THE CODE OF THE

TOWN OF

LEBANON, VIRGINIA

Published by Order of the Town Council

Adopted: December 13, 1993
Effective: December 13, 1993

MUNICIPAL CODE CORPORATION

Tallahassee, Florida 1993

Supp. No. 1

OFFICIALS

of the

TOWN OF

LEBANON, VIRGINIA

AT THE TIME OF THIS CODIFICATION

James A. Combs
Mayor

Joseph Gillespie
Vice-Mayor

H. M. "Pete" Harless
Clifford "Jack" Monk
James Hassell Kegley
Clint Sykes
Town Council

Michael L. Duty
Town Manager

Nancy C. Dickenson
Town Attorney

O. Jefferson Sword
Town Clerk

PREFACE

This Code constitutes a complete recodification of the general and permanent ordinances of the Town of Lebanon, Virginia.

Source materials used in the preparation of the Code were the 1977 Code and ordinances subsequently adopted by the town council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 1977 Code, as supplemented, and any subsequent ordinance included herein.

The chapters of the Code have been conveniently arranged in alphabetical order, and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is identified with its chapter, and at the same time new sections or even whole chapters can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 10-1 and 10-2 is desired to be added, such new section would be numbered 10-1.5. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case

of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix.

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The indexes have been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the indexes themselves which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up-to-date. Subsequent amendatory legislation will be properly edited, and the appropriate page or pages affected will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up-to-date at all times will depend largely upon the holder of the publication. As revised sheets are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Mary Rose DiMarco, Supervising Editor, and Ron McLaughlin, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Nancy Dickenson, Town Attorney, and Michael Duty, Town Manager, for their their cooperation and assistance during the progress of the work on this publication. It is hoped that their efforts and those of the publisher have resulted in a Code which will make the active law

of the town readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the town's affairs.

MUNICIPAL CODE CORPORATION
Tallahassee, Florida

ADOPTING ORDINANCE

ORDINANCE NO. 93-3

An Ordinance Adopting and Enacting a New Code for the Town of Lebanon, Virginia; Providing for the Repeal of Certain Ordinances Not Included Therein; Providing a Penalty for the Violation Thereof; Providing for the Manner of Amending Such Code; and Providing When Such Code and This Ordinance Shall Become Effective.

Be It Ordained by the Town Council of the Town of Lebanon:

Section 1. The Code entitled "The Code of the Town of Lebanon, Virginia," published by Municipal Code Corporation consisting of Chapters 1 through 78, each inclusive, is adopted.

Section 2. All ordinances of a general and permanent nature enacted on or before November 9, 1992, and not included in the Code or recognized and continued in force by reference therein, are repealed.

Section 3. The repeal provided for in section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.

Section 4. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof, shall be punished as follows:

(1) Whenever an act or offense, or the failure to do any act, is declared to be a class I misdemeanor, such act or offense shall be punished by a fine of not more than $2,500.00 or confinement in jail for not more than 12 months, or both such fine and imprisonment.

(2) Whenever an act or offense, or the failure to do any act, is declared to be a class II misdemeanor, such act or offense shall be punished by a fine of not more than $1,000.00 or confinement in jail for not more than six months, or both such fine and imprisonment.

(3) Whenever an act or offense, or the failure to do any act, is declared to be a class III misdemeanor, such act or offense shall be punished by a fine of not more than $500.00.

(4) Whenever an act or offense, or the failure to do any act, is declared to be a class IV misdemeanor, such act or offense shall be punished by a fine of not more than $250.00.

Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided shall apply to the amendment of any Code section whether or not such penalty prescribed above, the town may pursue other remedies such as abatement of nuisances, injunctive relief, and revocation of license or permits.

Section 5. Additions or amendments to the Code when passed in the form as to indicate the intention of the Town to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 6. Ordinances adopted after November 9, 1992, that amend or refer to ordinances that have been codified in the Code, shall be construed as if they amend or refer to like provisions of the Code.

Section 7. This ordinance shall become effective December 13, 1993.

Passed and adopted by the Town Council this 13th day of December, 1993.

/s/ _____
James A. Combs, Mayor

/s/ _____
O. Jefferson Sword, Town Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true copy of the ordinance passed at the regular meeting of the Town Council of the Town of Lebanon held on the 13th day of December, 1993.

/s/ O. Jefferson Sword, Clerk

SUPPLEMENT NO. 5
March 1999

CODE

Town of

LEBANON, VIRGINIA

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 98-4, adopted July 1, 1998.

See the Code Comparative Table for further information.

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Insert and maintain this instruction sheet in front of this publication. File removed pages for reference.

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Checklist of Up-to-Date Pages

(This checklist will be updated with the printing of each Supplement)

From our experience in publishing Looseleaf Supplements on a page-for-page substitution basis, it has become evident that through usage and supplementation many pages can be inserted and removed in error.

The following listing is included in this Code as a ready guide for the user to determine whether the Code volume properly reflects the latest printing of each page.

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Sec. 20. Power of town as to exercise of police powers, power of council as to ordinances, etc., carrying into effect enumerated powers conferred by Charter.
Sec. 21. Town manager; control and supervision of police force.
Sec. 22. Continuance in effect of ordinances.

***Editor's note**—Printed herein is the charter, as contained in an Act of the General Assembly of Virginia, approved March 29, 1958 (Acts of 1958, ch. 343). Amendments to the charter are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original charter. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines and citations to state statutes has been used. Additions made for clarity are indicated by brackets.

Sec. 1. Body politic and corporate, designation; powers under Constitution, etc.; boundaries.

The inhabitants of the territory embraced within the present limits of the Town of Lebanon, as hereinafter defined, or as the same may be hereafter altered or established by law, shall constitute and continue a body politic and corporate, to be known and designated as the Town of Lebanon, and as such shall have and may exercise all powers which are now, or may hereafter be, conferred upon or delegated to towns under the Constitution and laws of the Commonwealth of Virginia as fully and as completely as though all such powers were specifically enumerated herein. The territory embraced within the present limits of the Town of Lebanon is included and bounded by metes and bounds as follows:

BEGINNING at an angle point in the former corporate limits of Lebanon, Virginia, said angle point being a stake in the property of G.H. Dickenson; thence from the point of beginning N 80°39′37″ E 5650.82 feet to a point in the property of Frank Ketron; thence S 24°31′25″ E 2167.99 feet to a point on the east side of a private road in the Gilmer property; thence S 70°48′45″ W 6208.43 feet to a point on the south bank of Cedar Creek in the Con Fields property; thence S 76°11′50″ W 1318.26 feet to a point on the south bank of Cedar Creek in the Ferguson property; thence N 31°11′22″ W 985.72 feet to a point in the aforementioned Ferguson property; thence S 67°47′43″ W 1362.98 feet to a point in the aforementioned Ferguson property; thence N 09°56′08″ W 642.86 feet to a point on the south bank of Cedar Creek in the aforementioned Ferguson property; thence S 52°53′37″ W 5912.12 feet to a point on the east side of State Route No. 660, said point being 15.0 feet from the centerline of the aforementioned road; thence N 44°43′26″ W 1217.48 feet to a point on the south right-of-way line of Federal Route No. 19, said point being 33.0 feet from the centerline of the aforementioned road, thence N 34°51′53″W 2498.63 feet to a point witnessed by the corner common to the Bundy and Garrett properties; thence N 45°48′24″ E 6139.56 feet to a steel marker in the center of State Route No. 82, thence S 73°54′23″ E 3262.35 feet to a point witnessed by the corner common to the Russell County School Board and Hendricks properties; thence S 82°13′54″ E 2033.45 feet to an angle point in the former corporate lines of the Town of Lebanon, said angle point being a stake in the lands of G.H. Dickenson, at the beginning.

Editor's note—A current description of the boundaries of the town is on file in the town hall.

Sec. 2. Vesting of administration and government; composition of council; election and term of mayor and councilmen; vacancies.

The administration and government of the town shall be vested in a council composed of a mayor and six councilmen, all of whom shall be qualified electors of the town.

(a) The mayor and six councilmen shall be elected by the qualified voters of the town on the first Tuesday in May, 1992. The three members of council, each of whom has received more votes in such election than the other three members, shall serve as members of the council for terms of four years each. The remaining three members shall serve for terms of two years each. At the regular municipal election to be held on the first Tuesday in May 1994, and every two years thereafter, three councilmen

shall be elected, each for a term of four years beginning on July 1 next following their election. Each councilman elected as provided in this section shall serve for the term stated or until his successor has been elected and qualified. At the regular municipal election to be held on the first Tuesday in May of 1992, and every four years thereafter, the qualified voters shall elect a mayor to serve for a term of four years or until his successor has been elected and qualified. The mayor and council in office on the effective date of this act shall continue in office until expiration of their terms and until their successors shall have qualified.

(b) Vacancies in the office of mayor or council shall be filled for the unexpired term by a majority vote of the remaining members.

(Ord. of 12-28-89, § 2; Bill of 1-13-92)

Sec. 3. Compensation of mayor, councilmen, etc.

The council shall fix the compensation of the mayor, members of the council, and all appointed officers and employees of said town, at a sum not to exceed any limitations placed thereon by the laws and Constitution of the Commonwealth of Virginia.

State law reference—Salaries of mayor and councilmen may not be increased during the incumbent's term in office, Code of Virginia, §§ 15.1-827, 15.1-827.1.

Sec. 4. Meetings of council.

The council shall, by ordinance, fix the time for its regular meetings. Special meetings shall be called by the clerk of the council upon the written request of the mayor or three councilmen. Not less than twelve hours' written notice shall be given to the members of the council, of the purpose, place and time of any such special meeting. Special meetings may also be held at any time without notice, provided all members of the council are present. No business shall be transacted at any such special meeting which is not stated in the notice calling the same, unless all members of the council attend the meeting or waive notice thereof in writing.

Sec. 5. Quorum for transaction of business of council.

The mayor and four members of the council, or five members of the council shall constitute a quorum for the transaction of business.

Sec. 6. Appointment, etc., of clerk, treasurer, sergeant, town attorney, etc.

The council shall appoint a clerk, a treasurer and a sergeant and may appoint a town attorney and such other officers as it deems necessary or proper, prescribe their duties and functions and fix their compensation. Such officers shall hold office at the pleasure of the council and shall give such bonds as the council requires. The same person may be appointed to fill two or more such offices, in the discretion of the council.

Sec. 7. Powers and duties of sergeant.

The sergeant shall be a conservator of the peace, and shall have the same powers and perform the same duties within the corporate limits of the town and to a distance of one mile beyond the same, as are enumerated in Article 2 of Chapter 17, Title 15, of the Code of Virginia.

Editor's note—The state law reference above has been changed to Code of Virginia, § 15.1-796.

Sec. 8. Powers and duties of mayor; appointment, etc., of vice-mayor and police justice.

The mayor in addition to his other duties shall be a conservator of the peace, and shall, unless and until a police justice is appointed as hereinafter provided, have power to issue warrants and summon witnesses; have exclusive original jurisdiction to try cases involving violations of town ordinances, or the collection of town taxes or assessments, or any other form of debts owing to the town; and shall have like powers in the matter of collecting fines and costs imposed by him, as are vested by law in the judges of county courts. The fees and costs in connection with such cases shall be the same as are authorized by law to be charged, taxed and collected by county courts for similar services, and such fees or costs and all fines collected by the mayor shall be promptly paid by him into the town treasury, unless the council by ordinance directs some other disposition thereof. The council may, by resolution duly adopted, appoint any one of its members vice-mayor to act in the place and stead of the mayor in the trial and disposition of any warrant charging a violation of a town ordinance, in the event of the mayor's absence, sickness or disqualification. The council may appoint a police justice for the town, who shall be a qualified voter of the town, shall give such bond as the council requires, shall serve at the pleasure of the council, and shall receive such compensation as the council prescribes.

Such police justice shall have, during such time as he serves, and to the exclusion of the mayor, the same powers and jurisdiction as are hereinabove conferred upon and vested in the mayor, and shall exercise the same in like manner as they are above authorized and directed to be exercised by the mayor in that capacity.

Editor's note—Code of Virginia, § 16.1-70, provides that the authority of existing city and town courts, created by the provisions of a municipal charter, is continued. Such courts shall be designated as police courts.

Sec. 9. Appointment, etc., of justices of the peace.

The judge of the circuit court of Russell County may appoint one or more persons as justices of the peace for the town, who shall have power to issue warrants, commit persons to jail and to admit to bail persons charged with violation of the ordinances of the town. The term of the office of the justices of the peace shall be at the pleasure of the judge of the circuit court of Russell County. No justice of the peace who receives a salary from the town, as a justice of the peace, shall receive any fee for admitting any person to bail or for any services whatever

rendered by him in any criminal case. The council shall have the authority to fix the compensation of justices of the peace appointed hereunder.

Editor's note—The office of justice of the peace was abolished, effective January 1, 1974, Code of Virginia, § 19.2-30 et seq. Code of Virginia, § 19.2-32, provides that references in law to justices of the peace shall be deemed to apply to magistrates "unless other provisions of chapters 3 and 4 of this title shall render such reference inapplicable."

Sec. 10. Power of town as to waterworks and systems for supply of water; rates for water service generally.

The town is empowered to acquire, establish, enlarge, maintain and operate such waterworks and systems as the council deems necessary for the purpose of providing an adequate supply of water to consumers within the corporate limits of the town and within such adjacent territory as the council deems it expedient or proper to serve, at such rates as the council prescribes.

The town may discontinue serving water to any consumer who defaults in payment for such service within the time prescribed by the council for payment thereof, for so long as such default continues.

Sec. 11. Power of town as to sanitary sewer lines and systems; fees and rates for sewer connections and sewer service generally.

The town is empowered to establish, construct, enlarge, and maintain such sanitary sewer lines and systems as the council deems necessary or expedient, and to require owners or occupiers of real estate within the corporate limits of the town, which fronts or abuts on any such sewer line, to make connection with and use the same; and shall have power to assess and collect reasonable fees and rates for making sewer connections and for sewer service. Sewer service may be discontinued for default in payment for such service, within the time prescribed by the council for payment thereof, for so long as such default continues.

Sec. 12. Further provisions as to fees, rates and charges for use, etc., of public water system or sewage disposal system.

In the event the fees, rents or charges, charged for the use and service of the public water system or sewage disposal system, by, or in connection with, any real estate shall not be paid when due, interest shall accrue thereon at the rate of not more than one percent per month. Such fees, rents and charges, and the interest due thereon may be recovered by the Town of Lebanon by action at law, or suit in equity, and shall constitute a lien against the property, of equal dignity as liens for unpaid town or county taxes.

Sec. 13. Power of town as to acquisition, etc., of property for proper purposes of town and rights of way to certain town property and as to sale of town property.

Subject to the provisions of the Code of Virginia, § 25-233, the town is empowered to acquire by condemnation or otherwise, property, real or personal, or any interest or estate therein, either within or without its corporate limits, for any of its proper purposes, including

that of providing playgrounds, parks, golf courses and other recreational facilities, and to make reasonable charges for the use of such facilities, and to otherwise handle and deal with such properties in such manner as the council deems proper or expedient; and shall have power to acquire by condemnation or otherwise, rights of way from the town to any property acquired by it under any of the provisions of this Charter, which lies without its corporate limits, and to construct and maintain upon such rights of way, such roads or bridges as may be reasonably necessary for the full enjoyment thereof; and shall also have power to sell such properties or any of them, or any other property owned by the town, whenever the council deems it expedient to do so.

Sec. 14. Power of town as to motor vehicles carrying passengers or freight for hire, taxicab, etc., fares, motor traffic and parking of motor vehicles.

To the extent not expressly prohibited by general law, the town is empowered:

(a) To control and regulate the operation of motor vehicles carrying passengers or freight for hire upon its streets and alleys, and to require the owners or operators of such carriers to provide and maintain within the town, suitable terminals for the convenient loading and unloading of passengers and freight;

(b) To regulate the fares to be charged by operators of taxicabs or other motor vehicles operating from established stands within the town, for carrying passengers within its corporate limits, and to require that the drivers of such vehicles be of such moral character as conforms to standards set by the council; and

(c) To prescribe rules and regulations with respect to motor traffic of all kinds, within the town, and the parking of motor vehicles on its streets and alleys.

Sec. 15. Power of town as to holding of shows, carnivals, etc., and license taxes on businesses, trades, etc.

The town is empowered:

(a) To regulate the holding of shows, carnivals, fairs and other similar public exhibitions, or to prohibit the holding of same, or any of them, within its corporate limits;

(b) Except as prohibited by general law, to impose and collect such license tax as the council may determine for the privilege of engaging within the town in any business, trade, profession or calling upon which the state imposes a license tax; provided that the town may, unless expressly prohibited by general law, impose a higher license tax on any such activity, than that imposed by the state on the same activity.

Sec. 16. Power of town as to buildings and building and as to comprehensive plan concerning subdivision of lands.

The town is empowered:

(a) To provide a Building Code for the town; to provide for the orderly and safe construction of houses and other buildings; to prescribe setback lines on designated streets; to

designate standards to be observed in the construction of dwellings and business houses on designated streets and in designated sections; and

(b) To adopt a comprehensive plan concerning the subdivision of lands within the corporate limits of the town or within two miles thereof.

State law reference—Uniform Statewide Building Code, Code of Virginia, § 36-98.

Sec. 17. Power of town as to protection of public or private property, as to minors in poolrooms, etc., and as to compelling persons sentenced to jail for ordinance violation to work on streets.

The town is empowered:

(a) To enact such ordinances as may be necessary for the protection of public or private property within the town and to prescribe penalties for violations; provided, however, that no punishment so prescribed shall be greater than that permitted by the general laws of the commonwealth for like offenses;

(b) To prohibit minors from frequenting or loitering in public poolrooms, billiard parlors or bowling alleys, and prescribe punishment therefor, and to punish the proprietors of such places, or their agents in charge, for permitting the same; and

(c) To compel persons sentenced to confinement in jail for violations of town ordinances, to work on the streets or other public places of the town.

Sec. 18. Power of town as to encroachments on streets, etc.

The town is empowered to prohibit encroachments upon the streets or alleys, or upon parks or other public places of the town by any fence, building, porch, or other projection; and any such encroachment made without such consent shall be deemed a nuisance, which the town may compel to be abated and removed by and through appropriate court action or proceeding, against which right of the town no statute of limitation shall run.

Sec. 19. Power of town as to poles and wires for electric, etc., service and as to laying any kinds of pipes in streets and alleys.

The town is empowered to permit and regulate, or to prohibit, the erection of poles and wires for electric, telegraph or telephone service or the laying of any kinds of pipes in the streets or alleys of the town, and to prescribe, assess and collect annual or other periodical charges for the doing of any such things under permits hereafter granted, and the power to require the owners or operators of any such electric light, telephone or telegraph lines to change the location of any of their poles whenever the council deems any such change expedient; and to require all wires or cables carrying electric current, whether heretofore or hereafter installed, to be placed in suitable conduits, underground, in the discretion of the council; provided that none of the powers above enumerated shall be exercised in a manner inconsistent with the provisions of any franchise granted by the town.

Sec. 20. Power of town as to exercise of police powers, power of council as to ordinances, etc., carrying into effect enumerated powers conferred by Charter.

The town is empowered to exercise all such police powers as the council deems reasonably necessary for the promotion and protection of the health, morals and safety of the inhabitants of the town, for the protection of the property of the town and its inhabitants, for the preservation of peace and good order, and for the general welfare; and the council is empowered to make ordinances and bylaws for the purpose of carrying into effect the enumerated powers conferred upon the town by this Charter, including police powers, and to prescribe punishments for violations thereof, provided that no such punishment shall exceed the maximum punishment prescribed by general law for a misdemeanor; and provided further, that all ordinances, bylaws and resolutions made and adopted by the council shall become effective thirty days after their passage, unless a different date is specified in any such ordinance, bylaws or resolution, upon which the same shall become effective.

Sec. 21. Town manager; control and supervision of police force.

The council may appoint a town manager who shall be the chief administrative officer of the town and shall be chosen solely on the basis of his executive and administrative qualifications, and shall have such knowledge of civil, mechanical and electrical engineering as, in the opinion of the council, shall be requisite to the efficient discharge of his duties. During his term of office he shall reside within the corporate limits of the town, and shall be appointed for such term as he and the council agree upon, not to exceed two years, but in any event, to end with the term of the council making the appointment. The town manager may be suspended or removed by the council for any cause it deems sufficient, provided that no suspension or removal shall be effected until after he shall have been given at least five days' notice in writing, stating the cause for such suspension or removal and fixing a day when he may be heard thereon. The action of the council in suspending or removing the town manager shall be final. The council, in its discretion, may place the control and supervision of the police force of the town under either the mayor or the town manager.

Except as otherwise provided in this Charter, the town manager may, with the consent of the council, appoint or employ, and remove or discharge, such officers, employees and assistants as he deems necessary to carry on the work of such departments of the town as are committed to him by the council in an efficient manner. The salary or compensation, and the terms of office of employment of such officers, employees and assistants shall be fixed by the town manager, subject to approval by the council; and his actions in all respects shall be subject to review by the council.

Sec. 22. Continuance in effect of ordinances.

All ordinances now in force in the Town of Lebanon, not inconsistent with this Charter, shall be and remain in full force and effect until altered, amended or repealed by the council of the town, after the effective date of this Act (Charter).

Chapter 96, Acts of Assembly of 1872-73, in force February 21, 1873, and all amendments thereto, are repealed.

An emergency exists and this Act (Charter) is in force from its passage.

PART II

THE CODE

Chapter 1

GENERAL PROVISIONS

Sec. 1-1. How Code designated and cited.
Sec. 1-2. Rules of construction and definitions.
Sec. 1-3. Severability of parts of Code.
Sec. 1-4. Provisions considered as continuations of existing ordinances.
Sec. 1-5. Catchlines of sections.
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Sec. 1-7. Certain ordinances not affected by Code.
Sec. 1-8. General penalty; continuing violations.
Sec. 1-9. Issuance and service of summons in place of warrant.
Sec. 1-10. When search warrants required.

Sec. 1-1. How Code designated and cited.

The ordinances embraced in this and the following chapters and sections shall constitute and be designated "The Code of the Town of Lebanon, Virginia," and may be so cited. Such ordinances may also be cited as "Lebanon Town Code."
(Code 1977, § 1-1)

State law reference—Authority of town to codify ordinances, Code of Virginia, § 15.1-37.3.

Sec. 1-2. Rules of construction and definitions.

In the construction of this Code and of all ordinances and resolutions of the town, the following rules of construction and definitions shall be observed, unless they are inconsistent with the manifest intent of the council or the context clearly requires otherwise:

Bond. When a bond is required an undertaking in writing with such surety, if any, as the council may direct, shall be sufficient.

Computation of time. When a statute or rule of court requires a notice to be given, or any other act to be done, a certain time before any motion or proceeding, there must be that time, exclusive of the day for such motion or proceeding, but the day on which such notice is given, or such act is done, may be counted as part of the time; but when a statute or rule of court requires a notice to be given or any other act to be done within a certain time after any event or judgment, that time shall be allowed in addition to the day on which the event or judgment occurred.

State law reference—"Computation of time," Code of Virginia, § 1-13.3.

Council. The words "council" or "the council" mean the council of the Town of Lebanon, Virginia.

County. The words "county" or "the county" mean the County of Russell in the State of Virginia.

Following. The word "following," when used by way of reference to any section, means next following that in which such reference is made.

State law reference—"Following," Code of Virginia, § 1-13.6.

Gender. A word importing the masculine gender only may extend and be applied to females and to firms, partnerships and corporations as well as males.

State law reference—"Gender," Code of Virginia, § 1-13.7.

Health officer. The term "health officer" means the director of public health of the county or his authorized representative.

In the town. The words "in the town" mean any territory jurisdiction for which the exercise of its regulatory power has been conferred on the town by public or private law.

Month. The word "month" means a calendar month.

State law reference—Similar provisions, Code of Virginia, § 1-13.13.

Number. A word importing the singular number only may extend and be applied to several persons or things, as well as to one person or thing; and a word importing the plural number only may extend and be applied to one person or thing, as well as to several persons or things.

State law reference—"Number," Code of Virginia, § 1-13.15.

Oath. The word "oath" includes an affirmation in all cases in which by law an affirmation may be substituted for an oath.

State law reference—Similar provisions, Code of Virginia, § 1-13.16.

Occupant or tenant. The word "occupant" or "tenant," when applied to a building or land, means any person who holds a written or oral lease of or actually occupies the whole or a part of such building or land, either alone or with others.

Official time standard. Whenever particular hours are specified in this Code relating to the time within which any act shall or shall not be performed by any person, the time applicable shall be official standard time or daylight saving time, whichever may be in current use in the town.

Owner. The word "owner," when applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such building or land.

Person. The word "person" extends and is applied to associations, firms, partnerships and bodies politic and corporate as well as to individuals.

State law reference—Similar provisions, Code of Virginia, § 1-13.19.

Preceding. The word "preceding," when used by way of reference to any section, means next preceding that in which such reference is made.

State law reference—Similar provisions, Code of Virginia, § 1-13.23.

Property. The word "property" means real, personal or mixed property.

Public grounds. The words "public grounds" mean the parks and all public lands owned by the town, and those parts of public places which do not form traveled parts of streets as defined in this section.

Shall. The word "shall" is mandatory.

Sidewalk. The word "sidewalk" means any portion of a street between the curb line, or the lateral lines of a roadway where there is no curb, and the adjacent property line intended for the use of pedestrians.

Signature, subscription. The words "signature" and "subscription" include a mark when the person cannot write, his name being written near it and being witnessed by a person who writes his own name as a witness.

State. The word "state" or "the state" means the State of Virginia.

Street. The word "street" includes avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges and the approaches thereto and all other public thoroughfares in the town,

and means the entire width thereof between abutting property lines. It includes a sidewalk or footpath, unless the contrary is expressed or unless such construction would be inconsistent with the manifest intent of the council.

Swear, sworn. The word "swear" or "sworn" is equivalent to the word "affirm" or "affirmed" in all cases in which by law an affirmation may be substituted for an oath.

State law reference—Similar provisions, Code of Virginia, § 1-13.28.

Town. The words "town" or "the town" mean the Town of Lebanon, in the County of Russell and State of Virginia.

Written, in writing. The words "written" and "in writing" include typewriting, printing on paper and any other mode of representing words and letters.
(Code 1977, § 1-2)

Sec. 1-3. Severability of parts of Code.

It is hereby declared to be the intention of the council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable and, if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.
(Code 1977, § 1-3)

Sec. 1-4. Provisions considered as continuations of existing ordinances.

The provisions appearing in this Code, so far as they are the same as those of the 1977 Code and the ordinances of the town included in this Code, shall be considered as continuations thereof and not as new enactments.
(Code 1977, § 1-4)

Sec. 1-5. Catchlines of sections.

The catchlines of the several sections of this Code are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.
(Code 1977, § 1-5)

State law reference—Similar provisions, Code of Virginia, § 1-13.9.

Sec. 1-6. Supplementation of Code.

(a) By contract or by town personnel, supplements to this Code shall be prepared and printed. A supplement to the Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially

obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

(1) Organize the ordinance material into appropriate subdivisions;

(2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in catchlines, headings and titles;

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;

(4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and

(5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code, but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1-7. Certain ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following when not inconsistent with this Code:

(1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of such Code;

(2) Any ordinance promising or guaranteeing the payment of money for the town, or authorizing the issuance of any bonds of the town or any evidence of the town's indebtedness;

(3) Any contract or obligation assumed by the town;

(4) Any right or franchise granted by the town;

(5) Any ordinance dedicating, naming, establishing, locating, opening, paving, widening, vacating, etc., any street or public way in the town;

(6) Any ordinance establishing or prescribing grades for streets in the town;

(7) Any appropriation ordinance or ordinances providing for the levy of taxes or for adopting an annual budget;

(8) Any ordinance relating to local improvements and assessments therefor;

(9) Any ordinance annexing territory to the town or discontinuing territory as a part of the town;

(10) Any ordinance dedicating or accepting any plat or subdivision in the town;

(11) Any ordinance establishing or amending personnel rules or regulations;

(12) Ordinances prescribing traffic regulations for specific streets, such as ordinances establishing speed limits or designating one-way streets, no parking areas, truck routes, stop intersections, intersections where traffic to be controlled by signals, etc.;

(13) Any ordinance establishing or amending zoning or land use regulations or the zoning map or rezoning property;

(14) Any ordinance or resolution calling municipal elections or prescribing the manner of conducting the election in accordance with state law;

(15) Any ordinance prescribing any fee or payment of money to the town;

(16) Any ordinance prescribing the number, classification, benefits or compensation of any town officers or employees, not inconsistent herewith;

(17) Any ordinance which is temporary although general in effect;

(18) Any ordinance which is special although permanent in effect;

(19) Any ordinance containing any administrative provisions;

(20) The zoning ordinance;

(21) Any ordinance relating to the regulation of trailers;

and all such ordinances shall remain in effect and are on file in the town clerk's office.

Sec. 1-8. General penalty; continuing violations.

(a) Whenever in this Code, or in any ordinance of the town or rule or regulation promulgated by an officer, board or commission or agency thereof under authority vested by law or ordinance, any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or the doing of any act is required, or the failure to do any act is made or declared to be unlawful or an offense or a misdemeanor, the violation of any such provision of

this Code, ordinance, rule or regulation shall be punished as follows, except as otherwise provided in subsection (b) of this section:

(1) Whenever an act or offense, or the failure to do any act, is declared to be a class I misdemeanor, such act or offense shall be punished by a fine of not more than $2,500.00 or confinement in jail for not more than 12 months, or both such fine and imprisonment.

(2) Whenever an act or offense, or the failure to do any act, is declared to be a class II misdemeanor, such act or offense shall be punished by a fine of not more than $1,000.00 or confinement in jail for not more than six months, or both such fine and imprisonment.

(3) Whenever an act or offense, or the failure to do any act, is declared to be a class III misdemeanor, such act or offense shall be punished by a fine of not more than $500.00.

(4) Whenever an act or offense, or the failure to do any act, is declared to be a class IV misdemeanor, such act or offense shall be punished by a fine of not more than $250.00.

(b) Whenever a provision in this Code or other ordinance of the town prescribes punishment by stating that the act or offense, or the failure to do any act, is a misdemeanor, or that it is punishable as provided for in subsection (a) of this section, or no specific penalty is provided therefor, the act or offense, or failure to do any act, shall be deemed to be a class I misdemeanor. Acts or offenses, or failure to do any act, defined by the various provisions of this Code, for which punishment is prescribed without specification as to the class of the offense, act, or failure to act, shall be punished according to the provisions prescribing the punishment.

(c) Except where otherwise provided, each day any violation of this Code or of any such ordinance, rule or regulation shall continue shall constitute a separate offense.
(Code 1977, § 1-6)

Cross reference—Offenses and miscellaneous provisions, ch. 34.

State law references—Power of town to prescribe fines and other punishment for violation of ordinances, Code of Virginia, § 15.1-13; authority of town to impose penalty specified herein for violation of ordinances, Code of Virginia, § 15.1-901; penalties for misdemeanors generally, Code of Virginia, §§ 18.2-11, 18.2-12.

Sec. 1-9. Issuance and service of summons in place of warrant.

(a) Whenever any person is detained by or in the custody of an arresting officer for a violation of any town ordinance or of any provision of this Code, except as otherwise provided in Code of Virginia, title 46.2 or § 18.2-266, as amended, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody.

(b) Any person refusing to give such written promise to appear shall be taken immediately by the arresting or other police officer before the nearest or most accessible judicial

officer or other person qualified to admit to bail having jurisdiction, who shall proceed according to provisions of Code of Virginia, § 19.2-82.

(c) Any person who willfully violates his written promise to appear, given in accordance with this section, shall be guilty of a misdemeanor, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested.

(d) Anything in this section to the contrary notwithstanding, if any person is believed by the arresting officer to be likely to disregard a summons issued under the provisions of this section, the arresting officer shall take such person forthwith before the nearest or most accessible judicial officer or other person qualified to admit to bail in lieu of issuing the summons, who shall determine whether or not probable cause exists that such person is likely to disregard a summons, and may issue either a summons or warrant as he may determine proper.

(e) Notwithstanding the above, if any person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person, the officer may take such person before a magistrate or other issuing authority of the county and request the issuance of a warrant.
(Code 1977, § 1-7)

State law reference—Similar provisions, Code of Virginia, § 19.2-74.

Sec. 1-10. When search warrants required.

(a) No officer of the law or any other person shall search any place, thing or person except by virtue of and under a warrant issued by a proper officer. Any officer or other person searching any place, thing or person otherwise than by virtue of and under a search warrant shall be guilty of a misdemeanor. Any officer or person violating the provisions of this section shall be liable to any person aggrieved thereby in both compensatory and punitive damages. Any officer found guilty of a second offense under this section shall, upon conviction thereof, in addition to any penalty provided, immediately forfeit his office, and such conviction shall be deemed to create a vacancy in such office to be filled according to law.

(b) Any officer empowered to enforce the game laws may without a search warrant enter, for the purpose of enforcing such laws, any freight yard or room, passenger depot, baggage room or warehouse, storage room or warehouse, train, baggage car, passenger car, express car, pullman car or freight car of any common carrier, or any boat, automobile or other vehicle; but nothing contained in this proviso shall be construed to permit a search of any occupied berth or compartment on any passenger car or boat of any baggage, bag, trunk, box or other closed container without a search warrant.
(Code 1977, § 1-8)

State law reference—Similar provisions, Code of Virginia, § 19.2-59.

Chapter 2

ADMINISTRATION*

Article I. In General

Sec. 2-1. Annual audit.
Sec. 2-2. Deposit of funds.
Sec. 2-3. Execution of deeds for conveyances or exchange of town property, other instruments requiring use of seal.
Sec. 2-4. Town hall closed on holidays.
Secs. 2-5—2-30. Reserved.

Article II. Town Council

Sec. 2-31. Regular meetings.
Secs. 2-32—2-50. Reserved.

Article III. Officers and Employees

Division 1. Generally

Secs. 2-51—2-60. Reserved.

Division 2. Town Manager

Sec. 2-61. Establishment of office; appointment and term.
Sec. 2-62. Powers and duties.
Sec. 2-63. Supervisory functions.
Secs. 2-64—2-75. Reserved.

Division 3. Town Attorney

Sec. 2-76. Attendance at council meetings.
Sec. 2-77. Annual report.
Sec. 2-78. Compensation generally.
Sec. 2-79. Reimbursement for expenses.
Secs. 2-80—2-90. Reserved.

Division 4. Treasurer

Sec. 2-91. Bond.
Sec. 2-92. Town money in hands of treasurer to be safely kept.
Sec. 2-93. Books for receipts, disbursements and accounts.
Sec. 2-94. Record of checks issued; monthly report as to outstanding checks.
Sec. 2-95. Monthly financial statement.
Sec. 2-96. Annual settlement generally; collection of balance due.
Sec. 2-97. Annual audit and settlement of accounts; report to council.
Sec. 2-98. Certification of claims allowed and ordered paid; drawing of checks generally.
Sec. 2-99. Execution of checks generally.

***Cross references**—Elections, ch. 18; law enforcement, ch. 30; parks and recreation, ch. 38; park and recreation board, § 38-31 et seq.; personnel, ch. 42; planning and development, ch. 46; town planning commission, § 46-26 et seq.; procurement, ch. 50; taxation, ch. 66.

Sec. 2-100. Checks for salaries and legal fees.
Secs. 2-101—2-110. Reserved.

Division 5. Clerk

Sec. 2-111. Attendance at council meetings.
Sec. 2-112. Journal of council proceedings; attestation and publication of ordinances, etc., ordered published.
Sec. 2-113. Transmission to council of reports of town officers.
Sec. 2-114. Additional books and records.
Sec. 2-115. Examination of books and papers.
Sec. 2-116. Notice of coming town elections.
Sec. 2-117. Ordinance book—Entering ordinances.
Sec. 2-118. Same—Notation of amending or repealing ordinances.
Sec. 2-119. Numbering of ordinances.

ARTICLE I. IN GENERAL

Sec. 2-1. Annual audit.

There shall be an annual audit of the financial and administrative affairs of the town by a qualified and competent certified public accountant.
(Code 1977, § 2-1)

Sec. 2-2. Deposit of funds.

All money belonging to the town shall be deposited in the banks located in the county by the treasurer in the name of the town.
(Code 1977, § 2-2)

Sec. 2-3. Execution of deeds for conveyances or exchange of town property, other instruments requiring use of seal.

All deeds for the conveyance or exchange of the property of the town and all agreements or other instruments requiring the seal of the town to be affixed thereto shall, when authorized by the council, be authenticated in the name of the town by the mayor and the seal of the town shall be affixed thereto and attested by the clerk.
(Code 1977, § 2-3)

Charter reference—Power of town as to acquisition, etc., of property for proper purposes of town and rights-of-way to certain town property and as to sale of town property, § 13.

Sec. 2-4. Town hall closed on holidays.

The town hall shall be closed on all legal state holidays.
(Code 1977, § 2-4)

Secs. 2-5—2-30. Reserved.

ARTICLE II. TOWN COUNCIL*

Sec. 2-31. Regular meetings.

The council shall hold its regular monthly meeting on the second Monday of each month at 6:00 p.m.
(Code 1977, § 2-5)

Charter reference—Meetings of council, § 4.

Secs. 2-32—2-50. Reserved.

***Charter references**—Election of town council, composed of a mayor and six councilmen, terms of office and filing of vacancies in council, § 2; compensation of town officers and employees, ;s ; 3; quorum for transaction of council business, § 5.

ARTICLE III. OFFICERS AND EMPLOYEES*

DIVISION 1. GENERALLY

Secs. 2-51—2-60. Reserved.

DIVISION 2. TOWN MANAGER

Sec. 2-61. Establishment of office; appointment and term.

The town manager, assistant town manager, treasurer, deputy treasurer, public works director, chief of police, town engineer, and the zoning administrator shall be appointed by the council and shall hold office at the will and pleasure of the council.
(Code 1977, § 2-6; Mem. of 8-30-99)

Sec. 2-62. Powers and duties.

The powers and duties of the town manager shall be as provided by the council.
(Code 1977, § 2-7)

Sec. 2-63. Supervisory functions.

The town manager shall be solely responsible for directing the work of his subordinates. Neither the council nor any of its members nor the mayor shall give orders to any of the town manager's subordinates, either publicly or privately.
(Code 1977, § 2-8)

Secs. 2-64—2-75. Reserved.

DIVISION 3. TOWN ATTORNEY†

Sec. 2-76. Attendance at council meetings.

The town attorney shall attend all council meetings when requested to do so by the mayor, council or town manager.
(Code 1977, § 2-9; Min. of 8-26-91)

Sec. 2-77. Annual report.

The town attorney shall make an annual report to the council, giving a condensed statement of the business done in his office for the town in the year immediately preceding such report. This report shall contain a list of deeds, contracts, etc., to which the town was a party. Such report shall also contain a statement of the unfinished business in the hands of the town

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***Cross references**—Chief of police, § 30-2; resisting town officers, § 34-4.
†**Charter reference**—Appointment of town attorney, § 6.

attorney with such suggestions with reference to the interest of the town as he may deem pertinent.
(Code 1977, § 2-10)

Sec. 2-78. Compensation generally.

In addition to the annual retainer paid the town attorney by way of salary, he shall have additional compensation for all special services rendered the council, in such amount as may be agreed upon by the town attorney and the council.
(Code 1977, § 2-11)

Sec. 2-79. Reimbursement for expenses.

From time to time, the town attorney shall present for payment any actual outlay or expense which the performance of his duties has entailed.
(Code 1977, § 2-12)

Secs. 2-80—2-90. Reserved.

DIVISION 4. TREASURER*

Sec. 2-91. Bond.

Before entering on the duties of his office, the treasurer shall execute an official bond, with satisfactory sureties, in such penalty as the council may prescribe.
(Code 1977, § 2-13)

Sec. 2-92. Town money in hands of treasurer to be safely kept.

All money belonging to the town collected by the treasurer or paid over to him shall be safely kept, as provided in section 2-2.
(Code 1977, § 2-14)

Sec. 2-93. Books for receipts, disbursements and accounts.

It shall be the duty of the treasurer to keep suitable books in which all receipts and disbursements shall be properly entered and in which the accounts of all persons accountable to the town shall be kept. Each fund shall be separated. All accounts of the town shall be kept correctly and plainly.
(Code 1977, § 2-15)

Sec. 2-94. Record of checks issued; monthly report as to outstanding checks.

The treasurer shall open and keep in a methodical manner, in a book kept for the purpose, an account of all town checks issued by him showing number, date, to whom issued, on what account, amount and date of payment by the treasurer, and shall, each month, transmit to the

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***Charter reference**—Appointment of treasurer, § 6.

council a statement of aggregate amount of checks outstanding and unpaid at the close of the preceding month.
(Code 1977, § 2-16)

Sec. 2-95. Monthly financial statement.

The treasurer shall, each month, make out a full statement to the town council of all receipts, disbursements and expenditures for the month preceding, which shall also show the liabilities and resources of the town and the balance, if any, in his hands at that time, as well as all other things necessary to show the true financial condition of the town.
(Code 1977, § 2-17)

Sec. 2-96. Annual settlement generally; collection of balance due.

The treasurer shall, on August 31 of each year, make with the committee on finance a settlement of his account as treasurer for the year, at which time he shall have credit for his list of uncollected taxes and delinquents. If, upon such final settlement, the treasurer fails to account for any balance ascertained to be due by him, it shall be the duty of the mayor to proceed to collect the same in the manner governing proceedings against county treasurers under similar circumstances.
(Code 1977, § 2-18)

Sec. 2-97. Annual audit and settlement of accounts; report to council.

The committee on finance of the town council shall, on June 30 of each year, examine into and make settlement of the treasurer's annual accounts of receipts and disbursements and his list of uncollected taxes and delinquents, and shall make a report of same to the council at its meeting in July, with such corrections as are found necessary and proper.
(Code 1977, § 2-19)

Sec. 2-98. Certification of claims allowed and ordered paid; drawing of checks generally.

The treasurer shall duly certify all claims allowed and ordered to be paid by the council, and shall draw the check of the town in favor of the owner or legal holder of such claim for the amount thereof.
(Code 1977, § 2-20)

Sec. 2-99. Execution of checks generally.

All checks drawn against any account of the town shall be signed by the treasurer and countersigned by either the mayor or the clerk.
(Code 1977, § 2-21)

Sec. 2-100. Checks for salaries and legal fees.

The treasurer or his designee shall issue town checks for the salaries of town officers and employees and for legal fees.
(Code 1977, § 2-22)

Secs. 2-101–2-110. Reserved.

DIVISION 5. CLERK*

Sec. 2-111. Attendance at council meetings.

The clerk shall attend every meeting of the council.
(Code 1977, § 2-23)

Sec. 2-112. Journal of council proceedings; attestation and publication of ordinances, etc., ordered published.

The clerk shall keep an accurate journal of the proceedings of the council. He shall file and preserve all papers which may come into his hands as clerk, and shall attest and publish, as clerk, all ordinances or other papers or proceedings required by the council to be published.
(Code 1977, § 2-24)

Sec. 2-113. Transmission to council of reports of town officers.

The clerk shall transmit to the council, monthly, the reports of town officers.
(Code 1977, § 2-25)

Sec. 2-114. Additional books and records.

In addition to the books of account and records provided for in this division, the clerk shall keep such other books and records as may be necessary to the discharge of the functions of his office.
(Code 1977, § 2-26)

Sec. 2-115. Examination of books and papers.

The books and papers of the clerk shall, at all times, be subject to examination by the mayor, any member of the council or any committee of the council.
(Code 1977, § 2-27)

Sec. 2-116. Notice of coming town elections.

The clerk shall notify the mayor and all members of the council of a coming town election at least 65 days prior to such town election.
(Code 1977, § 2-28)

***Charter reference**—Appointment of clerk, § 6.

Sec. 2-117. Ordinance book—Entering ordinances.

The clerk shall enter in a book copies of all ordinances passed by the town council. The book in which ordinances are thus entered shall be known as the "Ordinances of the Town of Lebanon, Virginia," and shall be indexed.
(Code 1977, § 2-29)

Sec. 2-118. Same—Notation of amending or repealing ordinances.

The clerk shall write on the first page of every ordinance entered in the book mentioned in section 2-117, if the same has been amended or repealed, as the case may be, the words "amended" or "repealed," with a reference to the page of the ordinance book where the amending or repealing ordinance can be found.
(Code 1977, § 2-30)

Sec. 2-119. Numbering of ordinances.

All ordinances of the town shall be consecutively numbered in annual series, the number of a particular ordinance to consist of the year in which passed and the consecutive number of the ordinance.
(Code 1977, § 2-31)

Chapters 3–5

RESERVED

Chapter 6

ANIMALS*

Article I. In General

Sec. 6-1. Abandonment of animals.
Sec. 6-2. Livestock at large.
Sec. 6-3. Poultry at large.
Sec. 6-4. Keeping hogs.
Sec. 6-5. Cruelty to animals.
Sec. 6-6. Noisy animals and fowl.
Sec. 6-7. Permitting livestock on street right-of-way.
Secs. 6-8—6-30. Reserved.

Article II. Dogs

Sec. 6-31. Impoundment of unlicensed dogs.
Sec. 6-32. Running at large.
Sec. 6-33. Creation of unreasonable disturbance.
Sec. 6-34. Rabid dogs; quarantine.
Secs. 6-35—6-55. Reserved.

Article III. Birds

Sec. 6-56. Town as sanctuary.
Sec. 6-57. Signs.
Sec. 6-58. Molesting, etc., birds.

***Cross references**—Offenses and miscellaneous provisions, ch. 34; solid waste, ch. 54; streets and sidewalks, ch. 58.

ARTICLE I. IN GENERAL

Sec. 6-1. Abandonment of animals.

Any person who shall abandon any dog, cat or other domesticated animal in any public place, including the right-of-way of any public highway, road or street, or on the property of another shall be guilty of a class 3 misdemeanor.
(Code 1977, § 3-1)

Cross reference—Streets and sidewalks, ch. 58.

State law reference—Similar provisions, Code of Virginia, §§ 18.2-403.2(3), 3.1-796.73, 3.1-796.122.

Sec. 6-2. Livestock at large.

It shall be unlawful for the owners of horses, cattle or other livestock to allow such animals to roam at large.
(Code 1977, § 3-2)

Sec. 6-3. Poultry at large.

It shall be unlawful for the owners of chickens or other poultry to allow such poultry to roam at large.
(Code 1977, § 3-3)

Sec. 6-4. Keeping hogs.

It shall be unlawful for any person within the town to keep a hog in a pen or any other enclosure, except it be in a lot of at least one-half acre or more in extent; provided, however, there is excluded from this exception all lots or enclosures that have a frontage on any street having a width of at least 30 feet.
(Code 1977, § 3-4)

Sec. 6-5. Cruelty to animals.

Any person who:

(1) Overrides, overdrives, overloads, tortures, ill treats or cruelly or unnecessarily beats, maims, mutilates or kills any animal, whether belonging to himself or another, or deprives any animal of necessary sustenance, food or drink, or causes any of the above things, or being the owner of such animal permits such acts to be done by another;

(2) Wilfully sets on foot, instigates, engages in or in any way furthers any act of cruelty to any animal; or

(3) Shall carry or cause to be carried in or upon any vehicle or vessel or otherwise any animal in a cruel, brutal or inhuman manner, so as to produce torture or unnecessary suffering;

shall be guilty of a misdemeanor; but nothing in this section shall be construed to prohibit the dehorning of cattle. The word "animal," as used in this section shall be construed to include birds and fowl.
(Code 1977, § 3-5)

Cross reference—Offenses and miscellaneous provisions, ch. 34.
State law reference—Cruelty to animals, Code of Virginia, § 3.1-796.122.

Sec. 6-6. Noisy animals and fowl.

No person shall have or keep any animal or fowl which, by making or causing frequent or long continued and unreasonable noise, shall disturb the comfort and repose of any person in the vicinity. Upon complaint being made to the chief of police that the provisions of this section are being violated, such officer may, after investigation, give notice of such complaint to the owner or person in charge of such animal or fowl and order the discontinuance of the disturbance. It shall be unlawful to fail to comply with such order.
(Code 1977, § 3-6)

Sec. 6-7. Permitting livestock on street right-of-way.

No person shall pasture or graze, or cause to be pastured or grazed, or otherwise permit to be on any right-of-way of any street in the town, except as otherwise provided in this chapter, any livestock, unless such animal be securely tied or held by chain or rope so as to prevent such animal from getting on the traveled portion of the street; provided, however, that this section shall not apply when such livestock are being driven along such road or right-of-way while under the control of a responsible driver.
(Code 1977, § 3-7)

Cross reference—Streets and sidewalks, ch. 58.
State law reference—Similar provisions, Code of Virginia, § 33.1-210.

Secs. 6-8—6-30. Reserved.

ARTICLE II. DOGS

Sec. 6-31. Impoundment of unlicensed dogs.

Any unlicensed dog found in the town shall be seized and confined in the county dog pound and redemption of such dog shall be subject to county ordinances and regulations.
(Code 1977, § 3-8)

Sec. 6-32. Running at large.

It shall be unlawful for any dog to run at large in any portion of the town. A dog shall be deemed to run at large while roaming, running or self-hunting off the property of its owner or custodian and not under its owner's or custodian's immediate control. Any person who permits

his dog to run at large shall be deemed to have violated the provisions of this section and such action shall be unlawful.
(Ord. of 4-7-80)

State law reference—Authority of town to prohibit dogs from running at large, Code of Virginia, § 3.1-796.93.

Sec. 6-33. Creation of unreasonable disturbance.

It shall be unlawful for any person to keep any dog within the town which, by habitually barking, biting or by running after people in the streets in a vicious manner, or by other conduct, unreasonably disturbs the peace or the quiet of any person.
(Code 1977, § 3-9)

Sec. 6-34. Rabid dogs; quarantine.

The mayor shall have authority to proclaim the existence of an emergency by publication of proclamation in a newspaper published in the county upon proof that a rabid dog is at large and has bitten other dogs in or near the town. Upon such publication, all owners and custodians of all dogs in the town shall be required to keep the same confined on their premises unless muzzled in such manner that persons or animals will not be subject to the danger of being bitten thereby. Such period shall not exceed 30 days unless renewed by the town council.
(Code 1977, § 3-10)

State law reference—Authority of town to adopt ordinances which parallel Code of Virginia, § 3.1-796.98 concerning rabid dogs and cats, Code of Virginia, § 3.1-796.94.

Secs. 6-35—6-55. Reserved.

ARTICLE III. BIRDS

Sec. 6-56. Town as sanctuary.

The town, within its corporate limits, shall be a bird sanctuary for the protection of all birds protected by the Migratory Bird Treaty Act, adopted by the Congress of the United States of America, not including starlings, English sparrows or pigeons.
(Code 1977, § 3-11)

Sec. 6-57. Signs.

Signs stating that the town is a bird sanctuary may be erected in the town. Such signs shall be of such type and erected at such public places as may be approved by the town manager.
(Code 1977, § 3-12)

Sec. 6-58. Molesting, etc., birds.

It shall be unlawful for any person to shoot missiles of any description from any bow, sling, bean shooter, air rifle, spring gun, pistol, shotgun or other instrument or weapon at any of the birds for which a bird sanctuary is provided in this article or otherwise destroy such birds, their nests or eggs.
(Code 1977, § 3-13)

Chapters 7–9

RESERVED

Chapter 10

BUILDINGS AND BUILDING REGULATIONS*

Article I. In General

Sec. 10-1. Dangerous buildings, structures—Prohibited.
Sec. 10-2. Same—Repair, removal, etc.
Sec. 10-3. Blasting; permit required.
Secs. 10-4—10-30. Reserved.

Article II. Building Code

Sec. 10-31. Enforcement.
Sec. 10-32. Permits required.

***Charter reference**—Authority of town to regulate the building of houses, § 16.

Cross references—Fire prevention and protection, ch. 22; floods, ch. 26; planning and development, ch. 46; procurement, ch. 50; gates and doors upon sidewalks, § 58-7; open cellarways, areas, etc., to be guarded, § 58-8; throwing or depositing dirt, lumber, etc., in the street, alley or sidewalk, § 58-11; placing building materials upon street, alley or sidewalk, § 58-12; subdivisions, ch. 62; design standards for subdivisions, § 62-81 et seq.; utilities, ch. 74.

State law reference—Authority of town to promulgate regulations concerning the building of houses, Code of Virginia, § 15.1-15(1).

ARTICLE I. IN GENERAL

Sec. 10-1. Dangerous buildings, structures—Prohibited.

It shall be unlawful for any person knowingly to have, own, occupy, keep, maintain or permit any building, porch, awning, wall, chimney, pole, wire or any other structure owned, occupied or controlled by him, to be or remain in such condition as to render any street, alley or other public way or any public place dangerous for travel or other public use by the citizens of the town or any other person lawfully using such streets, alleys or other public ways or places.
(Code 1977, § 4-1)

Sec. 10-2. Same—Repair, removal, etc.

(a) The owners of property in the town shall, at such time or times as the town council may prescribe, remove, repair or secure any building, wall or any other structure which might endanger the public health or safety of other residents of the town.

(b) The town council, through its own agents or employees, may remove, repair or secure any building, wall or any other structure which might endanger the public health or safety of other residents of the town, wherein the owner of such property, after reasonable notice and a reasonable time to do so, has failed to remove, repair or secure such building, wall or other structure.

(c) In the event the town council, through its own agents or employees, removes, repairs or secures any building, wall or any other structure after complying with the notice provisions of this section, the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the town as taxes and levies are collected.

(d) Every charge authorized by this section with which the owner of any such property shall have been assessed and which remains unpaid shall constitute a lien against such property.
(Code 1977, § 4-2)

State law reference—Similar provisions, Code of Virginia, § 15.1-11.2.

Sec. 10-3. Blasting; permit required.

No person shall blast or carry on any blasting operations without having first secured therefor a permit from the town manager. Blasting or blasting operations conducted pursuant to a permit shall be carried on subject to such conditions as may be expressed in the permit.
(Code 1977, § 7-4)

Cross reference—Fire prevention and protection, ch. 22.

State law reference—Authority of town to regulate possession, use, etc., of explosives, Code of Virginia, § 15.1-865.

Secs. 10-4—10-30. Reserved.

ARTICLE II. BUILDING CODE*

Sec. 10-31. Enforcement.

As the town council is responsible for the enforcement of the Virginia Uniform Statewide Building Code by hiring building officials, or by contracting with other localities for the enforcement thereof, if the necessary contractual arrangements shall be made, the county may enforce the Virginia Uniform Statewide Building Code in the town.
(Code 1977, § 4-3)

Sec. 10-32. Permits required.

It shall be unlawful for any person to begin any construction of buildings or other structures within the town without first providing to the town manager a copy of the building or other permit obtained from the county for such construction.
(Code 1977, § 4-4)

***State law reference**—Virginia Uniform Statewide Building Code, Code of Virginia, § 36-97.

Chapters 11–13

RESERVED

Chapter 11

CABLE TELEVISION

Article I. In General

Secs. 11-1—11-20. Reserved.

Article II. Rates and Charges

Sec. 11-21. Regulation generally.

ARTICLE I. IN GENERAL

Secs. 11-1–11-20. Reserved.

ARTICLE II. RATES AND CHARGES

Sec. 11-21. Regulation generally.

(a) The town will follow the FCC rate regulations in its regulations of the basic service rates and charges of the company and any other cable television system operating in the town, notwithstanding any different or inconsistent provisions in the franchise.

(b) In accordance with such regulation, the town will ensure a reasonable opportunity for consideration for the views of interested parties.

(c) The town manager, or his or her designee, is authorized to execute on behalf of the town and file with the FCC any instruments as are now or may hereafter be required by the FCC rate regulations in order to enable the town to regulate basic service rates and charges. (Ord. No. 94-2, §§ 1–3, 3-14-94)

Chapters 12, 13

RESERVED

Chapter 14

BUSINESS, PROFESSIONAL AND OCCUPATION LICENSE TAX REGULATIONS*

Sec. 14-1. Overriding conflicting ordinances.
Sec. 14-2. Definitions.
Sec. 14-3. License requirement.
Sec. 14-4. Situs of gross receipts.
Sec. 14-5. Limitations and extension.
Sec. 14-6. Appeals and rulings.
Sec. 14-7. Recordkeeping and audits.
Sec. 14-8. Exclusions and deductions from "gross receipts."
Sec. 14-9. License fee and tax.

***Editor's note**—Ord. of Feb. 10, 1997, amended the Code by adding provisions designated as a new Ch. 14. Former Ch. 14 pertained to businesses. See the Code Comparative Table.

Charter reference—Power of town as to holding of shows, carnivals, etc., and license taxes on businesses, trades, etc., § 15.

Cross references—Junkyards, § 54-91 et seq.; taxation, ch. 66; vehicles for hire, ch. 78.

State law reference—Local license taxes generally, Code of Virginia, § 58.1-3700 et seq.

Sec. 14-1. Overriding conflicting ordinances.

Except as may be otherwise provided by the laws of the Commonwealth of Virginia, and notwithstanding any other current ordinances or resolutions enacted by this governing body, whether or not compiled in the Code of this jurisdiction, to the extent of any conflict, the following provisions shall be applicable to the levy, assessment, and collection of licenses required and taxes imposed on businesses, trades, professions and callings and upon the persons, firms and corporations engaged therein within this locality.
(Ord. of 2-10-97, A)

Sec. 14-2. Definitions.

For the purpose of this chapter, unless otherwise required by the context:

Affiliated group means:

(1) One or more chains of includable corporations connected through stock ownership with a common parent corporation which is an includable corporation if:

a. Stock possessing at least 80 percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the includable corporations, except the common parent corporation, is owned directly by one or more of the other includable corporations; and

b. The common parent corporation directly owns stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of at least one of the other includable corporations. As used in this subdivision, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends. The term "includable corporation" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

(2) Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:

a. At least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation, and

b. More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

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

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

Assessor or *assessing official* means the town manager (or his designee) of this jurisdiction.

Base year means the calendar year preceding the license year, except for contractors subject to the provision of § 58.1-3715.

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

Contractor shall have the meaning prescribed in § 58.1-3714.B of the Code of Virginia, as amended, whether such work is done or offered to be done by day labor, general contract or subcontract.

Definite place of business means an office or a location at which occurs a regular and continuous course of dealing for 30 consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis; and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not licensable as a peddler or itinerant merchant.

Financial services means the buying, selling, handling, managing, investing, and providing of advise regarding money, credit, securities and other investments and shall include the service for compensation by a credit agency, an investment company, a broker or dealer in securities and commodities or a security or commodity exchange, unless such service is otherwise provided for in this chapter.

Broker shall mean an agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or services, usually on a commission basis.

Commodity shall mean staples such as wool, cotton, etc. which are traded on a commodity exchange and on which there is trading in futures.

Dealer for purposes of this chapter shall mean any person engaged in the business of buying and selling securities for his own account, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.

Security for purposes of this chapter shall have the same meaning as in the Securities Act (§ 13.1-1-501 et seq.) of the Code of Virginia, or in similar laws of the United States regulating the sale of securities.

Those engaged in rendering financial services include, but without limitation, the following:

Buying installment receivables

Chattel mortgage financing

Consumer financing

Credit card services

Credit unions

Factors

Financing accounts receivable

Industrial loan companies

Installment financing

Inventory financing

Loan or mortgage brokers

Loan or mortgage companies

Safety deposit box companies

Security and commodity brokers and services

Stockbroker

Working capital financing "gross receipts" means the whole, entire, total receipts attributable to the licensed privilege, without deduction, except as may be limited by the provisions of Chapter 37 of Title 58.1 of the Code of Virginia.

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

Personal services shall mean rendering for compensation any repair, personal, business or other services not specifically classified as "financial, real estate or professional service" under this chapter, or rendered in any other business or occupation not specifically classified in this chapter unless exempted from local license tax by Title 58.1 of the Code of Virginia.

Professional services means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and no others, as the Virginia Department of Taxation may list in the BPOL guidelines promulgated pursuant to 58.1-3701 of the Code of Virginia. The department shall identify and list each occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study is used by its practical application to the affairs of others, either advising, guiding, or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

Purchases shall mean all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods, wares and merchandise manufactured by any wholesaler or wholesale merchant and sold or offered for sale. Such merchant may elect to report the gross receipts from the sale of manufactured goods, wares and merchandise if it cannot determine or chooses not to disclose the cost of manufacture.

Real estate services shall mean rendering a service for compensation as lessor, buyer, seller, agent or broker and providing a real estate service, unless the service is otherwise specifically provided for in this chapter, and such services include, but are not limited to, the following:

Appraisers of real estate

Escrow agents, real estate

Fiduciaries, real estate

Lessors of real property

Real estate agents, brokers and managers

Real estate selling agents

Rental agents for real estate

Retailer or *retail merchant* shall mean any person or merchant who sell goods, wares and merchandise for use or consumption by the purchaser or for any purpose other than resale by the purchaser, but does not include sales at wholesale to institutional, commercial and industrial users.

Services shall mean things purchased by a customer which do not have physical characteristics, or which are not goods, wares, or merchandise.

Wholesaler or *wholesale merchant* shall mean any person or merchant who sells wares and merchandise for resale by the purchaser, including sales when the goods, wares and

merchandise will be incorporated into goods and services for sale, and also includes sales to institutional, commercial, government and industrial users which because of quantity, price, or other terms indicate that they are consistent with sales at wholesale.
(Ord. of 2-10-97, B)

Sec. 14-3. License requirement.

(a) Every person engaging in this jurisdiction in any business, trade, profession, occupation or calling (collectively hereinafter "a business") as defined in this chapter, unless otherwise exempted by law, shall apply for a license for each such business if (i) such person maintains a definite place of business in this jurisdiction, (ii) such person does not maintain a definite office anywhere but does maintain an abode in this jurisdiction, which abode for the purposes of this chapter shall be deemed a definite place of business, or (iii) there is no definite place of business but such person operates amusement machines, is engaged as a peddler or itinerant merchant, carnival or circus as specified in §§ 58.1-3717, 58.1-3718, or 58.1-3728, respectively of the Code of Virginia, or is a contractor subject to § 58.1-3715 of the Code of Virginia, or is a public service corporation subject to § 58.1-3731 of the Code of Virginia. A separate license shall be required for each definite place of business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied: (i) each business or profession is licensable at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of this jurisdiction; (ii) all of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and (iii) the taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.

(b) Each person subject to a license tax shall apply for a license prior to beginning business if he was not subject to licensing in this jurisdiction on or before January 1 of the license year, or not later than March 1 of the current license year if he had been issued a license for the preceding license year. The application shall be on forms prescribed by the assessing official.

(c) The tax shall be paid with the application in the case of any license not based on gross receipts. If, the tax is measured by the gross receipts of the business, the tax shall be paid on or before March 1 of each year.

(d) The assessing official may grant an extension of time, not to exceed 90 days, in which to file an application for a license, for reasonable cause. The extension shall be conditioned upon the timely payment of a reasonable estimate of the appropriate tax, subject to adjustment to the correct tax at the end of the extension together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, a penalty of ten percent of the portion paid after the due date.

(e) A penalty of ten percent of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the assessing official if both the application and payment are late; however, both

penalties may be assessed if they assessing official determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the assessing official, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the assessing official is not paid within 30 days the treasurer [or other collecting official] may impose a ten percent late payment penalty. The penalties shall not be imposed, or if imposed, shall be abated by the official who assessed them, if the failure to file or pay was not the fault of the taxpayer. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.

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

"Events beyond the taxpayer's control" include, but are not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence (e. g., due to death or serious illness) of the person with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the assessing official, who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

(f) Interest shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the assessing official is found to be erroneous, all interest and penalty charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any tax paid under this chapter from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged under § 58.1-3916.

No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, in the event of such adjustment, provided the refund or the late payment is made not more than 30 days from (i) the date of the payment that created the refund, or (ii) the due date of the tax, whichever is later.
(Ord. of 2-10-97, C)

Sec. 14-4. Situs of gross receipts.

(a) *General rule.* Whenever the tax imposed by this chapter is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a licensable privilege at a definite place of business within this jurisdiction.

In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite places of business or offices as follows:

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

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

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

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

(b) *Apportionment.* If the licensee has more than one definite place of business and it is impractical or impossible to determine to which definite place of business gross receipts should be attributed under the general rule (and the affected jurisdictions are unable to reach an apportionment agreement), except as to circumstances set forth in § 58.1-3709 of the Code of Virginia, the gross receipts of the business shall be apportioned between the definite places of the businesses on the basis of payroll. Gross receipts shall not be apportioned to a definite place of business unless some activities under the applicable general rule occurred at, or were controlled from, such definite place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall not be attributed to this jurisdiction solely because the other jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business in such other jurisdiction.

(c) *Agreements.* The assessor may enter into agreements with any other political subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than 100 percent of its gross receipts from all locations in the affected jurisdictions, the assessor shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved.
(Ord. of 2-10-97, D)

Sec. 14-5. Limitations and extension.

(a) Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this chapter, both the assessing official and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(b) Notwithstanding § 58.1-3903 of the Code of Virginia, the assessing official shall assess the local license tax omitted because of fraud or failure to apply for a license for the current license year and the six preceding years.

(c) The period for collecting any local license tax shall not expire prior to the period specified in § 58.1-3940 of the Code of Virginia, two years after the date of assessment if this period for assessment has been extended pursuant to this subdivision, two years after the final determination of an appeal for which collection has been stayed pursuant to the following subsection 14-5(b) or 14-6(d) of this chapter, or two years after the final decision in a court application pursuant to § 58.1-3984 of the Code of Virginia or similar law for which collection has been stayed, whichever is later.
(Ord. of 2-10-97, E)

Sec. 14-6. Appeals and rulings.

(a) Any person assessed with a licensing tax under this chapter as the result of an audit may apply within 90 days from the date of the assessment to the assessing official for a correction of the assessment. The application must be filed in good faith and sufficiently identify the taxpayer, audit period, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The assessor may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, further audit, or other evidence deemed necessary for a proper and equitable determination of the applications. The assessment shall be deemed prima facie correct. The assessor shall undertake a full review of

the taxpayer's claims and issue a determination to the taxpayer setting forth its position. Every assessment pursuant to an audit shall be accompanied by a written explanation on the taxpayer's right to seek correction and the specific procedure to be followed in the jurisdiction (e.g., the name and address to which an application should be directed).

(b) Provided an application is made within 90 days of an assessment, collection activity shall be suspended until a final determination is issued by the assessor, unless the assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of subsection 14-3(f) of this chapter, but not further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires (i) to depart quickly from the locality, (ii) to remove his property therefrom, (iii) to conceal himself or his property therein, or (iv) to do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

(c) Any person assessed with a license tax under this chapter as a result of an audit may apply within 90 days of the determination by the assessing official on an application pursuant to subsection 14-6(a) above to the tax commissioner for a correction of such assessment. The tax commissioner shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the assessing official are notified that a longer period will be required. The application shall be treated as an application pursuant to § 58.1-1821 of the Code of Virginia, and the tax commissioner may issue an order correction such assessment pursuant to § 58.1-1822 of the Code of Virginia. Following such an order, either the taxpayer or the assessing official may apply to the appropriate circuit court pursuant to § 58.1-3984 of the Code of Virginia. However, the burden shall be on the party making the application to show that the ruling of the tax commissioner is erroneous. Neither the tax commissioner nor the department of taxation shall be made a party to an application to correct an assessment merely because the tax commissioner has ruled on it.

(d) On receipt of a notice of intent to file an appeal to the tax commissioner under subsection 14-6(c) above, the assessing official shall further suspend collection activity until a final determination is issued by the tax commissioner, unless the assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of subsection 14-3(f), but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" shall have the same meaning as set forth in subsection 14-6(b) above.

(e) Any taxpayer may request a written ruling regarding the application of the tax to a specific situation from the assessor. Any person requesting such a ruling must provide all the relevant facts for the situation and may present a rationale for the basis on an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law of the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the

law, a court decision, or (ii) the assessor notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.
(Ord. of 2-10-97, F)

Sec. 14-7. Recordkeeping and audits.

Every person who is assessable with a license tax shall keep sufficient records to enable the assessor to verify the correctness of the tax paid for the license years assessable and to enable the assessor to ascertain what is the correct amount of tax that was assessable for each of those years. All such records, books of accounts and other information shall be open to inspection and examination by the assessor in order to allow the assessor to establish whether a particular receipt is directly attributable to the taxable privilege exercised within this jurisdiction. The assessor shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside this jurisdiction, copies of the appropriate books and records shall be sent to the assessor's office upon demand.
(Ord. of 2-10-97, G)

Sec. 14-8. Exclusions and deductions from "gross receipts."

(a) General rule. Gross receipts for license tax purposes shall not include any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business or profession.

(b) The following items shall be excluded from gross receipts:

(1) Amounts received and paid to the United States, the Commonwealth or any county, city or town for the Virginia retail sales or use tax, or for any local sales tax or any local excise tax on cigarettes, for any federal or state excise taxes on motor fuels.

(2) Any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxed (e. g., the factoring of accounts receivable created by sales which have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business).

(3) Any amount representing returns and allowance granted by the business to its customer.

(4) Receipts which are the proceeds of a loan transaction in which the licensee is the obligor.

(5) Receipts representing the return of principal of a loan transaction in which the licensee is the creditor, or the return of principal or basis upon the sale of a capital asset.

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

(7) Withdrawals from inventory for purposes other than sale or distribution and for which no consideration is received and the occasional sale or exchange of assets other than inventory, whether or not a gain or loss is recognized for federal income tax purposes.

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

(b) The following shall be deducted from gross receipts or gross purchases that would otherwise be taxable:

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

(2) Any receipts attributable to business conducted in another state or foreign country in which the taxpayer is liable for an income or other tax based upon income.

(Ord. of 2-10-97, H)

Sec. 14-9. License fee and tax.

Every person or business subject to licensure under this chapter shall be assessed and required to pay annually:

(1) Except as may be otherwise provided in §§ 58.1-3712, 58.1-3712.1 and 58.1-3713 of the Code of Virginia, every such person or business shall be assessed and required to pay annually a license tax on all the gross receipts of such persons includable as provided in this chapter at a rate set forth below for the class of enterprise listed:

a. For contractors and persons constructing for their own account for sale, a flat rate of $30.00.

b. For retailers, a base rate of $20.00 for the first $2,000.00 of gross sales, plus $1.00 per $1,000.00 for each additional $1,000.00 of gross sales.

c. For real and professional services, a base rate of $20.00 for the first $2,000.00 of gross receipts, plus an additional $2.50 for each additional $1,000.00 of gross receipts.

d. For repair, personal and business services and all other businesses and occupations not specifically listed or exempted in this chapter or otherwise by law, a base rate of $20.00 for the first $2,000.00 of gross receipts, plus an additional $1.00 for each additional $1,000.00 of gross receipts.

e. For wholesalers, a base rate of $20.00 for the first $2,000.00 of gross receipts, plus an additional $0.50 for each additional $1,000.00 of gross receipts.

f. For carnivals, circuses and speedways, $25.00 for each performance held in this jurisdiction (see § 58.1-3728 of the Code of Virginia for limitations);

g. For itinerant merchants or peddlers, $500.00 per year (see limitation in § 58.1-3717 of the Code of Virginia);

h. For photographers with no regularly established place of business in the commonwealth, $25.00 per year (see limitation in § 58.1-3727);

i. For direct sellers as defined in § 58.1-3719.1 of the Code of Virginia with total annual sales in excess of $4,000.00, a base rate of $20.00 for the next $2,000.00 of gross receipts, plus an additional $1.00 for each additional $1,000.00 of gross receipts;

j. For coin operated amusement machines, a fee of $200.00 for the operation of ten or more coin operated amusement machines. For the operation of nine machines or less, a fee of $100.00. The fee shall not apply to amusement operators who operate less than three machines (see Virginia Code § 58.1-3721).

(Ord. of 2-10-97, I; Ord. No. 98-2, 6-8-98)

Chapters 15–17

RESERVED

Chapter 18

ELECTIONS*

Sec. 18-1. Voting place.

*Cross reference—Administration, ch. 2.

Sec. 18-1. Voting place.

The voting place for the town elections shall be the town fire and police station located in the town.
(Ord. of 1-30-89)

Chapters 19–21

RESERVED

Chapter 22

FIRE PREVENTION AND PROTECTION*

Article I. In General

Sec. 22-1. Duties of chief of police at fires generally.
Sec. 22-2. Establishment and maintenance of fire lines.
Sec. 22-3. Charge for out-of-town fire calls.
Secs. 22-4—22-30. Reserved.

Article II. Fireworks

Sec. 22-31. Sale, use, etc.
Sec. 22-32. Special displays.
Sec. 22-33. Exceptions to application of article.

***Cross references**—Buildings and building regulations, ch. 10; blasting, § 10-3; resisting town officers, § 34-4; streets and sidewalks, ch. 58; subdivisions, ch. 62; direction of traffic by officers of the fire department, § 70-15; utilities, ch. 74.

ARTICLE I. IN GENERAL

Sec. 22-1. Duties of chief of police at fires generally.

The chief of police or his designee shall attend all fires in the town and shall so direct traffic and enforce traffic regulations in the vicinity of the fire as to expedite the approach and work of the fire department. He shall also safeguard property during the progress of the fire.
(Code 1977, § 7-1)

Cross references—Law enforcement, ch. 30; chief of police, § 30-2.

Sec. 22-2. Establishment and maintenance of fire lines.

The chief of the volunteer fire department shall establish fire lines where needed during any fire and the chief of police shall be responsible for maintaining such lines until the emergency has passed.
(Code 1977, § 7-2)

Sec. 22-3. Charge for out-of-town fire calls.

A minimum charge, set from time to time by the town council, plus actual expenses will be charged on all out-of-town fire calls.
(Code 1977, § 7-3)

Secs. 22-4—22-30. Reserved.

ARTICLE II. FIREWORKS*

Sec. 22-31. Sale, use, etc.

Subject to the provisions of this article, it shall be unlawful for any person to sell, offer for sale, expose for sale, or to buy, use, ignite or explode any firecracker, torpedo, skyrocket, Roman candle or other substance or thing, of whatever form or construction, intended or commonly known as fireworks, within the town.
(Code 1977, § 7-5)

Sec. 22-32. Special displays.

The mayor may order the special display of fireworks by properly qualified individuals under the direct supervision of experts in the handling of fireworks. Such display shall be of such a character, so located, discharged or fired, as in the opinion of the mayor shall not be hazardous to surrounding property and endanger any person.
(Code 1977, § 7-6)

***Cross reference**—Offenses and miscellaneous provisions, ch. 34.

State law reference—Authority of town to prohibit the sale, storage, use, possession, or manufacture of fireworks, Code of Virginia, § 59.1-148.

Sec. 22-33. Exceptions to application of article.

This article shall not apply to sparklers, fountains, Pharaoh's serpents, caps for pistols, nor shall it apply to pin wheels commonly known as whirligigs or spinning jennies, when used, ignited or exploded on private property with the consent of the owner of such property. (Code 1977, § 7-7)

State law reference—Similar provisions, Code of Virginia, § 59.1-147.

Chapters 23–25

RESERVED

Chapter 26

FLOODS AND FLOODPLAIN DISTRICTS*

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***Editor's note**—Ordinance No. 10-01, adopted June 14, 2010, enacted provisions establishing floodplain districts. Said provisions not being specifically amendatory of an ordinance adopted March 19, 1987, from which ch. 26 derived, have been treated as superseding §§ 26-1—26-9 and 26-36—26-49, at the discretion of the editor, and codified to read as herein set out. The original ordinance designations have been retained in the history note following each section.

Cross references—Buildings and building regulations, ch. 10; streets and sidewalks, ch. 58; subdivisions, ch. 62.

ARTICLE I. IN GENERAL

Sec. 26-1. Statutory authorization and purpose.

This chapter is adopted pursuant to the authority granted to localities by Code of Virginia, § 15.2-2280. The purpose of these provisions is to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

(a) Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies;

(b) Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding;

(c) Requiring all those uses, activities, and developments that do occur in floodprone districts to be protected and/or floodproofed against flooding and flood damage; and

(d) Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

(Ord. No. 10-01, Art. I, § 1.1, 6-14-10)

Sec. 26-2. Applicability.

These provisions shall apply to all privately and publicly owned lands within the jurisdiction of the Town of Lebanon and identified as being floodprone.

(Ord. No. 10-01, Art. I, § 1.2, 6-14-10)

Sec. 26-3. Compliance and liability.

(a) No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this chapter and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this chapter.

(b) The degree of flood protection sought by the provisions of this chapter is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study, but does not imply total flood protection. Larger floods may occur on rare occasions. Flood heights may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This chapter does not imply that districts outside the floodplain district or land uses permitted within such district will be free from flooding or flood damages.

(c) Records of actions associated with administering this chapter shall be kept on file and maintained by the town manager.

(d) This chapter shall not create liability on the part of the Town of Lebanon or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.
(Ord. No. 10-01, Art. I, § 1.3, 6-14-10)

Sec. 26-4. Abrogation and greater restrictions.

This chapter supersedes any ordinance currently in effect in floodprone districts. Any ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.
(Ord. No. 10-01, Art. I, § 1.4, 6-14-10)

Sec. 26-5. Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this chapter shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this chapter. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this chapter are hereby declared to be severable.
(Ord. No. 10-01, Art. I, § 1.5, 6-14-10)

Sec. 26-6. Penalty for violations.

Any person who fails to comply with any of the requirements or provisions of this article or directions of the director of planning or any authorized employee of the Town of Lebanon shall be guilty of a misdemeanor and subject to the penalties therefore.

In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this article. The imposition of a fine or penalty for any violation of, or noncompliance with, this article shall not excuse the violation or noncompliance or permit it to continue; and all such persons shall be required to correct or remedy such violations or noncompliances within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the Town of Lebanon to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this article.
(Ord. No. 10-01, Art. I, § 1.6, 6-14-10)

Sec. 26-7. Definitions.

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

Base flood. The flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation. The Federal Emergency Management Agency designated 100-year water surface elevation. The water surface elevation of the base flood in relation to the datum specified on the community's flood insurance rate map. For the purposes of this chapter, the 100-year flood or one percent annual chance flood.

Basement. Any area of the building having its floor subgrade (below ground level) on all sides.

Board of zoning appeals. The board appointed to review appeals made by individuals with regard to decisions of the zoning administrator in the interpretation of this chapter.

Development. Any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated building. A nonbasement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and piers).

Encroachment. The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Flood or *flooding.*

(1) A general or temporary condition of partial or complete inundation of normally dry land areas from:

a. The overflow of inland or tidal waters; or

b. The unusual and rapid accumulation or runoff of surface waters from any source.

c. Mudflows which are proximately caused by flooding as defined in paragraph (1)b. of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(2) The collapse or subsistence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (1)a. of this definition.

Flood insurance rate map (FIRM). An official map of a community, on which the administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has made available digitally is called a digital flood insurance rate map (DFIRM).

Flood insurance study (FIS). An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

Floodplain or *floodprone area.* Any land area susceptible to being inundated by water from any source.

Floodproofing. Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Freeboard. A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed. When a freeboard is included in the height of a structure, the flood insurance premiums may be cheaper.

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure. Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

   a. By an approved state program as determined by the Secretary of the Interior; or

   b. Directly by the Secretary of the Interior in states without approved programs.

Lowest floor. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of Federal Code 44 CFR § 60.3.

Manufactured home. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days, but does not include a recreational vehicle.

Manufactured home park or subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New construction. For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after January 16, 1987, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

Recreational vehicle. A vehicle which is:

(1) Built on a single chassis;

(2) Four hundred square feet or less when measured at the largest horizontal projection;

(3) Designed to be self-propelled or permanently towable by a light duty truck; and

(4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

Shallow flooding area. A special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Special flood hazard area. The land in the floodplain subject to a one percent or greater chance of being flooded in any given year as determined in section 26-32 of this chapter.

Start of construction. For other than new construction and substantial improvement, under the Coastal Barriers Resource Act (P.L.-97-348), means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main

structure. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure. For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Violation. The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in [Federal Code 44 CFR] § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Watercourse. A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.
(Ord. No. 10-01, Art. II, 6-14-10)

Secs. 26-8—26-30. Reserved.

ARTICLE II. DISTRICTS

DIVISION 1. ESTABLISHMENT

Sec. 26-31. Description of districts.

(a) *Basis of districts.* The various floodplain districts shall include special flood hazard areas. The basis for the delineation of these districts shall be the flood insurance study (FIS) and the flood insurance rate maps (FIRM) for Russell County prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated September 29, 2010, and any subsequent revisions or amendments thereto.

The boundaries of the special flood hazard area and floodplain districts are established as shown on the flood insurance rate map which is declared to be a part of this chapter and which shall be kept on file at the Town of Lebanon offices.

(1) *Floodway district.* The floodway district is delineated, for purposes of this chapter, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the 100-year flood without increasing the water surface elevation of that flood more than one foot at any point. The areas included in this district are specifically defined in the above-referenced flood insurance study and shown on the accompanying flood insurance rate map.

(2) *Special floodplain district.* The special floodplain district shall be those areas identified as an AE zone on the maps accompanying the flood insurance study for which 100-year flood elevations have been provided.

(3) *Approximated floodplain district.* The Approximated floodplain district shall be those areas identified as an A or A99 zone on the maps accompanying the flood insurance study. In these zones, no detailed flood profiles or elevations are provided, but the 100-year floodplain boundary has been approximated. For these areas, the 100-year flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific 100-year flood elevation cannot be determined for this area using other sources of data, such as the U.S. Army Corps of Engineers Flood Plain Information Reports, U.S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this elevation in accordance with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the governing body.

(b) *Overlay concept.*

(1) The floodplain districts described above shall be overlays to the existing underlying districts as shown on the official zoning ordinance map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.

(2) If there is any conflict between the provisions or requirements of the floodplain districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.

(3) In the event any provision concerning a floodplain district is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

(Ord. No. 10-01, Art. III, § 3.1, 6-14-10)

Sec. 26-32. District boundary changes.

The delineation of any of the floodplain districts may be revised by the Town of Lebanon where natural or manmade changes have occurred and/or where more detailed studies have been conducted or undertaken by the U.S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration.
(Ord. No. 10-01, Art. III, § 3.2, 6-14-10)

Sec. 26-33. Interpretation of district boundaries.

Initial interpretations of the boundaries of the floodplain districts shall be made by the zoning officer. Should a dispute arise concerning the boundaries of any of the districts, the board of zoning appeals shall make the necessary determination. The person questioning or contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the board and to submit his own technical evidence if he so desires.
(Ord. No. 10-01, Art. III, § 3.3, 6-14-10)

Sec. 26-34. Submitting technical data.

A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.
(Ord. No. 10-01, Art. III, § 3.4, 6-14-10)

Secs. 26-35—26-40. Reserved.

DIVISION 2. DISTRICT PROVISIONS

Sec. 26-41. Permit and application requirements.

(a) *Permit requirement.* All uses, activities, and development occurring within any floodplain district, including placement of manufactured homes, shall be undertaken only upon the issuance of a zoning permit. Such development shall be undertaken only in strict compliance with the provisions of this chapter and with all other applicable codes and ordinances, as amended, such as the Virginia Uniform Statewide Building Code (VA USBC) and the Town of Lebanon subdivision regulations. Prior to the issuance of any such permit, the town manager shall require all applications to include compliance with all applicable state and federal laws and shall review all sites to assure they are reasonably safe from flooding. Under no

circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.

(b) *Site plans and permit applications.* All applications for development within any floodplain district and all building permits issued for the floodplain shall incorporate the following information:

(1) The elevation of the base flood at the site.

(2) The elevation of the lowest floor (including basement).

(3) For structures to be floodproofed (nonresidential only), the elevation to which the structure will be floodproofed.

(4) Topographic information showing existing and proposed ground elevations.

(Ord. No. 10-01, Art. IV, § 4.1, 6-14-10)

Sec. 26-42. General standards.

The following provisions shall apply to all permits:

(a) New construction and substantial improvements shall be according to the VA USBC, and anchored to prevent flotation, collapse or lateral movement of the structure.

(b) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state anchoring requirements for resisting wind forces.

(c) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(d) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

(e) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(f) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(g) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

(h) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

In addition to provisions (a) through (h) above, in all special flood hazard areas, these additional provisions shall apply:

(i) Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U.S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, in riverine areas, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and the Federal Insurance Administrator.

(j) The flood-carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

(Ord. No. 10-01, Art. IV, § 4.2, 6-14-10)

Sec. 26-43. Specific standards.

In all special flood hazard areas where base flood elevations have been provided in the flood insurance study or generated according section 26-46, the following provisions shall apply:

(a) *Residential construction.* New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated to or above the base flood level.

(b) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial, or nonresidential building (or manufactured home) shall have the lowest floor, including basement, elevated to or above the base flood level. Buildings located in all A1-30, AE, and AH zones may be floodproofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus one foot are watertight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by town manager.

(c) *Elevated buildings.* Fully enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

(1) Not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum

necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator).

(2) Be constructed entirely of flood-resistant materials below the regulatory flood protection elevation;

(3) Include, in Zones A, AO, AE, and A1-30, measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:

a. Provide a minimum of two openings on different sides of each enclosed area subject to flooding.

b. The total net area of all openings must be at least one square inch for each square foot of enclosed area subject to flooding.

c. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.

d. The bottom of all required openings shall be no higher than one foot above the adjacent grade.

e. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.

f. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

(d) *Standards for manufactured homes and recreational vehicles.*

(1) All manufactured homes placed, or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, must meet all the requirements for new construction, including the elevation and anchoring requirements in section 26-42(a) and (b) and section 26-43(a).

(2) All recreational vehicles placed on sites must either:

a. Be on the site for fewer than 180 consecutive days;

b. Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions); or

c. Meet all the requirements for manufactured homes in sections 26-42 and 26-43(d).

(Ord. No. 10-01, Art. IV, § 4.3, 6-14-10)

Sec. 26-44. Standards for the floodway district.

The following provisions shall apply within the floodway district:

(a) Encroachments, including fill, new construction, substantial improvements and other developments are prohibited unless certification such as hydrologic and hydraulic analyses (with supporting technical data) is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the town manager. Development activities which increase the water surface elevation of the base flood may be allowed, provided that the applicant first applies, with the Town of Lebanon endorsement, for a conditional flood insurance rate map and floodway revision, and receives the approval of the Federal Emergency Management Agency.

(b) If section 26-46(a) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of sections 26-41 through 26-47.

(c) The placement of manufactured homes (mobile homes) is prohibited, except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring, elevation, and encroachment standards are met.

(Ord. No. 10-01, Art. IV, § 4.4, 6-14-10)

Sec. 26-45. Standards for the special floodplain district.

The following provisions shall apply within the special floodplain district:

(a) Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zones A1-30 and AE on the flood insurance rate map, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the Town of Lebanon.

(b) Development activities in Zones A1-30, AE, and AH, on the Town of Lebanon's flood insurance rate map which increase the water surface elevation of the base flood by

more than one foot may be allowed, provided that the applicant first applies, with the Town of Lebanon's endorsement, for a conditional flood insurance rate map revision, and receives the approval of the Federal Emergency Management Agency.

(Ord. No. 10-01, Art. IV, § 4.5, 6-14-10)

Sec. 26-46. Standards for approximated floodplain district.

The following provisions shall apply with the approximate floodplain district:

(a) The approximated floodplain district shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a 100-year floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the flood insurance study. For these areas, the 100-year flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific 100-year flood elevation cannot be determined for this area using other sources of data, such as the U.S. Army Corps of Engineers Floodplain Information Reports, U.S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this elevation. For development proposed in the approximate floodplain the applicant must use technical methods that correctly reflect currently accepted technical concepts, such as point on boundary, high water marks, or hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the town manager.

(b) The town manager reserves the right to require a hydrologic and hydraulic analyses for any development. When such base flood elevation data is utilized, the lowest floor shall be elevated to or above the base flood level. During the permitting process, the town manager shall obtain:

(1) The elevation of the lowest floor (including the basement) of all new and substantially improved structures; and

(2) If the structure has been floodproofed in accordance with the requirements of sections 26-41 through 26-47, the elevation (in relation to mean sea level) to which the structure has been floodproofed.

(Ord. No. 10-01, Art. IV, § 4.6, 6-14-10)

Sec. 26-47. Standards for subdivision proposals.

(a) All subdivision proposals shall be consistent with the need to minimize flood damage.

(b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

(c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(d) Base flood elevation data shall be provided for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed 50 lots or five acres, whichever is the lesser.
(Ord. No. 10-01, Art. IV, § 4.7, 6-14-10)

Sec. 26-48. Variances, factors to be considered.

(1) Variances shall be issued only upon (i) a showing of good and sufficient cause, (ii) after the board of zoning appeals has determined that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) after the board of zoning appeals has determined that the granting of such variance will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

(2) While the granting of variances generally is limited to a lot size less than one-half acre, deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. Variances may be issued by the board of zoning appeals for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of this section.

(3) Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of this section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(4) In passing upon applications for variances, the board of zoning appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

(a) The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any floodway district that will cause any increase in the 100-year flood elevation.

(b) The danger that materials may be swept onto other lands or downstream to the injury of others.

(c) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

(d) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

(e) The importance of the services provided by the proposed facility to the community.

(f) The requirements of the facility for a waterfront location.

(g) The availability of alternative locations not subject to flooding for the proposed use.

(h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

(i) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.

(j) The safety of access by ordinary and emergency vehicles to the property in time of flood.

(k) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.

(l) The historic nature of a structure. Variances for repair or rehabilitation of historic structures may be granted upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(m) Such other factors which are relevant to the purposes of this chapter.

(5) The board of zoning appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

(6) Variances shall be issued only after the board of zoning appeals has determined that the granting of such will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

(7) Variances shall be issued only after the board of zoning appeals has determined that the variance will be the minimum required to provide relief.

(8) The board of zoning appeals shall notify the applicant for a variance, in writing and signed by title of appropriate public official, that the issuance of a variance to construct a structure below the 100-year flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.

(9) A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances that are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator. (Ord. No. 10-01, Art. V, 6-14-10)

Sec. 26-49. Existing structures in floodplain areas.

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions:

(a) Existing structures in the floodway area shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed expansion would not result in any increase in the base flood elevation.

(b) Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain areas to an extent or amount of less than 50 percent of its market value shall conform to the VA USBC.

(c) The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its location in a floodplain area to an extent or amount of 50 percent or more of its market value shall be undertaken only in full compliance with this chapter and shall require the entire structure to conform to the VA USBC.

(Ord. No. 10-01, Art. VI, 6-14-10)

Chapters 27–29

RESERVED

Chapter 30

LAW ENFORCEMENT*

Sec. 30-1. Control and supervision of police force.
Sec. 30-2. Chief of police.

***Charter references**—Police powers of town, generally, § 20; control and supervision of police force by town manager, § 21.

Cross references—Administration, ch. 2; duties of chief of police at fires generally, § 22-1; offenses and miscellaneous provisions, ch. 34; resisting town officers, § 34-4.

State law reference—Powers and duties of police force, generally, Code of Virginia, § 15.1-138.

Sec. 30-1. Control and supervision of police force.

The mayor or his designee shall have control and supervision of the police force of the town.
(Code 1977, § 2-36)

Sec. 30-2. Chief of police.

The office of chief of police is hereby established. The chief of police shall be appointed by the council and shall hold office at the pleasure of the council. He shall perform such duties as may be required of him by the mayor in the exercise of his control and supervision of the police force of the town.
(Code 1977, § 2-37)

Cross references—Officers and employees, § 2-51 et seq.; duties of chief of police at fires generally, § 22-1.

Chapters 31–33

RESERVED

Chapter 34

OFFENSES AND MISCELLANEOUS PROVISIONS*

Article I. In General

Sec. 34-1. Use of county jail.
Sec. 34-2. Skateboarding.
Sec. 34-3. Alcoholic beverages.
Sec. 34-4. Resisting town officers, etc.
Sec. 34-5. Malicious mischief—Public property.
Sec. 34-6. Same—Trees on streets and public grounds.
Sec. 34-7. Minors prohibited in poolrooms, etc.
Sec. 34-8. Loitering, etc.—Generally.
Sec. 34-9. Same—Obstruction of sidewalks.
Sec. 34-10. Designation of police department as "person lawfully in charge thereof" for purposes of enforcing trespass laws.
Secs. 34-11—34-30. Reserved.

Article II. Offenses Against Public Peace

Sec. 34-31. Disorderly conduct in public places.
Sec. 34-32. Loudspeakers, etc.—Prohibited generally; certain permits authorized.
Sec. 34-33. Same—Transient, itinerant advertising, etc.
Sec. 34-34. Noise disturbances.
Secs. 34-35—34-55. Reserved.

Article III. Weapons

Sec. 34-56. Carrying concealed; exceptions.
Sec. 34-57. Discharging air gun, bow, etc.
Sec. 34-58. Discharging firearms.

***Cross references**—General penalty, § 1-8; animals, ch. 6; cruelty to animals, § 6-5; sale, use, etc., of fireworks, § 22-31; law enforcement, ch. 30.

ARTICLE I. IN GENERAL

Sec. 34-1. Use of county jail.

The town shall have the use of the county jail to aid town authorities in maintaining peace and good order, and generally for the enforcement of its ordinances, unless for good cause the judge of the circuit court of the county shall prohibit such use.
(Code 1977, § 11-1)

State law reference—Similar provisions, Code of Virginia, § 53.1-73.

Sec. 34-2. Skateboarding.

The use of skateboards on the property of the town, including public sidewalks and roadways, is prohibited. There shall be a $25.00 fine for the violation of this section.
(Ord. No. 89-5, 2-13-89)

Cross reference—Streets and sidewalks, ch. 58.

Sec. 34-3. Alcoholic beverages.

(a) Beer and wine, or either beer or wine, or beverages, as defined in Code of Virginia, § 4-99, and acts amendatory thereto, shall not be sold in the town between the hours of 12:00 midnight of each Saturday and 6:00 a.m. of each Monday.

(b) Any person violating the provisions of this section shall be guilty of a misdemeanor.
(Code 1977, § 11-6)

State law reference—Authority of town to adopt ordinances prohibiting the sale of wine and beer during certain hours, Code of Virginia, § 4-97.

Sec. 34-4. Resisting town officers, etc.

It shall be unlawful for any person to resist, intimidate or interfere with or to attempt to resist, intimidate or interfere with any police officer, firefighter or officer or employee of the town in the performance of his duties.
(Code 1977, § 11-22)

Cross references—Officers and employees, § 2-51 et seq.; fire prevention and protection, ch. 22; law enforcement, ch. 30.

Sec. 34-5. Malicious mischief—Public property.

It shall be unlawful for any person wantonly to carry away, destroy, cut, mark or in any way injure or deface any public property.
(Code 1977, § 11-15)

Charter reference—Power of town to enact ordinances necessary for the protection of public or private property within the town, § 17(a).

State law reference—Injuries to public property, buildings, monuments, etc., Code of Virginia, §§ 18.2-137, 18.2-138.

Sec. 34-6. Same—Trees on streets and public grounds.

Any person who shall wilfully injure in any way any tree on any street or in the public grounds of the town shall be guilty of a class 3 misdemeanor.
(Code 1977, § 11-16)

State law reference—Similar provisions, Code of Virginia, § 18.2-141.

Sec. 34-7. Minors prohibited in poolrooms, etc.

(a) No minor shall frequent, play in or loiter in any public poolroom or billiard room operated in conjunction with any establishment licensed under the Alcoholic Beverage Control Act.

(b) Any such minor or any such proprietor or agent violating the provisions of this section shall be guilty of a class 3 misdemeanor.
(Code 1977, § 11-20; Mins. of 10-28-91)

Charter reference—Power of town to enact ordinances to prohibit minors from frequenting or loitering in public poolrooms, etc., § 17(6).

State law reference—Authority of town to prohibit minors from frequenting, playing in, or loitering in poolrooms, Code of Virginia, § 18.2-432.

Sec. 34-8. Loitering, etc.—Generally.

No person shall loaf, loiter or lurk on the streets and sidewalks of the town nor sit or lounge in front of any church, poolroom, bowling alley, barbershop or any other public place of business, or any private residence or in the doorways or entrance ways of such places.
(Code 1977, § 15-11)

Sec. 34-9. Same—Obstruction of sidewalks.

It shall be unlawful for any person to loiter on the sidewalks of the town in such manner as in any way to obstruct or inconvenience pedestrians in the use of the same.
(Code 1977, § 15-12)

Cross reference—Streets and sidewalks, ch. 58.

Sec. 34-10. Designation of police department as "person lawfully in charge thereof" for purposes of enforcing trespass laws.

Any owner of real property may, in writing on a form prescribed by the chief of police, designate the Town of Lebanon Police Department as a "person lawfully in charge thereof" as those terms are used in Virginia Code Section 18.2-119, as amended, for the purpose of forbidding another to go or remain upon the lands, buildings or premises of such owner.

Such designation shall include a description of the land, buildings or premises to which it applies; shall state the period of time which it is in effect; and shall be kept on file subject to public view in the office of the Town of Lebanon Police Department.
(Ord. No. 00-2, 9-11-00)

Editor's note—Ord. No. 00-2, adopted Sept. 11, 2000, did not specifically amend the Code; hence, inclusion herein as § 34-10 was at the discretion of the editor.

State law reference—Similar provisions, § 15.2-1717.1.

Secs. 34-11—34-30. Reserved.

ARTICLE II. OFFENSES AGAINST PUBLIC PEACE

Sec. 34-31. Disorderly conduct in public places.

(a) A person is guilty of disorderly conduct if, with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

(1) In any street, highway, public building or public place, or while in or on a public conveyance, engages in conduct having a direct tendency to cause acts of violence by the person at whom such conduct is directed; provided, however, such conduct shall

not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this chapter; or

(2) Wilfully, or being intoxicated whether wilfully or not, disrupts any meeting of the town council or a division or agency thereof, or of any school, literary society or place of religious worship, if such disruption prevents or interferes with the orderly conduct of such meeting or has a direct tendency to cause acts of violence by the person at whom such disruption is directed; provided, however, such conduct shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this chapter.

(b) The person in charge of any such building, place, conveyance or meeting may eject therefrom any person who violates any provision of this section, with the aid, if necessary, of any persons who may be called upon for such purpose.

(c) A person violating any provision of this section shall be guilty of a class 1 misdemeanor.
(Code 1977, § 11-8)

State law reference—Authority of town to adopt ordinance prohibiting and punishing disorderly conduct in public places, Code of Virginia, § 18.2-415.

Sec. 34-32. Loudspeakers, etc.—Prohibited generally; certain permits authorized.

Subject to section 34-33, it shall be unlawful for any person to have any electrical or mechanical amplifier or loudspeaker placed or located on the outside of any premises or sidewalks for the purpose of transmitting radio music, records or other means of transmission through such loudspeaker, megaphone or equipment; provided, that the mayor may issue permits to churches for the broadcasting of religious programs, and may issue to establishments within the business district a permit to broadcast appropriate Christmas music, without advertising, between Thanksgiving Day and January 2 of the year following, and may also issue permits to duly licensed auctioneers. Such permits shall prescribe the hours and manner of broadcasting and may be modified or revoked by the mayor.
(Code 1977, § 11-17)

Sec. 34-33. Same—Transient, itinerant advertising, etc.

Nothing contained in section 34-32 shall be construed to prevent transient, itinerant advertising over such system as referred to in section 34-32 or to prevent the broadcasting of any special occurrence or news through such systems. No such broadcast shall be given unless there shall first have been secured a permit from the mayor.
(Code 1977, § 11-18)

Sec. 34-34. Noise disturbances.

(a) *Prohibited generally.* It shall be a Class 2 misdemeanor and a public nuisance for any person to willfully make, permit, continue or cause to be made, permitted or continue any noise disturbance, whether located on public or private property.

(b) *Specific prohibitions.* Subject to the exceptions provided in paragraph (c), any of the following acts, or the causing or permitting thereof, among others, is declared to be a noise disturbance constituting a Class 2 misdemeanor and a public nuisance, but such enumeration shall not be deemed to be exclusive:

(1) *Radios, television sets, musical instruments and similar devices.* Operating, playing or permitting the operation or playing of any radio, amplifier, television, record, tape or compact disc player, drum, musical instrument or similar device:

a. Between the hours of 11:00 p.m. and 8:00 a.m. in such a manner as to permit sound to be heard across a real property boundary;

b. When the sound source is located within a motor vehicle in or upon public right-of-way or public property and the sound can be heard more than fifty (50) feet from its source.

(2) *Yelling, shouting, etc.* Yelling, shouting, whistling or singing between the hours of 11:00 p.m. and 8:00 a.m. so as to create a noise disturbance across a residential real property boundary or on a public right-of-way or public property.

(3) Schools, public buildings, churches and hospitals. The creation of any noise disturbance within any school, court, public building, church or hospital or on the grounds thereof.

(c) *Exemptions.* Paragraphs (a) and (b) shall have no application to any sound generated by any of the following:

(1) Any speech of any kind, not in conflict with provisions of paragraph (b).

(2) Activities on or in municipal and school athletic facilities and on or on publicly owned property and facilities, provided that such activity has been authorized by the owner of such property or facilities or its agent.

(3) Fire alarms and burglar alarms, prior to the giving of notice and a reasonable opportunity for the owner or tenant in possession of the premises served by any such alarm to turn off the alarm.

(d) [*Severability.*] It is the intent of the town council that this section shall be construed to secure for the people of this town freedom from any noise disturbance as described herein without violating any of the rights secured by the Constitution to the people. In the event that any provision hereof should ever be determined invalid for any reason, it is the intent of the town council that the remaining provisions continue in effect to the extent that they can be enforced notwithstanding such determination, and, therefore, this section is declared severable.

(Ord. No. 93-2, 10-12-93)

Secs. 34-35—34-55. Reserved.

ARTICLE III. WEAPONS

Sec. 34-56. Carrying concealed; exceptions.

(a) Any person who shall carry about his person, hid from common observation, any pistol, dirk, Bowie knife, switchblade knife, razor, slung shot, metal knucks, or any weapon of like kind, shall be guilty of a class 1 misdemeanor. Such pistol, dirk, Bowie knife, switchblade knife, razor, slung shot, metal knucks, or weapon of like kind shall, by order of the court, be forfeited to the town and may be seized by an officer as forfeited and such as may be needed for police officers and conservators of the peace shall be devoted to that purpose, and the remainder shall be destroyed by the officer having them in charge.

(b) This section shall not apply to any police officers, sergeants, sheriffs, officers or guards of the penitentiary or other institutions or camps of the state corrections system, conservators of the peace other than notaries public, or to carriers of the United States mail in the rural districts, or to any collecting officer while in the discharge of his official duty. No person shall be punishable under this section who has been granted permission to carry concealed weapons in accordance with state law.
(Code 1977, § 11-31)

State law reference—Similar provisions, Code of Virginia, § 18.2-308.

Sec. 34-57. Discharging air gun, bow, etc.

No person shall, anywhere within the town, discharge an arrow, shot, stone, gravel, bullet or any similar thing from any air gun, bow, gravel shooter or other similar instrument.
(Code 1977, § 11-32)

Sec. 34-58. Discharging firearms.

It shall be unlawful for any person, without necessity, to fire or discharge any firearm of any kind within the town.
(Code 1977, § 11-33)

State law reference—Similar provisions, Code of Virginia, § 18.2-280.

Chapters 35–37

RESERVED

Chapter 38

PARKS AND RECREATION*

Article I. In General

Sec. 38-1. Speed limit in J.S. Easterly Park.
Sec. 38-2. Unlicensed motor vehicles in J.S. Easterly Park.
Sec. 38-3. Charges for use of community center.
Secs. 38-4—38-30. Reserved.

Article II. Park and Recreation Board

Sec. 38-31. Official name.
Sec. 38-32. Created; purpose.
Sec. 38-33. Composition; term of office; vacancies.
Sec. 38-34. Meetings; quorum; order of business.
Sec. 38-35. Duties.
Sec. 38-36. Budget; compensation of members.
Sec. 38-37. Properties.
Sec. 38-38. Officers—Generally.
Sec. 38-39. Same—Duties.
Sec. 38-40. Amendments to article.

***Cross references**—Administration, ch. 2; solid waste, ch. 54; streets and sidewalks, ch. 58.

State law reference—Authority of town to establish and conduct a system of public recreation and playgrounds, Code of Virginia, § 51.1-15(2).

ARTICLE I. IN GENERAL

Sec. 38-1. Speed limit in J.S. Easterly Park.

There is hereby established a five miles per hour speed limit for motor vehicles in J.S. Easterly Park. The posting of signs advising of this speed limit is hereby authorized.
(Code 1977, § 12-1)

Cross reference—Traffic and vehicles, ch. 70.

Sec. 38-2. Unlicensed motor vehicles in J.S. Easterly Park.

No unlicensed motor vehicle shall be permitted upon the roads of the J.S. Easterly Park; nor shall any person ride an unlicensed motor vehicle in such park; nor shall any unlicensed person drive a motor vehicle in such park.
(Code 1977, § 12-2)

Cross reference—Traffic and motor vehicles, ch. 70.

Sec. 38-3. Charges for use of community center.

Persons using the community center shall pay a fee for such use. The amount of the fee to be paid by such persons shall be as set by the town council from time to time.
(Code 1977, § 12-3)

Secs. 38-4—38-30. Reserved.

ARTICLE II. PARK AND RECREATION BOARD*

Sec. 38-31. Official name.

The name of the organization provided for in this article shall be the "Lebanon Park and Recreational Board."
(Code 1977, § 12-4)

Sec. 38-32. Created; purpose.

(a) There is hereby established a system of public recreation and playgrounds, pursuant to the provisions of Code of Virginia, § 15.1-271.

(b) The conduct thereof is hereby delegated to the park and recreation board, which is hereby created for such purpose.

(c) The board shall operate and conduct its affairs pursuant to and in accordance with the provisions of this article.
(Code 1977, § 12-5)

***Cross reference**—Administration, ch. 2.

Sec. 38-33. Composition; term of office; vacancies.

(a) The park and recreation board shall be composed of five members, appointed by the town council, who shall serve for staggered terms of three years.

(b) No member shall serve more than two consecutive terms, but may be reappointed after one term.

(c) The recreation director is an ex-officio member of the board.

(d) In the event of resignation or death of a member of the board or of absence without an acceptable reason for three consecutive meetings, a member of the board will be dropped as a member and will be replaced by an appointment made by the town council. It will be the responsibility of the chairman to notify the council of the need for replacements.
(Code 1977, § 12-6)

Sec. 38-34. Meetings; quorum; order of business.

(a) All regular meetings of the park and recreation board shall be held monthly.

(b) Special meetings shall be called upon the request of the chairman or three members of the board.

(c) A quorum shall be present to transact any business at any and all meetings; and a majority of the membership shall constitute a quorum. Unless a quorum is present any business shall be tabled until more members are available to vote.

(d) The order of business of the board shall be as follows:

(1) Roll call.

(2) Reading and approval of minutes of preceding meeting.

(3) Report of the chairman.

(4) Report of the director of parks and recreation.

(5) Reports of the committees.

(6) Old business.

(7) New business.

(8) Adjournment.
(Code 1977, § 12-7)

Sec. 38-35. Duties.

(a) It shall be the duty of each member of the park and recreation board to take an active part in the recreational program and to act in whatever capacity he may be called; to be loyal in thought and deed to the welfare of recreation and to the community which it seeks to serve.

(b) The park and recreation board shall establish all parks and recreational policies; the board shall advise the director as a group rather than as individuals.

(c) The park and recreation board shall make regular tours of the playgrounds and facilities and make inspections of equipment and activities.

(d) The park and recreation board shall be responsible for assisting the director in giving necessary publicity to the recreational program.

(e) The board members shall deal officially with the recreational staff only through the director.

(f) The board members shall become familiar with the recommended standards for the leadership and facilities of a public recreation program.
(Code 1977, § 12-10)

Sec. 38-36. Budget; compensation of members.

(a) The annual budget for the fiscal year of the park and recreation board must be prepared and submitted to the town council for presentation two months before the beginning of the next fiscal year.

(b) It will be the responsibility of the board to regulate the expenditures for a fiscal year so they do not exceed amounts stipulated in the approved budget.

(c) The members of this board are to serve without compensation.
(Code 1977, § 12-11)

Sec. 38-37. Properties.

(a) The park and recreation board shall approve the acceptance of any gifts, bequests of money, real or personal property or other donations.

(b) All gifts, bequests of money, real or personal property or other donations made for permanent use for playground or recreational purposes and accepted by the board shall become the sole property of the town, to be used as designated by the park and recreation board.
(Code 1977, § 12-12)

Sec. 38-38. Officers—Generally.

(a) The officers of the park and recreation board shall consist of a chairman, a vice-chairman and a secretary, elected by and from the members of the board. The treasurer shall be the treasurer serving the town. The officers elected by the board shall serve a term of one year, which year shall end September 30 of each year.

(b) Upon the resignation or death of the chairman, vice-chairman or secretary, the board shall elect a successor.
(Code 1977, § 12-8)

Sec. 38-39. Same—Duties.

(a) *Chairman.* The chairman of the park and recreation board shall preside at all meetings and shall be an ex-officio member of all committees. The chairman shall be responsible for making annual reports to the town council and such other reports as the council may request.

(b) *Vice-chairman.* The vice-chairman of the park and recreation board shall assume the duties of the chairman in the absence of the chairman.

(c) *Secretary.* The secretary of the park and recreation board shall notify members and ex-officio members in writing of all meetings, keep minutes of all meetings of the board, shall maintain all records and correspondence properly and shall conduct such correspondence as the board may direct.

(d) *Treasurer.* The treasurer of the park and recreation board shall record all receipts and disbursements and shall maintain such other financial records as are necessary, and such records shall be available for inspection upon request. The treasurer shall be empowered by the board to make regular and ordinary disbursements which have the prior approval of the board. Disbursements of an unusual nature shall be approved individually by the board and passed to the treasurer for payment.
(Code 1977, § 12-9)

Sec. 38-40. Amendments to article.

The provisions of this article may be amended at any meeting of the town council, provided notice of the proposed amendment has been given in writing to all board members at least 14 days prior to such meeting. All amendments to this article must be approved by the town council.
(Code 1977, § 12-13)

Chapters 39–41

RESERVED

Chapter 42

PERSONNEL*

Article I. In General

Secs. 42-1—42-25. Reserved.

Article II. Pension Plan and Trust Agreement

Sec. 42-26. Established.
Sec. 42-27. Outline of provisions.
Secs. 42-28—42-50. Reserved.

Article III. Grievance Procedure

Sec. 42-51. Enabling legislation.
Sec. 42-52. Objective.
Sec. 42-53. Coverage of personnel.
Sec. 42-54. Determination of grievability.
Sec. 42-55. Determining issues qualifying for management steps.
Sec. 42-56. Procedure.
Sec. 42-57. Procedural noncompliance.
Sec. 42-58. First step; immediate supervisor.
Sec. 42-59. Second step; department head.
Sec. 42-60. Third step; town manager.
Sec. 42-61. Fourth step; request for panel hearing.
Sec. 42-62. Final step; panel hearing.
Sec. 42-63. Panel members.
Sec. 42-64. Panel selection.
Sec. 42-65. Communication with panel members.
Sec. 42-66. Panel hearing date.
Sec. 42-67. Rules for panel hearing.

***Charter reference**—Town council to fix compensation of town officers and employees, § 3.

Cross reference—Administration, ch. 2.

ARTICLE I. IN GENERAL

Secs. 42-1—42-25. Reserved.

ARTICLE II. PENSION PLAN AND TRUST AGREEMENT*

Sec. 42-26. Established.

There is hereby established, for the benefit of the employees of the town, a pension plan as outlined in section 42-27.
(Code 1977, § 13-6)

Sec. 42-27. Outline of provisions.

A brief outline of the pension plan adopted by section 42-26 is as follows:

(1) *Eligibility.* All employees shall be eligible to participate in the benefits of this plan on the effective date, September 1, 1973; provided, that they shall have been an employee continuously for at least 30 months and shall have attained age 23, but shall not have attained insurance age 57. Employees not eligible on the effective date shall be eligible to participate on the anniversary date of the plan following the completion of 30 months of continuous service; provided, that they shall have attained age 23, but shall not have attained insurance age 57.

(2) *Normal retirement date.* The normal retirement date shall be the anniversary date of the plan nearest the employee's 65th birthday or ten years after entry. With the consent of the employer a participant who has attained age 55 years or has been determined disabled or incapable of performing his ordinary job, then such participant may retire prior to his normal retirement date with reduced benefits as may then be available under the contracts on his life. With the consent of the employer, a participant may continue his employment with the employer past his normal retirement age.

(3) *Retirement benefits.* The benefit at normal retirement shall be a monthly life income, ten years certain, based on contributions equal to ten percent of your income to retirement. Adjustments in retirement benefits for increases or decreases in compensation will be made on each anniversary of the plan; provided, that such increase or decrease in compensation is sufficient to cause an increase or decrease in the pension benefit of at least $10.00 per month. However, no such adjustment will be made during the period of five years before the normal retirement date.

(4) *Contributions.* The entire cost of the plan will be paid by the town.

***State law reference**—Authority of town to establish local retirement system, Code of Virginia, § 51.1-800.

(5) *Death benefit.* If death of an insurable participant occurs prior to retirement, a death benefit in an amount equal to 100 times the monthly retirement benefit will be paid to the employee's beneficiary. For those employees found to be uninsurable, a death benefit will be a sum equal to the amount of premiums paid on an annuity contract, or the cash value of the annuity contract, whichever is greater.

(6) *Severance or withdrawal benefits.* Should a participant leave the employ of the town for any cause except retirement or death, he shall have a vested interest as of the date of such termination of employment equal to ten percent for each full year of participation in the plan, with full vesting after ten complete years of participation in the plan.

(7) *Administration of the plan.* The plan shall be administered by the trustees named in the trust agreement. The pension plan shall be administered under a trust agreement, and the retirement and death benefits are to be underwritten by the Equitable Life Assurance Society of the United States, assuring impartial administration, maximum flexibility, actuarial soundness and safety of funds. The trust agreement is available for inspection at any time. An employee's entrance into the plan signifies his or her acceptance of the provisions of the agreement.

(Code 1977, § 13-7)

Secs. 42-28—42-50. Reserved.

ARTICLE III. GRIEVANCE PROCEDURE*

Sec. 42-51. Enabling legislation.

Code of Virginia, § 15.1-7.1, provides that each municipality having more than 15 employees shall have a grievance procedure which affords an immediate and fair method for the resolution of disputes which arise between the municipality and employee conforming to the requirements of the state grievance procedure.

Sec. 42-52. Objective.

The general purpose of this grievance procedure is to afford an immediate and impartial method for the resolution of disputes arising between the town and employees in municipal services, so that they may have an orderly resolution of complaints and grievances with complete freedom from discrimination, coercion, recrimination, restraint or reprisal, thereby creating a more efficient and harmonious work force.

***State law reference**—Requirement that town adopt a grievance procedure for employees, Code of Virginia, § 15.1-7.1.

Sec. 42-53. Coverage of personnel.

(a) All permanent, nonprobationary fulltime and parttime employees come under the provisions of this article. Law enforcement officers have the option to proceed under the town's grievance procedure or the law enforcement officer's procedural guarantee of Code of Virginia, § 2.1-110 et seq., but such employee may not proceed by both procedures.

(b) The following are excluded from the provisions of this article:

(1) Probationary employees.

(2) Appointees to boards and commissions.

(3) Town manager.

(4) Attorney, chief of police, clerk of council.

(5) Department heads.

(6) Employees who by charter serve at the will of the town.

(7) Seasonal and temporary employees.

Sec. 42-54. Determination of grievability.

A grievance is defined as a complaint or dispute by an employee relating to his employment:

(1) *Included,* including but not necessarily limited to:

a. Disciplinary actions, including dismissals, demotions and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance.
b. The application or interpretation of personnel policies, procedures, rules and regulations.
c. Acts of reprisal as a result of the utilization of the grievance procedure or of participation in the grievance of another municipal employee.
d. Complaints of discrimination on the basis of race, color, creed, political affiliation, age, handicap, national origin or sex.
e. Acts of retaliation because the employee has complied with any law of the United States or of the commonwealth, has reported any violation of such law to a governmental authority or has sought any change in law before Congress or the General Assembly.

(2) *Excluded.* The town reserves the exclusive right to manage the affairs and operations of the municipal government.

a. Establishment and revision of wages or salaries, position classification or general benefits.
b. Work activity accepted by the employee as a condition of employment or work activity which may be reasonably expected to be a part of the job content.

c. The contents of ordinances, resolutions, statutes, personnel policies, procedures, rules and regulations.
d. Failure to promote except where the employee can show established promotional policies or procedures were not followed or applied fairly.
e. The method, means and personnel by which such work activities are to be carried on.
f. Except where such action affects an employee who has been reinstated within the previous six months as a result of the final determination of a grievance; termination, layoff, demotion or suspension from duties because of lack of work, reduction in work force or job abolition. Any grievance brought under this exception shall be upheld upon a showing by the agency that there was a valid business reason for the action, and that the employee was notified of such reason in writing prior to the effective date of the action.
g. The hiring, promotion, transfer, assignment and retention of employees within the town.
h. The relief of employees from duties of this town in emergencies.

Sec. 42-55. Determining issues qualifying for management steps.

(a) When either the department head or the employee so requests in writing, the chief administrative office of the town shall decide within ten working days of the request whether or not the matter is grievable and shall notify the employee in writing of his decision. The request to determine the grievability of an issue shall be decided before the second step and prior to the panel hearing, or it shall be deemed to be waived. The town attorney or commonwealth's attorney shall not be authorized to decide the question of grievability.

(b) Decisions on grievability issues of the chief administrative officer may be appealed to the county circuit court for a hearing de novo on the issue of whether or not the grievance qualifies for a panel hearing. Proceedings for review by the circuit court shall be instituted by filing a notice of appeal with the town manager within ten calendar days from the date of receipt of the decision and giving copy thereof to all parties. Within ten calendar days thereafter the town manager shall transmit to the clerk of the circuit court a copy of the decision of the agency head, a copy of the notice of appeal, and the exhibits. A copy of the evidence furnished to the court shall be furnished to the grievant. The failure of the town manager or his designee to transmit the record shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the town manager to transmit the record on or before a certain date. The decision of the court is final and not appealable.

Sec. 42-56. Procedure.

Most employee concerns or complaints can be resolved informally through communication between employee and supervisor. Accordingly, employees are encouraged to take their complaints to their immediate supervisor and then to upper-management levels to seek a solution. Employees are also encouraged to pursue grievable issues through the grievance procedure and supervisors are to assist them in this process.

Sec. 42-57. Procedural noncompliance.

(a) After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure without just cause will result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five work days of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the town manager.

(b) The town manager or his designee may require a clear written explanation of the basis for just cause extensions or exceptions. The town manager shall determine compliance issues. Compliance determinations are subject to review by the circuit court by filing of a petition within 30 days of determination.

Sec. 42-58. First step; immediate supervisor.

(a) The employee shall identify the grievance verbally to the immediate supervisor in an informal meeting within 20 days after the event or action which is the basis for the grievance in order to proceed.

(b) The supervisor shall give a verbal response to the employee within five work days following the meeting.

(c) If a resolution is not reached at this point, the employee shall submit to the town manager on grievance form the nature of the grievance and the specific relief requested within five work days following the date of receipt of the verbal response.

(d) The supervisor, in turn, shall give the employee a written response on grievance form within five days of receipt of form A.

Sec. 42-59. Second step; department head.

(a) If the first-step response is not accepted, and the issue of grievability has not been raised, the employee should indicate on form A the desire to have the grievance advanced to the next step. The grievance must be submitted to the department head within five work days following receipt of the supervisor's reply.

(b) Upon receipt of form A, the second-step department head shall meet with the employee within five work days. The only persons present at this meeting are the employee, the second-step department head and appropriate witnesses.

(c) The department head shall give the employee a second-step response in writing on form A within five work days following the date of the meeting.

Sec. 42-60. Third step; town manager.

(a) If the second-step written response is not accepted and the issue of grievability has not been raised, the employee should check on the grievance form the desire to advance the

grievance to the third step. The employee is allowed five work days following the date of receipt to forward the grievance to the town manager.

(b) Upon receipt of form A, the third-step town manager shall meet with the employee within five work days. The persons present at this meeting are the employee, the town manager, appropriate witnesses and at the employee's option a representative of his choice. If the grievant is represented by legal counsel, management likewise has the option of being represented by legal counsel.

(c) The town manager shall give the employee a third-step response in writing on the grievance form within five work days following the meeting.

Sec. 42-61. Fourth step; request for panel hearing.

If the third-step written response is not acceptable, the employee should check on the grievance form the desire to advance the grievance to the fourth stage for a panel hearing. The request must be received by the town manager within five work days after the receipt of the third-step reply.

Sec. 42-62. Final step; panel hearing.

The final step of the grievance procedure shall be the actual panel hearing.

Sec. 42-63. Panel members.

(a) A panel shall consist of three members: one member appointed by the grievant, one member appointed by the agency and a third member selected by the other two panel members, or appointed by the circuit court. The third panel member shall be the chairperson of the panel.

(b) The following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or coemployee of such an attorney shall serve as a panel member.

(c) To insure an impartial panel, such panel shall not be composed of any persons having direct involvement with the grievance being heard, or with the problem giving rise to the grievance; for example, the grievant, the agency head, supervisors replying at any management step, representatives of the grievant at the third step and witnesses who have appeared at any management step. In addition, managers who are in a direct line of supervision of a grievant are also excluded for serving as panel members.

(d) Additionally, due to their relationships to the grievance process, employees in the personnel department shall not serve as panel members.

(e) Panels chosen in compliance with these requirements shall be deemed to be impartial.

Sec. 42-64. Panel selection.

The employee and the agency shall select their respective panel members within five work days following the receipt of the decision that the grievance qualifies for a panel hearing. The full panel selection shall be completed by the tenth work day following such receipt. However, this time limit may be extended in instances where the agreement on a third panel member has not been reached. In such instances, the agency shall within the ensuing five work days request the chief judge of the circuit court in the locality in which the grievant is employed to select a third panel member.

Sec. 42-65. Communication with panel members.

The parties should not discuss the substance of any grievance or the problem giving rise to the grievance with any panel members prior to the hearing. Any matter requiring the attention of the panel should be communicated in writing with copies to all parties.

Sec. 42-66. Panel hearing date.

The full panel will set the date, the time and place for the hearing, which should be held within ten days following the selection of the full panel. The panel chairperson shall immediately notify the grievant and the agency of the hearing date. The panel shall conduct the hearing in the locale where the grievant is employed unless the panel unanimously decides that another location is appropriate.

Sec. 42-67. Rules for panel hearing.

Hearings conducted by the panel under this article are subject to the following rules:

(1) The panel does not have the authority to formulate policies or procedures or to alter existing policies or procedures.

(2) The panel shall decide the propriety of attendance at the hearing of persons not having a direct interest in the hearing and at the request of either party the hearing shall be private.

(3) The town shall provide the panel with copies of the grievance record before the hearing and provide the grievant with a list of the documents furnished to the panel and the grievant and his attorney at least ten days prior to the scheduled panel hearing shall be allowed access to and copies of all relevant files intended to be used in the grievance proceeding.

(4) The panel has the authority to determine the admissability of evidence without regard to the burden of proof or the order of presentation of evidence so long as full and equal opportunity is afforded to all parties for the presentation of evidence. All evidence shall be presented in the presence of the panel and the parties except by mutual consent of the parties. The rules of evidence do not necessarily apply.

(5) Documents, exhibits and witness lists shall be exchanged prior to the hearing between the parties.

(6) The majority decision of the panel, acting within the scope of its authority, shall be final, subject to existing policies, procedures and law.

(7) The panel's decision shall be provided to the parties within 15 days of the final hearing.

(8) Either party may petition the circuit court of the county for an order requiring implementation of the panel decision.

Chapters 43–45

RESERVED

Chapter 46

PLANNING AND DEVELOPMENT*

Article I. In General

Secs. 46-1–46-25. Reserved.

Article II. Planning Commission

Sec. 46-26. Created.
Sec. 46-27. Appointment, terms of office and removal of members; filling of vacancies.
Sec. 46-28. Compensation of members.
Sec. 46-29. Functions, powers and duties.

***Cross references**—Administration, ch. 2; buildings and building regulations, ch. 10; streets and sidewalks, ch. 58; subdivisions, ch. 62; utilities, ch. 74.

ARTICLE I. IN GENERAL

Secs. 46-1—46-25. Reserved.

ARTICLE II. PLANNING COMMISSION*

Sec. 46-26. Created.

A town planning commission is hereby created pursuant to the provisions of Code of Virginia, §§ 15.1-437—15.1-445.
(Code 1977, § 2-32)

Sec. 46-27. Appointment, terms of office and removal of members; filling of vacancies.

(a) The planning commission shall consist of seven members, appointed by the town 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, at least one-half of the members so appointed shall be freeholders. The town council may require each member of the commission to take an oath of office.

(b) 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 co-extensive with the term of office to which he has been elected or appointed, unless the town council, at the first regular meeting each year appoints others to serve as their representatives.

The remaining members of the commission shall serve for a term of two years. The town council may establish different terms of office for initial and subsequent appointments. Vacancies shall be filled by appointment for the unexpired term only. Members may be removed for malfeasance in office.
(Code 1977, § 2-33; Ord. No. 98-4, 7-1-98)
State law reference—Similar provisions, Code of Virginia, § 15.1-437.

Sec. 46-28. Compensation of members.

All members of the town planning commission shall serve as such without compensation; provided, however, members of the planning commission shall be reimbursed for actual expenses incurred by them.
(Code 1977, § 2-34)
State law reference—Similar provisions, Code of Virginia, § 15.1-437.

***Cross reference**—Administration, ch. 2.
State law reference—Duty of town to create a local planning commission, Code of Virginia, § 15.1-427.1.

Sec. 46-29. Functions, powers and duties.

The town planning commission shall have all the functions, powers and duties provided by law.

(Code 1977, § 2-35)

State law reference—Duties of planning commission, Code of Virginia, § 15.1-444.

Chapters 47–49

RESERVED

Chapter 50

PROCUREMENT*

Article I. In General

Sec. 50-1. Purpose.
Sec. 50-2. Application of chapter.
Sec. 50-3. Intent of chapter.
Sec. 50-4. Implementation.
Sec. 50-5. Definitions.
Sec. 50-6. Compliance with conditions with federal grants or contracts.
Sec. 50-7. Cooperative procurement.
Sec. 50-8. Prompt payment of bills by localities.
Sec. 50-9. Small purchases.
Secs. 50-10—50-30. Reserved.

Article II. Contract Formulation and Administration

Sec. 50-31. Methods of procurement.
Sec. 50-32. Competitive bidding on state-aid projects.
Sec. 50-33. Cancellation, rejection of bids; waiver of informalities.
Sec. 50-34. Contract pricing arrangements.
Sec. 50-35. Discrimination prohibited.
Sec. 50-36. Exceptions to requirement for competitive procurement.
Sec. 50-37. Prequalification.
Sec. 50-38. Debarment.
Sec. 50-39. Preference for state products and firms.
Sec. 50-40. Participation of small businesses and businesses owned by women and minorities.
Sec. 50-41. Use of brand names.
Sec. 50-42. Comments concerning specifications.
Sec. 50-43. Employment discrimination by contractor prohibited.
Sec. 50-44. Public inspection of certain records.
Sec. 50-45. Negotiation with lowest responsible bidder.
Sec. 50-46. Withdrawal of bid due to error.
Sec. 50-47. Modification of the contract.
Sec. 50-48. Retainage of construction contracts.
Sec. 50-49. Deposit of certain retained funds on certain contracts with local governments; penalty for failure to timely complete.
Sec. 50-50. Bid bonds.
Sec. 50-51. Performance and payment bonds.
Sec. 50-52. Action on performance bond.
Sec. 50-53. Actions on payment bonds.
Sec. 50-54. Alternative forms of security.
Sec. 50-55. Bonds on other than construction contracts.
Secs. 50-56—50-75. Reserved.

***Cross references**—Administration, ch. 2; buildings and building regulations, ch. 10.
State law reference—Virginia Public Procurement Act, Code of Virginia, § 11-35 et seq.

Article III. Remedies

Sec. 50-76. Ineligibility.
Sec. 50-77. Appeal of denial of withdrawal of bid.
Sec. 50-78. Determination of non-responsibility.
Sec. 50-79. Protest of award or decision to award.
Sec. 50-80. Effect of appeal on contract.
Sec. 50-81. Stay of award during protest.
Sec. 50-82. Contractual disputes.
Sec. 50-83. Legal actions.
Sec. 50-84. Administrative appeals procedure.
Secs. 50-85—50-105. Reserved.

Article IV. Ethics in Public Contracting

Sec. 50-106. Purpose.
Sec. 50-107. Definitions.
Sec. 50-108. Penalty for violation.
Sec. 50-109. Proscribed participation by public employees in procurement transactions.
Sec. 50-110. Solicitation or acceptance of a gift.
Sec. 50-111. Disclosure of subsequent employment.
Sec. 50-112. Gifts by bidders, offerors, contractors, subcontractors.
Sec. 50-113. Kickbacks.
Sec. 50-114. Purchase of building materials, equipment from architect or engineer prohibited.
Sec. 50-115. Purchases and sales to be based on competition.

ARTICLE I. IN GENERAL

Sec. 50-1. Purpose.

The purpose of this chapter is to enunciate the public policies of this town pertaining to governmental procurement from nongovernmental sources.
(Ord. of 4-9-90, art. I, § 1B)

Sec. 50-2. Application of chapter.

The provisions of this chapter shall not apply to those contracts entered into by the town prior to January 1, 1990, which shall continue to be governed by the laws in effect at the time those contracts were executed.
(Ord. of 4-9-90, art. I, § 1C)

Sec. 50-3. Intent of chapter.

To the end that this town obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of this town that competition be sought to the maximum feasible degree, that this town enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of this town rather than being drawn to favor a particular vendor, and that purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered.
(Ord. of 4-9-90, art. I, § 1D)

Sec. 50-4. Implementation.

This chapter may be implemented by ordinances, resolutions or regulations consistent with this chapter and with the provisions of other applicable law promulgated by this town. This town may act by and through its duly designated or authorized officers or employees.
(Ord. of 4-9-90, art. I, § 2)

Sec. 50-5. Definitions.

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

Competitive negotiation is a method of contractor selection which includes the following elements:

(1) Issuance of a written request for proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contrac-

tual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.

(2) Public notice of the request for proposal at least ten days prior to the date set for receipt of proposals by posting in a public area normally used for posting of public notices and by publication in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. In addition, proposals may be solicited directly from potential contractors.

(3) Procurement of professional services. This town shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial response and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The request for proposal shall not, however, request that offerors furnish estimates of manhours or cost for services. At the discussion stage, this town may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and, where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion outlined in this subsection on the basis of evaluation factors published in the request for proposal and all information developed in the selection process to this point, this town shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to this town can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should this town determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

(4) Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the request for proposal, including price if so stated in the request for proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, this town shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Should this town determine in writing and in its sole discretion that only one offeror is fully qualified, or that one