive a written permit from the Clarke County Health Department prior to any replacements made to the water supply system. The replacement of a well pump or the replacement of a well seal or cap with an equivalent well seal or cap shall not be considered a well modification.

*§ 184-4. Inspections and recommendations.*

[Amended 2005-03-15]

- A. The Agent may inspect an entire water supply system or any part thereof maintained at any premises in the county for the purpose of determining if such system is being constructed, operated or maintained in a sanitary manner so as to produce potable water. Inspections shall be made at reasonable times and, whenever practical, in the company of the owner or occupant of such premises.
- B. The Agent will be expected to provide recommendations and advice regarding the construction, operation and maintenance of water supply systems.

*§ 184-5. Misuse or neglect of water supply.*

- A. No owner, tenant or lessee of any premises supplied with a potable water supply shall misuse or neglect such supply so as to allow the water therefrom to become contaminated and possibly unsafe for human consumption or other domestic purposes.
- B. Once a water supply is found to be contaminated with potentially harmful microorganisms, chemicals or minerals, steps should be taken to restore potability to the water or to abandon the existing water supply and construct another water supply with the approval of the Clarke County Health Department.

*§ 184-6. Issuance of building permits for any structure requiring water supply.*

No person shall obtain a building permit in the county for any structure the use of which requires a water supply, until one of the following conditions has been met:

- A. Any person applying for a building permit for a structure to be served by a new private groundwater well shall first construct the well. The applicant must obtain a permit from the Health Department for the construction of such well as required by this chapter. Public water supply systems shall be tested for the contaminant levels established in Appendix II. <sup>68</sup> No test is required for private water supplies at the time of applying for a building permit. A copy of all test results shall be provided to the Health Department and the building permit applicant.
- B. For any structure to be served by an existing public water supply system, the building permit applicant must first obtain a statement from the system owner that such public water supply system is in compliance with state and county regulations and that capacity will be available for the applicant at the anticipated time of connection.

*§ 184-7. Permit procedure and conditions.*

[Amended 2005-03-15]

- A. Application for permit. Application for a permit shall be made on forms furnished by the Health Department and shall contain a description of the location and dimensions of the land on which the water supply system is to be constructed. The Department may require such plans and/or specifications as are necessary to determine the adequacy and safety of the system, and such Applications for a permit to construct a public water supply system which will have 15 or more connections can be made through the county Health Department, or the applications can be made concurrently to the Division of Water Programs, Lexington Regional Office, Virginia Department of Health.
- B. Approval or denial of permit. When the Agent is satisfied that a proposed water supply system can be constructed in accordance with provisions of this chapter, he shall issue a written permit to proceed with construction. When the Agent determines that a proposed water supply system cannot meet the requirements of this chapter and there are no other adequate alternatives, he shall deny, in writing, a permit and specify therein the reason for denial.
- C. Construction of system. No construction of and/or repairs of or replacements to a water supply system may take place without a valid signed permit from the Clarke County Health Department, upon which measurements and construction standards have been specified.
- D. Changes in conditions. Material changes in site conditions, such as site grading, sewage disposal system location changes, etc., under which a permit was issued shall void such permit. No person shall proceed with construction until such time as written approval for the changes has been obtained from the Health Department, provided that such changes can be approved in accordance with the provisions of this chapter.
- E. Voidance of permit. Permits shall be null and void after 18 months from the date of issuance, unless extended for additional periods not to exceed 18 months, in writing, by the Health Director.

*§ 184-8. Fees.* <sup>69</sup>

The Board of Supervisors shall set by resolution such fees as it deems necessary and reasonable to defray the cost of permits and/or licenses, inspections and testing as are required to be issued under this chapter.

*§ 184-9. Location of water supplies.*

[Amended 1999-08-17; 2008-12-16; 2022-12-20]

All water supply systems shall conform to the following site requirements:

- A. No water supply for human consumption shall be located within any building except a separate structure housing pumping equipment.



- B. New water supplies shall be protected from surface wash or flooding by suitable sloping or ditching of ground surfaces or by suitable dikes or curbs. Positive surface drainage should be provided away from the well to prevent surface runoff from entering the wellborne hole prior to grouting the well casing. Water supply systems shall not be located in ground swale areas or floodways which are subject to surface runoff and/or flooding.
- C. All water supplies shall be located at minimum distances from known sources of contamination as set forth in Appendix I Table I Minimum Safe Distances. <sup>70</sup>
- D. All water supplies shall be located on the premises consistent with the general layout, topography and surroundings, including abutting lots.
- E. Any well which is the water source for a private water supply system shall be located within the boundary of the lot it serves. Easements for use of a well located outside of the boundary of the lot it is intended to serve shall only be permitted with approval of a variance in accordance with Section 184-15, Appeals and Variances.
- F. Any well which is the water source for a public water supply system shall be located on a well lot with lot maintenance provided by the entity or person operating the water system. No fertilizer, insecticide, herbicide or other chemical may be applied to any well lot.
- G. No well shall be located in drainage ways or sinkholes. (See Appendix I Table I Minimum Safe Distances.)
- H. Replacement and repairs of existing wells, may encroach on minimum separation distances for site features listed in Table I, so long as they are no closer to those features than the existing well, and so long as the encroachment is not likely to cause a significant threat to public health or the environment as determined by the Lord Fairfax Health District Environmental Health Manager. [Amended 1999-08-17]
- I. Existing Wells may not be encroached upon by know contamination sources as set forth in Table I in such a manner which exceeds current location conditions.
- J. Well Separation. Any new well installed shall be a located a minimum of 100 feet from any other well. This requirement shall not apply to any lot or parcel recorded prior to December 16, 2008, if such lot or parcel is not sufficient to accommodate this separation distance, as determined by the Clarke County Health Department. However, the maximum amount of separation possible shall be provided.

*§ 184-10. General requirements.*

[Amended 2003-08-19; 2005-03-15; 2008-12-16]

- A. Report on completed well/water system required. A complete report shall be made on each well, including dry and those not meeting yield requirements, and such a report shall be supplied to the owner and the Clarke County Health Department by the well driller. In complete reports will not be accepted. Such report shall include at minimum the following:
- (1) The type, diameter and length of the casing.
  - (2) The total depth of the well.
  - (3) The standing (static) water level; measured with an electric tape; that is, the water depth below the ground surface when not pumping.
  - (4) The yield of the well in gallons per minute and the level of the water surface when pumped at the designated rate (production level).
  - (5) The number of hours the pump is operated at a stipulated rate during the pumping test.
  - (6) A record of any other pumping performance.
  - (7) A log of materials encountered during drilling.
  - (8) The physical appearance of the water at the end of the final pumping test.
  - (9) The depth in feet where the pump is set in the well.
  - (10) Depth of the water zones
  - (11) Depth of bedrock
  - (12) Depth of grout and grout material
  - (13) Amount of water per water zone
- B. When required, pump test results shall be supplied to the owner and the Clarke County Health Department by the drawdown tester.
- C. Wells under construction or repair shall be protected at all times so as to prevent any drainage or foreign matter from entering the casing. When drilling operations are suspended, as overnight, the casing shall be securely covered or capped. Upon completion of drilling, a secure cap or plug shall be placed on or in the top of the casing. Water used for drilling operations or for tempering or cooling of well tools shall be clean and free of contamination.

- D. Disinfection and flushing. Upon completion of construction and/or repairs of any water supply system or following repairs to the pumping equipment, it shall be disinfected and flushed.
- E. Non-acceptable equipment. No pitcher, split-base or chain bucket pump shall be installed on any water supply system.
- F. Cross-connections. Where frost-proof hydrants are used, installed adequate draining shall be provided to prevent possible backflow. Backflow preventers are required. There shall be no cross-connection between a private water supply system and a public water supply system. <sup>71</sup>
- G. Abandoned wells. No person shall use an abandoned or unused well for the purpose of disposal of sewage, sewage effluent or other contaminating material. The owner of any permanently abandoned well shall immediately fill and/or seal the well with cement or bentonite clay or other equally suitable material under supervision of the Agent. Permanent abandonment occurs when a well is not used for a period of two years and/or when the construction of the well no longer meets criteria in this chapter. "Immediately" as used above means within 48 hours of drilling completion if the well to be abandoned yields insufficient water or within 30 days if a previously constructed and operational well is abandoned. Any person who abandons or intends to abandon a well shall obtain a permit from the Clarke County Health Department.
- H. Chemical or physical alteration of wells after drilling.
  - (1) Hydraulic fracturing of wells is prohibited.
  - (2) The use of explosives in wells is prohibited.
  - (3) The use of chemical and biologic additives to remove contaminants and/or to improve well yields may be permitted by the Agent under the provisions of this chapter and shall be considered on a case-by-case basis.
- I. Drilled wells constructed in the bottom of a dug or bored well shall not be approved.
- J. Ground-source heat pumps
  - (1) Open-looped ground-source heat pump wells are prohibited.
  - (2) Closed-loop ground source heat pump system (GSHP) shall:
    - a. be installed by a contractor who has current International Ground Source Heat Pump Association (IGSHPA) certification, having completed an IGSHPA training course in the fundamentals of design, installation, and operation of ground source systems, and having passed the IGSHPA certification examination and pipe fusion tests.

- b. The installation specifications for the GSHP system shall conform to the IGSHA installation standards.
- c. Only biodegradable mixtures such as food grade propylene glycol may be used as the circulating fluid for GSHP systems.

*§ 184-11. Specifications for construction of deep wells.*

[Amended 2005-03-15]

A. Construction requirements.

- (1) All casing shall be made up and placed so as to be watertight throughout the depth used. When water is derived from rock formations, the casing shall extend sufficiently far into the rock as to be firmly seated on solid rock, plus a minimum of 10 feet.
- (2) The well casing shall terminate at least 12 inches above the natural grade surface (preferably 18 inches), and no well casing shall terminate in a pit, provided that this shall not apply to private wells where proper topographical conditions exist so as to permit a four-inch gravity flow drain and where the pit walls and floor and ceiling are constructed so as to be waterproof and preclude entrance of groundwater or surface water.
- (3) Separate structures which are constructed to house the water supply system and/or pumping equipment shall have an impervious floor, raintight walls and roof and adequate ventilation. The floors shall be four inches in thickness and shall be sloped away from the well casing with a slope of not less than one inch in eight feet. Where necessary, such structures shall be provided with an adequate drain. The well terminus shall be sealed with a sanitary seal, gasketed and protected from insects or, if utilizing a pitless adapter, shall use an approved pitless adapter and terminus cap.

B. Specifications and classes of drilled wells. All drilled wells shall be cased and grouted in accordance with the following classifications. Grouting shall conform to hereinbelow prescribed grouting procedures. No work shall be considered completed in accordance with the provisions of this chapter unless and until grouting is complete, and such shall be done within 10 days after setting of the casing.

- (1) Class I wells shall be cased and grouted to solid rock with a minimum casing and grout of 100 feet.
- (2) Class IIIA wells shall be cased to solid rock with a minimum casing of 100 feet and a minimum grout of 20 feet and shall only be used where the formation encountered precludes the use of 50 feet of grout.

- (3) Class IIIB wells shall be cased and grouted to solid rock with a minimum casing and grouting of 50 feet.

C. Material specifications.

- (1) The minimum standard of quality for steel casing pipe shall conform to the requirements set forth in Appendix I Table II Casing Pipe Weights and Dimensions, included at the end of this chapter. Only steel casing shall be permitted. For percussion drilled wells, the casing pipe shall be assembled watertight by means of joints welded in accordance with approved practice or by correctly mated drive couplings. Those pipes (ten- and twelve-inch) marked with an asterisk in Appendix I Table II may be used for casing rotary drilled wells, where the casing does not have to be driven, and may be assembled watertight by means of joints welded in accordance with good practice or by correctly mated standard couplings.
- (2) No secondhand or reclaimed pipe shall be used as protective casing in the permanent construction of a well.
- (3) Well casing pipe shall be installed so that there will be no adverse effect on water quality.

D. Free-flowing artesian wells. Every artesian well that flows under natural artesian pressure shall be equipped with a valve which will shut off the flow completely or be plugged for permanent abandonment.

- (1) The water well contractor completing such well shall be responsible for installation of a valve to control natural artesian flow or for other means of preventing waste of groundwater.
- (2) Subsequent to construction, the well owner shall be responsible for maintenance of the valve or other means of preventing waste of groundwater.

E. Applicability of well classes. Wells for the following uses shall, at minimum, be constructed to the following classifications unless unique site and geologic conditions approved by the Health Director prevent such construction.

- (1) Private water supply system: Class IIIB or Class IIIA.
- (2) Public water supply system and private water supply systems: Class IIIB or Class IIIA.
- (3) Public multiuser water supply system: Class I.

*§ 184-12. Appurtenances.*

- A. Each well installation shall be provided with the following appurtenances or their equivalent:
  - (1) A sample tap.
  - (2) A well vent.
  - (3) A pressure-relief valve.
  - (4) A gate valve.
  - (5) A check valve where required.
  - (6) An electrical disconnect switch on the pump power supply; a plug receptacle connection will not be considered a disconnect switch.
- B. Public wells shall be equipped with a water meter and the remote meter indicator shall be located on the exterior of the building in an easily accessible location.

*§ 184-13. Grouting procedure.*

- A. The annular space or any opening surrounding a well casing shall be completely filled with neat portland cement grout or with approved bentonite clay/cement grout from an elevation above the established grade of the surface at the well into a continuous impervious formation or to a safe depth below the probable present or future operating water level. The minimum width of the annular space for grouting shall provide a clearance of at least 1 1/2 inches. Grouting space shall be at least three inches larger than the outside diameter of the casing.
- B. The annular space between the inner or protective casing and the outer casing or hole shall be filled with cement or approved bentonite grout. Any outer casing installed shall be removed during the grouting procedure unless approved by the Health Director prior to the grouting procedure.
  - (1) Cement grout shall be proportioned of cement and the minimum quantity of water (five to 6 1/2 gallons per cubic feet of cement) required to give a mixture of such consistency that it can be forced through the grout pipe.
  - (2) Bentonite clay grout may be used when installed by a method approved by the Virginia Department of Health. Bentonite clay must be specified by the manufacturer for the purpose of grouting water wells.
- C. Grouting shall be done by a method which forces the grout from the bottom of the space to be grouted towards the surface. The method of mixing and the consistency of the grout shall ensure that the grout fills the annular space. A suitable retainer, packer or plug shall be provided at the lower terminus of the grouting so that grout will not leak

through into the water-bearing formation. The grouting shall be done continuously and in such a manner as will ensure the entire filling of the annular space in one operation. No drilling operation or other work in the well shall be permitted within 72 hours after the cement grouting of casings. If high early strength portland cement is used, this period may be reduced to 24 hours.

*§ 184-14. Disinfection and testing prior to use.*

General specifications for disinfecting wells, water service pipelines, pneumatic storage tanks and other water conveying or storage devices shall be as follows:

- A. Disinfection of the entire water system, per Clarke County Health Department standards, shall be performed upon completion of plumbing fixture installation and after final plumbing inspection by the Clarke County Building Department when water system and plumbing system installation are not concurrent.
- B. After operating the pump and after removal of disinfection residual, a sample shall be collected for examination by a state-certified laboratory for coliform bacteria and nitrates and, prior to placing the system into service, shall be found negative for coliform bacteria and have nitrate levels below the Environmental Protection Agency (EPA) standard.
- C. Property owners or the person taking the sample shall be required to submit an affidavit that he/she has followed proper sampling procedures as defined by the Clarke County Health Department and has submitted a sample from the well for which approval of operation from the Clarke County Health Department is requested.
- D. If testing for safe water after drilling the well identified the presence of primary (harmful) contaminants, a test for that contaminant shall be conducted to confirm the adequacy of treatment and the treatment method found to reduce the occurrence of the contaminant below maximum acceptable levels prior to placing the system into service. Private wells shall be considered contaminated if coliform is present or nitrate levels exceed EPA standards. Public wells shall be considered contaminated if any of the substances tested for exceed EPA standards.

*§ 184-15. Appeals and variances.*

[Amended 2000-04-18; 2022-12-20]

- A. Board of Septic and Well Appeals. The Board of Septic & Well Appeals, as described in Code of Clarke County Chapter 143 (Septic Systems), shall hear appeals of administrative interpretations and applications for variances to this chapter.
- B. Appeals

1. Any appeal shall be filed within 30 days of the issuance date of the order, requirement, decision, or determination.
2. Any person seeking an appeal shall apply in writing to the Board. Such application shall include:
  - a. A citation to the order, decision, determination or regulation to which an appeal of interpretation or application is requested;
  - b. Any relevant analytical results, including results of tests conducted pursuant to the requirements of this article;
  - c. Other information, if any, deemed pertinent by the applicant; and
  - d. Such other information as the Board may require.
3. The Board shall act on any appeal request within 60 calendar days from the Board's first review.
4. All appeals shall be consistent with the intent of this article. The Board may attach reasonable conditions consistent with the intent of this article in granting appeals.
5. No appeal may be heard except after notice and hearing as required by Code of Virginia §15.2-2204.
6. An appeal of a decision of the Board shall be made within 30 days to the Board of Supervisors. Any appeal of the decision of the Board of Supervisors shall be made within 30 days to the Circuit Court of Clarke County.
7. The concurring vote of two members shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer, or to decide in favor of the applicant on any matter upon which the Board is required to pass under this chapter, or to effect any variance from the regulations of this chapter.

## C. Variances

1. Variance Criteria
  - a. In order to be eligible for a variance, the private water supply system for which the variance is requested serves or is planned to serve one of the following:
    - i. An existing single-family dwelling or structure serving an existing business.



- ii. An existing single-family dwelling or structure serving an existing business that has been destroyed by circumstances beyond the control of the owner or occupant of the building within one year of the variance application.
  - iii. A building that is eligible to be on the Virginia Landmarks Register or the National Register of Historic Places or is eligible to be a contributing property in an historic district listed in the Virginia Landmarks Register or the National Register of Historic Places.
  - iv. The variance is requested so as to provide for new private water supply systems replacing existing systems that are more consistent with the regulations of this article. An existing single-family dwelling or structure serving an existing business must be located on the property with the existing water supply system.
  - v. The entire parcel of land has been placed under a permanent conservation easement.
2. Variances shall be approved to alleviate a clearly demonstrable hardship approaching confiscation involving existing single-family dwellings or structures serving an existing business as distinguished from a special privilege or self-imposed (elective) convenience or option sought by the applicant.
3. Variance Procedure.
- a. Any person seeking a variance shall apply in writing to the Board. Such application shall be in writing and shall include:
    - i. A citation to the order, decision, determination or regulation from which a variance is requested.
    - ii. Identification of which of the variance criteria in paragraph C(1) applies;
    - iii. The nature of the variance requested.
    - iv. Any relevant analytical results, including results of tests conducted pursuant to the requirements of this article.
    - v. Statements or evidence why the public health and welfare as well as the groundwater resources would not be degraded if the variance were granted.

- vi. Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on public health and welfare or groundwater resources.
  - vii. Other information, if any, deemed pertinent by the applicant.
  - viii. Such other information as the Board may require.
- b. The Board of Septic and Well Appeals shall act on any variance request within 60 calendar days of receipt of the request.
  - c. The Board may attach reasonable conditions consistent with the intent of this article in granting variances. Compliance with conditions shall be required for the life of the system for which the variance is issued, unless specified otherwise by the Board.
  - d. No variance may be granted except after notice and hearing as required by Code of Virginia §15.2-2204. Posting and notification of adjacent property owners are waived for existing failed systems requiring emergency repairs, which alter the configuration of the existing system as determined by the county Health Department.
  - e. A denial of a variance, or an appeal from the terms and conditions set forth in the variance, shall be made within 30 days to the Board of Supervisors. Any appeal of the decision of the Board of Supervisors shall be made within 30 days to the Circuit Court of Clarke County.

*§ 184-16. Notice to correct.*

If upon any inspection the Health Director or his authorized agent finds a violation of any of the provisions of this chapter and/or the provisions of the permit issued under it, he shall direct the person to whom the permit was issued and/or the installer of the system and/or the current owner, by written notice, to make the necessary corrections within such reasonable period as is specified therein. No person shall fail to comply with such notice within such period.

*§ 184-17. Equitable remedies.*

In addition to the penalty provided by local code or state statute, the Health Director may initiate injunction, mandamus, abatement or any other appropriate action to prevent, enjoin, abate or remove a violation of any of the provisions of this chapter.

*§ 184-18. Violations and penalties.*

Fines and other penalties may be levied for violations of any of the provisions of this chapter.

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*Appendix I Tables*

Table I Minimum Safe Distances  
[Amended 2008-12-16]

Sources of Contamination	Location of Wells	
		Minimum Distance (feet)
Chemical storage tanks		100
Feedlots, hog lots, poultry houses		100
(Petroleum) storage tanks		100
Roads surface (public)		25
Septic tanks		100
Absorption field		100
Cesspools, pit privies, etc.		150
Intermittent streams, active mill races (even if sporadic use)		50
Other sewers		35
Perennial streams, surface water bodies such as ponds, lakes		100
Property lines		10
Foundation of buildings of solid masonry		50
Foundation of buildings of wood framing or exterior		50
Sinkholes and cave entrances		100
Chemically Termite treated foundations		100
Cemetery		100

**NOTES:**

In such installations where Class I wells are constructed, the distance between the potential sources of pollution may be reduced, provided that geological conditions indicate that such would be satisfactory and in accordance with the Division of Engineering, State Health Department, standards for location of public supplies in relation to potential sources of contamination.

Table II Casing Pipe Weights and Dimensions

Size (Inches)	Weight Threads & Couplings (lbs./ft.)	Pipe Thickness (Inches)	Pipe Diameter (Inches)
External		Internal	
4	10.89	.237	4.500
6*	13.00	.188	6.625
6	19.18	.280	6.625
8*	17.80	.188	8.625
8	29.35	.322	8.625
10*	32.75	.279	10.750
10	41.85	.365	10.750
12*	45.45	.330	12.750
12	51.15	.375	12.750

NOTES:

☐ See § 184-11C(1).

Table III- Feet of Storage Required in Well to Meet Total Well Water Supply Standard

	Nominal Well Sizes (inches)						
	2	3	4	5	6	7	8
1.0	--	--	--	375	255	190	150
1.5	--	--	--	315	220	160	125
2.0	--	--	400	255	180	130	100
2.5	--	--	310	200	140	100	80
3.0	--	380	220	140	95	70	55
3.5	--	220	125	80	55	40	35
4.0	125	53	35	15	15	10	10

NOTES:

Caution: Table III is intended to aid in determining minimum well storage requirements. Additional storage may be necessary to adequately protect the pump during normal operation.

*Appendix II Maximum Contaminant Levels*

The current drinking water standards, exclusive of the eight volatile chemicals, are maximum contaminant levels contained in the Commonwealth of Virginia/State Board of Health, Waterworks Regulations. The eight volatile organic chemicals (VOC's) are based on current maximum contaminant levels as defined by the United States Environmental Protection Agency.

*Appendix III Test Methodologies and Protocols*

Wells shall be constructed and tested according to the following:

- A. Well development. The permittee shall develop a well according to the following requirements: Well development shall consist of cyclic or intermittent pumping or surging, or both, either mechanically or by using water or air under pressure. Development shall continue until all formation cuttings, mud, drilling fluids and additives are removed from the well.
- B. Every well shall be developed by the well driller in order to obtain the full yield of the well and a water quality that meets all of the following requirements:
  - (1) The well driller or licensed plumbing contractor shall conduct yield and, when appropriate, drawdown tests as specified in Rules for the Construction of Groundwater Wells, Virginia Water Control Board, and shall report results on Form GW2 to the Health Director or the Health Director's designated agent.
  - (2) Pumping equipment.
    - (a) The pump capacity shall be consistent with the intended use and yield characteristics of the well.
    - (b) A lightning protective device shall be provided for submersible pumps.
    - (c) Installation of the pump shall be in accordance with manufacturer's recommendations and in accordance with Water Systems Handbook, Water Systems Council.
    - (d) The well shall be vented at the well head to allow for pressure changes within the well due to pumping. Well vents shall be positioned to prevent the entrance of surface water, dust, insects or other foreign material.
    - (e) Upon completion of installation, the person installing the pump (i.e., well driller, pump installer or plumber) should disinfect the well, pump and water supply system. The water supply system shall be disinfected immediately upon completion of construction.
  - (3) Observation wells. The Health Director may specify special construction standards for wells installed for the sole purpose of monitoring water quality or water levels.
  - (4) Domestic water supply system standard.

- (a) A well or double well system shall produce at least one gallon per minute.
- (b) The water supply system shall produce not less than 500 gallons of water in a two-hour period, at least once each day.
- (c) If the sustained yield of the well is not capable of meeting the total water supply standard, sufficient storage shall be provided.
- (d) Well storage.
  - (1) [1] If well storage is selected, the amount of storage is calculated by subtracting the well yield, as determined in Subsection B(4)(b) above, over a two-hour period from 500 gallons.
  - (2) [2] The quantity of water in storage in the well is equal to the number of feet between the un-pumped static water level and the level of drawdown as determined in the pump test at Subsection B(5)(b)[3], multiplied times 1.5 gallons per foot for a six-inch well or 0.65 gallons per foot for a four-inch well.
  - (3) [3] Example of determining required storage. If a six-inch well produces a constant one gallon per minute, it will produce 120 gallons in a two-hour period. The well storage, therefore, shall provide 380 gallons (500 gallons - 120 gallons = 380 gallons). To provide this quantity, the well shall contain 253 feet of water in storage (380 gallons - 1.5 gallons per foot = 253).
  - (4) [4] Table III has been provided to assist in determining the number of feet of water contained in well storage that is required to meet the well water supply standard.
  - (5) Minimum yield for domestic wells.
- (e) Each well shall be tested and approved for yield in accordance with Subsection B(5)(b) below. Replacement wells, servicing an existing improved property, are exempt from this requirement.
- (f) Yield test. All wells drilled with a yield determined to be less than five gallons per minute by Subsection B(1) above shall be tested as provided below:
  - (1) The pump and related equipment shall be placed in the well and the static water level measurement recorded.

- (2) Pumping shall begin at a rate of withdrawal greater than five gallons per minute until the water level drops to a point close to the bottom of the well.
  - (3) When the water level reaches this point, the pump rate shall be adjusted so that the water level remains constant (in effect, pumping out any water which is flowing into the well).
  - (4) Measure and record the volume of water discharged (flow meter reading) and water level (with an electric tape) at fifteen-minute intervals throughout the test.
  - (5) Discharge water at least 50 feet from the well and on-site disposal systems.
  - (6) A single interruption of pumping of up to 15 minutes due to equipment failure or other unusual circumstances will be permitted, but the amount of downtime shall be made up by additional pumping at the end of the test.
- (g) The criteria for approval shall be a minimum yield of one gallon per minute for six hours of continuous pumping after the well has been pumped out as provided in Subsection B(5)(b)[2] above.
- (h) The pump test can be terminated early and the well yield will be considered adequate if:
- (1) A well cannot be pumped out after three hours' pumping as provided in Subsection B(5)(b)[2].
  - (2) A well yields an average of 2.5 gallons per minute or greater for three hours' continuous pumping, after the well has been pumped out as provided in Subsection B(5)(b)[2].
- (i) The Health Director may permit two wells to be connected to meet the minimum yield requirement. The well to be connected shall be tested in accordance with the procedure described in Subsection B(5)(b) above, and each shall demonstrate a yield of 0.5 gallons per minute or greater throughout the entire uninterrupted drawdown phase.
- (j) All samples to be analyzed for constituents described in Appendix II shall be taken by representatives of the Lord Fairfax Health District.

### *Amendments Chapter 184*

1999-08-17

§ 184-9-H, Location of Water Supplies, so as to allow repair or replacement wells closer to site features than normally allowed.

2000-04-18

§ 184-4-16 appeals and Variance Process so as to delete this section and add a reference to Septic Ordinance revised § 143-11.

2003-08-19

§ 184-1 Definitions – add definition for ground-source heat pump well – closed loop and open loop; § 184-10 General Requirements add J prohibiting open-loop ground-source heat pump wells.

2004-04-20

§ 184-1 Definitions – remove definition of Spring and reference to definition in § 143.7

2005-03-15

§ 184-1, -4, -7, -10, -11, -12 General changes to clarify and update. § 184-12 Specifications for construction of shallow wells deleted and subsequent sections renumbered.

2008-12-16

§ 184-1, -9, -10, Appendix 1 Table 1, 1 add foundation and modify private water supply system; -9 add j. well separation; -10 h 1 modify to read is prohibited. J. change title and add closed loop; Table 1 add comment to perennial and intermittent streams and add “Chemically” termite....

2022-12-20

§ 184-9 Language added to require all wells to be located within the boundaries of the lot that they are intended to serve unless a variance is obtained. § 184-15 incorporate detailed language from Chapter 143 (Septic Systems) regarding review of appeals and variances.

## *References*

<sup>66</sup> Editor's Note: Appendix III is included at the end of this chapter.

<sup>67</sup> Editor's Note: Appendix II is included at the end of this chapter.

<sup>68</sup> Editor's Note: Appendix II is included at the end of this chapter.

<sup>69</sup> Editor's Note: Fees are on file in the office of the County Administrator.

<sup>70</sup> Editor's Note: Table I is included at the end of this chapter.

<sup>71</sup> Editor's Note: See Ch. 180, Water and Wastewater, Art. III, Cross-Connection and Backflow Prevention.

<sup>72</sup> Editor's Note: See Ch. 1, General Provisions, Art. I.



# **Chapter 189 Lighting In Agricultural, Forestal, and Rural Residential Areas – REPEALED**

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## **Chapter 189 Lighting In Agricultural, Forestal, and Rural Residential Areas – REPEALED**

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[HISTORY: Adopted by the Board of Supervisors of Clarke County January 16, 2007. Repealed by the Clarke County Board of Supervisors 10-19-2021]

### **Amendments Chapter 189**

2021-10-19

Chapter 189 Lighting in Agricultural, Forestal, and Rural Residential Areas was repealed by the Clarke County Board of Supervisors. Previous versions may be requested from County Administration.

## Chapter 200 Zoning & Subdivision Ordinance

Chapter 200 can be found at [www.clarkecounty.gov/government/planning-zoning](http://www.clarkecounty.gov/government/planning-zoning) or in the Planning & Zoning Office.