

Chapter 2

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State law reference(s)--The Virginia Freedom of Information Act, Code of Virginia, § 2.1-340 et seq.; State and Local Government Conflict of Interests Act, Code of Virginia, § 2.1-639.1 et seq.; Virginia Public Procurement Act, Code of Virginia, § 11-35 et seq.; counties, cities and towns, Code of Virginia, tit. 15.2; Virginia Public Records Act, Code of Virginia, § 42.1-76 et seq.

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ARTICLE I. IN GENERAL**Sec. 2-1. Fiscal year.**

The fiscal year of the town shall begin on July 1 and end on June 30 of the following year.

(Code 1981, § 3-1)

Sec. 2-2. Form of budget.

The form of the budget for the town shall be the standard municipal budget form recommended by the auditor of public accounts of the commonwealth and the Virginia Municipal League.

(Code 1981, § 3-2)

Secs. 2-3—2-35. Reserved.**ARTICLE II. COUNCIL*****DIVISION 1. GENERALLY****Sec. 2-36. Powers, duties and functions.**

The powers, duties and functions of the town council shall be as set out in the Charter, town ordinances and state law.

(Code 1981, § 2-10)

Sec. 2-37. Use of Robert's Rules of Order.

The meetings of the town council, except as its own rules of procedure may otherwise provide, shall be conducted according to Robert's Rules of Order, Newly Revised.

(Code 1981, § 2-11)

Sec. 2-38. Records of proceedings.

The town council shall keep an accurate record of its proceedings, which record shall be open to inspection by members of the public during the regular office hours of the town clerk.

(Code 1981, § 2-12)

***Charter reference(s)**--Town council, §§ 3 et seq., 15 et seq.
Cross reference(s)--Officers, § 2-181 et seq.

Secs. 2-39—2-60. Reserved.

DIVISION 2. MEETINGS GENERALLY

Sec. 2-61. Date and time of regular meetings.

The town council shall meet in regular session on the second Tuesday of each month at 7:00 p.m., or at such other times as may be fixed by resolution; provided that at least one regular meeting per month shall be held as required by section 16 of the Charter. When the second Tuesday of a month falls on a legal holiday, or the town election day, the town council shall advance the regular meeting to the next day following, and notice of such advancement shall be published at the town hall in an area accessible to the public and by such means as the town council may select. When a regular or special meeting cannot be held at the scheduled time due to inclement weather, the mayor shall fix a date and time for the meeting to occur. Matters advertised for a meeting rescheduled due to inclement weather need not be readvertised if the advertisement stated that the meeting may be rescheduled in the event of inclement weather.

(Code 1981, § 2-13; Ord. O-2004-12, § 2-61; Ord. O-2007-07, § 2-61)

Sec. 2-62. Special meetings.

Special meetings of the town council may be called, in accordance with section 16 of the Charter, at any time provided that all members are duly notified in writing a reasonable time prior to such meeting as to the time and place for the meeting and the business to be considered during such meeting.

(Code 1981, § 2-14)

Sec. 2-63. Quorum.

In accordance with section 16 of the Charter, a quorum for the transaction of business shall consist of three members of the town council and the mayor, or in the absence of the mayor, three members of the town council. If a quorum cannot be obtained, there shall be no meeting.

(Code 1981, § 2-15)

Sec. 2-64. Mayor to preside; voting and veto powers of mayor.

In accordance with section 6 of the Charter, the mayor shall preside at all meetings and sessions of the town council. The mayor shall have no right to vote; except in every case of a tie vote, the mayor shall be entitled to vote and speak as other members of the town council, but shall not have power of veto.

(Code 1981, § 2-19)

Sec. 2-65. President pro tempore.

If the mayor is absent, or if his office is vacant, during any meeting of the town council, the vice-mayor shall serve as presiding officer. In the absence of the vice-mayor, the town council shall elect one of its members to serve as president pro tempore to preside at such meeting. Such member shall continue to have the right to vote in the council.

(Code 1981, § 2-20)

Sec. 2-66. Introduction of ordinances and resolutions.

Ordinances and resolutions and their amendments shall be introduced in writing.

(Code 1981, § 2-37)

Sec. 2-67. Recognition of members.

Recognition of members of the town council shall be requested by addressing the chair. When recognized by the chair, a member shall confine remarks to the question under debate, avoid personalities, and refrain from impugning the motives of any other member's argument or vote. No member shall address the chair or demand the floor while any vote is being taken.

(Code 1981, § 2-29)

Sec. 2-68. Question of order.

Any member may interrupt town council proceedings to raise a point of order. The pending business shall be suspended thereupon, and the chair shall rule on the point of order after affording both sides an opportunity to be heard. Such ruling shall be subject to being overruled by majority vote upon a duly made and seconded motion. A tie vote sustains the ruling of the chair.

(Code 1981, § 2-30)

Sec. 2-69. Limitation on debate.

No member shall be allowed to speak more than once upon any one subject until every other member choosing to speak on the subject shall have spoken. The total time during which any business shall be considered may be limited by a majority vote of members present and voting. A motion to so limit debate is in order at any time.

(Code 1981, § 2-31)

Sec. 2-70. Citizen time.

(a) Members of the public may present in writing or appear and be heard briefly, not to exceed

five minutes, under the agenda item entitled "Citizen Time," for the purpose of directing attention to or requesting action on matters not included on the prepared agenda. Such appearances shall be limited to a short resume of the situation or problem involved and the action desired. At the conclusion of such appearances, all matters discussed shall be duly recorded and made a part of the official record by the town clerk and referred to appropriate town officials for investigation and report.

(b) Citizens may address issues when they come up on the agenda if advance notice is given during "Citizen Time."

(Code 1981, § 2-32)

Sec. 2-71. Excusing members from meetings.

No member shall be excused from attendance at a town council meeting after the meeting has been called to order unless he has been excused by the presiding officer.

(Code 1981, § 2-16)

Sec. 2-72. Adjourned sessions.

Any meeting of the town council may, by majority vote, be continued or adjourned to any future time certain which occurs prior to the beginning of the next succeeding regular meeting.

(Code 1981, § 2-17)

Sec. 2-73. Executive or closed meetings.

An executive or closed meeting of the town council may be held in accordance with the Virginia Freedom of Information Act, Code of Virginia, § 2.1-340 et seq.

(Code 1981, § 2-18)

Secs. 2-74--2-95. Reserved.

DIVISION 3. PRIVILEGES OF THE FLOOR

Sec. 2-96. Members of council.

During town council meetings, councilmembers shall observe order and shall not delay or interrupt the proceedings nor refuse to obey the orders of the presiding officer or the rules of the council. Every councilmember desiring to speak shall address the chair and, upon recognition by the presiding officer, shall limit remarks to the question under debate and shall avoid indecorous language. Every councilmember desiring to direct questions to the administrative staff shall first seek recognition from the mayor.

(Code 1981, § 2-21)

Sec. 2-97. Members of town staff.

Members of the town staff shall observe the same rules of procedure and decorum applicable to members of the town council. The presiding officer shall have the authority to preserve decorum in meetings as far as staff members and town employees are concerned. Any staff member desiring to address the town council may be recognized by the presiding officer. When recognized, remarks shall be limited to the matter under discussion. No staff member, other than the staff member having the floor, shall enter into any discussion without permission of the presiding officer.

(Code 1981, § 2-22)

Sec. 2-98. Members of the public.

(a) Any member of the public desiring to address the town council may be recognized by the presiding officer. Name and address shall be stated in an audible tone for the record, and remarks shall be limited to the question under discussion. Once a motion is made, the floor shall be closed to further citizen discussion.

(b) Citizens attending town council meetings shall observe the same rules of propriety, decorum and good conduct applicable to members of the town council. Any person making personal, impertinent and slanderous remarks or who becomes boisterous while addressing the town council or while attending the council meeting may be removed from the room by the police department upon request of the presiding officer. Aggravated cases may be prosecuted on appropriate complaint signed by the presiding officer. If the presiding officer shall fail to act, any member of the council may move to require the presiding officer to act to enforce the rules.

(Code 1981, § 2-23)

Secs. 2-99--2-120. Reserved.

DIVISION 4. ATTENDANCE OF OFFICERS AND EMPLOYEES

Sec. 2-121. Town manager.

The town manager shall attend all meetings, hearings and sessions of the town council. The town manager shall advise and make recommendations to the council on all agenda items as requested by the presiding officer and shall be afforded floor privileges in the same manner as councilmembers.

(Code 1981, § 2-24)

Sec. 2-122. Town clerk.

The town clerk shall be the clerk of the council and shall perform the duties in connection with

such office. The town clerk or his designee shall attend all meetings, hearings and sessions of the council as requested.

(Code 1981, § 2-25)

Sec. 2-123. Town attorney.

The town attorney shall attend meetings, hearings and sessions of the council as requested, either in person or by a deputy. Any member of the council may call upon the town attorney, through the mayor, for an oral or written opinion on any question of law, but not on any question of parliamentary procedure. The town attorney shall be afforded the privilege of the floor to explain any matter of legal significance to the pending business.

(Code 1981, § 2-26)

Sec. 2-124. Town treasurer.

The town treasurer shall attend all meetings of the council and provide monthly reports of the receipts and disbursements in the town's accounts.

(Code 1981, § 2-27)

Sec. 2-125. Town sergeant.

The town sergeant or his designee shall attend regular meetings of the council and other meetings as requested.

(Code 1981, § 2-28)

Secs. 2-126--2-145. Reserved.

DIVISION 5. ORDER OF BUSINESS AND AGENDA ITEMS

Sec. 2-146. Order of business.

The business of all regular meetings of the town council shall be transacted in the following order, except that the town council by a majority vote of members present and voting may change the order:

- (1) Citizen time.
- (2) Approval of minutes.
- (3) Mayor's report.

(4) Reports of boards, commissions and committees.

(5) Agenda items.

(6) Adjournment.

(Code 1981, § 2-33)

Sec. 2-147. Procedure for adding items.

No item that does not appear on the agenda for a regular council meeting may be proposed for consideration unless a member of the town council determines that it is a matter of such nature that its consideration cannot be postponed to the next regular town council meeting.

(Code 1981, § 2-34)

Sec. 2-148. Preparation; delivery to members.

The town clerk and the mayor shall prepare a written agenda for each meeting of the town council. All items to be considered shall appear on the written agenda, which shall be available to each member of the council not later than Friday prior to the regular meeting.

(Code 1981, § 2-35)

Sec. 2-149. Items to be included.

(a) The town clerk shall place on the agenda for each town council meeting all items which, after consultation with the mayor, are determined to be required or are appropriate for council consideration.

(b) The mayor and each member of the council shall have the right to have included on any prepared agenda such items as they deem appropriate for council consideration. The mayor and members of the town council desiring to submit items for inclusion on the prepared agenda shall notify the town clerk of the nature of the matter they wish considered in sufficient detail as to enable the item to be properly researched. Such notification shall be written and shall be delivered to the town clerk's office by Wednesday prior to the regular town council meeting. All materials pertinent to items in the agenda shall be distributed to members with the prepared agenda.

(c) The mayor has the right to defer agenda items with the concurrence of the councilmember presenting the item.

(Code 1981, § 2-36)

Secs. 2-150--2-180. Reserved.

ARTICLE III. OFFICERS*

Sec. 2-181. Duties, powers and functions of mayor.

(a) The mayor shall have such duties, powers and functions as set out in the Charter, the town ordinances and in state law.

(b) In cases of litigation in which the town is interested, the mayor, with the concurrence of the council, shall execute, in association with such other persons as may be procured, appeal bonds, injunction bonds, suretyship for costs, and all other legal obligations that may be necessary for the due protection of the interests of the town in such cases before the courts; and the faith of the town is pledged for the due indemnification of the parties who make such engagements or obligations on its behalf.

(c) All deeds, leases, contracts, conveyances and agreements of any description, in order to be true and binding instruments of the town, must be authorized by the council, approved and signed by the mayor and attested by the clerk of the council. Whenever the seal of the town is required for any writing, the clerk of the council shall have authority to affix the seal to such writing. Any duly authorized writing executed as proved by this section shall be the true and binding act and instrument of the town.

(Code 1981, § 2-1)

Charter reference(s)--Mayor, §§ 3, 4, 6, 8-10.

Sec. 2-182. Duties, powers and functions of vice-mayor.

At its first meeting following the regular municipal election for councilmembers, the council shall elect one of its members as vice-mayor, who shall preside at meetings in the absence of the mayor and may discharge any other duty of the mayor during the mayor's absence or disability.

(Code 1981, § 2-2)

Charter reference(s)—Vice-mayor, §§ 7, 9.

Sec. 2-183. Duties, powers and functions of town manager.

(a) The town council may appoint a town manager, fix a salary and delegate such administrative duties, powers and responsibilities as it believes to be in the best interest of the town.

***Charter reference(s)**--Town officers, §§ 5, 16.

Cross reference(s)--Council, § 2-36 et seq.

(b) The town manager shall serve an indefinite term and shall be removable from office by the town council. The town manager shall be chosen by the council without regard to political beliefs and solely on the basis of executive and administrative qualifications.

(c) No member of the council shall, during the term for which elected, be chosen as town manager.

(d) In meetings of the town council, the town manager shall:

- (1) Have the responsibility to counsel and advise but with no voting rights;
- (2) Have the right to attend and participate in the proceedings of but not to vote in the meetings of all boards, commissions and committees;
- (3) Recommend to the council such measures as deemed necessary or desirable; and
- (4) Keep the council advised as to present and future needs and policies of the town and as to operation of its government.

(Code 1981, § 2-3)

Sec. 2-184. Duties of town clerk.

The town clerk, who shall be appointed by the council and hold office at and during the pleasure of the council, or in the absence of the town clerk a designee of the mayor, shall attend the meetings of the town council and shall keep a correct and complete record of the proceedings of the town council. The clerk shall have charge of the records of the town, faithfully preserve such records, and perform such other services and functions as may be directed by the town council. The town clerk shall be required to give bond in the amount of \$5,000.00, with surety approved by the mayor, payable to the town, for the faithful performance of duties.

(Code 1981, § 2-4)

Charter reference(s)—Clerk, §§ 5, 12, 15.

Sec. 2-185. Duties of town treasurer.

(a) The town treasurer, who shall be appointed by the council and hold office at the pleasure of the council, shall receive all taxes and other money and revenues belonging to the town, and deposit them in such bank as the town council may direct. The treasurer shall keep the bank books and checkbooks so that they will accurately reflect the state of accounts. Each check shall be drawn payable to the order of the person for whose benefit it is drawn and shall contain a notation on its face that will indicate the purpose for which it is drawn. All checks and vouchers shall be carefully preserved.

(b) The treasurer shall also so keep the books that all receipts and disbursements and their source and character may appear, and so that a true and accurate understanding of the financial affairs and conditions of the town may be readily ascertained. All of the treasurer's books and records shall be open to the inspection of the mayor and any member of the town council, or such persons as the town council may direct.

(c) No funds shall be disbursed by the town treasurer except by order of the council and upon a warrant of the town clerk, countersigned by the mayor. No funds in excess of \$500.00 shall be disbursed without order of the council, taken in open session, duly and fully recorded. Each disbursement shall be itemized by date, amount and payee and appear in the treasurer's monthly financial report to the council. For purposes of this subsection, the term "order" shall include the award of a contract by the council for services performed on a one-time or reoccurring basis (during the life of the contract).

(d) An audit of the books of the town treasurer shall be made annually, as soon as practical after the close of the fiscal year, but not later than six months after, by such persons as the town council may designate for the purpose, assisted by the treasurer, and a report of such audit made to the town council. This report shall also indicate the amount of uncollected assets of the town in the hands of the treasurer for collection.

(e) Before entering upon the duties of this office, the town treasurer shall execute a bond with surety approved by the mayor in the penalty of not less than \$50,000.00 conditioned upon the faithful performance of the duties of the office, for the proper collection of and accounting for all money that shall come into the town treasurer's hands or that it shall be his duty to collect and for the payment of all money, on proper order of the town council, to those entitled to receive the money.

(Code 1981, § 2-5)

Charter reference(s)—Town treasurer, §§ 5, 13, 15.

Sec. 2-186. Duties of town sergeant/deputy town sergeant/police officers.

(a) The town sergeant, deputy town sergeant, and police officers of the town shall have the powers and duties of enforcing this Code and other town ordinances, and all other powers and duties vested in them by the laws of the commonwealth.

(b) The town sergeant shall serve as the senior officer with such duties, powers and responsibilities as the town council believes to be in the best interest of the town.

(c) The town sergeant, deputy town sergeant, and police officers shall have the power to arrest without warrant and carry before the proper authority to be dealt with as the law provides, any and all persons who shall violate any provision of this Code or other ordinances of the town in their presence.

(d) The town sergeant, deputy town sergeant, and police officers shall be required to give bond in the amount of \$5,000.00 with surety approved by the mayor, payable to the town, for the faithful performance of their duties.

(e) All officers of police force shall read, sign and agree to abide by police department general orders.

(Code 1981, § 2-6)

Charter reference(s)--Town sergeant, deputy town sergeant, §§ 5, 14, 15; additional police during emergency, § 10.

Sec. 2-187. Duties, powers and functions of town engineer.

(a) The town engineer shall be appointed by and serve at the pleasure of the council.

(b) The town engineer shall be registered as a professional engineer by the commonwealth and shall have five years' experience in development engineering.

(c) The town engineer shall:

- (1) Review final site plans for compliance with requirements for grading, paving, stormwater drainage and retention, traffic circulation, utilities and floodproofing and coordinate reviews of other agencies and recommend final approval or disapproval to the town council;
- (2) Inspect on-going construction work for compliance with the approved site plan permits and applicable town regulations;
- (3) Provide oversight of contractors engaged in construction projects for the town, including review of payment requests;
- (4) Serve as subdivision agent for the review of subdivision plats;
- (5) Administer chapter 18, article II;
- (6) Provide information, reports, approvals or other information to the town clerk as necessary for issuance of various construction-related permits;
- (7) Provide the zoning administrator with technical support on the Chesapeake Bay Preservation Act (Code of Virginia, § 10.1-2100 et seq.);
- (8) Investigate such matters of an engineering nature as may be assigned by the mayor and/or council and report findings and recommendations;

- (9) Assist the mayor and/or town council in obtaining required professional services or bids from contractors;
- (10) Coordinate with other town officials and outside agencies as appropriate to ensure that town regulations are not circumvented or overlooked; and
- (11) Perform such other engineering tasks as may be assigned by the mayor and/or council.

(Code 1981, § 2-7)

Sec. 2-188. Duties, powers and functions of zoning administrator.

- (a) The zoning administrator shall be appointed by and serve at the pleasure of the council.
- (b) The zoning administrator shall have five years' experience in writing, enforcing and/or interpreting zoning regulations, either as an employee of a local government or as a consultant to a local government.
- (c) The zoning administrator shall:
 - (1) Enforce the provisions of chapter 66 of this Code.
 - (2) Interpret chapter 66 of this Code and the zoning map.
 - (3) Review site plans and subdivision plans for compliance with chapter 66 of this Code and the Chesapeake Bay Preservation Act (Code of Virginia, § 10.1-2100 et seq.).
 - (4) Serve as administrator for the local program under the Chesapeake Bay Preservation Act.
 - (5) Consult with the town engineer concerning any technical matters subject to the zoning administrator's evaluation under the Chesapeake Bay Preservation Act.
 - (6) Maintain the zoning map in the town clerk's office, including recording such changes in zoning districts as may be approved by the town council within 30 days of council action and notifying the county.
 - (7) Provide advice and assistance to the town council regarding applications for zoning changes or special use permits.
 - (8) Provide records and staff reports to the board of zoning appeals as requested or required.
 - (9) Coordinate with other town officials or outside agencies as appropriate to ensure that town regulations are not circumvented or overlooked.

- (10) Investigate alleged violations of chapter 66 and take such steps as are authorized under the state code to prevent or abate violations that are found to exist.

(d) The council may appoint a deputy zoning administrator whose qualifications and duties shall be set by the council.

(Code 1981, § 2-8; Ord. O-2004-11, § 2-188)

Sec. 2-189. Duties, powers and functions of building/code official. (Repealed)

(Code 1981, § 2-9; Ord. of 5-13-1997, ch. 2, § 9(a))
 Repealed Ord. 2-2004-13, §2-189

Secs. 2-190—2-220. Reserved.

ARTICLE IV. BOARDS AND COMMISSIONS

DIVISION 1. GENERALLY

Secs. 2-221—2-240. Reserved.

DIVISION 2. PLANNING COMMISSION

Sec. 2-241. Definitions.

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

Commission means the town planning commission.

Cross reference(s)--Definitions generally, § 1-2.

Sec. 2-242. Establishment.

The planning commission created pursuant to authority contained in the Code of Virginia shall continue in force under the provisions of this division.

(Code 1981, § 2-38.1)

Sec. 2-243. Qualifications, appointment, removal, terms, compensation of members.

The commission shall consist of not less than five nor more than 15 members, appointed by the council, all of whom shall be residents of the town, qualified by knowledge and experience to make decisions on questions of community growth and development; provided, that at least half the

members so appointed shall be owners of real property. They must have certification within one year. The town council may waive the certification requirement. The town may require each member of the commission to take an oath of office. One member of the commission may be a member of the town council and one member may be a member of the administrative branch of government of the town, the term of each of these two members shall be coextensive with the term of office to which he has been elected or appointed unless the council, at the first regular meeting each year, appoints others to serve as their representatives. The remaining members of the commission shall serve for staggered terms of four years each. Vacancies shall be filled by appointment within 60 days for the unexpired term only. Members may be removed for malfeasance in office. The council may provide for:

- (1) Reimbursement of actual expenses incurred by members of the commission;
- (2) Compensation to such members, or any of them, for their services; or
- (3) Both.

(Code 1981, § 2-38.2; Ord. of 5-13-1997, ch. 2, § 38.2; Ord. O-2002-2, § 2-243)

Sec. 2-244. Meetings.

The commission shall fix the time for holding regular meetings, but it shall meet at least every two months. Special meetings of the commission may be called by the chairman or by two members upon written request to the secretary. The secretary shall mail to all members, at least five days in advance of a special meeting, a written notice fixing the time and place of the meeting and the purpose of the meeting. Written notice of a special meeting is not required if the time of the special meeting has been fixed at a regular meeting, or if all members are present at the special meeting or file a written waiver of notice. When a regular or special meeting cannot be held at the scheduled time due to inclement weather, the chairman shall fix a date and time for the meeting to occur. Matters advertised for a meeting rescheduled due to inclement weather need not be readvertised if the advertisement stated that the meeting may be rescheduled in the event of inclement weather.

(Code 1981, § 2-38.3; Ord. O-2204-12, § 2-244)

Sec. 2-245. Quorum; majority vote.

A majority of the members of the commission shall constitute a quorum, and no action of the commission shall be valid unless authorized by a majority vote of those present and voting.

(Code 1981, § 2-38.4)

Sec. 2-246. Facilities for holding of meetings and preservation of documents.

The town council shall provide the commission with facilities for the holding of meetings and the preservation of plans, maps, documents and accounts.

(Code 1981, § 2-38.5)

Sec. 2-247. Officers.

The commission shall elect from the appointed members a chairman, vice-chairman and secretary, whose terms shall be for one year. The commission may create and fill such other offices as it deems necessary with approval of the town council. The planning commission may contract with consultants for such services as it requires with the approval of the town council.

(Code 1981, § 2-38.6)

Sec. 2-248. Duties.

The commission shall:

- (1) Exercise general supervision of and make regulations for the administration of its affairs;
- (2) Prescribe rules pertaining to its investigations and hearings;
- (3) Supervise its fiscal affairs and responsibilities, under rules and regulations as prescribed by the town council;
- (4) Keep a complete record of its proceedings and be responsible for the custody and preservation of its papers and documents;
- (5) Make recommendations and an annual report to the town council concerning the operation of the commission and the status of planning within its jurisdiction;
- (6) Prepare, publish and distribute reports, ordinances and other material relating to its activities;
- (7) Prepare and submit an annual budget in the manner prescribed by the town council;
- (8) If deemed advisable, establish an advisory committee;
- (9) Make, and recommend to the council for adoption, a comprehensive plan, which, with accompanying maps, plats, charts and descriptive matter, shall show the commission's recommendations for the development of the territory covered by the plan. In the preparation of such plan, the commission shall make careful and comprehensive surveys and studies of existing conditions and trends of growth, and of the probable future requirements of its territory and inhabitants. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the town and its environs that will, in accordance with present and probable future needs and resources, best promote health, safety, morals, order,

convenience, comfort, prosperity and general welfare of the inhabitants, as well as efficiency and economy in the process of development;

- (10) Promote public interest in and an understanding of the comprehensive plan, and to that end may publish and distribute copies of the plan or of any report and may employ such other means of publicity and education as it may determine;
- (11) Authorize members of the commission to attend planning conferences or meetings of planning institutes or to attend hearings upon pending planning legislation or to visit other communities, and the commission may request that the town treasurer pay the reasonable traveling expenses incident to such attendance or visit from funds appropriated for such use;
- (12) Review and comment to the town council on proposed development documents as required by town ordinances;
- (13) Review and comment to the town council on all proposed zoning changes;
- (14) Review all proposed amendments to the town ordinances relating to the building and development process and make recommendations to the town council;
- (15) Conduct such studies as requested by the town council;
- (16) Perform special duties as prescribed by the town council; and
- (17) Make an annual report in July to the town council concerning commission activities.

(Code 1981, § 2-38.7)

Sec. 2-249. Expenditures; gifts and donations.

The commission may expend, under regular town procedure as provided by law, sums appropriated to it for its purposes and activities. The town may accept gifts and donations for commission purposes. Any moneys so accepted shall be deposited with the appropriate governing body in a special nonreverting local commission fund to be available for expenditure by the commission for the purpose designated by the donor. The town treasurer may issue warrants against such special fund only upon vouchers signed by the mayor, town clerk and the chairman and the secretary of the commission.

(Code 1981, § 2-38.8)

Secs. 2-250—2-270. Reserved.

DIVISION 3. BOARD OF ZONING APPEALS*

Sec. 2-271. Establishment.

The board of zoning appeals created pursuant to authority contained in the Code of Virginia shall continue in force under the provisions of this division.

(Code 1981, § 2-39.1)

Sec. 2-272. Membership.

The board of zoning appeals shall consist of five residents of the town, who shall be appointed by the circuit court of the county for a five-year term. Appointments shall be made for such terms that the term of one member shall expire each year. An appointment to fill a vacancy shall be only for the unexpired portion of that term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until his successor is appointed and qualifies.

(Code 1981, § 2-39.2)

Sec. 2-273. Conditions of tenure, conflict of interest, removal from office.

Members of the board of zoning appeals shall hold no other public office in the town, except that one member may be a member of the planning commission. They must have certification within one year. Any member of the board having an interest in property related to an appeal to the board shall be disqualified to vote on that matter. Any board member may be removed for just cause by the court that appointed him, upon written charges and after a public hearing.

(Code 1981, § 2-39.3; Ord. of 5-13-1997, ch. 2, § 39.3)

Sec. 2-274. Vacancies.

The secretary of the board of zoning appeals shall notify the circuit court whenever a vacancy occurs and shall also provide the court notice at least 30 days in advance of the expiration of any term of office. Concurrently with any notice to the court, the secretary shall transmit to the mayor and council any recommendation the board may have with respect to a replacement. The council shall forward its recommendation to the circuit court.

(Code 1981, § 2-39.4)

Sec. 2-275. Organization.

The board of zoning appeals shall conduct an annual organizational meeting in the month of January, if possible, to elect a chairman, vice-chairman, secretary and such other officers as it deems

***Cross Reference**—Zoning, ch. 66

necessary for the remainder of that calendar year. Officers may be reelected to succeed themselves. An officer vacancy may be filled by special election. Meetings of the board shall be held at the call of its chairman or acting chairman and at such times as the majority of the board may determine. When a regular or special meeting cannot be held at the scheduled time due to inclement weather, the chairman shall fix a date and time for the meeting to occur. Matters advertised for a meeting rescheduled due to inclement weather need not be readvertised if the advertisement stated that the meeting may be rescheduled in the event of inclement weather.

(Code 1981, § 2-39.5; Ord. O-2004-12, § 2-275)

Sec. 2-276. Quorum.

A quorum shall be at least three members unless as otherwise provided for by the State and Local Government Conflict of Interests Act (Code of Virginia, § 2.1-639.1 et seq.).

(Code 1981, § 2-39.6)

Sec. 2-277. Rules and regulations.

(a) The board of zoning appeals may make, alter or rescind such rules, regulations and forms as it may consider necessary, consistent with the ordinances of the town and general laws of the commonwealth.

(b) Except for deliberating an appeal, all meetings of the board and voting shall be open to the public and shall otherwise conform to The Virginia Freedom of Information Act (Code of Virginia, § 2.1-340 et seq.).

(c) The board shall keep minutes of its proceedings, which shall reflect the vote of each member upon each question, or if absent or failing to vote, indicating such fact.

(d) The board shall keep records of its examinations, minutes of its proceedings, public hearings, public advertising and other official actions, all of which will be immediately filed with the town clerk and shall constitute a public record.

(e) All advertisements for public hearings and other notices shall conform to the requirements of the Code of Virginia.

(f) Except as otherwise provided in the State and Local Government Conflict of Interests Act (Code of Virginia, § 2.1-639.1 et seq.), a favorable vote of three members of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter upon which the board is required to act.

(Code 1981, § 2-39.7)

Sec. 2-278. Records and reports.

In addition to records required by section 2-277, the board of zoning appeals shall submit, each January, an annual report of its activities to the mayor and town council.

(Code 1981, § 2-39.8)

Sec. 2-279. Compensation and support services.

Board of zoning appeals members may be compensated for their services at the discretion of and in such amounts as the town council may determine. Within the limits of funds appropriated by the council, the board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services when such services are not provided by or available from the town.

(Code 1981, § 2-39.9)

Sec. 2-280. Powers and duties.

The board of zoning appeals shall have the following powers and duties:

- (1) To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this division or of chapter 66.
- (2) To authorize upon appeal or original application in specific cases such variance as defined in Code of Virginia, § 15.2-2201, from the terms of chapter 66 as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of chapter 66 shall be observed and substantial justice done, as follows:
 - a. When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of chapter 66, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the condition, situation or development of property immediately adjacent thereto, the strict application of the terms of chapter 66 would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of chapter 66.
 - b. No such variance shall be authorized by the board unless it finds that:
 1. The strict application of chapter 66 would produce undue hardship.

2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
 3. The authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
- c. No such variance shall be authorized except after notice and hearing as required by Code of Virginia, § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first class mail rather than by registered or certified mail.
 - d. No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to chapter 66.
 - e. In authorizing a variance, the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
- (3) To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by Code of Virginia, § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first class mail rather than by registered or certified mail. No such appeal shall be heard except after notice and hearing as provided by Code of Virginia, § 15.2-2204.
 - (4) To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, and after public hearing with notice as required by Code of Virginia, § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of chapter 66 for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance. No provision of this section shall be construed as granting to the board the power to rezone property.
 - (5) To hear and decide applications for such special exceptions as may be authorized in chapter 66. The board may impose such conditions relating to the use provided for in the authorized special exceptions for which a permit is granted as it may deem necessary in the public

interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. No such special exception may be granted except after notice and hearing as provided by Code of Virginia, § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first class mail rather than by registered or certified mail.

- (6) To revoke a special exception if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by Code of Virginia, § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first class mail rather than by registered or certified mail.

(Code 1981, § 2-39.10)

Sec. 2-281. Appeals to board.

(a) *Generally.* An appeal to the board of zoning appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the town affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of Code of Virginia, § 15.2-2280 et seq., or chapter 66. Notwithstanding any Charter provision to the contrary, any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and unappealable if not appealed within 30 days. The appeal period shall not commence until the statement is given.

(b) *Application and fees.* An appeal must be taken within 30 days after the decision appealed from by filing, on the form provided, a notice of appeal with the zoning administrator and the board of zoning appeals, which appeal shall specify the grounds of the appeal, together with the fees as established in the current fee schedule. The application and accompanying maps, plans and other documentation constituting the record upon which the action appealed from was taken shall be transmitted promptly to the secretary of the board, who shall place the matter on the docket. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

(c) *Notice and hearing required; planning commission recommendation.* After entering the appeal on the docket, the secretary of the board shall advertise a public hearing, give written notice to the parties in interest, and request the zoning administrator to transmit a copy of the application and

his staff report to the planning commission; the planning commission may send a written recommendation to the board to appear as a party at the public hearing.

(d) *Burden of proof.* The applicant for a variance has the burden of proving that denial of a variance will result in unnecessary hardship, of proving that his hardship is due to chapter 66 itself, and of proving, to the satisfaction of the board, requirements for a variance stipulated in the Code of Virginia.

(e) *Findings required.* The board shall fix a reasonable time for the hearing of an application or appeal, give public notice as well as due notice to the parties in interest, and make its decision within 90 days of the filing of the application or appeal. In exercising its powers, the board may reverse or affirm, wholly or partly, or may modify an order, requirement, decision or determination appealed from. The concurring vote of a majority of the membership of the board 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 it is required to pass under chapter 66 or to effect any variance from chapter 66. The decision of the board must be based on the evidence adduced at a public hearing and must include findings of fact disclosing the evidence relied upon by the board and otherwise state the business and grounds for its decision to assure that the provisions of the Code of Virginia and this division have been met.

(f) *Board to issue order.* Whenever the board shall grant a variance, the secretary of the board shall cause an order to be issued evidencing the grant and furnish copies of the order to the applicant, to the zoning administrator, to the town clerk, and to such other parties as deemed necessary.

(g) *Limitation on change.* In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the town attorney, modification is required to correct clerical or other nondiscretionary errors.

(Code 1981, §§ 2-39.11, 2-39.12)

Sec. 2-282. Judicial review and relief.

(a) *Certiorari to review decision of board.* Any person aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the town may present to the circuit court of the county a petition specifying the grounds on which aggrieved within 30 days after the filing of a decision in the office of the board.

(b) *Parties aggrieved entitled to writ.* Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board and shall prescribe the time within which a return must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from; but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(c) *Other parties to suit.* If the petition is presented by the town council, the council shall be party to the suit. The court may, likewise, admit as a party to the suit any person who, if the decision had been adverse, would have been authorized under this division to present a petition in the first instance.

(d) *Board to make return.* The board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies of the papers or of such portions of the papers as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(e) *Costs not allowed.* Costs shall not be allowed against the board unless it shall appear to the court that the board acted in bad faith or with malice in making the decision appealed from.

(Code 1981, § 2-39.13)

Secs. 2-283--2-400. Reserved.

DIVISION 4. ARCHITECTURAL REVIEW BOARD

Sec. 2-401. Establishment.

The architectural review board heretofore created shall continue in force under the provisions of this division.

(Code 1981, § 2-40.1)

Sec. 2-402. Membership.

The architectural review board shall consist of seven residents of the town appointed by the town council, and two alternate members to serve on the ARB who shall vote in the absence of any regular member. One board member shall be appointed from the town council and one from the planning commission. Other members shall be appointed primarily on the basis of a knowledge and demonstrated interest in the historical heritage and architecture of the town.

(Code 1981, § 2-40.2; Ord. of 5-13-1997, ch. 2, § 40.2; Ord. O-2003-03, § 2-402)

Sec. 2-403. Term of office; removal; vacancies.

The term of office of the members of the architectural review board shall be for three years except that the terms of the councilmember and planning commission member shall correspond to their official tenure of office. Any appointed member of the board may be removed from office by the council, after public hearing, for inefficiency, neglect of duty, malfeasance, or other just cause, after charges made in writing. Appointments to fill vacancies shall be only for the unexpired portion of the term and shall be done within 60 days. Members may be reappointed to succeed themselves. Recommendations to fill vacancies may be made by the board to the mayor and approved by the council.

(Code 1981, § 2-40.3)

Sec. 2-404. Officers.

The architectural review board shall elect its chairman, vice-chairman and secretary from its membership.

(Code 1981, § 2-40.4)

Sec. 2-405. Procedure for meetings.

(a) The chairman shall conduct the meetings of the architectural review board and report action taken at the regular monthly meeting of the town council. In the absence of the chairman, the vice-chairman shall preside.

(b) The secretary shall keep the minutes of the meetings and a permanent record of all resolutions, motions, transactions and determinations.

(c) All members of the board, with the exception of nonvoting consultants, shall be entitled to vote; and the decision of the board shall be determined by a majority vote.

(d) A quorum of four members present is required before the board can take any official action. When serving in the absence of a regular member, an alternate counts toward the quorum.

(e) Meetings shall be conducted according to Robert's Rules of Order, Newly Revised.

(f) The board shall meet in regular session on the first Tuesday of each month at 7:30 p.m. if an application has been filed for its consideration and may meet in special session as called by the chairman and deemed necessary for the conduct of business. When a regular or special meeting cannot be held at the scheduled time due to inclement weather, the chairman shall fix a date and time for the meeting to occur. Matters advertised for a meeting rescheduled due to inclement weather need not be readvertised if the advertisement stated that the meeting may be rescheduled in the event of inclement weather.

(g) The meetings of the board shall be open to the public, and a full and impartial hearing shall be granted.

(h) When voting on any question, no proxy shall be allowed.

(i) The board shall vote and announce its decision on any matter properly before it not later than 14 days after the conclusion of the hearing on the matter unless the time is extended by mutual agreement between the board and the applicant.

(j) The board shall not reconsider any decision made by it except in cases where an applicant appears within 90 days with an amended application as hereinafter provided.

(k) In case of disapproval of the erection, reconstruction, alteration, restoration or razing of a building or structure, the board shall briefly state its reasons in writing and may make recommendations to the applicant with respect to the appropriateness of design, arrangement, texture, material, color, location, etc., of the building or structure involved. In case of disapproval accompanied by recommendations, the applicant may be heard before the board if, within 90 days, the applicant comes before the board with an amended application so as to comply with the recommendations of the board.

(l) In matters regarding the procedure for meetings not covered by this section, the board may establish its own rules, provided they are not contrary to the spirit of this chapter and are consistent with the ordinances of the town and the Code of Virginia.

(Code 1981, § 2-40.5; Ord. O-2003-03, § 2-405; Ord. O-2004-12, § 2-405)

Sec. 2-406. Duties.

The duties of the architectural review board shall be to:

- (1) Administer chapter 66, article II, division 8.
- (2) Prescribe rules pertaining to the administration of its affairs.
- (3) Keep a complete record of its proceedings and make provisions for the custody and preservation of its papers and documents in the town hall.
- (4) Assist and advise the town council, planning commission and other town departments, agencies and property owners in matters involving historically significant sites and buildings, such as appropriate land usage, parking facilities and signs.
- (5) Formulate recommendations to the town council regarding the old and historic district and signage.

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(6) Prepare and recommend for adoption a design manual based upon the criteria set forth in chapter 66, article II, division 8.

(7) Promote public interest in and an understanding of the history of the town.

(Code 1981, § 2-40.6; Ord. O-2004-05, § 2-406)