



COUNTY of FREDERICK

Jay E. Tibbs

Deputy County Administrator


540/665-5666

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E-mail:

jtibbs@fcva.us

TO: Code and Ordinance Committee

FROM: Jay E. Tibbs, Deputy County Administrator 

DATE: June 21, 2018

RE: Code & Ordinance Committee Meeting Agenda

There will be a meeting of the Code and Ordinance Committee on **Thursday, June 28, 2018 beginning at 8:30 a.m., Board of Supervisors Closed Session Room, County Administration Building, 107 North Kent Street.**

The following items will be discussed:

1. Review of Committee Charter. **(See Attached.)**
2. An amendment to Chapter 48 (Animals and Fowl), Article I (Dog Licensing; Rabies Control), Section 48-18 (License Taxes), of the County Code, to allow for lifetime licensing of dogs. **(See Attached.)**
3. Amendments to Chapter 52 (Building Construction), Section 52-5 (Issuance of Permits) and Chapter 143 (Stormwater/Erosion and Sediment Control), Section 143-194 (Issuance, time limit, modification, maintenance, transfer and/or termination of Frederick County land-disturbing permit and VSMP authority permit), of the County Code, to require payment of delinquent real estate taxes before issuance of certain permits. **(See Attached.)**
4. Amendments to Chapters 48 and 118, of the County Code, to adopt a “plainly audible” standard with respect to certain prohibited noise. **(See Attached.)**
5. An amendment to Chapter 155 (Taxation), Article VIII (Tax on Purchasers of Utility Service), Section 155-34 (Tax Imposed), of the County Code, to correct a typographical error with respect to the tax on electric service. **(See Attached.)**
6. Such other business as may come before the Committee.

Should you have any questions or if you are unable to attend the meeting, please do not hesitate to contact me.

Attachments



COUNTY of FREDERICK

Jay E. Tibbs


Deputy County Administrator

540/665-5666

Fax 540/667-0370

E-mail:

jtibbs@fcva.us

TO:	Code & Ordinance Committee
FROM:	Jay E. Tibbs, Deputy County Administrator 
SUBJECT:	Committee Charter
DATE:	June 21, 2018

Attached please find a copy of the charter for the Code & Ordinance Committee. The committee charter is to be reviewed annually to ensure that it accurately depicts the makeup and duties of the committee. There are currently no changes or updates proposed to the charter.

It is being presented to the Committee for information only.

If you have any questions, please do not hesitate to contact me.

Attachment

Frederick County Board of Supervisor's Code and Ordinance Committee Charter

I. Organization

There shall be a committee of the Board of Supervisors ("Board") of Frederick County, Virginia ("County") known as the Code and Ordinance Committee ("Committee"). The Committee shall be comprised of three (3) members of the Board of Supervisors who will be appointed by the Chairman of the Board, with one appointed as Chair, and three (3) citizen members as appointed by the Chairman of the Board. This Charter shall govern the Committee with regard to its duties and responsibilities.

II. Purpose

The primary function of the Committee is to assist the Board in the review and recommendation of proposed text changes to the Frederick County Code, excluding amendments to the Zoning Ordinance and Subdivision Ordinance. The Committee's primary duties and responsibilities are as follows:

- To review all proposed changes to the Frederick County Code.
- To work with department heads and staff to initiate amendments to the Frederick County Code.

The Committee will primarily fulfill these responsibilities by carrying out the activities enumerated in Section IV of this Charter.

III. Meetings

The Committee shall meet as circumstances dictate. The Chairman of the Board, the Chairman of the Committee, or a majority of the Committee members may call or cancel meetings of the Committee. The Chairman of the Committee shall prepare or approve an agenda in advance of each meeting. Department heads or department representatives offering proposed amendments shall be invited to the meetings. Other management officials and counsel to the Board may be invited as necessary.

IV. Responsibilities

The Committee shall have the following duties and responsibilities:

1. Review and advise the Board of Supervisors with respect to Frederick County Code initiatives and amendments.
2. Prepare minutes of all meetings of the Committee, and report to the Board on the matters discussed at each Committee meeting, as appropriate.
3. Forward all recommendation to the Board of Supervisors for final approval.
4. Review and reassess annually the adequacy of this Charter, and conduct an annual self-assessment of this Committee's performance.
5. Perform any other activities consistent with this Charter, the County's goals, objectives and governing law, as the Committee or the Board deems necessary or appropriate.



COUNTY OF FREDERICK

Roderick B. Williams
County Attorney

540/722-8383
Fax 540/667-0370
E-mail: rwillia@fcva.us

MEMORANDUM

TO: Code & Ordinance Committee

FROM: Roderick B. Williams
County Attorney

DATE: June 4, 2018

RE: County Code, Chapter 48 (Animals and Fowl), Article I (Dog Licensing; Rabies Control), Section 48-18 (License Taxes) – Lifetime Licensing of Dogs

Per legislation enacted by the 2017 Session of the General Assembly, 2017 Acts of Assembly, Chapters 559 and 567, localities may, effective July 1, 2017, provide for lifetime licensing of dogs. Attached are copies of the enabling legislation and of a draft ordinance, for the Committee's consideration, that would amend the County Code to make such provision. The draft also would permit zero cost lifetime tags for dogs adopted from the County Shelter. The intent of the proposed ordinance is to reduce the administrative burden of the County's current dog licensing system and to encourage adoptions from the Shelter. The Public Works Committee reviewed the draft ordinance at its meeting on May 29 and recommended forwarding the draft ordinance to the Code & Ordinance Committee, with the addition of a further provision that a lifetime dog tag does not transfer to a new owner, which provision is incorporated in the additional proposed language of subsection A of the code section.

Attachments

cc: Public Works Department
Animal Shelter
Sheriff's Office
Treasurer's Office

VIRGINIA ACTS OF ASSEMBLY -- 2017 SESSION

CHAPTER 559

An Act to amend and reenact §§ 3.2-6527, 3.2-6528, 3.2-6530, 3.2-6532, and 18.2-403.3 of the Code of Virginia, relating to dogs and cats; lifetime licenses.

[H 1477]

Approved March 16, 2017

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-6527, 3.2-6528, 3.2-6530, 3.2-6532, and 18.2-403.3 of the Code of Virginia are amended and reenacted as follows:

§ 3.2-6527. How to obtain license.

Any person may obtain a dog license or cat license if required by an ordinance adopted pursuant to subsection B of § 3.2-6524, by making oral or written application to the treasurer of the locality where such person resides, accompanied by the amount of license tax and current certificate of vaccination as required by this article or satisfactory evidence that such certificate has been obtained. The treasurer or other officer charged with the duty of issuing dog and cat licenses shall only have authority to license dogs and cats of resident owners or custodians who reside within the boundary limits of his county or city and may require information to this effect from any applicant. Upon receipt of proper application and current certificate of vaccination as required by this article or satisfactory evidence that such certificate has been obtained, the treasurer or other officer charged with the duty of issuing dog and cat licenses shall issue a license receipt for the amount on which he shall record the name and address of the owner or custodian, the date of payment, the ~~year~~ *years* for which issued, the serial number of the tag, whether dog or cat, whether male or female, whether spayed or neutered, or whether a kennel, and deliver the metal license tags or plates provided for ~~herein~~ *in § 3.2-6526*. The information thus received 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 or city and appoint agents for the collection of the license tax and issuance of such licenses.

§ 3.2-6528. Amount of license tax.

The governing body of each county or city shall impose by ordinance a license tax on the ownership of dogs within its jurisdiction. The governing body of any locality that has adopted an ordinance pursuant to subsection B of § 3.2-6524 shall impose by ordinance a license tax on the ownership of cats within its jurisdiction. The governing body may establish different rates of taxation for ownership of female dogs, male dogs, spayed or neutered dogs, female cats, male cats, and spayed or neutered cats. The tax for each dog or cat shall not be ~~less than \$1 and not more than \$10~~ *or \$50 for a lifetime license issued pursuant to subsection B of § 3.2-6530*. If the dog or cat has been spayed, the tax shall not exceed the tax provided for a male dog or cat. Any ordinance may provide for ~~a~~ *an annual* license tax for kennels of 10, 20, 30, 40, or 50 dogs or cats not to exceed \$50 for any one such block of kennels.

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

As used in this section, "hearing dog," "mobility-impaired person," "otherwise disabled person," and "service dog" have the same meanings as assigned in § 51.5-40.1.

§ 3.2-6530. When license tax payable.

A. The license tax as prescribed in § 3.2-6528 is due not later than 30 days after a dog or cat has reached the age of four months, or not later than 30 days after an owner acquires a dog or cat four months of age or older, and each year thereafter.

~~B. Licensing periods for individual dogs and cats may be equal to and may run concurrently with the rabies vaccination effective period.~~

B. The governing body of a county or city may by ordinance provide for a lifetime dog or cat license. Such a license shall be valid only as long as the animal's owner resides in the issuing locality and the animal's rabies vaccination is kept current.

C. Any kennel license tax prescribed pursuant to § 3.2-6528 shall be due on January 1 and not later than January 31 of each year.

§ 3.2-6532. Duplicate license tags.

If a dog or cat license tag is lost, destroyed or stolen, the owner or custodian shall at once apply to the treasurer or his agent who issued the original license for a duplicate license tag, presenting the original license receipt. Upon affidavit of the owner or custodian before the treasurer or his agent that the original license tag has been lost, destroyed or stolen, he shall issue a duplicate license tag that the owner or custodian shall immediately affix to the collar of the dog. The treasurer or his agent shall

endorse the number of the duplicate and the date issued on the face of the original license receipt. The fee for a duplicate tag for any dog or cat shall ~~be~~ *not exceed* \$1.

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

The following unlawful acts and offenses against animals shall constitute and be punished as a Class 4 misdemeanor:

1. Violation of § 3.2-6566 pertaining to interference of agents charged with preventing cruelty to animals.
2. Violation of § 3.2-6573 pertaining to shooting pigeons.
3. Violation of § 3.2-6554 pertaining to disposing of the body of a dead companion animal.
4. Violation of ordinances passed pursuant to §§ 3.2-6522 and 3.2-6525 pertaining to rabid dogs and preventing the spread of rabies and the running at large of vicious dogs.
5. Violation of an ordinance passed pursuant to § 3.2-6539 requiring dogs to be on a leash.
6. Failure by any person to secure and exhibit the permits required by § 29.1-422 pertaining to field trails, night trails and foxhounds.
7. Diseased dogs. — For 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.
8. License application. — For any person to make a false statement in order to secure a dog or cat license to which he is not entitled.
9. License tax. — For any dog or cat owner to fail to pay any license tax required by *subsection A or C* of § 3.2-6530 ~~before February 1 for the year in which~~ *within one month after the date when it is due*. In addition, the court may order confiscation and the proper disposition of the dog or cat.
10. Concealing a dog or cat. — For any person to conceal or harbor any dog or cat on which any required license tax has not been paid.
11. Removing collar and tag. — For any person, except the owner or custodian, to remove a legally acquired license tag from a dog or cat without the permission of the owner or custodian.
12. Violation of § 3.2-6503 pertaining to care of animals by owner.

VIRGINIA ACTS OF ASSEMBLY -- 2017 SESSION

CHAPTER 567

An Act to amend and reenact §§ 3.2-6527, 3.2-6528, 3.2-6530, 3.2-6532, and 18.2-403.3 of the Code of Virginia, relating to dogs and cats; lifetime licenses.

[S 856]

Approved March 16, 2017

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-6527, 3.2-6528, 3.2-6530, 3.2-6532, and 18.2-403.3 of the Code of Virginia are amended and reenacted as follows:

§ 3.2-6527. How to obtain license.

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§ 3.2-6528. Amount of license tax.

The governing body of each county or city shall impose by ordinance a license tax on the ownership of dogs within its jurisdiction. The governing body of any locality that has adopted an ordinance pursuant to subsection B of § 3.2-6524 shall impose by ordinance a license tax on the ownership of cats within its jurisdiction. The governing body may establish different rates of taxation for ownership of female dogs, male dogs, spayed or neutered dogs, female cats, male cats, and spayed or neutered cats. The tax for each dog or cat shall not be ~~less than \$1 and not more than \$10~~ *or \$50 for a lifetime license issued pursuant to subsection B of § 3.2-6530*. If the dog or cat has been spayed, the tax shall not exceed the tax provided for a male dog or cat. Any ordinance may provide for ~~a~~ *an annual* license tax for kennels of 10, 20, 30, 40, or 50 dogs or cats not to exceed \$50 for any one such block of kennels.

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

As used in this section, "hearing dog," "mobility-impaired person," "otherwise disabled person," and "service dog" have the same meanings as assigned in § 51.5-40.1.

§ 3.2-6530. When license tax payable.

A. The license tax as prescribed in § 3.2-6528 is due not later than 30 days after a dog or cat has reached the age of four months, or not later than 30 days after an owner acquires a dog or cat four months of age or older, and each year thereafter.

~~B.~~ Licensing periods for individual dogs and cats may be equal to and may run concurrently with the rabies vaccination effective period.

B. The governing body of a county or city may by ordinance provide for a lifetime dog or cat license. Such a license shall be valid only as long as the animal's owner resides in the issuing locality and the animal's rabies vaccination is kept current.

C. Any kennel license tax prescribed pursuant to § 3.2-6528 shall be due on January 1 and not later than January 31 of each year.

§ 3.2-6532. Duplicate license tags.

If a dog or cat license tag is lost, destroyed or stolen, the owner or custodian shall at once apply to the treasurer or his agent who issued the original license for a duplicate license tag, presenting the original license receipt. Upon affidavit of the owner or custodian before the treasurer or his agent that the original license tag has been lost, destroyed or stolen, he shall issue a duplicate license tag that the owner or custodian shall immediately affix to the collar of the dog. The treasurer or his agent shall

endorse the number of the duplicate and the date issued on the face of the original license receipt. The fee for a duplicate tag for any dog or cat shall ~~be~~ *not exceed* \$1.

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

The following unlawful acts and offenses against animals shall constitute and be punished as a Class 4 misdemeanor:

1. Violation of § 3.2-6566 pertaining to interference of agents charged with preventing cruelty to animals.
2. Violation of § 3.2-6573 pertaining to shooting pigeons.
3. Violation of § 3.2-6554 pertaining to disposing of the body of a dead companion animal.
4. Violation of ordinances passed pursuant to §§ 3.2-6522 and 3.2-6525 pertaining to rabid dogs and preventing the spread of rabies and the running at large of vicious dogs.
5. Violation of an ordinance passed pursuant to § 3.2-6539 requiring dogs to be on a leash.
6. Failure by any person to secure and exhibit the permits required by § 29.1-422 pertaining to field trails, night trails and foxhounds.
7. Diseased dogs. — For 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.
8. License application. — For any person to make a false statement in order to secure a dog or cat license to which he is not entitled.
9. License tax. — For any dog or cat owner to fail to pay any license tax required by *subsection A or C* of § 3.2-6530 ~~before February 1 for the year in which~~ *within one month after the date when it is due*. In addition, the court may order confiscation and the proper disposition of the dog or cat.
10. Concealing a dog or cat. — For any person to conceal or harbor any dog or cat on which any required license tax has not been paid.
11. Removing collar and tag. — For any person, except the owner or custodian, to remove a legally acquired license tag from a dog or cat without the permission of the owner or custodian.
12. Violation of § 3.2-6503 pertaining to care of animals by owner.



ORDINANCE
_____, 2018

The Board of Supervisors of Frederick County, Virginia hereby ordains that Section 48-18 (License Taxes) of Article I (Dog Licensing; Rabies Control) of Chapter 48 (Animals and Fowl) of the Code of Frederick County, Virginia be, and the same hereby is, amended as follows (deletions are shown in ~~strikethrough~~ and additions are shown in **bold underline**):

§ 48-18. License taxes.

- A. License periods for individual dogs shall be equal to and run concurrently with the rabies vaccination effective period for that respective dog. **Notwithstanding the foregoing, pursuant to Va. Code § 3.2-6530(B), a person may apply for a lifetime license for his or her dog. Lifetime licenses are not transferrable between dogs or owners, and are not transferrable to other localities.** Any person who applies for a license tag for a neutered or spayed dog shall present, at the time of application, certification from a licensed veterinarian attesting to the neutering or spaying of the dog. If such certification is not so presented, the dog shall be taxed the fee levied on male or female dogs. Kennel licenses are only sold for a one-year period and shall be due on January 1 and not later than January 31 of each year. Inspections by animal control may be required before the issuance of a kennel license.
- B. License taxes shall be in the **following** amounts~~s~~-of:

	Spayed or Neutered	Not Spayed or Neutered
<u>One dog – for January 1 to December 31 or vaccination period of 12 months or less</u>	\$5.00	\$10.00
Vaccination period of 36 months or less	\$10.00	\$20.00
<u>One dog – for lifetime of dog – for dogs adopted from the Frederick County Animal Shelter</u>	<u>Free</u>	<u>Free</u>
<u>One dog – for lifetime of dog – for all other dogs</u>	<u>\$10.00</u>	<u>\$15.00</u>
<u>Multi-dog license – for January 1 to December 31:</u>		
20 multi-dog license		\$30.00
50 multi-dog license		\$50.00

Enacted this _____ day of _____, 2018.

Charles S. DeHaven, Jr., Chairman _____

Gary A. Lofton _____

J. Douglas McCarthy _____

Robert W. Wells _____

Blaine P. Dunn _____

Shannon G. Trout _____

Judith McCann-Slaughter _____

A COPY ATTEST

Kris C. Tierney
Frederick County Administrator



COUNTY OF FREDERICK

Roderick B. Williams
County Attorney

540/722-8383

Fax 540/667-0370

E-mail: rwillia@fcva.us

MEMORANDUM

TO: Code & Ordinance Committee

FROM: Roderick B. Williams
County Attorney

DATE: June 4, 2018

RE: County Code, Chapter 52 (Building Construction), Section 52-5 (Issuance of Permits) and Chapter 143 (Stormwater/Erosion and Sediment Control), Section 143-194 (Issuance, time limit, modification, maintenance, transfer and/or termination of Frederick County land-disturbing permit and VSMP authority permit) – Ordinance to require payment of delinquent real estate taxes before issuance of certain permits

Section 15.2-2286(B) of the Code of Virginia permits a locality to require that any delinquent real estate taxes and any other charges that constitute a lien on a property, that are owed to the locality, and that have been properly assessed against the subject property, be paid before the locality accepts an application for a building permit or stormwater/erosion and sediment control permit for the property. A copy of Section 15.2-2286 is attached for reference.

Attached is a proposed ordinance that would allow implementation of this requirement in Frederick County. At present, the County Code already prohibits a property owner from proceeding with a request for a rezoning or conditional use permit unless the taxes on the property have been paid. The proposed ordinance is consistent with that already existing prohibition, but does contain an exception for emergency construction, alterations or equipment replacement, so that such work could take place without delay. Attached is the relevant provision of the Uniform Statewide Building Code, Section 108.1, regarding emergency construction. Otherwise allowing a property owner to proceed with further development activities on a property would only allow the owner to enjoy the benefits of enhanced development of the property without having paid the taxes on the property and would raise a fairness issue relative to other County taxpayers who dutifully pay their taxes. In addition, conditioning the issuance of building and stormwater/erosion and sediment control permits on the payment of delinquent taxes on a property would provide the County with an additional valuable method of enforcement to help ensure payment of amounts properly due to the County.

The Public Works Committee reviewed the draft ordinance at its meeting on May 29 and recommended forwarding the draft ordinance to the Code & Ordinance Committee.

Attachments

cc: Public Works – Engineering
Public Works – Inspections
Treasurer's Office

§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties

A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

1. For variances or special exceptions, as defined in § 15.2-2201, to the general regulations in any district.
2. For the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning ordinance, and pending the orderly amendment of the ordinance.
3. For the granting of special exceptions under suitable regulations and safeguards; notwithstanding any other provisions of this article, the governing body of any locality may reserve unto itself the right to issue such special exceptions. Conditions imposed in connection with residential special use permits, wherein the applicant proposes affordable housing, shall be consistent with the objective of providing affordable housing. When imposing conditions on residential projects specifying materials and methods of construction or specific design features, the approving body shall consider the impact of the conditions upon the affordability of housing.

The governing body or the board of zoning appeals of the City of Norfolk may impose a condition upon any special exception relating to retail alcoholic beverage control licensees which provides that such special exception will automatically expire upon a change of ownership of the property, a change in possession, a change in the operation or management of a facility or upon the passage of a specific period of time.

The governing body of the City of Richmond may impose a condition upon any special use permit issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special use permit shall be subject to an automatic review by the governing body upon a change in possession, a change in the owner of the business, or a transfer of majority control of the business entity. Upon review by the governing body, it may either amend or revoke the special use permit after notice and a public hearing as required by § 15.2-2206.

4. For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the locality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307 or subsection C of § 15.2-2311.

Whenever the zoning administrator has reasonable cause to believe that any person has engaged in or is engaging in any violation of a zoning ordinance that limits occupancy in a residential

dwelling unit, which is subject to a civil penalty that may be imposed in accordance with the provisions of § 15.2-2209, and the zoning administrator, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the attorney for the locality petition the judge of the general district court for his jurisdiction for a subpoena duces tecum against any such person refusing to produce such data or information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued the subpoena to quash it.

Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of less than 30 days, but not less than 10 days, for a notice of violation involving temporary or seasonal commercial uses, parking of commercial trucks in residential zoning districts, maximum occupancy limitations of a residential dwelling unit, or similar short-term, recurring violations.

Where provided by ordinance, the zoning administrator may be authorized to grant a modification from any provision contained in the zoning ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements, if the administrator finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification. Prior to the granting of a modification, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice. The zoning administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph. The decision of the zoning administrator shall constitute a decision within the purview of § 15.2-2311, and may be appealed to the board of zoning appeals as provided by that section. Decisions of the board of zoning appeals may be appealed to the circuit court as provided by § 15.2-2314.

The zoning administrator shall respond within 90 days of a request for a decision or determination on zoning matters within the scope of his authority unless the requester has agreed to a longer period.

5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any such violation shall be a misdemeanor punishable by a fine of not less than \$10 nor more than \$1,000. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1,000, and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not less than \$100 nor more than \$1,500.

However, any conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall be punishable by a fine of up to

\$2,000. Failure to abate the violation within the specified time period shall be punishable by a fine of up to \$5,000, and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of up to \$7,500. However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of such dwelling unit against a tenant to eliminate an overcrowding condition in accordance with Chapter 13 or Chapter 13.2 of Title 55, as applicable. A conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall not be punishable by a jail term.

6. For the collection of fees to cover the cost of making inspections, issuing permits, advertising of notices and other expenses incident to the administration of a zoning ordinance or to the filing or processing of any appeal or amendment thereto.

7. For the amendment of the regulations or district maps from time to time, or for their repeal. Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated (i) by resolution of the governing body; (ii) by motion of the local planning commission; or (iii) by petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the subject of the proposed zoning map amendment, addressed to the governing body or the local planning commission, who shall forward such petition to the governing body; however, the ordinance may provide for the consideration of proposed amendments only at specified intervals of time, and may further provide that substantially the same petition will not be reconsidered within a specific period, not exceeding one year. Any such resolution or motion by such governing body or commission proposing the rezoning shall state the above public purposes therefor.

In any county having adopted such zoning ordinance, all motions, resolutions or petitions for amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or consents to action beyond such period or unless the applicant withdraws his motion, resolution or petition for amendment to the zoning ordinance or map, or both. In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action as otherwise would be required by this subdivision.

8. For the submission and approval of a plan of development prior to the issuance of building permits to assure compliance with regulations contained in such zoning ordinance.

9. For areas and districts designated for mixed use developments or planned unit developments as defined in § [15.2-2201](#).

10. For the administration of incentive zoning as defined in § [15.2-2201](#).

11. For provisions allowing the locality to enter into a voluntary agreement with a landowner that would result in the downzoning of the landowner's undeveloped or underdeveloped property in exchange for a tax credit equal to the amount of excess real estate taxes that the landowner has paid due to the higher zoning classification. The locality may establish reasonable guidelines for determining the amount of excess real estate tax collected and the method and duration for applying the tax credit. For purposes of this section, "downzoning" means a zoning action by a

locality that results in a reduction in a formerly permitted land use intensity or density.

12. Provisions for requiring and considering Phase I environmental site assessments based on the anticipated use of the property proposed for the subdivision or development that meet generally accepted national standards for such assessments, such as those developed by the American Society for Testing and Materials, and Phase II environmental site assessments, that also meet accepted national standards, such as, but not limited to, those developed by the American Society for Testing and Materials, if the locality deems such to be reasonably necessary, based on findings in the Phase I assessment, and in accordance with regulations of the United States Environmental Protection Agency and the American Society for Testing and Materials. A reasonable fee may be charged for the review of such environmental assessments. Such fees shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and administrative expense involved in such review.

13. Provisions for requiring disclosure and remediation of contamination and other adverse environmental conditions of the property prior to approval of subdivision and development plans.

14. For the enforcement of provisions of the zoning ordinance that regulate the number of persons permitted to occupy a single-family residential dwelling unit, provided such enforcement is in compliance with applicable local, state and federal fair housing laws.

15. For the issuance of inspection warrants by a magistrate or court of competent jurisdiction. The zoning administrator or his agent may make an affidavit under oath before a magistrate or court of competent jurisdiction and, if such affidavit establishes probable cause that a zoning ordinance violation has occurred, request that the magistrate or court grant the zoning administrator or his agent an inspection warrant to enable the zoning administrator or his agent to enter the subject dwelling for the purpose of determining whether violations of the zoning ordinance exist. After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the zoning administrator or his agents shall return the warrant to the clerk of the circuit court of the city or county wherein the inspection was made. The zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.

B. Prior to the initiation of an application by the owner of the subject property, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent, for a special exception, special use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, or prior to the issuance of final approval, the authorizing body may require the applicant to produce satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the locality and have been properly assessed against the subject property, have been paid, unless otherwise authorized by the treasurer.

Code 1950, § 15-968.5; 1962, c. 407, § 15.1-491; 1964, c. 564; 1966, c. 455; 1968, cc. 543, 595; 1973, c. 286; 1974, c. 547; 1975, cc. 99, 575, 579, 582, 641; 1976, cc. 71, 409, 470, 683; 1977, c. 177; 1978, c. 543; 1979, c. 182; 1982, c. 44; 1983, c. 392; 1984, c. 238; 1987, c. 8; 1988, cc. 481, 856; 1989, cc. 359, 384; 1990, cc. 672, 868; 1992, c. 380; 1993, c. 672; 1994, c. 802; 1995, cc. 351, 475, 584, 603; 1996, c. 451; 1997, cc. 529, 543, 587; 1998, c. 385; 1999, c. 792; 2000, cc. 764, 817;

2001, c. [240](#);2002, cc. [547](#), [703](#);2005, cc. [625](#), [677](#);2006, cc. [304](#), [514](#), [533](#), [903](#);2007, cc. [821](#), [937](#); 2008, cc. [297](#), [317](#), [343](#), [581](#), [593](#), [720](#), [777](#);2009, c. [721](#);2012, cc. [304](#), [318](#);2014, c. [354](#);2017, c. [398](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

A permit or any amendments to an existing permit shall not be issued until the designated fees have been paid, except that the building official may authorize the delayed payment of fees.

107.1.2 Refunds. When requested in writing by a permit holder, the locality shall provide a fee refund in the case of the revocation of a permit or the abandonment or discontinuance of a building project. The refund shall not be required to exceed an amount which correlates to work not completed.

107.1.3 Fees for generators used with amusement devices. Fees for generators and associated wiring used with amusement devices shall only be charged under the Virginia Amusement Device Regulations (13VAC5-31).

107.2 Code academy fee levy. In accordance with subdivision 7 of Section 36-137 of the Code of Virginia, the local building department shall collect a 2.0% levy of fees charged for permits issued under this code and transmit it quarterly to DHCD to support training programs of the Virginia Building Code Academy. Localities that maintain individual or regional training academies accredited by DHCD shall retain such levy.

SECTION 108 APPLICATION FOR PERMIT

108.1 When applications are required. Application for a permit shall be made to the building official and a permit shall be obtained prior to the commencement of any of the following activities, except that applications for emergency construction, alterations or equipment replacement shall be submitted by the end of the first working day that follows the day such work commences. In addition, the building official may authorize work to commence pending the receipt of an application or the issuance of a permit.

1. Construction or demolition of a building or structure. Installations or alterations involving (i) the removal or addition of any wall, partition or portion thereof, (ii) any structural component, (iii) the repair or replacement of any required component of a fire or smoke rated assembly, (iv) the alteration of any required means of egress system, (v) water supply and distribution system, sanitary drainage system or vent system, (vi) electric wiring, (vii) fire protection system, mechanical systems, or fuel supply systems, or (viii) any equipment regulated by the USBC.
2. For change of occupancy, application for a permit shall be made when a new certificate of occupancy is required under Section 103.3.

3. Movement of a lot line that increases the hazard to or decreases the level of safety of an existing building or structure in comparison to the building code under which such building or structure was constructed.
4. Removal or disturbing of any asbestos containing materials during the construction or demolition of a building or structure, including additions.

108.2 Exemptions from application for permit. Notwithstanding the requirements of Section 108.1, application for a permit and any related inspections shall not be required for the following; however, this section shall not be construed to exempt such activities from other applicable requirements of this code. In addition, when an owner or an owner's agent requests that a permit be issued for any of the following, then a permit shall be issued and any related inspections shall be required.

1. Installation of wiring and equipment that (i) operates at less than 50 volts, (ii) is for network powered broadband communications systems, or (iii) is exempt under Section 102.3(1), except when any such installations are located in a plenum, penetrate fire rated or smoke protected construction or are a component of any of the following:
 - 1.1. Fire alarm system.
 - 1.2. Fire detection system.
 - 1.3. Fire suppression system.
 - 1.4. Smoke control system.
 - 1.5. Fire protection supervisory system.
 - 1.6. Elevator fire safety control system.
 - 1.7. Access or egress control system or delayed egress locking or latching system.
 - 1.8. Fire damper.
 - 1.9. Door control system.
2. One story detached structures used as tool and storage sheds, playhouses or similar uses, provided the building area does not exceed 256 square feet (23.78 m²) and the structures are not classified as a Group F-1 or H occupancy.
3. Detached prefabricated buildings housing the equipment of a publicly regulated utility service, provided the floor area does not exceed 150 square feet (14 m²).



ORDINANCE
_____, 2018

The Board of Supervisors of Frederick County, Virginia hereby ordains that Section 52-5 (Issuance of Permits) of Chapter 52 (Building Construction) and Section 143-195 (Issuance, time limit, modification, maintenance, transfer and/or termination of Frederick County land-disturbing permit and VSMP authority permit) of Chapter 143 (Stormwater/Erosion and Sediment Control) of the Code of Frederick County, Virginia be, and the same hereby is, amended as follows (deletions are shown in ~~strikethrough~~ and additions are shown in **bold underline**):

CHAPTER 52 BUILDING CONSTRUCTION

§ 52-5. Issuance of Permits.

Unless otherwise excepted, no permit to begin work for construction as defined by § 36-97 of the Code of Virginia or required by the several provisions of the Virginia Uniform Statewide Building Code shall be issued until all permit fees have been paid. **Prior to the initiation of an application, by the owner of the subject property, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent, for a permit under this Chapter, except for, as provided under Section 108.1 of the Virginia Construction Code, a permit for emergency construction, alterations or equipment replacement, all delinquent real estate taxes and any other charges that constitute a lien on the subject property, that are owed to the County and have been properly assessed against the subject property, must be paid, unless otherwise authorized by the treasurer.** All such permits **issued under this Chapter** shall be issued by the Chief Building Official or his authorized agent, on forms approved and provided by the Department of Building Inspections.

CHAPTER 143 STORMWATER/EROSION AND SEDIMENT CONTROL

§ 143-195. Issuance, time limit, modification, maintenance, transfer and/or termination of Frederick County land-disturbing permit and VSMP authority permit.

- A. Permit issuance. Once the requirements for obtaining a Frederick County land-disturbing permit and coverage under the state general permit for discharges from construction activity (if applicable) have been met, including the receipt or verification of payment of all required permit fees in accordance with the fee schedule of § 143-235, the administrator will issue a Frederick County land-disturbing permit and a VSMP authority permit. **Prior to the initiation of an application, by the owner of the subject property, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent, for a permit under this Chapter, all delinquent real estate taxes and any other charges that constitute a lien on the subject property, that are owed to the County and have been properly assessed against the subject property, must be paid, unless otherwise authorized by the treasurer.**
- B. No transfer, assignment, or sale of the rights granted by virtue of a Frederick County land-disturbing permit shall be made unless a written notice of transfer and corresponding permit modification fee is filed with the administrator and the transferee certifies agreement to comply with all obligations and conditions of the permit. The administrator may require modification or revocation and reissuance of the VSMP authority permit to change the name of the permittee and incorporate such other requirements as may be necessary for the transfer.
- C. If land-disturbing activity has not commenced within 180 days of land-disturbing or VSMP authority permit issuance or ceases for more than 180 days, the administrator may evaluate the existing approved ESC plan to determine whether the plan still satisfies local and state erosion and sediment control criteria and to verify that all design factors are still valid. If the previously filed ESC plan is determined to be inadequate, a modified plan shall be submitted and approved prior to the resumption of land-disturbing activity.

Reference: 9 VAC 25-840-80B.

- D. VSMP authority permits are effective for a fixed permit cycle of five years. Activities requiring a VSMP permit may obtain coverage at any time during the five-year permit cycle and must be renewed if the permit has not been terminated prior to the end of the cycle. The annual permit maintenance fees in § 143-235 apply until the permit coverage is terminated or renewed.
- E. Land-disturbing activities for which VSMP permit coverage was issued between July 1, 2009, and June 30, 2014, for that permit cycle may remain subject to the technical criteria of Part II C of the Virginia Stormwater Regulations for two additional permit cycles, provided coverage under the original VSMP permit is maintained. After two permit cycles have passed, or should the original VSMP permit coverage not be maintained, portions of the project not under construction shall become subject to

any new technical criteria adopted by the VSMP authority after the original VSMP permit coverage was issued.

- F. Land-disturbing activities for which VSMP permit coverage was issued between July 1, 2009, and June 30, 2014, for that permit cycle may elect to modify the permit by paying the appropriate permit modification fee and request approval for compliance with the technical criteria of Part II B for any remaining portions of the project.

Reference: Va. Code § 62.1-44.15:24: 9 VAC 25-870-47.

Enacted this _____ day of _____, 2018.

Charles S. DeHaven, Jr., Chairman	_____	Gary A. Lofton	_____
J. Douglas McCarthy	_____	Robert W. Wells	_____
Blaine P. Dunn	_____	Shannon G. Trout	_____
Judith McCann-Slaughter	_____		

A COPY ATTEST

Kris C. Tierney
Frederick County Administrator



COUNTY OF FREDERICK

Roderick B. Williams
County Attorney

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MEMORANDUM

TO: Code & Ordinance Committee

FROM: Roderick B. Williams
County Attorney

DATE: June 4, 2018

RE: Frederick County Code – Noise Ordinance – draft revisions

The Committee previously considered this item at its meeting in August 2017. The Committee postponed further consideration of the item, pending further changes to the draft revisions.

To refresh the Committee on this item, please note that the County adopted its current noise ordinance in 1993. The ordinance uses, as its standard for whether noise is unlawful, whether a person is “annoyed, disturbed or vexed by unnecessary and unreasonable noise”. The relevant portions of the County’s animal ordinance, adopted in 1992, contain substantially the same type of prohibition with respect to barking dogs.

The Virginia Supreme Court, in 2009, decided the case of Tanner v. City of Virginia Beach, 277 Va. 432, in which the Court held that a noise ordinance containing similar “unreasonableness” language was unconstitutionally vague and therefore unenforceable. In light of the decision in Tanner, the County’s prohibitions against noise may be subject to similar challenge.

The draft revisions adopt as the standard for prohibited noise whether the noise is “plainly audible” at certain points beyond its source. The Committee inquired regarding the meaning and sufficiency of the term “plainly audible”. In one Attorney General Opinion, while the Attorney General did not define the term, the Attorney General found that an ordinance including the term “states in precise terms what is forbidden” and that “persons ‘of common intelligence’ are not required to ‘necessarily guess at [the] meaning [of the language] and differ as to its application.’”. 2011 Va. Att’y Gen’l Opin. 39, 41-42 (citing Tanner). In an abundance of caution, however, the draft revisions now include a definition, taken from the Blacksburg Town Ordinance, adopted in response to Tanner and cited by an ad hoc committee of the Local

Government Attorneys formed in 2009 to provide guidance to localities in response to Tanner. Also, with particular respect to barking dogs, the draft revisions further require that barking occur at least once a minute for ten consecutive minutes in order to be prohibited.

The draft revisions otherwise generally do not deviate from the general principles in the current ordinances; the draft revisions keep the general noise prohibition limited to the RP, R4, R5, and MH zoning districts, with the prohibition being applicable only between 9:00 p.m. and 6:00 a.m. The draft revisions also expressly provide that the prohibition does not apply to bona fide agricultural activity and further contain a list of other specific activities that are not subject to the prohibition.

The attached draft shows the changes submitted to the Committee in August and then, in red, the changes since that draft.

Attachment



**ORDINANCE TO AMEND PROVISIONS OF COUNTY CODE REGARDING
NOISE PROHIBITIONS
_____, 2018**

The Board of Supervisors of Frederick County, Virginia hereby ordains that Sections 48-23 (Unreasonable noise unlawful) and 48-24 (Enforcement) of Article II (Noise) of Chapter 48 (Animals and Fowl) and that Chapter 118 (Noise) of the Code of Frederick County, Virginia be, and the same hereby are, amended by enacting an amended Section 48-23 (Unreasonable noise unlawful) and 48-24 (Enforcement) of Article II (Noise) of Chapter 48 (Animals and Fowl) and an amended Section 118-1 (Unreasonable noise unlawful) and new Sections 118-4 (Specific prohibitions) and 118-5 (Exceptions) of Chapter 118 (Noise) of the Code of Frederick County, Virginia, as follows (deletions are shown in ~~strike through~~ and additions are shown in underline):

CHAPTER 48 ANIMALS AND FOWL

Article II Noise

§ 48-23 Unreasonable Specified noise unlawful.

- A.** It shall be unlawful, after written notice by the Sheriff to the owner, custodian or person in control or possession of ~~a dog~~ any animal a dog, for such person to suffer or allow such ~~dog animal dog~~ to howl, bark, meow, squawk, yelp, whine, or otherwise make ~~unreasonably loud~~ noises, ~~as are plainly audible to adjoining residents or property owners in a residential subdivision so as to unreasonably annoy, disturb, bother or vex such residents or property owners at least once a minute for ten (10) consecutive minutes:~~
- 1. In such a manner as to be plainly audible across a residential real property boundary or through partitions common to two (2) or more dwelling units within a building; or**
 - 2. In such a manner as to be plainly audible at a distance of fifty (50) feet or more from the building in which it is located, provided that the sound is audible on another's property; or**
 - 3. In such a manner as to be plainly audible at a distance of fifty (50) feet or more from its source, provided that the sound is audible on another's property.**

B. This article shall be applicable from 9:00 p.m. to 6:00 a.m., inclusive, each day, to such noise emanating from property located within the following zoning districts as indicated on the Frederick County Zoning Map:

- RP Residential Performance District**
- R4 Residential Planned Community District**
- R5 Residential Recreational Community District**
- MH1 Mobile Home Community District**

C. This section shall not apply to any bona fide agricultural activity.

D. The term “plainly audible” shall mean any sound that can be heard clearly by a person using his or her unaided hearing faculties.

§ 48-24 Enforcement.

Enforcement of this article shall be by the Sheriff of Frederick County **or his designee.**

§ 48-25 Violations and penalties. [Ed. note: No change is proposed to this section]

A violation of this article shall be punishable by a fine of not more than \$25 for the first offense and a fine of not more than \$100 for each subsequent offense. Each such occurrence shall constitute a separate offense.

CHAPTER 118 NOISE

§ 118-1 Unreasonable Specified noise unlawful.

A. It shall be unlawful, after complaint from any person annoyed, disturbed or vexed by unnecessary and unreasonable noise and after notice by the Sheriff to the person creating such noise or to the owner, custodian or person in control or possession of the property from which such noise emanates or arises, for such person to suffer or allow such unnecessary and unreasonable noise to continue. At certain levels, noise can be detrimental to the health, safety, welfare, and quality of life of inhabitants of the county, and, in the public interest, such noise should be restricted. It is, therefore, the policy of the County to reduce, and eliminate where possible, excessive noise and related adverse conditions in the community, and to prohibit unnecessary, excessive, harmful, and annoying noises from all sources.

B. This chapter shall be applicable from 9:00 p.m. to 6:00 a.m., inclusive, each day, to noise emanating from property located within the following zoning classifications districts as indicated on the Frederick County Zoning Map:

- RP Residential Performance District**

- R4 Residential Planned Community District
- R5 Residential Recreational Community District
- MH1 Mobile Home Community District

C. No person shall be charged with a violation of this section unless that person has received verbal, electronic, or written notice from a law enforcement officer of Frederick County that he is violating or has violated the provisions of this chapter and has thereafter had the opportunity to abate the noise disturbance.

§ 118-2 Enforcement. [Ed. note: No change is proposed to this section]

Enforcement of this chapter shall be by the Sheriff of Frederick County.

§ 118-3 Violations and penalties. [Ed. note: No change is proposed to this section]

A violation of this chapter shall be punishable by a fine of not more than \$100 for the first offense and a fine of not more than \$1,000 for each subsequent offense. Each such occurrence shall constitute a separate offense.

§ 118-4 Specific prohibitions.

The following acts are declared to be noise disturbances in violation of this chapter, provided that this list shall not be deemed to be an exclusive enumeration of those acts which may constitute noise disturbances and that an act not listed below may nevertheless constitute a violation of this chapter:

- A. Prohibited Noise Generally. Operating, playing or permitting the operation or playing of any radio, television, computer, recording, musical instrument, amplifier, or similar device, or yelling, shouting, whistling, or singing, or operating or permitting the operation of any mechanical equipment:**
 - 1. In such a manner as to be plainly audible across a residential real property boundary or through partitions common to two or more (2) dwelling units within a building; or**
 - 2. In such a manner as to be plainly audible at a distance of fifty (50) feet or more from the building in which it is located, provided that the sound is audible on another's property; or**
 - 3. In such a manner as to be plainly audible at a distance of fifty (50) feet or more from its source, provided that the sound is audible on another's property.**

- B. Schools, public buildings, places of worship, and hospitals. The creation of any noise on or near the grounds of any school, court, public building, place of worship, or hospital in a manner that is plainly audible within such**

school, court, public building, place of worship, or hospital, and which noise interferes with the operation of the institution.

- C. The term “plainly audible” shall mean any sound that can be heard clearly by a person using his or her unaided hearing faculties. When music is involved, the detection of rhythmic bass tones shall be sufficient to be considered plainly audible sound.

§ 118-5 Exceptions.

This chapter shall have no application to any sound generated by any of the following:

- A. Sound which is necessary for the protection or preservation of property or the health, safety, life, or limb of any person.
- B. Public speaking and public assembly activities conducted on any public right-of-way or public property.
- C. Radios, sirens, horns, and bells on police, fire, or other emergency response vehicles.
- D. Parades, lawful fireworks displays, school-related activities, and other such public special events or public activities.
- E. Activities on or in municipal, county, state, United States, or school athletic facilities, or on or in publicly owned property and facilities.
- F. Fire alarms and burglar alarms, prior to the giving of notice and a reasonable opportunity for the owner or person in possession of the premises served by any such alarm to turn off the alarm.
- G. Religious services, religious events, or religious activities or expressions, including, but not limited to music, singing, bells, chimes, and organs which are a part of such service, event, activity, or expression.
- H. Locomotives and other railroad equipment, and aircraft.
- I. The striking of clocks.
- J. Military activities of the Commonwealth of Virginia or of the United States of America.
- K. Agricultural activities.
- L. Lawful discharge of firearms.
- M. Motor vehicles.
- N. Construction equipment.

Enacted this ____ day of ____, 2018.

Charles S. DeHaven, Jr., Chairman

Gary A. Lofton

J. Douglas McCarthy

Robert W. Wells

Blaine P. Dunn

Shannon G. Trout

Judith McCann-Slaughter

A COPY ATTEST

Kris C. Tierney
Interim Frederick County Administrator



COUNTY OF FREDERICK

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MEMORANDUM

TO: Code & Ordinance Committee

FROM: Roderick B. Williams
County Attorney

DATE: June 4, 2018

RE: County Code, Chapter 155 (Taxation), Section 155-34 (Tax Imposed)

The Commissioner of the Revenue's Office recently discovered a typographical error in County Code § 155-34(A)(1)(2)(c), which provides the formula by which the tax on electricity is calculated when the electricity is being consumed by multiple dwellings or units through a master meter. As presently written, the subsection erroneously refers to apartment houses or multiple-family dwellings utilizing gas service, not electric service.

The attached draft shows the correction of the typographical error noted above.

Attachment

cc: Ellen Murphy, Commissioner of the Revenue



ORDINANCE

_____, 2018

The Board of Supervisors of Frederick County, Virginia hereby ordains that Section 155-34 (Tax Imposed) of Article VIII (Tax on Purchasers of Utility Service) of Chapter 155 (Taxation) of the Code of Frederick County, Virginia be, and the same hereby is, amended as follows (deletions are shown in ~~bold strikethrough~~ and additions are shown in **bold underline**):

§ 155-34 Tax Imposed

A. Consumer taxes

(1) Electric Utility Consumer Tax

(a) Levy. In accordance with Virginia Code, § 58.1-3814, effective January 1, 2001, there is hereby imposed and levied a monthly tax on each purchase of electricity delivered to consumers by a service provider, classified as determined by such provider, as follows:

1. Residential Consumers

- a. Such tax shall be \$0.22 plus the rate of \$0.003 on each KWH delivered monthly to residential consumers by a service provider not to exceed \$3 monthly.
- b. Nonmetered charges will carry a tax at the rate of 0.04 times the nonmetered charge per month not to exceed \$3 per month.

2. Nonresidential Consumers

- a. Such tax on nonresidential consumers shall be \$0.30 per month plus \$0.0024 per kilowatt hour (KWH) on the first 700 KWH delivered per month then \$0.0015928 on the balance.
- b. Nonmetered charges will carry a tax at the rate of 0.04 times the nonmetered charge per month.

- c. In the case of any apartment house or other multiple-family dwelling using **gas electric** service through a master meter, the tax shall be equal to the sum of \$3 multiplied by the number of dwelling units served.
 3. The conversion of tax pursuant to this subsection to monthly KWH delivered shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by this jurisdiction shall be in effect.
- (b) Exemptions. The following consumers of electricity are exempt from the tax imposed by this § 155-34A(1): the United States of America, the commonwealth and the political subdivisions thereof, including this jurisdiction.
- (c) Billing, collection and remittance of tax. The service provider shall bill the electricity consumer tax to all users who are subject to the tax and to whom it delivers electricity and shall report the same to the Commissioner of the Revenue for the County on a monthly basis on forms provided by the Commissioner. Such taxes shall be paid by the service provider to the Treasurer in accordance with Virginia Code, § 58.1-3814, Paragraphs F. and G., and Virginia Code, § 58.1-2901. If any consumer receives and pays for electricity but refuses to pay the tax imposed by this section, the service provider shall notify the Commissioner of the Revenue of this jurisdiction of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider must follow its normal collection procedures and, upon collection of the bill or any part thereof, must apportion the net amount collected between the charge for electric service and the tax and remit the tax portion to this jurisdiction. Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to this jurisdiction. Such remittance shall be done before the last day of the calendar month following the month the tax was received by the service provider.
- (d) Computation of bills not on monthly basis. Bills shall be considered as monthly bills for the purposes of this subsection if submitted 12 times per year of approximately one month each. Accordingly, the tax for a bimonthly bill (approximately 60 days) shall be determined as follows:
 1. The KWH will be divided by 2;
 2. A monthly tax will be calculated using the rates set forth above;
 3. The tax determined by Subsection A(1)(d)(2) shall be multiplied by 2;

4. The tax in Subsection A(1)(d)(3) may not exceed twice the monthly maximum tax

(2) Local Natural Gas Utility Consumer Tax.

- (a) In accordance with Virginia Code, § 58.1-3814, there is hereby imposed and levied a monthly tax on each purchase of natural gas delivered to consumers by pipeline distribution companies and gas utilities classified by "class of consumers" as such term is defined in Virginia Code, § 58.1-3814 J., as follows:
 1. Residential consumers. Such tax on residential consumers of natural gas shall be 0.04 times any nonmetered charges plus the rate of \$0.055 on each CCF, delivered monthly to residential consumers, not to exceed \$3 per month.
 2. Nonresidential consumers. Such tax on nonresidential consumers shall be at the rates per month shown for each CCF delivered by a pipeline distribution company or a gas utility for the classes as set forth below:
 - a. Commercial, industrial, interrupted and transportation consumers. Such tax shall be 0.04 times any non-metered charges plus the rate of \$0.04 on the first 1,000 CCF delivered monthly to commercial consumers plus \$0.033 for the next 29,000 CCF, and \$0.025 for all CCF over 30,000.
 - b. In the case of any apartment house or other multiple-family dwelling using gas service through a master meter, the tax shall be equal to the sum of \$3 multiplied by the number of dwelling units served.
 3. The conversion of tax pursuant to this subsection to monthly CCF delivered shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by this jurisdiction shall be in effect.
- (b) Exemptions: The following consumers of natural gas shall be exempt from the tax imposed by this § The following consumers of natural gas shall be exempt from the tax imposed by this § 155-34A(2): the United States of American, the commonwealth and the political subdivisions thereof, including this jurisdiction.: the United States of American, the commonwealth and the political subdivisions thereof, including this jurisdiction.
- (c) Billing collection and remittance of tax. The service provider shall bill the natural gas consumer tax to all users who are subject to the tax and to whom it delivers natural gas and shall report the same to the

Commissioner of the Revenue for the County on forms provided by the Commissioner on a monthly basis. Such taxes shall be paid by the service provider to the Treasurer in accordance with Virginia Code, § 58.1-3814, Paragraphs F. and G., and Virginia Code, § 58.1-2901. If any consumer receives and pays for natural gas but refuses to pay the tax imposed by this section, the service provider shall notify the Commissioner of the Revenue of this jurisdiction of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider must follow its normal collection procedures, and upon collection of the bill or any party thereof, must apportion the net amount collected between the charge for natural gas and the tax and remit the tax portion to this jurisdiction. Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to this jurisdiction. Such remittance shall be done before the last day of the calendar month following the month the tax was received by the service provider.

(d) Computation of bills not on monthly basis. Bills shall be considered as monthly bills for the purposes of this subsection if submitted 12 times per year of approximately one month each. Accordingly, the tax for a bimonthly bill (approximately 60 days) shall be determined as follows:

1. The CCF will be divided by 2;
2. A monthly tax will be calculated using the rates set forth above;
3. The tax determined by Subsection A(2)(d)(2) shall be multiplied by 2;
4. The Tax in Subsection A(2)(D)(3) may not exceed twice the monthly maximum tax.

(3) Telephone Service Tax. There is hereby imposed and levied by the County upon each and every purchaser of local exchange telephone service a tax in the amount of 4% of the charge (exclusive of any federal or state tax thereon) made by the seller against the purchaser with respect to each line, which tax in every case shall be collected by the seller from the purchaser and shall be paid by the purchaser unto 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.

B. The tax hereby imposed and levied 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. A cap on the telephone service tax in the amount of \$450 is hereby established.

Enacted this ____ day of _____, 2018.

Charles S. DeHaven, Jr., Chairman _____

Gary A. Lofton _____

J. Douglas McCarthy _____

Robert W. Wells _____

Blaine P. Dunn _____

Shannon G. Trout _____

Judith McCann-Slaughter _____

A COPY ATTEST

Kris C. Tierney
Frederick County Administrator