

**CODE OF ORDINANCES**  
**OF THE TOWN OF**  
**UPPER MARLBORO, MARYLAND**

Published in 2023 by Order of the Board of Commissioners

**municode**  
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PROOFS

OFFICIALS

of the

TOWN OF

UPPER MARLBORO, MARYLAND

AT THE TIME OF THIS CODIFICATION

\_\_\_\_\_

[Mayor], Mayor  
[Commissioner], Commissioner  
[Commissioner], Commissioner  
*Board of Commissioners*

\_\_\_\_\_

[Name of Town Manager]  
*Town Manager*

\_\_\_\_\_

[Name of Town Attorney]  
*Town Attorney*

\_\_\_\_\_

[Name of Town Clerk]  
*Town Clerk*

PROOFS

## PREFACE

This Code constitutes a codification of the general and permanent ordinances of the Town of Upper Marlboro, Maryland.

Source materials used in the preparation of the Code were the ordinances adopted by the board of commissioners. 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 ordinance included herein.

### *Acknowledgments*

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**PART I**  
**CHARTER\***

**\*Editor's note**—Printed herein is the Charter of the Town of Upper Marlboro, Maryland, as reprinted in November 2018 and prepared by the Department of Legislative Services General Assembly of Maryland. 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. Additions made for clarity are indicated by brackets.

~~CHARTER OF THE~~  
~~Town of Upper Marlboro~~  
~~PRINCE GEORGE'S COUNTY, MARYLAND~~

(Reprinted November 2018)

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UPPER MARLBORO

[Corporate Name]

**Section 82-1.**

The inhabitants of the town of Upper Marlboro are hereby continued a body corporate and a municipal corporation by the name of "The Town of Upper Marlboro" with all of the privileges thereof, by that name to sue and be sued, to plead and be impleaded in any court of law or equity, to have and use a common seal and to have perpetual succession.

(Res. No. 01-2021, § 1(82-1), 3-9-2021)

Corporate Limits

**Section 82-2.**

The corporate limits of the Town shall be as follows:

Commencing at the mouth of the Federal Spring Branch at its confluence with the Western Branch and running down with the meanders of the Western Branch on the south side thereof, and exclusive of said branch, to the stream beyond James B. Belt's meadow; then up and with said stream to the small bridge culvert on the

road from Upper Marlboro to Rosaryville, back of the former residence of A. S. Brooke; then in an air or direct line across the land of Frederick Sasscer to the Federal Spring Branch at a point which will throw into the corporation all the land formerly purchased by Thomas E. Williams and C. C. Magruder, Jr., of the trustees of D. Benedict J. Gardiner; then down and with the meanders of said Federal Spring Branch on the south side thereof, and exclusive of said branch to its mouth, the beginning point aforesaid.

### The Board of Commissioners

#### **Section 82-3. (Number, Selection, Term).**

All legislative powers of the Town shall be vested in a Board of Commissioners consisting of five Commissioners who shall be elected as hereinafter provided and who shall hold office for a term of two years and until the succeeding Board takes office. The regular term of the Commissioners shall expire on the second Monday of December following the election of their successors. Notwithstanding anything herein to the contrary, the incumbent Commissioners serving their terms of office as previously set to expire in January of 2022 shall instead end their terms earlier on the second Monday of December of 2021 or shall serve until their successors qualify.

(Res. No. 02-2021, § 1(82-3), 8-10-2021)

#### **Section 82-4. (Qualification of Commissioners).**

Commissioners shall have resided in the Town for at least two years immediately preceding their election, shall be qualified voters of the Town, and shall be at least 25 years of age. If, at any time such person shall remove from the town, his or her office shall automatically become vacant.

(Res. No. 2-01, 9-26-2001)

#### **Section 82-5. (Salary of Commissioners).**

Each Commissioner shall receive an annual salary which shall be equal for all Commissioners and shall be as specified from time to time by an ordinance passed by the Board in the regular course of its business, provided, however, that the salary specified at the time any Board takes office shall not be changed during the period for which that Board was elected. The ordinance making any change in the salary paid to the several Commissioners, either by way of increase or decrease, shall be finally ordained prior to the general election for the members of the next succeeding Board and shall take effect only as to the members of the next succeeding Board.

#### **Section 82-6. (Meetings of the Board).**

The newly elected Board shall meet at 8:00 p.m. on the second Monday of December following its election for the purpose of organization and conducting other Town business, after which the Board shall meet regularly at such times as may be prescribed by its rules but not less frequently than once each month. Special meetings may be called upon the request of the President or a majority of the members of the Board. All meetings of the Board shall be open to the public, except that the Board may, by majority vote, meet in closed session for any purpose then authorized by State law; and, the residents of the Town shall have a reasonable opportunity to be heard at any regular meeting in regard to any municipal question.

(Res. No. 1-2008, 1-7-2009; Res. No. 02-2021, § 1(82-6), 8-10-2021)

#### **Section 82-7. (Board to be the Judge of Qualifications of its Members).**

The Board shall be the judge of the election and qualification of its members.

(Ord. No. 01-2021, § 1(82-7), 3-9-2021)

#### **Section 82-8. (Quorum).**

A majority of the members of the Board shall constitute a quorum for the transaction of business, but no ordinance shall be approved nor any other action taken without the favorable votes of a majority of the whole number of members elected to the Board.

#### **Section 82-9. (Procedure of Board).**

The Board shall determine its own rules and order of business. It shall keep a journal of its proceedings and enter therein the yeas and nays upon final action on any question, resolution, or ordinance, or at any other time if

required by any one member. The journal shall be open to public inspection.

**Section 82-10. (Vacancies in Board).**

Vacancies in the Board shall be filled as provided in Section 82-32 of this charter.

**Section 82-11. (Ordinances).**

No ordinance shall be passed at the meeting at which it is introduced. At any regular or special meeting of the Board of Commissioners held not less than six nor more than sixty days after the meeting at which an ordinance was introduced, it shall be passed, or passed as amended, or rejected, or its consideration deferred to some specified future date. In cases of emergency, the provision that an ordinance may not be passed at the meeting at which it is introduced may be suspended by unanimous vote of the Board of Commissioners. Every ordinance, unless it is passed as an emergency ordinance, shall become effective at the expiration of twenty (20) calendar days following approval of the Board of Commissioners. Each ordinance shall be posted in the Town office, and each ordinance, or a fair summary thereof, shall be published at least once, in a newspaper of general circulation in the Town.

(Res. No. 5-77, 9-22-1977)

**Section 82-12. (File of Ordinances).**

The complete text of each and every ordinance and resolution passed by the Board shall be permanently filed by the clerk and shall be kept available for public inspection.

The President

**Section 82-13. (Selection).**

At their organizational meeting, a majority of the Commissioners shall elect one of their members President. The President shall preside at all meetings of the Board in accordance with the accepted rules of parliamentary procedure, except that he or she may vote on any question before the Board. The President shall be the ceremonial Mayor of the Town and shall be identified either as the President of the Board of Commissioners or as the Town Mayor.

(Res. No. 01-2021, § 1(82-13), 3-9-2021)

**Section 82-14. (Salary of the President).**

The President may receive an annual salary in addition to that received as a Commissioner, as set from time to time by an ordinance passed by the Board in the regular course of business. Provided, however, that no change shall be made in the salary for any president during the term for which he was elected. The ordinance making any change in the salary paid to the President, either by way of increase or decrease, shall be finally ordained prior to the general election to elect the next succeeding Board, and shall take effect only as to the next succeeding President.

**Section 82-15. (Powers and Duties).**

(a) The President shall see that the ordinances of the Town are faithfully executed and shall be the chief executive officer and the head of the administrative branch of the Town government.

(b) The president, with the approval of the Board, shall appoint the heads of all offices, departments, and agencies of the Town government as established by this charter or by ordinance. All office, department, and agency heads shall serve at the pleasure of the President.

All subordinate officers and employees of the offices, departments, and agencies of the Town government shall be appointed and removed by the President, in accordance with rules and regulations in any merit system which may be adopted by the Board.

(c) The President each year shall report to the Board the condition of municipal affairs and make such recommendations as he deems proper for the public good and the welfare of the Town.

(d) The President shall have complete supervision over the financial administration of the Town government. He shall prepare or have prepared annually a budget and submit it to the Board. He shall supervise the administration of the budget as adopted by the Board. He shall supervise the disbursement of all monies and have control over all

expenditures to assure that budget appropriation are not exceeded.

(e) The President shall have such other powers and perform such other duties as may be prescribed by this charter or as may be required of him by the Board, not inconsistent with this charter.

## General Powers

### Section 82-16.

(1) (*General Powers*). The Board shall have the power to pass all such ordinances not contrary to the Constitution and laws of the State of Maryland or this charter as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights, and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of the Town and visitors thereto and sojourners therein.

(2) (*Specific Powers*). The Board shall have, in addition, the power to pass ordinances not contrary to the laws and Constitution of this State, for the following specific purposes:

- (a) (*Advertising*). To provide for advertising for the purposes of the Town, for printing and publishing statements as to the business of the Town.
- (b) (*Aisles*). To regulate and prevent the obstruction of aisles in public halls, churches and place of amusement, and to regulate the construction and operation of the doors and means of egress therefrom.
- (c) (*Amusements*). To provide in the interest of the public welfare for licensing, regulating, or restraining theatrical or other public amusements.
- (d) (*Appropriations*). To appropriate municipal monies for any purpose within the powers of the Board.
- (e) (*Auctioneers*). To regulate the sale of all kinds of property at auction within the Town and to license auctioneers excepting that such power shall exclude authority over such sales conducted pursuant to judicial or foreclosure sales to be reported to the Circuit Court and sales made by any public official pursuant to the duties of his office.
- (f) (*Band*). To establish a municipal band, symphony orchestra or other musical organization, and to regulate by ordinance the conduct and policies thereof.
- (g) (*Billboards*). To license, tax and regulate, restrain or prohibit the erection or maintenance of billboards within the Town, the placing of signs, bills and posters of every kind and description on any building, fence, post, billboard, pole, or other place within the Town.
- (h) (*Bridges*). To erect and maintain bridges.
- (i) (*Buildings*). To make reasonable regulations in regard to buildings and signs to be erected, constructed, or reconstructed in the Town, and to grant building permits for the same; to formulate a building code and a plumbing code and to appoint a building inspector and a plumbing inspector, and to require reasonable charges for permits and inspections; to authorize and require the inspection of all buildings and structures and to authorize the condemnation thereof in whole or in part when dangerous or insecure, and to require that such buildings and structures be made safe or be taken down.
- (j) (*Cemeteries*). To regulate or prohibit the interment of bodies within the municipality and to regulate cemeteries.
- (k) (*Codification*). To provide for the codification of all ordinances and resolutions which have been or may hereafter be passed.
- (l) (*Community Services*). To provide, maintain, and operate community and social services for the preservation and promotion of the health, recreation, welfare, and enlightenment [enlightenment] of the inhabitants of the Town.
- (m) (*Cooperative Activities*). To make agreements with other municipalities, counties, districts, bureaus, commissions, and governmental authorities for the joint performance of or for cooperation in the

performance of any governmental functions.

- (n) (*Curfew*). To prohibit the youth of the Town from being in the streets, lanes, alleys, or public places at unreasonable hours of the night.
- (o) (*Dangerous Conditions*). To compel persons about to undertake dangerous improvements to execute bonds with sufficient sureties conditioned that the owner or contractor will pay all damages resulting from such work which may be sustained by any persons or property.
- (p) (*Departments*). To create, change, and abolish offices, departments, or agencies, other than offices, departments, and agencies established by this Charter; to assign additional functions or duties to offices, departments or agencies, established by this Charter, but not including the power to discontinue or assign to any other office, department, or agency, any function or duty assigned by this charter to a particular office, department, or agency.
- (q) (*Disorderly Houses*). To suppress bawdy houses, disorderly houses and houses of ill fame.
- (r) (*Dogs*). To regulate the keeping of dogs in the Town and to provide, whether the County does not license or tax dogs, for the licensing and taxing of the same; to provide for the disposition of homeless dogs and dogs on which no license fee or taxes are paid.
- (s) (*Elevators*). To require the inspection and licensing of elevators and to prohibit their use when unsafe or dangerous or without a license.
- (t) (*Explosives*). To regulate or prevent the storage of gunpowder, oil, or any other explosive or combustible matter; to regulate or prevent the use of firearms, fireworks, bonfires, explosives, or any other similar things which may endanger persons or property.
- (u) (*Filth*). To compel the occupant of any premises, building or outhouse situated in the Town, when the same has become filthy or unwholesome, to abate or cleanse the condition; and after reasonable notice to the owners or occupants to authorize such work to be done by the proper officers and to assess the expense thereof against such property, making it collectible by taxes or against the occupant or occupants.
- (v) (*Finances*). To levy, assess, and collect ad valorem property taxes; to expend municipal funds for any public purpose; to have general management and control of the finances of the Town.
- (w) (*Fire*). To suppress fires and prevent the dangers thereof and to establish and maintain a fire department; to contribute funds to volunteer fire companies serving the Town; to inspect buildings for the purpose of reducing fire hazards, to issue regulations concerning fire hazards, and to forbid and prohibit the use of fire-hazardous buildings and structures permanently or until the conditions of Town fire-hazard regulations are met; to install and maintain fire plugs where and as necessary, and to regulate their use; and to take all other measures necessary to control and prevent fires in the Town.
- (x) (*Food*). To inspect and to require the condemnation of, if unwholesome, and to regulate the sale of any food products.
- (y) (*Franchises*). To grant and regulate franchises to water companies, electric light companies, gas companies, telegraph and telephone companies, transit companies, taxicab companies, and any others which may be deemed advantageous and beneficial to the Town. No franchise shall be granted for longer period than fifty years.
- (z) (*Gambling*). To regulate, restrain or prohibit gambling.
- (aa) (*Garbage*). To prevent the deposit of any unwholesome substance either on private or public property, and to compel its removal to designated points; to require slops, garbage, ashes and other waste or other unwholesome materials to be removed to designated points, or to require the occupants of the premises to place them conveniently for removal.
- (bb) (*Grants-in-Aid*). To accept gifts and grants of federal or of state funds from the federal or state governments or any agency thereof, and to expend the same for any lawful public purpose, agreeably to the conditions under which the gifts or grants were made.

- (cc) (*Hawkers*). To license, tax, regulate, suppress and prohibit hawkers and itinerant dealers, peddlers, pawnbrokers and all other persons selling any articles on the streets of the Town, and to revoke such licenses for cause.
- (dd) (*Health*). To protect and preserve the health of the Town and its inhabitants; to appoint a public health officer, and to define and regulate his powers and duties; to prevent the introduction of contagious diseases into the Town; to establish quarantine regulations, and to authorize the removal and confinement of persons having contagious or infectious diseases; to prevent and remove all nuisances; to inspect, regulate, and abate any buildings, structures, or places which cause or may cause unsanitary conditions or conditions detrimental to health.
- (ee) (*House Numbers*). To regulate the numbering of houses and lots and to compel owners to renumber the same or in default thereof to authorize and require the same to be done by the Town at the owner's expense, such expense to constitute a lien upon the property collectible as tax monies.
- (ff) (*Jail*). To establish and regulate a station house or lock-up for temporary confinement of violators of the laws and ordinances of the Town or to use the County jail for such purpose.
- (gg) (*Licenses*). Subject to any restrictions imposed by the public general laws of the State, to license and regulate all persons beginning or conducting transient or permanent business in the Town for the sale of any goods, wares, merchandise, or services, to license and regulate any business, occupation, trade, calling, or place of amusement or business; to establish and collect fees and charges for all licenses and permits issued under the authority of this charter.
- (hh) (*Liens*). To provide that any valid taxes, assessments or charges made against any real property within the Town shall be liens upon such property from the date they became payable.
- (ii) (*Lights*). To provide for the lighting of the Town.
- (jj) (*Livestock*). To regulate and prohibit the running at large of cattle, horses, swine, fowl, sheep, goats, dogs or other animals; to authorize the impounding, keeping, sale and redemption of such animals when found in violation of the ordinance in such cases provided.
- (kk) (*Markets*). To obtain by lease or rent, own, construct, purchase, operate, and maintain public markets within the Town.
- (ll) (*Minor Privileges*). To regulate or prevent the use of public ways, sidewalks, and public places for signs, awnings, posts, steps, railings, entrances, racks, posting handbills and advertisement, and display of goods, wares, and merchandise.
- (mm) (*Noise*). To regulate or prohibit unreasonable ringing of bells, crying of goods or sounding of whistles, horns and speakers.
- (nn) (*Nuisances*). To prevent or abate by appropriate ordinance all nuisances in the Town whether the same be herein specifically named or not; to regulate, to prohibit, to control the location of, or to require the removal from the Town of all trading in, handling of, or manufacture of any commodity [commodity] which is or may become offensive, obnoxious, or injurious to the public comfort or health. In this connection the Town may regulate, prohibit, control the location of, or require the removal from the Town of such things as stockyards, junkyards, slaughterhouses, cattle or hog pens, tanneries, and renderies. This listing is by way of enumeration, not limitation.
- (oo) (*Obstructions*). To remove all nuisances and obstructions from the streets, lanes and alleys and from any lots adjoining thereto, or any other places within the limits of the Town.
- (pp) (*Parking Facilities*). To license and regulate and to establish, acquire by purchase, lease or other transfer, own, construct, operate, and maintain parking lots and other facilities for off street parking.
- (qq) (*Parking Meters*). To install parking meters on the streets and public places of the Town in such places as by ordinance may be determined, and by ordinance prescribe rates and provisions for the use thereof, except that the installation of parking meters on any street or road maintained by the State Roads Commission of Maryland must first be approved by the Commission.

- (rr) (*Parks and Recreation*). To establish and maintain public parks, gardens, playgrounds, and other recreational facilities and programs to promote the health, welfare, and enjoyment of the inhabitants of the Town.
- (ss) (*Police Force*). To establish, operate, and maintain a police force. All Town policemen shall, within the municipality, have the powers and authority of constables in this State.
- (tt) (*Police Powers*). To prohibit, suppress, and punish within the Town all vice, gambling, and games of chance; prostitution and solicitation therefor and the keeping of bawdy houses and houses of ill fame; all tramps and vagrants; all disorder, disturbances, annoyances, disorderly conduct, obscenity, public profanity, and drunkenness [drunkenness].
- (uu) (*Property*). To acquire by conveyance, purchase or gift, real or leasehold property for any public purpose; to erect buildings and structures thereon for the benefit of the Town and its inhabitants; and to sell, lease, convey or otherwise dispose of or encumber any real or leasehold property when no longer needed for the public use, after having given at least twenty days' public notice thereof; to control, protect and maintain public buildings, grounds and property of the Town.
- (vv) (*Regulations*). To adopt by ordinance and enforce within the corporate limits police, health, sanitary, fire, building, plumbing, traffic, speed, parking, and other similar regulations not in conflict with the laws of the State of Maryland or with this charter.
- (ww) (*Sidewalks*). To regulate the use of sidewalks and all structures in, under or above the same; to require the owner or occupant of premises to keep the sidewalks in front thereof free from ice, snow or other obstructions; to prescribe hours for cleaning sidewalks.
- (xx) (*Sweepings*). To regulate or prevent the throwing or depositing of sweepings, dust, ashes, offal, garbage, paper, trash or handbills, dirty liquids, or other unwholesome materials into any public way or onto any public or private property in the Town.
- (yy) (*Taxicabs*). To license, tax and regulate public hackmen, taxicab men, draymen, drivers, cabmen, porters and expressmen, and all other persons pursuing like occupations.
- (zz) (*Vehicles*). To regulate and license wagons and other vehicles not subject to the licensing powers of the State of Maryland.
- (aaa) (*Voting Machines*). To purchase, lease, borrow, install, and maintain voting machines for use in Town elections.
- (bbb) (*Savings Clause*). The enumeration of powers in this section is not to be construed as limiting the powers of the Town to the several subjects mentioned.

**Section 82-17. (Exercise of Powers).**

For the purpose of carrying out the powers granted in this charter, the Board may pass all necessary ordinances. All the powers of the Town shall be exercised in the manner prescribed by this charter, or, if the manner be not prescribed, then in such manner as may be prescribed by ordinance.

**Section 82-18. (Enforcement).**

To ensure the observance of the ordinances of the Town, the Board shall have the power to provide that violation thereof shall be a misdemeanor or municipal infraction, punishable as provided in Sec. 82-88 hereof.

(Res. No. 01-2009, 9-2-2009)

**Registration, Candidates and Elections**

**Section 82-19. (Voters).**

Every person who (a) is a citizen of the United States, (b) is at least eighteen (18) years of age, (c) has resided within the corporate limits of the Town for thirty (30) days next preceding any Town election and (d) is registered in accordance with the provisions of this Charter shall be a qualified voter entitled to vote at any or all Town elections.

(Res. No. 1-01, 9-26-2001)

**Section 82-19(A). (Voters, Non-Resident Property Owners).**

(Repealed by Res. No. 1-77, 9-22-1977.)

**Section 82-20. (Board of Supervisors of Elections).**

There shall be a Board of Supervisors of Elections, consisting of three to five members including any additional member that may be designated to serve as an alternate or substitute member who shall act as a member of such Board in the absence of any one of the regularly-appointed members, as the Board in its sole discretion shall determine by written resolution as necessary and proper, who shall be appointed by the President with the approval of the Board of Commissioners on or before the second Tuesday in September in every even numbered year. The terms of members of the Board of Supervisors of Elections shall begin on the second Tuesday in September in the year in which they are appointed and shall run for two years. Members of the Board of Supervisors of Elections shall be qualified voters of the Town and shall not hold or be candidates for any elective office during their terms of office. The Board of Supervisors of Elections shall appoint one of its members as chairman, who shall vote only in case of tie when the number of appointed and seated Supervisors is four regularly-appointed members. Vacancies on the said Board of Supervisors shall be filled by the President with the approval of the Board of Commissioners for the remainder of the unexpired term. The compensation of the members of the said Board of Supervisors shall be determined by the Board of Commissioners. Notwithstanding anything herein to the contrary, the incumbent Supervisors serving their terms of office as previously set to expire in November of 2021 shall instead end their terms later on the first Monday of September of 2022 or shall serve until their successors qualify.

(Res. No. 02-2021, § 1(82-20), 8-10-2021)

**Section 82-21. (Removal).**

Any member of the Board of Supervisors of Elections may be removed for good cause by the Board of Commissioners. Before removal, the member of the Board of Supervisors of

Elections to be removed shall be given a written copy of the charges against him and shall have a public hearing on them before the Board of Commissioners if he so requests within ten days after receiving the written copy of the charges against him.

**Section 82-22. (Duties).**

The Board of Supervisors of Elections shall be in charge of the registration of voters, nominations and all Town elections. The Board of Supervisors may appoint election judges, clerks or other employees to assist it in any of its duties. Any member of the Board of Supervisors of Elections shall not by virtue of his membership be disqualified to serve as a judge of election.

**Section 82-23. (Notice).**

The Board of Supervisors of Elections shall give at least two weeks' notice of every registration day and every election by an advertisement published in a newspaper of general circulation in the Town.

**Section 82-24. (Registration).**

Registration with the Prince George's County Board of Elections by a voter who resides in the corporate limits of the Town and whose address is reflected on the rolls as a Town resident shall be deemed registration registered for the Town elections. A person continues to have the choice to register only with the Town for its elections and not to register with the Prince George's County Board of Elections. Persons desiring to register only with the Town may register at Town Hall during normal working hours daily; or upon request, may receive an application by mail. Registration shall be permanent, and no person shall be entitled to vote in Town elections unless they are registered to vote with the Board of Supervisors upon the supplemental municipal voter registry maintained by the Town at least ten (10) days prior to the election or with the Prince George's County Board of Elections in accordance with State law. It shall be the duty of the Board of Supervisors of Elections to keep the registration lists up to date by striking from the lists persons known to have died, to have moved out of the Town, or who have become otherwise disqualified by the Board of Supervisors or the County Board of Elections. An individual is not qualified to be a registered voter under State law and this Charter if the individual shall have been convicted of a disqualifying crime

or be under guardianship for mental disability as provided in Section 3-102(b) of the Election Article Of The Annotated Code of Maryland. The Board of Commissioners is hereby authorized and directed, by ordinance, to adopt and enforce any provisions necessary to establish and maintain a system of permanent registration and to provide for a re-registration, when necessary.

(Res. No. 3-01, 9-26-2001; Res. No. 02-2021, § 1(82-24), 8-10-2021)

**Section 82-25. (Appeal).**

If any person shall feel aggrieved by the action of the Board of Supervisors of Elections in refusing to register or in striking off the name of any person, or by any other action, such person may appeal to the Board of Commissioners. Any decision or action of the Board of Commissioners upon such appeals may be appealed to the Circuit Court for Prince George's County within thirty days of the decision or action of the Board of Commissioners.

**Section 82-26. (Candidates).**

Any person qualified to hold the office of Commissioner and desiring to be a candidate for such office shall file with one of the Supervisors of Elections a written statement to that effect on or before the second Monday in October next preceding the election at which he desires to be a candidate or his name shall not be printed on the ballot.

The name of any qualified person may be certified for candidacy and shall be printed on the ballot upon receipt of the aforementioned written statement of candidacy and a petition of 10 or more qualified voters of said Town filed with one of the Supervisors of Elections on or before the second Monday in October next preceding the election or his/her name shall not be printed on the ballot. The written statement of candidacy and the nominating petition may be filed separately or together provided they are both received no later than the second Monday in October.

(Res. No. 5-01, 9-26-2001; Res. No. 02-2021, § 1(82-26), 8-10-2021)

**Section 82-27. (Election of the Board of Commissioners).**

On the first Tuesday which is not a legal holiday in November in every odd numbered year, the qualified voters of the Town shall elect five persons as Commissioners to serve for a term of two years or until their successors qualify.

(Res. No. 02-2021, § 1(82-27), 8-10-2021)

**Section 82-28. (Conduct of Elections).**

It shall be the duty of the Board of Supervisors of Elections to provide for each special and general election a suitable place or places for voting and suitable ballot boxes and ballots or voting machines. In each general election, the ballots or voting machines shall show the name of each candidate, arranged in alphabetical order with no party designation of any kind and shall indicate in such terms as may by said Board be deemed appropriate, that five Commissioners are to be elected. The ballots and/or voting machines shall also provide a space or spaces to permit the voter to write in name or names of additional persons. The Board of Supervisors of Elections shall keep the polls open for a minimum of twelve (12) hours, such time to be selected and announced by the said Board of Supervisors of Elections, provided that these hours fall between 7:00 a.m. and 9:00 p.m.

(Res. No. 3-77, 9-22-1977; Res. No. 02-2021, § 1(82-28), 8-10-2021)

**Section 82-29. (Special Elections).**

All special Town elections shall be conducted by the Board of Supervisors of Elections in the same manner and with the same personnel, as far as practicable, as regular Town elections. In the event a special election is required pursuant to Section 82-32, the said special election shall be held not less than thirty (30) days and not more than forty-five (45) days after the vacancy is created. The newly elected Commissioner shall take office on the second Monday of the month following the special election. The vote count of a special election for Commissioner shall be the same as provided under Section 82-30 of this Charter, as amended.

(Res. No. 4-77, 9-22-1977)

**Section 82-30. (Vote Count).**

After the closing of the polls, the Board of Supervisors of Elections shall determine the vote cast for each

candidate or question and shall, no later than 12:00 Noon on the Thursday immediately following the election, certify the results of the election to the clerk of the Town who shall record the results in the minutes of the Board of Commissioners. The five candidates for Commissioners receiving the highest number of votes in a general election shall be declared elected.

(Res. No. 4-01, 9-26-2001; Res. No. 02-2021, § 1(82-30), 8-10-2021)

**Section 82-31. (Preservation of Ballots).**

All ballots and recording of votes used in any town election shall be preserved for at least six months from the date of the election.

**Section 82-32. (Vacancies).**

In case of a vacancy on the Board of Commissioners for any reason, the Board of Supervisors of Elections shall, pursuant to the provisions of Section 82-29, conduct a special election to elect some qualified person to fill such vacancy for the unexpired term, provided, however, any vacancy which occurs within 61 days of the next general election as provided for in Section 82-27 shall remain vacant until said general election. In case of a vacancy in the office of President for any reason, the Board shall elect one of its members to fill the vacancy for the remainder of the unexpired term. Any vacancy in the office of the President shall be filled by the favorable votes of a majority of the members of the Board. The results of any such votes shall be recorded in the minutes of the Board.

(Res. No. 01-2021, § 1(82-32), 3-9-2021; Res. No. 02-2021, § 1(82-32), 8-10-2021)

**Section 82-33. (Reserve).**

(Res. No. 02-2021, § 1(82-33), 8-10-2021)

**Section 82-34. (Regulation and Control).**

The Board of Commissioners shall have the power to provide by ordinance in every respect not covered by the provisions of this Charter for the conduct of registration, candidacy and elections and for the prevention of fraud in connection therewith, and for a recount of ballots in case of doubt or fraud.

**Section 82-35. (Penalties).**

Any person who (a) fails to perform any duty required of him under the provisions of this Charter or any ordinance passed thereunder, or (b) in any manner willfully or corruptly violates any of the provisions of this Charter or any ordinances passed thereunder, or (c) willfully or corruptly does anything which will or will tend to affect fraudulently any registration, candidacy, or election, shall be deemed guilty of a misdemeanor or a municipal infraction, punishable as provided in sec. 82-88 hereof. Any officer or employee of the Town government who is convicted of a misdemeanor under the provisions of this section shall immediately upon conviction thereof cease to hold such office or employment.

(Res. No. 01-2009, 9-2-09)

## Finance

**Section 83-36. [82-36.] (Treasurer).**

There shall be a treasurer appointed by the President with the approval of the Board. He shall serve at the pleasure of the President. His compensation shall be determined by the Board. The treasurer shall be the chief financial officer of the Town. The financial powers of the Town, except as otherwise provided by this Charter, shall be exercised by the treasurer under the direct supervision of the President. The treasurer appointed may be a member of the Board.

**Section 82-37. (Powers and Duties of the Treasurer).**

Under the supervision of the President, the treasurer shall have authority and shall be required to:

- (a) Prepare at the request of the President an annual budget to be submitted by the President to the Board.
- (b) Supervise and be responsible for the disbursement of all monies have control over all expenditures to assure that budget appropriations are not exceeded.

- (c) Maintain a general accounting system for the Town in such form as the Board may require, not contrary to State law.
- (d) Submit at the end of each fiscal year, and at such other times as the Board may require, a complete financial report to the Board.
- (e) Ascertain that all taxable property within the Town is assessed for taxation.
- (f) Bill for and collect all taxes, special assessments charges, license fees, liens, and all other revenues (including utility revenues) of the Town, and all other revenues for whose collections the Town is responsible, and receive any funds receivable by the Town.
- (g) Have custody of all public monies belonging to or under the control of the Town, except as to finds [fines] in the control of any set of trustees, and have custody of all bonds and notes of the Town.
- (h) Do such other things in relation to the fiscal or financial affairs of the Town as the Board may require or as may be required elsewhere in this Charter.

**Section 82-38. (Bond of Treasurer).**

The treasurer shall provide a bond with such corporate surety and in such amount as the Board by ordinance may require.

**Section 82-39. (Fiscal Year).**

The Town shall operate on an annual budget. The fiscal year of the Town shall, from and after December 31, 1964, begin on the first day of July and shall end on the last day of June in each year. Such fiscal year shall constitute the tax year, the budget year, and the accounting year.

**Section 82-40. (Budget).**

The President on such date as the Board shall determine, but at least thirty days before the beginning of any fiscal year, shall submit a budget to the Board. The Budget shall provide a complete financial plan for the budget year and shall contain estimates of anticipated revenues and proposed expenditures for the coming year. The budget shall be a public record in the office of the treasurer, open to public inspection during normal business hours.

**Section 82-41. (Budget Adoption).**

Before adopting the budget the Board may hold a public hearing thereon upon such notice as may be deemed appropriate. The Board may increase, decrease or eliminate any item in the budget and may add new items thereto. The budget shall be adopted in the form of an ordinance. A favorable vote of at least a majority of the total elected membership of the Board shall be necessary for adoption.

**Section 82-42. (Appropriations).**

No public money may be expended without having been appropriated by the Board. From the effective date of the budget, the several amounts stated therein as proposed expenditures shall be and become appropriated to the several objects and purposes named therein.

**Section 82-43. (Transfer of Funds).**

Any transfer of funds between major appropriations for different purposes by the President must be approved by the board before becoming effective.

**Section 82-44. (Over-Expenditure Forbidden).**

No officer or employee shall during any budget year expend or contract to expend any money or incur any liability or enter into any contract which by its terms involves the expenditure of money, for any purpose, in excess of the amounts appropriated for or transferred to that general classification of expenditure pursuant to this Charter. Any contract, verbal or written, made in violation of this Charter shall be null and void. Nothing in this section contained, however, shall prevent the making of contracts or the spending of money for capital improvements to be financed in whole or in part by the issuance of bonds, nor the making of contracts of lease, or for services for a period exceeding the budget year in which such contract is made when such contract is permitted by law.

(Res. No. 01-2021, § 1(82-44), 3-9-2021)

**Section 82-45. (Appropriations Lapse After One Year; reserve funds).**

(a) Except for appropriations for any reserve fund created pursuant to this section, all appropriations shall lapse at the end of the budget year to the extent that they have not been expended or lawfully encumbered. Except as stated herein, any unexpended and unencumbered funds shall be considered a surplus at the end of the budget year and shall be included among the anticipated revenues for the next succeeding budget year. An appropriation for a reserve fund or similar non-lapsing fund shall continue in force until expended, revised or repealed, or the entire fund is dissolved with any surplus or unexpended funds to be transferred to the General Fund.

(b) A reserve fund or funds may be established by ordinance. such reserve funds may be used from time to time for such purposes as (i) capital expenditures, i.e., equipment, facilities, land acquisition, street construction and the like, (ii) to guarantee the temporary continuation of services directly affected by a loss of supporting budgeted revenues, (iii) to provide for long term investments, and (iv) to provide disaster or emergency relief for residents, property owners, and businesses of the Town of Upper Marlboro. A favorable vote of at least a majority of the entire Board shall be necessary for the adoption or repeal of an ordinance creating such a reserve fund.

(Res. No. 01-2022, § 1(82-45), 11-22-2022)

**Section 82-46. (Checks).**

Except as otherwise stated herein, all checks issued in payment of salaries or other municipal obligations shall be issued and signed by the treasurer. The Board may further designate from time to time by ordinance or written resolution those person(s) in addition to the treasurer who shall be authorized to sign checks issued on behalf of the Town when the need arises and the treasurer is unavailable. Additional person(s) authorized to sign checks shall be bonded. The Board shall establish by ordinance or resolution a dollar amount above which all checks made payable by the Town shall be issued and signed by two persons, the treasurer and the President, or in either or both of their unavailability or incapacities, two other persons who shall be designated from time to time by resolution or ordinance of the Board, which at least one of whom shall be a Commissioner.

(Res. No. 01-12, 10-31-2012)

**Section 82-47. (Taxable Property).**

All real property and all tangible personal property within the corporate limits of the Town, or personal property which may have a situs there by reason of the residence of the owner therein, shall be subject to taxation for municipal purposes, and the assessment used shall be the same as that for State and County taxes.

**Section 82-48. (Tax Levy).**

On or before the thirtieth day of June in each and every year, the Board shall determine the tax rate for the ensuing fiscal year, which determination shall constitute the tax levy for such year.

**Section 82-49. (When Taxes are Overdue).**

Ordinary Town taxes shall be due and payable on the first day of July in the year for which they are levied and shall be overdue and in arrears on the first day of the following October. They shall bear interest while in arrears at the rate of 1/2 of one per cent per month or fraction thereof until paid and in addition thereto, there shall be a penalty imposed for failure to make payment by or after that day of 1/2 of 1% for each month or fraction thereof until paid. All taxes not paid and in arrears after the first day of the following January may be collected as provided in Section 82-50 hereof or may be collected by action of assumpsit as provided in Section 206 to 211, inclusive, of Article 81 of the Annotated Code of Maryland (1957 Edition) [see now Ann. Code of Md., Tax General article, § 13-815 et seq.].

**Section 82-50. (Sale of Tax Delinquent Property).**

A list of all property on which the Town taxes have not been paid and which are in arrears as provided by Section 82-49 of this Charter shall be turned over by the treasurer to the official of the County responsible for the sale of tax delinquent property as provided in State law. All property listed thereon shall, if necessary, be sold for taxes by this County official, in the manner prescribed by State law.

**Section 82-51. (Fees).**

All fees received by an officer or employee of the Town government in his official capacity shall belong to the Town government and be accounted for to the Town.

**Section 85-52. [82-52.] (Audit).**

The financial books and accounts of the Town shall be audited annually if and when required by Section 16-305 of the Local Government article of the Annotated Code of Maryland.

(Res. No. 01-2021, § 1(82-52), 3-9-2021)

**Section 82-53. (Authorization To Borrow Money).**

Notwithstanding any other provisions or limitation of public general or public local law, the Town shall have the power to borrow money for any public purpose and to evidence such borrowing by the issue and sale of its general obligation bonds, or notes issued in anticipation thereof, and shall likewise have authority to borrow money in anticipation of the receipt of current taxes and to evidence such borrowing by the issuance and sale of its tax anticipation notes, payable as to principal and interest from said taxes when received, all in the manner prescribed in Section 31-37, inclusive, of Article 23A of the Annotated Code of Maryland (1957 Edition, as amended) title "Municipal Corporations", sub-title "Home Rule", subheading "Creation of Municipal Public Debt" [see now Ann. Code of Md., Local Government article, § 19-301 et seq.], provided, however, that no referendum shall be necessary for any issue of bonds made pursuant to the authority contained in this section so long as the total indebtedness of the Town shall not exceed 2% of the assessable base of real property located within said Town, and provided further that if the ordinance or ordinances authorizing the issuance and sale of any such bonds or notes shall so specify, said bonds or notes may be sold at private sale, without advertisement or publication of notice of sale or solicitation of competitive bids. In the event the Board considers it desirable to borrow in excess of the 2% limitation aforesaid, the ordinance proposing such exercise of borrowing power shall provide therein for a referendum if the same is petitioned by 20% of the qualified voters within 40 days of the adoption of said ordinance. In the event there is no petition for a referendum, the 2% debt limitation shall not apply except at no time shall the total indebtedness of the Town exceed 10% of the assessable base of real property located within said Town.

**Section 82-53A. (Borrowing).**

(a) In addition to any other borrowing powers which the Town of Upper Marlboro may possess (from whatever source derived) and notwithstanding any other provision of the Charter of the Town or limitation of law (to the extent such limitation may be removed or modified by this Charter provision), the Town shall have the power, by resolution or ordinance adopted from time to time, to borrow money to finance the cost (as defined herein) or projects for the accomplishment of any of the purposes, objects and powers of the Town of Upper Marlboro and in connection therewith to issue its revenue bonds, notes or other obligations (including revenue refunding bonds, notes or other obligations as provided in this section). The term "cost" shall include, but not be limited to, the cost of (i) acquiring, by lease or by purchase or otherwise, all interests in property in connection therewith; (ii) financial, architectural, consulting, engineering or legal services; (iii) plans, specifications, surveys, estimated or feasibility reports; (iv) development of the property, including, without limitation, grading, road construction, and installation of water, sewers, storm drains and other utilities; (v) erection of structures, including labor, materials, equipment and administrative expenses, and any other expenses incidental thereto. Such revenue bonds shall not be general obligations of the Town of Upper Marlboro but shall be payable as to principal, interest and premium (if any) solely from and secured solely by a pledge of the tolls, receipts, rentals, and any other revenues of any type and kind whatsoever realized from or in connection with the project being financed. Such security may include, without in any way limiting the generality of the foregoing, a pledge of the revenues realized from the property, facilities, developments and improvements being financed by the revenue bonds and from existing facilities to which such new property, facilities, developments and improvements are related. The revenue bonds may be further secured by mortgage, pledge, assignment, or creation of any security interest of any kind and nature whatsoever as, in the judgment of the Commissioners of the Town, shall be appropriate.

Such revenue bonds shall not constitute an indebtedness of the Town of Upper Marlboro to which its faith and credit or taxing power are pledged, nor shall such bonds constitute a debt of the Town within the meaning of any

constitutional, statutory or charter provision, and all such revenue bonds shall contain on their face a statement to that effect.

All revenue bonds, revenue refunding bonds, revenue bond anticipation notes, and other obligations issued by the Town in accordance with this section shall have and possess all the attributes of negotiable instruments as provided in Section 8 of Article 31 of the Annotated Code of Maryland [see now Ann. Code of Md., Local Government article, § 19-506], in accordance with Section 35 of Article 23A of the Annotated Code of Maryland. As also provided by Section 35 of Article 23A [see now Ann. Code of Md., Local Government article, § 19-306], the principal of and interest on any such revenue bonds, revenue refunding bonds, revenue bond anticipation notes or other obligations shall be and remain exempt from taxation of any kind or nature whatsoever by the State of Maryland and by any county, municipal corporation or other political subdivision thereof.

(b) The Town shall have absolute discretion by resolution or ordinance to determine with respect to the revenue bonds of any issue: (i) The date or dates of issue; (ii) The date or dates and amount or amounts of maturity, provided only that no revenue bond or any issue shall mature later than (40) years from the date of its issue; (iii) The rate or rates of interest payable thereon and the date or dates of such payment; (iv) The form or forms, denomination or denominations, manner of execution (which may be facsimile) and the place or places of payment thereof, and of the interest thereon, which may be at any bank or trust company within or without this state; (v) Whether such revenues [revenue] bonds or any part thereof shall be made redeemable before maturity and, if so, upon what terms, conditions and prices; (vi) Provisions for issuance in coupon or in registered form, or both, and for the registration of the principal only of revenue bonds having coupons attached, and for the reconversion of revenue bonds into coupon form if any such revenue bonds have been registered as to both principal and interest and for the replacement of revenue bonds which become mutilated or are lost or destroyed; and (vii) Any other matter relating to the form, terms, conditions, issuance and sale and delivery thereof.

(c) In case any officer whose signature or a facsimile of whose signature appears on any revenue bonds or coupons shall cease to be such officer before the delivery of such revenue bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery.

(d) If the ordinance or ordinances authorizing the issuance of such revenue bonds shall so specify, such bonds may be sold at private sale without advertisement or publication of notice of sale or solicitation or competitive bids.

(e) If the proceeds of the revenue bonds of any issue shall, by reason of increased construction costs or error in estimates or otherwise, be less than the amount required for the purpose for which such revenue bonds are authorized, additional bonds may be like manner be issued to provide the amount of such deficiency and shall (if the authorizing resolution or ordinance for the revenue bonds first issued shall so provide or permit) be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the revenue bonds first issued. If the proceeds of such revenue bonds shall exceed the amount so required, such excess shall be deposited to the credit of any reserve fund for such revenue bonds or, if so provided in any trust agreement securing such revenue bonds, may be applied to the cost of any additional project.

(f) The Town may also provide by resolution or ordinance for the issuance and sale of its revenue refunding bonds for the purpose of refunding any revenue bonds issued under the provisions of this section, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such revenue bonds, and, if deemed advisable by the Town, for such additional purposes as may be provided or permitted by the authorizing resolution or ordinance for the revenue bonds being refunded. The issuance of such revenue refunding bonds and the details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Town in respect thereto, shall be governed by the provisions of this section relating to revenue bonds, insofar as they may be applicable.

(g) The Town may also provide by resolution or ordinance: (i) for the issuance, prior to the preparation of definitive bonds, of interim certificates or temporary bonds, with or without coupons, exchangeable for definitive bonds when such definitive bonds have been executed and are available for delivery; and/or (ii) for the issuance and sale of its revenue bond anticipation notes, the principal of, interest on and premium (if any) on said notes to be made payable to the bearer or registered holder thereof out of the first proceeds of sale of any revenue bonds issued under this section. Revenue bond anticipation notes may be issued in series as funds are required and

provision may be made for renewal of such notes at maturity with or without resale. The issuance of such notes and the details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Town in respect thereto, shall be governed by the same provisions of this section relating to the issuance of revenue bonds in anticipation of the sale of which the notes were issued, insofar as those provisions may be applicable.

(h) (i) Revenue bonds issued under the provisions of this section may be secured by a trust agreement by and between the Town and a corporate trustee, which may be any trust company, or bank having trust powers, within or without the State. Such trust agreement may pledge or assign all or any part of the revenues from or arising in connection with any of the property, facilities or projects of the Town related to the undertaking being financed. Any such trust agreement, or resolution or ordinance authorizing the issuance of revenue bonds, may contain such provisions for the protection and enforcement of the rights and remedies of bondholders as may be deemed reasonable and proper, including covenants setting forth the duties of the Town in relation to the financing or development of any undertaking of the Town and the extension, enlargement, improvement, maintenance, operation, repair and insurance of any undertaking of the Town and the custody, safeguarding and application of moneys. Such trust agreement may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders. Such trust agreement may contain such other provisions as the Town may deem reasonable and proper for the security of the bondholders, including, without limitation, covenants pertaining to the issuance of additional parity revenue bonds upon conditions stated therein consistent with the requirements of this section. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of financing the undertaking of the Town in connection with which such revenue bonds have been issued.

(ii) Revenue bonds issued under the provisions of this section may be additionally secured by the pledge, mortgage, assignment, or creation of other security interest or right in, any project, the revenues derived from a project, or from any existing facilities to which such project is related.

(iii) The proceeds of the sale of revenue bonds shall be paid to the trustee under any trust agreement securing such revenue bonds and shall be disbursed in such manner and under such restrictions, if any, as may be provided in such trust agreement.

(i) Any holder of revenue bonds issued under this section or of any coupons thereto appertaining, and the trustee, except to the extent the rights herein given may be restricted by the trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of this State or granted hereunder or under the trust agreement or the resolution or ordinance authorizing the issuance of such revenue bonds, and may enforce and compel the performance of all duties required by this section or by the trust agreement to be performed by the Town or by any officer thereof, including the fixing, charging and collecting of rentals, rates, fees, tolls and other charges.

(j) No referendum shall be necessary for any issue of revenue bonds made pursuant to the authority contained in this section.

(k) If any part or parts of this section of the Charter shall be held to be illegal or unconstitutional, the illegality or unconstitutionality shall not affect the validity of the remaining parts of this section. The President and Board of Commissioners of Upper Marlboro hereby declare that they would have passed the remaining parts of this section if they had known that the part or parts thereof would be declared illegal or unconstitutional.

(Res. No. 1-1974, 11-12-1974)

### **Section 82-53B. (Parking Facility).**

(a) Without in any way limiting the generality of Section 82-53A, the Town of Upper Marlboro shall have the power to establish a parking facility within its corporate limits and, in connection therewith, to exercise any and all of its powers from whatever source derived, together with the power (without in any way limiting the generality of the foregoing):

(i) To finance (in such manner as it may deem appropriate including, without limitation, the issuance of its revenue bonds in accordance with the provisions of Section 82-53A of the Charter) the cost of establishing the parking facility, including, without limitation, the acquisition and development of the land on which the parking facility will be situated, the acquisition and construction of the parking facility

structure, and the acquisition and construction of all necessary appurtenant structures, roads, approaches and other facilities necessary or reasonably related to such parking facility;

- (ii) To purchase or to lease from any person, firm or corporation (including, without limitation, any governmental entity) the land on which the parking facility is to be situated;
- (iii) To appoint any person, firm, or corporation (including without limitation, any governmental entity) as its agent for planning and construction of the parking facility, including without limitation, (A) contracting for financial, architectural, consulting, engineering or legal services; (B) developing plans, specifications, surveys, estimates or feasibility reports; (C) developing the site, including, without limitation, grading, road construction, and installation of water, sanitary sewers and storm sewers, and other utilities; (D) contracting for labor, materials and equipment and administrative services required for construction of the parking facility; and (E) supervising the construction of the parking facility and taking all actions necessary to place it in operation;
- (iv) To lease to any person, firm or corporation (including, without limitation, any governmental entity) all or any part of the completed parking facility or the land on which it is situated, or both;
- (v) To sublease from, or to otherwise contract with, any person, firm or corporation (including, without limitation, any governmental entity), upon such terms as the town deems appropriate, for space within the parking facility for such public purposes as the Board of Commissioners of the Town may deem appropriate;
- (vi) To fix, revise, charge and collect fees, rents and other charges of any kind and nature whatsoever from any firm, person or corporation (including, without limitation, any governmental entity) leasing or otherwise using all or any part of the parking facility and to make mandatory the payment of such fees, rents and charges; and
- (vii) To convey all of its right, title and interest in the parking facility and/or the land on which it is situated to any person, firm or corporation (including, without limitation, any governmental entity), at such times and upon such terms as the Board of Commissioners may deem appropriate.

(b) Without in any way limiting the generality of the foregoing, the Town shall have the power to convey, assign, mortgage, pledge, or otherwise transfer its interest in all or any part of the parking facility (including, without limitation, its right to receive fees, rents, charges and any other revenues of any kind and nature whatsoever in connection with the parking facility) as security for the revenue bonds, notes, or other obligations issued under Section 82-53A of the Charter to finance the cost of such parking facility.

(c) It is the purpose and intent of this section to authorize the Town of Upper Marlboro to undertake the acquisition and construction of a parking facility in order to relieve the serious shortage of adequate parking facilities within the corporate limits of the Town of Upper Marlboro, particularly in view of the construction of the county office building in the Town of Upper Marlboro. It is hereby found and determined that the acquisition and construction of a parking facility by the Town of Upper Marlboro, by itself or acting in conjunction with any other person, firm or corporation (including, without limitation, any governmental entity) will serve the essential public purposes of (i) relieving traffic congestion within the corporate limits of the Town of Upper Marlboro; (ii) providing adequate parking facilities to accommodate the existing parking needs of the Town of Upper Marlboro and parking needs resulting from the construction of the new county office building; (iii) facilitating the free flow of traffic within the Town of Upper Marlboro; and (iv) thus promoting the public health, welfare and safety of the residents of the Town of Upper Marlboro.

It is the purpose and intent of this section to authorize the Town of Upper Marlboro to accomplish the acquisition or construction of a parking facility in conjunction with Prince George's County, Maryland, or in any other way which the Board of Commissioners of Upper Marlboro may deem appropriate. In connection with such acquisition and construction, it shall not be necessary or required, notwithstanding any other provision of the Charter of the Town of Upper Marlboro:

- (i) To take competitive bids in connection with the acquisition of land or the acquisition and construction of the parking facility or otherwise in connection with the parking facility project; or
- (ii) To conduct any referendum in connection therewith; provided, however, that the Commissioners of

Upper Marlboro shall determine, by resolution or ordinance, that the procedures adopted for the acquisition and construction of the parking facility are in the best interests of the citizens of Upper Marlboro.

(d) If any part or parts of this section of the Charter shall be held to be illegal or unconstitutional, the illegality or unconstitutionality shall not affect the validity of the remaining parts of this section. The President and Board of Commissioners of Upper Marlboro hereby declare that they would have passed the remaining parts of this section if they had known that the part or parts thereof would be declared illegal or unconstitutional.

(Res. No. 2-1974, 11-12-1974; Res. No. 01-2021, § 1(82-53B), 3-9-2021)

**Section 82-54. (Payment of Indebtedness).**

The issuance or sale of general obligation bonds, or notes in the anticipation thereof, or tax anticipation notes, authorized by Section 82-53 hereof shall constitute a pledge of the full faith and credit of the Town to the prompt payment, when due, from ad valorem taxes and such other revenues as may be described in the authorizing ordinance or ordinances, of the principal of and interest on such bonds or notes. The maturing principal of and interest on any general obligation bonds may be paid in whole or in part, from the proceeds of such benefit assessments or charges, or any combination thereof, as the Board may impose and collect during the life of said bonds, power and authority so to do being hereby specifically granted where appropriate to the public purpose for which said bonds may be issued, notwithstanding any limitation contained in this Charter or in any other law; but, in any event, the Town shall, if and when necessary, annually levy upon all property subject to taxation within its corporate limits ad valorem taxes sufficient to provide for the payment of the maturing principal of and interest on any such bonds or notes, without limitation as to rate or amount notwithstanding the limitation of any other law, and the issuance and sale of any such bonds or notes shall constitute a covenant to that effect.

**Section 82-55. (Previous Issues).**

All bonds, notes, or other evidence of indebtedness issued by the Town previous to the effective date of this Charter and all ordinances passed concerning them are hereby declared to be valid, legal, and binding and of full force and effect as if herein fully set forth.

**Section 82-56. (Purchasing and Contracts).**

All purchases and contracts for the Town government shall be authorized by the Board or the President as provided herein. The President, as prescribed by ordinance, may be authorized to make individual purchases and execute contracts up to \$10,000 in cost so long as the duration of the purchase or contract is one year or less without prior Board approval if such contracts or purchases were previously authorized by a budget ordinance or approved within any detailed budget documents supporting said budget ordinance. The Board shall provide by ordinance for rules and regulations regarding the use of sealed competitive bidding, request for proposals, negotiated proposals, negotiated bids and other forms of bids or offers, and any other contractual matters as appropriate, for all Town purchases and contracts in keeping with good procurement practices and fiscal responsibility. All expenditures for contracts and purchases with an anticipated cost of more than \$75,000 shall be subject to a competitive Procurement process [determined] by the Board unless the Board, by supermajority vote of the full Board, finds another method of procurement, as prescribed by ordinance, to be more advantageous. The Board shall advertise for competitive sealed bids or another method of procurement in such manner as shall be prescribed by ordinance for all such competitive or other methods of procurement. Competitively procured contracts shall be awarded to the bidder or offeror who offers the lowest or best bid or offer, quality of goods and work, time of delivery or completion, and responsibility of bidders or offerors being considered. All such competitively procured and other contracts exceeding \$75,000 shall be in writing and approved by the Board before becoming effective. The Board shall have the right to reject all bids, proposals or offers and re-advertise. The Town, at any time in its discretion, may employ its own force for the construction or reconstruction of public improvements without advertising for (or re-advertising for) or receiving bids or offers. All contracts may be protected by such bonds, penalties and conditions as the Town may require.

(Res. No. 01-2010, 9-29-2010; Res. No. 01-2021, § 1(82-13), 3-9-2021; Res. No. 01-2022, § 1(82-56), 11-22-2022)

**Section 82-57. (Clerk to the Board).**

There shall be a clerk to the Board. The clerk shall be appointed by the President with the approval of the Board and shall serve at the pleasure of the President. The clerk shall attend every meeting of the Board and keep a full and accurate account of the proceedings of the Board. The clerk shall keep such other records and perform such other duties as may be required by this Charter or the Board. In the event that the clerk cannot be present for any meeting or meetings of the Board, the clerk shall have the authority, with the Board's approval, to assign the responsibility of attending said Board meeting(s), and the taking of minutes, to a town administrative staff member as a temporary alternate. The Clerk to the Board shall be identified either as the Clerk to the Board Or as the Town Clerk.

(Res. No. 01-2016, 3-8-2016; Res. No. 01-2021, § 1(82-57), 3-9-2021)

**Section 82-58. (Town Attorney).**

The President with the approval of the Board may appoint a Town Attorney. The Town Attorney shall be a member of the bar of the Maryland Court of Appeals. The Town Attorney shall be the legal adviser of the Town and shall perform such duties in this connection as may be required by the Board or the President. His compensation shall be determined by the Board. The Town shall have the power to employ such other legal consultants as it deems necessary from time to time.

**Section 82-59. (Authority to Employ Personnel).**

The Town shall have the power to employ such officers and employees as it deems necessary to execute the powers and duties provided by this Charter or State law and to operate the Town government.

**Section 82-59A. Town Administrator).**

The President, with the approval of the Board, may appoint an officer of the Town by ordinance or resolution who shall hold the title of Town Administrator and shall have the powers and perform the duties as may be provided by any applicable ordinances or resolutions of the Town. Under the supervision of the President, the Town Administrator shall coordinate and guide the administration of all departments, offices and agencies of the Town, except as otherwise provided by this Charter or by law. Neither the President nor any Town Commissioner shall receive such appointment during the term for which he or she shall have been elected, nor within one year after expiration of said term. Notwithstanding anything elsewhere in this Charter to the contrary, the Town Administrator shall be considered subordinate to the Board, and an at-will employee serving at the pleasure of the Board.

(Res. No. 01-2021, § 1(82-59A), 3-9-2021)

**Section 82-59B. (Chief of Police).**

The President, with the approval of the Board, may appoint an officer of the Town by ordinance or resolution who shall hold the office of Chief of Police. The Chief of Police shall assist the president in the establishment and maintenance of a Police Department. the power to manage and operate the Town's Police Department shall be vested in the Chief of Police, subject to approval and oversight by the President and Board of Town Commissioners. It shall be the function of the Upper Marlboro Police Department to enforce the laws of the Town and, when appropriate and lawful, the laws of Prince George's County and the State of Maryland. The Chief of Police shall ensure that the Police Department adequately and competently fulfills its function.

(Res. No. 01-2021, § 1(82-59B), 3-9-2021)

**Section 82-60. (Compensation of Employees).**

The compensation of all officers and employees of the Town shall be set from time to time by an ordinance.

**Section 82-61. (Retirement System).**

The Town shall have the power to do all things necessary to include its officers and employees, or any of them, within any retirement system or pension system under the terms of which they are admissible, and to pay the employer's share of the cost of any such retirement or pension system out of the general funds of the Town.

**Section 82-62. (Definition of Public Ways).**

The term "public ways" as used in this Charter shall include all streets, avenues, roads, highways, public thoroughfares, lanes and alleys.

**Section 82-63. (Control of Public Ways).**

The Town shall have control of all public ways in the Town except such as may be under the jurisdiction of the Maryland State Roads Commission or the County Commissioners for Prince George's County. Subject to the laws of the State of Maryland and this Charter, the Town may do whatever it deems necessary to establish, operate, and maintain in good condition the public ways of the Town.

**Section 82-64. (Public Ways Powers).**

The Town shall have the power: (a) To establish, regulate, and change from time to time the grade lines, width, and construction materials of any Town public way or part thereof, bridges, curbs, and gutters. (b) To grade, lay out, construct, open, extend, and make new Town public ways. (c) To grade, straighten, widen, alter, improve, or close up any existing Town public way or part thereof. (d) To pave, surface, repave, or resurface any Town public way or part thereof. (e) To install, construct, reconstruct, repair, and maintain curbs and/or gutters along any Town public way or part thereof. (f) To construct, reconstruct, maintain, and repair bridges. (g) To name Town public ways. (h) To have surveys, plans, specification [specifications], and estimates made for any of the above activities or projects or parts thereof.

**Section 82-65. (Sidewalks: Powers).**

The Town shall have the power: (a) To establish, regulate, and change from time to time the grade lines, widths, and construction materials of any sidewalks or part thereof on Town property along any public way or part thereof. (b) To grade, lay out, construct, reconstruct, pave, repave, repair, extend, or otherwise alter sidewalks on Town property along any public way or part thereof. (c) To require that the owners of any property abutting on a sidewalk keep the sidewalk clear of all ice, snow, and other obstructions. (d) To require and order the owner of any property abutting on any public way in the Town to perform any projects authorized by this section at the owner's expense according to reasonable plans and specifications. If after due notices the owner fails to comply with the order within a reasonable time, the Town may do the work, and the expense shall be a lien on the property and may be collected in the same manner as Town taxes.

### Water and Sewers

**Section 82-66. (Powers).**

The Town shall have the power to acquire, establish, design, construct, reconstruct, expand, extend, alter, improve, operate, maintain and repair a water supply and distribution system, a sanitary sewer system, a storm water drainage system and a sanitary disposal plant, system or stabilization lagoon, within or without the corporate limits of the Town, and to take any and all action necessary or appropriate thereto, including the making of surveys, plans, specifications and estimates.

**Section 82-67. (Placing Structures in Public Ways).**

Any public service corporation, company, or individual, before beginning construction of or placing of or changing the location of any main, conduit, pipe, or other structure in the public ways of the Town, shall submit plans to the Town and obtain written approval upon such conditions and subject to such limitations as may be imposed by the Town. Any public service corporation, company, or individual violating the provisions of this section shall be guilty of a misdemeanor. If any unauthorized main, conduit, pipe, or other structure interferes with the operation of the water, sewerage, or storm water systems, the Town may order it removed.

**Section 82-68. (Obstructions).**

All individuals, firms, or corporations having mains, pipes, conduits, or other structures, in, on, under, or over any public way in the Town or in the County which impede the establishment, construction, or operation of any Town sewer or water main shall, upon reasonable notice, remove or adjust the obstructions at their own expense to the satisfaction of the Town. If necessary to carry out the provisions of this section, the Town may use its

condemnation powers provided in Section 82-82. Any violation of an ordinance passed under the provisions of this section shall be made a misdemeanor.

**Section 82-69. (Entering on County Public Ways).**

The Town may enter upon or do construction in, on, under, or over any County public way for the purpose of installing or repairing any equipment or doing any other things necessary to establish, operate, and maintain the water system, water plant sanitary sewerage system, sewage treatment plant, or storm water sewers provided for in this Charter. Unless required by the County the Town need not obtain any permit or pay any charge for these operations, but it must notify the County of its intent to enter on the public way and must leave the public way in a condition not inferior to that existing before.

**Section 82-70. (Connections).**

The Town may provide a connection with water and sanitary sewer mains for all property abutting on any public way in which a sanitary sewer or water main is laid. When any water main or sanitary sewer is declared ready for operation by the Town, all abutting property owners after reasonable notice shall be required to connect all fixtures with the water or sewer main. The Town may require that, if it considers existing fixtures unsatisfactory, satisfactory ones be installed and may require that all cesspools, sinkdrains, and privies to be abandoned, filled, removed or left in such a way as not to injure public health. All wells found to be polluted or a menace to health may be ordered to be abandoned and closed. Any violation of an ordinance passed under the provisions of this section shall be made a misdemeanor.

**Section 82-71. (Charge for Connections).**

The Town may make a charge, the amount to be determined by the Board, for each connection made to the Town's water or sewer mains. This charge shall be uniform throughout the Town, but may be changed from year to year and subject to such reasonable classification of connections as the Board by ordinance may determine. Arrangements for the payment of this charge shall be made before the connection is made.

**Section 82-72. (Improper Uses).**

In order to prevent any leakage or waste of water or other improper use of the Town's water system or sewage disposal system, the Town may require such changes in plumbing, fixtures, or connections as it deems necessary to prevent such waste or improper use.

**Section 82-73. (Private Systems).**

The Town may by ordinance provide that no water supply, sewerage, or storm water drainage system, and no water mains, sewers, drains, or connections therewith, shall be constructed or operated by any person or persons, firm, corporation, institution, or community, whether upon private premises or otherwise, and may provide that cesspools or other private methods of sewage disposal shall be operated and maintained in such a manner that they do not and will not be likely to affect adversely the public comfort and health and any cesspool or other private method of sewage disposal affecting or likely to affect adversely the public comfort and health may be deemed a nuisance and may be abated by the Town. Any violation of an ordinance passed under the provisions of this section shall be made a misdemeanor.

(Res. No. 01-2021, § 1(82-73), 3-9-2021)

**Section 82-74. (Extensions Beyond Boundaries).**

The Town shall have the power to extend its water or sewerage systems beyond the Town limits.

**Section 82-75. (Right of Entry).**

Any employee or agent of the Town, while in the necessary pursuit of his official duties with regard to the water or sewage disposal systems operated by the Town, shall have the right of entry, for access to water or sewer installations, at all reasonable hours, and after reasonable advance notice to the owner, tenant, or person in possession, upon any premises and into any building in the Town or in the County served by the Town's water or sewage disposal system. Any restraint or hindrance offered to such entry by any owner, tenant, or person in possession, or the agent of any of them, shall be a misdemeanor.

(Res. No. 01-2021, § 1(82-75), 3-9-2021)

**Section 82-76. (Pollution of Water Supply).**

No person shall do anything which will discolor, pollute, or tend to pollute any water used or to be used in the Town water supply system. Any violation of the provisions of this section shall be a misdemeanor.

**Section 82-77. (Contracts for Water).**

The Town, if it deems it advisable, may contract with any party or parties, inside or outside the Town, to obtain or provide water or to provide for the removal of sewage.

**Section 82-78. (Charges).**

The Town shall have the power to charge and collect such service rates, water rents, ready-to-serve charges, or other charges as it deems necessary for water supplied and for the removal of sewage. These charges are to be billed and collected by the treasurer, and if bills are unpaid within thirty days, the service may be discontinued. All charges shall be a lien on the property and may be collected in the same manner as Town taxes.

Special Assessments

**Section 82-79. (Power: Special Assessments).**

The Town shall have the power to levy and collect taxes in the form of special assessments upon property in a limited and determinable area for special benefits conferred upon such property by the installation, or construction of water mains, sanitary sewers, storm water sewers, curbs, and gutters and by the construction, and paving of public ways and sidewalks or parts thereof, and to provide for the payment of all or any part of the above projects out of the proceeds of such special assessments. The cost of any project to be paid in whole or in part by special assessments may include the direct cost thereof, the cost of any land acquired for the project, the interest on bonds, notes, or other evidences of indebtedness issued in connection with such project, a reasonable charge for the service of the administrative staff of the Town, and any other item of cost which may reasonably be attributed to the project.

(Res. No. 01-2021, § 1(82-79), 3-9-2021)

**Section 82-80. (Procedure).**

The procedure for making special assessments shall be as follows: (a) The cost of the project being charged for shall be assessed according to the front foot rule of apportionment or some other equitable basis determined by the Board. (b) The amount assessed against any project or improvement shall not exceed the value of the benefits accruing to the property therefrom. (c) When desirable, the affected property may be divided into different classes to be charged different rates, but, except for this, any rate shall be uniform. (d) All special assessment charges shall be levied by the Board by ordinance. Before levying any special assessment charges, the Board shall hold a public hearing. The treasurer shall cause notice to be given stating the nature and extent of the proposed project, the kind of materials to be used, the estimated cost of the project, the portion of the cost to be assessed, the number of installments in which the assessment may be paid, the method to be used in apportioning the cost, and the limits of the proposed area of assessment. The notice shall also state the time and place at which all persons interested, or their agents or attorneys, may appear before the Board and be heard concerning the proposed project and special assessment. Such notice shall be given by sending a copy thereof by first class mail to the person in whose name the property is assessed for taxation purposes and by publication of a copy of the notice at least once in a newspaper of general circulation in the Town. The treasurer shall present at the hearing a certificate of publication and mailing of copies of the notice, which certificates shall be deemed proof of notice, but failure of any owner to receive the mailed copy shall not invalidate the proceedings. The date of hearing shall be set at least ten and not more than thirty days after the treasurer shall have completed publication and service of notice as provided in this section. Following the hearing, the Board, in its discretion, may vote to proceed with the project and may levy the special assessment. (e) Any interested person feeling aggrieved by the levying of any special assessment under the provisions of this Charter shall have the right to appeal to the Circuit Court for Prince George's County within ten days after the levying of any special assessment by the Board. (f) Special assessments may be made payable in annual or more frequent installments over such period of time and in such manner as the Board may fix and determine. The Board shall determine on what date installments shall be due and payable. Interest may be charged

on installments at a rate or rates to be determined by the Board. (g) All special assessment installments shall be overdue six months after the date on which they become due and payable. If any one installment becomes overdue, the entire amount of the special assessment shall be deemed to be overdue. All special assessments shall be liens on the property and may be collected in the same manner as Town taxes. (h) All special assessments shall be billed and collected by the treasurer.

## Town Property

### **Section 82-81. (Acquisition, Possession, and Disposal).**

The Town may acquire real, personal, or mixed property within or without the corporate limits of the Town for any public purpose by purchase, gift, bequest, devise, lease, condemnation, or otherwise and may sell, lease, convey, or otherwise dispose of or encumber any property belonging to the Town. All municipal property, funds, and franchises of every kind belonging to or in possession of the Town (by whatever prior name known) at the time this Charter becomes effective are vested in the Town, subject to the terms and conditions hereof.

### **Section 82-82. (Condemnation).**

The Town shall have the power to condemn any interest in property or franchise connected therewith, in fee or as an easement, within the corporate limits of the Town, for any public purpose. Any activity, project, or improvement authorized by the provisions of this Charter or by any State law applicable to the Town shall be deemed to be a public purpose. The manner of procedure in case of any condemnation proceeding shall be that established in Article 33A of the Annotated Code of the Public General Laws of Maryland (1957 Edition, as amended), title "Eminent Domain" [see now Ann. Code of Md., Real Property article, § 12-101 et seq.].

### **Section 82-83. (Town Buildings).**

The Town shall have the power to acquire by lease or purchase to construct, operate, and maintain any buildings and structures it deems necessary for the operation of the Town government.

### **Section 82-84. (Protection of Town Property).**

The Town shall have the power to do whatever may be necessary to protect Town property and to keep the same in good condition.

## General Provisions

### **Section 82-85. (Oath of Office).**

(a) Before entering upon the duties of their offices, the President, the Commissioners, the Clerk, the Treasurer, the members of the Board of Supervisors of Election, and all other persons elected or appointed to any office of profit or trust in the Town government shall take and subscribe the following oath or affirmation: "I, \_\_\_\_\_ do swear (or affirm, as the case may be), that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the Constitution and Laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of \_\_\_\_\_ according to the Constitution and Laws of this State."

(b) The Board of Commissioners shall take and subscribe this oath or affirmation before the clerk of the Circuit Court for the County or before one of the sworn deputies of the clerk. All other persons taking and subscribing the oath shall do so before the President.

### **Section 82-86. (Official Bonds).**

The treasurer and such other officers or employees of the Town as the Board or this Charter may require, shall give bond in such amount and with such surety as may be required by the Board. The premiums on such bonds shall be paid by the Town.

### **Section 82-87. (Prior Rights and Obligations).**

All right, title, and interest by the Town or any other person or corporation at the time this Charter is adopted, in and to any lien acquired under any prior Charter of the Town, are hereby preserved for the holder in all respects as if this Charter had not been adopted, together with all rights and remedies in relation thereto. This Charter shall

not discharge, impair, or release any contract, obligation, duty, liability, or penalty whatever existing at the time this Charter becomes effective. All suits and actions, both civil and criminal, pending, or which may hereafter be instituted for causes of action now existing or offenses already committed against any law or ordinance repealed by this Charter, shall be instituted, proceeded with, and prosecuted to final determination and judgment as if this Charter had not become effective.

**Section 82-88. (Violations).**

(a) Every act of omission which is made or designated a misdemeanor by this Charter or by ordinance passed hereunder shall, unless otherwise provided, be punishable upon conviction before any Judge of the District Court of Maryland or in the Circuit Court of Prince George's County by a fine or imprisonment in the County correctional center, or both, for a period of incarceration, fine, or both not exceeding the maximum penalty allowed by State law as determined in the discretion of the Circuit Court or the District Court Judge. The party aggrieved shall have the right to appeal as is now provided under the general laws of the State. Where the act of omission is of a continuing nature and is persisted in, a conviction for one offense shall not be a bar to a conviction for a continuation of the offense subsequent to the first or any succeeding conviction.

(b) The Board of Commissioners may provide that violation of any municipal ordinance shall be a municipal infraction unless that violation is declared to be a felony or misdemeanor by the laws of the State or other ordinance. For purposes of this section, a municipal infraction in a civil offense.

(c) A fine not to exceed the maximum allowable under State law may be imposed for each conviction of a municipal infraction. Repeat offenders may be assessed a fine not to exceed the maximum allowable under State law for each repeat offense, and each day a violation continues shall constitute a separate offense.

(Res. No. 01-2009, 9-2-2009)

**Section 82-89. (Effect of Charter on Existing Ordinances).**

(a) All ordinances, resolutions, rules, and regulations in effect in the Town at the time this Charter becomes effective which are not in conflict with the provisions of this Charter shall remain in effect until changed or repealed according to the provisions of this Charter.

(b) All ordinances, resolutions, rules, and regulations in effect in the Town at the time this Charter becomes effective which are in conflict with the provisions of this Charter be and the same hereby are repealed to the extent of such conflict.

**Section 82-90.**

The County Commissions for [Council of] Prince George's County are hereby authorized and directed to levy six hundred dollars (\$600.00) annually for the Town of Upper Marlboro and to pay the same to the Town Commissioners of said Town; the said funds to be expended in such manner and for such purposes as the Commissioners of said Town, in their discretion deem expedient.

**Section 82-91. (Separability).**

If any section or part of any section of this Charter, or the application thereof to any person or circumstances, shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect the remaining parts or sections or any other application of this Charter which can be given effect without the invalid provisions or application, and to this end the provisions of this Charter are declared to be severable.

**PART II**  
**CODE OF ORDINANCES**

Chapter 1

**GENERAL PROVISIONS<sup>1</sup>**

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

The ordinances embraced in this and the following chapters and sections shall constitute and be designated as the "Code of Ordinances of the Town of Upper Marlboro, Maryland," and may be so cited. The Code may also be cited as the "Upper Marlboro Code."

**Sec. 1-2. Definitions and rules of construction.**

The following definitions and rules of construction shall apply to this Code and to all ordinances unless the context requires otherwise:

Generally.

- (1) All provisions shall be liberally construed to effect their purposes. When provisions conflict, the specific shall prevail over the general. All provisions shall be liberally construed so that the intent of the board of commissioners may be effectuated.
- (2) Terms and phrases shall be construed according to the common and approved usage of the language, but technical words, technical phrases and terms and phrases that have acquired peculiar and appropriate meanings in law shall be construed according to such meanings.
- (3) Provisions shall be interpreted and applied so as to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare.
- (4) In the event of conflicts between provisions, the more stringent provision controls.

Board of commissioners. The term "board of commissioners," "board," or "commission" means the board of commissioners of the town, being the governing body thereof.

Charter. The term "Charter" means the Charter of the Town of Upper Marlboro, Maryland.

Code. The term "Code" means the Code of Ordinances of the Town of Upper Marlboro, Maryland, as designated in section 1-1.

Computation of time. The time within which an act is to be done shall be computed by excluding the first day and including the last day; if the last day is a Sunday or legal holiday, it shall be excluded. When the period of time allowed is more than seven days, intermediate Sundays and holidays shall be considered as other days; but if the period of time allowed is seven days or less, intermediate Sundays and holidays shall not be counted in computing the period of time.

County. The term "county" means Prince George's County, Maryland.

Delegation of authority. A provision that authorizes or requires a town officer or town employee to perform an act or make a decision authorizes such officer or employee to act or make a decision through subordinates.

Gender. Words of gender include all genders.

Joint authority. Unless state law provides otherwise, all terms giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

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<sup>1</sup> Legal Analysis: This chapter is added. All provisions (penalties excepted) will be edited in light of this chapter.

May. The term "may" is to be construed as being permissive.

May not. The phrase "may not" or phrases of like import have a mandatory negative effect and establish a prohibition.

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

Must. The term "must" is to be construed as being mandatory.

Number. Terms used in the singular include the plural and the plural includes the singular number.

Oath. The term "oath" includes an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the terms "swear" and "sworn" are equivalent to the terms "affirm" and "affirmed."

Officers, employees, boards, commissions and committees. References to officers, employees, boards, commissions, or committees are to town officers, town employees, town boards, town commissions, and town committees.

Owner. The term "owner," as 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 term "person" includes a corporation, company, firm, partnership, association or society as well as a natural person.

Personal property. The term "personal property" includes money, goods, chattels, things in action and evidences of debt.

Preceding, following. The terms "preceding" and "following" mean next before and next after, respectively.

Property. The term "property" includes real and personal property.

Real property. The term "real property" includes lands, tenements and hereditaments.

Shall. The term "shall" is to be construed as being mandatory.

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

Signature or subscription. The term "signature" or "subscription" includes a mark when the person cannot write, the person's name being written near it and witnessed by a person who writes the name of said person as witness.

State. The term "state" means the State of Maryland.

State code. The abbreviation "Ann. Code of Md." refers to the Annotated Code of Maryland as now or hereafter amended.

Street. The term "street" includes public avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges and the approaches thereto and all other public thoroughfares in the town, and shall mean the entire width thereof between abutting property lines.

Tenant, occupant. The terms "tenant" and "occupant," applied to a building or land, include any person who occupies the whole or a part of such building or land, whether alone or with others.

Tense. Terms used in the past or present tense include the future as well as the past and present.

Town. The term "town" means the Town of Upper Marlboro, Maryland.

Writing. The term "writing" includes printing.

Year. The term "year" means a calendar year.

### **Sec. 1-3. Catchlines of sections, effect of history notes, and references in Code.**

(a) The catchlines of the several sections of this Code, set in boldface type, are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections, nor as any part of such sections, nor, unless expressly so provided, shall they be so deemed when any of such sections, including

the catchlines, are amended or reenacted.

(b) The history or source notes appearing in parentheses after sections in this Code are not intended to have any legal effect but are merely intended to indicate the sources of matter contained in the section.

(c) Editor's notes that appear after sections or subsections of this Code or which otherwise appear in footnote form are provided for the convenience of the user of this Code and have no legal effect.

(d) All references to chapters, articles, or sections are to be chapters, articles, and sections of this Code unless otherwise specified.

#### **Sec. 1-4. Effect of repeal of ordinances.**

The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed.

#### **Sec. 1-5. Amendments to Code; effect of new ordinances; amendatory language.**

(a) All ordinances adopted subsequent to this Code that amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of the Code and printed for inclusion in the Code.

(b) Amendments to provisions of this Code may be made with the following language: "Section (chapter, article, division or subdivision, as appropriate) \_\_\_\_\_ of the Code of Ordinances of the Town of Upper Marlboro, Maryland, is hereby amended to read as follows: . . ." The section (chapter, article, division, or subdivision) should be set out in full.

(c) If a new section, subdivision, division, article or chapter is to be added to the Code, the following language may be used: "Section (chapter, article, division or subdivision, as appropriate) \_\_\_\_\_ of the Code of Ordinances of the Town of Upper Marlboro, Maryland, is hereby created to read as follows: . . ." The section (chapter, article, division, or subdivision) should be set out in full.

(d) All provisions desired to be repealed should be repealed specifically by section, subdivision, division, article or chapter number, as appropriate, or by setting out the repealed provisions in full in the repealing ordinance.

#### **Sec. 1-6. Supplementation of Code.**

(a) Supplements to this Code shall be prepared and printed whenever authorized or directed by the town. A supplement to this 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 the supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages that have become obsolete or partially obsolete. 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 that 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 person authorized to prepare the supplement may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as necessary to do so in order to embody them into a unified Code. For example, the person may:

- (1) Arrange the material into appropriate organizational units.
- (2) Supply appropriate catchlines, headings and titles for chapters, articles, divisions, subdivisions and sections to be included in the Code and make changes in any such catchlines, headings and titles or in any such catchlines, headings and titles already in the Code.
- (3) Assign appropriate numbers to chapters, articles, divisions, subdivisions and sections to be added to this Code.
- (4) Where necessary to accommodate new material, change existing numbers assigned to chapters, articles, divisions, subdivisions or sections.

- (5) Change the words "this ordinance" or similar words to "this chapter," "this article," "this division," "this subdivision," "this section" or "sections \_\_\_\_\_ to \_\_\_\_\_" (inserting section numbers to indicate the sections of the Code that embody the substantive sections of the ordinance incorporated in this Code).
- (6) Make other nonsubstantive changes necessary to preserve the original meaning of the ordinances inserted in this Code.

**Sec. 1-7. General penalty; continuing violations; alteration of fees and penalties.**

(a) In this section, the term "violation of this Code" means:

- (1) Doing an act that is prohibited or made or declared a municipal infraction, unlawful, an offense or a misdemeanor by ordinance or by rule or regulation authorized by ordinance;
- (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance; or
- (3) Failure to perform an act if the failure is declared a municipal infraction, a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.

(b) In this section, the term "violation of this Code" does not include the failure of a town officer or town employee to perform an official duty unless it is provided that failure to perform the duty is to be punished as provided in this section.

(c) Unless declared by state law or town ordinance to be a misdemeanor, each violation of this Code is a municipal infraction punishable, unless otherwise stated, by a fine of \$1,000.00.

(d) Except as otherwise provided, a violation of this Code that is a misdemeanor shall be punished by a fine not to exceed \$1,000.00, imprisonment for not to exceed six months, or both such fine and imprisonment.

(e) Except as otherwise provided by law or ordinance:

- (1) With respect to violations of this Code that are continuous with respect to time, each day that the violation continues is a separate offense.
- (2) With respect to violations of this Code that are not continuous with respect to time, each act constitutes a separate offense.

(f) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise.

(g) Violations of this Code that are continuous with respect to time may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent equitable relief.

(h) Any fine or fee established in this Code may be changed or modified by written resolution, provided such resolution is posted in a conspicuous place in town hall 30 days before and after its passage.

**Sec. 1-8. Severability of parts of Code.**

The sections, subsections, paragraphs, sentences, clauses and phrases of this Code and all provisions adopted by reference in this Code are severable so that if any section, subsection, paragraph, sentence, clause or phrase of this Code or of any provision adopted by reference in this Code is declared unconstitutional or invalid by a valid judgment of a court of competent jurisdiction, such judgment shall not affect the validity of any other section, subsection, paragraph, sentence, clause or phrase of this Code or of any provision adopted by reference in this Code. The board of commissioners declares that it is its intent that it would have enacted this Code and all provisions adopted by reference in this Code without such invalid or unconstitutional provisions.

**Sec. 1-9. Provisions considered as continuations of existing ordinances.**

The provisions appearing in this Code, so far as they are in substance the same as those of legislation existing at the time of adoption of this Code, shall be considered as continuations thereof and not as new enactments.

**Sec. 1-10. Code does not affect prior offenses, rights, etc.**

(a) Nothing in this Code or the ordinance adopting this Code affects 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 this

Code.

(b) The adoption of this Code shall not be interpreted as authorizing or allowing any use or the continuance of any use of a structure or premises in violation of any ordinance of the town in effect on the date of adoption of this Code, except as otherwise provided.

**Sec. 1-11. Certain ordinances not affected by Code.**

(a) Nothing in this Code or the ordinance adopting this Code repeals or otherwise affects the validity of any of the following:

- (1) Any resolution annexing territory or excluding territory as a part of the town or amending the town Charter.
- (2) Any ordinance promising or guaranteeing the payment of money or authorizing the issuance of any bonds or any evidence of the town's indebtedness.
- (3) Any appropriation ordinance providing for the levy of taxes or for an annual budget.
- (4) Any ordinance relating to the salaries, benefits or terms of employment of town officers or town employees.
- (5) Any ordinance granting any franchise, permit or other right.
- (6) Any ordinance approving, authorizing or otherwise relating to any contract, agreement, lease, deed or other instrument.
- (7) Any ordinance naming, renaming, opening, accepting or vacating streets or alleys in the town.
- (8) Any ordinance levying special assessments.
- (9) Any ordinance pertaining to subdivisions or zoning.
- (10) Any ordinance whose purpose has been accomplished.
- (11) Any ordinance that is special although permanent in effect.
- (12) Any ordinance that is temporary although general in effect.

(b) All such ordinances and resolutions are recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

**Sec. 1-12. Exemption of adoption of county ordinances.**

(a) Pursuant to Ann. Code of Md., Local Government article, § 4-111 and unless the provisions of this Code of Ordinances expressly state otherwise, the town is generally exempt from all legislation heretofore or hereafter enacted by the county relating to any subject upon which the town has been heretofore or is hereafter granted legislative authority to act, either by public general law or by the town Charter, and upon which subject the town in fact acts. Legislation of the county pertaining to a subject as to which the town has not acted shall be in effect in the town unless and until the town specifically exempts itself therefrom.

(b) Whenever, in this Code, the town adopts or incorporates by reference, or otherwise subjects itself or persons within its boundaries to the ordinances or regulations of the county, it is the intention of the board of commissioners to adopt any amendments that might subsequently be enacted by the county council, such that the most current version of such ordinance or regulation then in effect in the unincorporated areas the county shall be effective within the town.

Chapter 2  
ADMINISTRATION

ARTICLE I. IN GENERAL

Secs. 2-1--2-18. Reserved.

ARTICLE II. BOARD OF COMMISSIONERS

Sec. 2-19. Commissioner salary.<sup>2</sup>

The salary for each member of the board of commissioners shall be set at \$1,200.00 per year and may be changed pursuant to the Charter.

(Ord. No. 2013-02, § 1, 12-16-2013)

Sec. 2-20. President salary.

The president of the board of commissioners shall receive \$15,000.00 per year in addition to said president's salary as a town commissioner.

(Ord. No. 2013-02, § 2, 12-16-2013)

~~Sec. 3. Date of new salaries.~~

~~These new salaries shall begin with the new fiscal year starting on July 1st, 2014.~~

~~(Ord. No. 2013-02, § 3, 12-16-2013)~~

~~Sec. 4. Savings clause.~~

~~Current salaries of elected officials shall remain until July 1st, 2014.~~

~~(Ord. No. 2013-02, § 4, 12-16-2013)~~

Secs. 2-21--2-43. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES

DIVISION 1. GENERALLY

Secs. 2-44--2-74. Reserved.

DIVISION 2. PUBLIC ETHICS

Sec. 2-75. Purpose and scope.

The purpose of this division is to provide a clear statement of the minimum standards of ethical conduct expected of town elected officials, appointees and employees and local responsibility for compliance with adopted standards, and to avoid improper influence or even the appearance of improper influence.

(Ord. No. 2016-04, § 1, 12-13-2016)

Sec. 2-76. Enforcement.

(a) Upon direction from the board of commissioners, the town attorney may file a petition for injunctive or other relief in the circuit court for the county, or any other court having proper venue, for the purpose of requiring compliance with the provisions of this division. The town attorney may seek:

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<sup>2</sup> Legal or Editorial Change: Ord. No. 2013-02, § 1. Commissioners salary. Altered per instructions.

- (1) To have the court issue an order to cease and desist from the violation; and
- (2) To have the court void an official action taken by an official or employee with a conflict of interest prohibited by this division when the action arises from or concerns the subject matter of the conflict and if the legal action is brought within 365 days of the occurrence of the official action, if the court deems voiding the action to be in the best interests of the public; provided, however, that the court may not void any official action appropriating public funds, levying taxes, or providing ~~of~~ for the issuance of bonds, notes or other evidence of public obligation.

(b) In addition to any other action described in this division, the board of commissioners may vote to declare that a specific violation of this division shall be prosecuted as a municipal infraction subject to the maximum penalty permitted by the town Charter as awarded by the court in its discretion. Each violation of this division shall be pursued as a separate municipal infraction.

(c) Town employees found to be in violation of this division may, in addition to or in lieu of a civil infraction, be further subject to personnel disciplinary actions, including, but not limited to, suspension or dismissal.

(Ord. No. 2016-04, § 9, 12-13-2016)

### **Sec. 2-77. Ethical standards.**

In order to avoid becoming involved or implicated in a conflict of interest or impropriety or, just as important, an appearance of conflict of interest or impropriety, elected officials, appointees and town employees shall not:

- (1) Knowingly use their office or position for personal or family gain or profit;
- (2) Act officially in a matter in which the official is privately interested;
- (3) Accept transportation, lodging, food, beverages, or anything else of more than token value offered because the official holds a town position;
- (4) Solicit or accept rewards or items or services likely to influence the official;
- (5) Offer or provide influence in exchange for campaign contributions;
- (6) Use town-owned property or town services for personal or family gain or profit; or
- (7) Use information acquired in confidence by reason of their official position from a town customer, supplier, lessee or contractor for other than town purposes.

(Ord. No. 2016-04, § 2, 12-13-2016)

### **Sec. 2-78. Conflicts of interest.**

(a) Elected officials, appointees and town employees shall not knowingly engage in activities which are in conflict, or which have the potential to create conflict, with performance of official duties. No person subject to this division shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of the public duties or employment of said person.

(b) Examples of conflicts or potential conflicts of interest include, but are not necessarily limited to, circumstances where an elected official, appointee or town employee:

- (1) Influences the selection or non-selection of, or the conduct of business between the town and any entity in which the elected official, appointee, town employee or the spouse or domestic partner of said elected official, appointee, or town employee has a financial interest.
- (2) Accepts any retainer, compensation, gift or anything of value that is contingent upon a specific action or non-action by the public official, appointee or town employee.
- (3) Intentionally uses or discloses information not available to the general public and acquired by reason of the official position of said elected official, appointee or town employee which benefits said elected official, appointee, or town employee or said elected official's, appointee's or town employee's family, friends or others.
- (4) Performs an act in other than said elected official's, appointee's or town employee's capacity as a town-

elected official, appointee or town employee knowing that the act without prior disclosure may later be subject, directly or indirectly, to the control, regulation, supervision, inspection, review, audit, or enforcement by the official or employee, or a body in which the official is a member.

- (5) Solicits, demands, accepts, or agrees to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or any solicitation or proposal thereof.

(c) Elected officials, appointees and town employees shall not take part in any commission action, deliberation or vote concerning any contract, property, or other matter of any kind in which the public official, appointee, town employee or the immediate family of said public official, appointee, or town employee has a financial interest, or which otherwise creates a conflict of interest.

(d) Elected officials, appointees and town employees shall not be deemed to violate subsection (b) of this section when they only have a remote interest in a contract or sale. Elected officials, appointees and department heads shall disclose the fact and extent of a remote interest for the official minutes of the board of commissioners prior to the commission taking any action related to the interest and thereafter all action taken by the board of commissioners related to such interest shall be by vote sufficient for the purpose without counting the vote of the elected official or town employee having the remote interest.

(e) Unless as permitted by statute, Charter or other ordinance, and except as otherwise stated in this subsection, a town-elected official shall be prohibited from simultaneously holding multiple town offices. Nothing in this subsection shall prevent the board of commissioners from approving the appointment of a commissioner to serve as an ex officio member of any town board, commission, committee or other appointed body.

(f) Members of the town board of commissioners, appointees and town staff are prohibited from being awarded contracts with the town. Notwithstanding anything to the contrary in this subsection, elected officials, appointees and town employees may have a beneficial interest in a contract with the town under the following circumstances:

- (1) If an item of business relating to the contract comes before the elected official, appointee or town employee, said official or employee must identify the contract on the record and recuse from acting in any way on that item. The individual shall not remain in the meeting room during the discussion of that item;
- (2) The official or employee has not lobbied the town to enter into the contract;
- (3) The official or employee has not influenced town policy with the primary purpose of creating the need for the contract; and
- (4) The contract cannot be made by, through or under the supervision of the official or employee, in whole or in part, or for the benefit of the office of said official or employee.

(Ord. No. 2016-04, § 3, 12-13-2016)

### **Sec. 2-79. Improper use of position.**

(a) Elected officials, appointees and town employees shall not use the prestige of their office for their own benefit or that of another. The performance of usual and customary constituent services, without additional compensation, does not constitute the improper use of position or misuse of the prestige of office. A town official's or employee's misuse of the position of said town official or employee not only diminishes public confidence in that official or employee, but it also harms trust and confidence in the town government as well. This prohibition means an official or employee may not use any influence said official or employee may have to obtain a special benefit for said official or employee or another or use town resources for personal benefit or to benefit another.

(b) Examples of improper use of position include, but are not necessarily limited to, circumstances where an elected official, appointee or town employee:

- (1) Uses the public office and employment of said elected official, appointee or town employee for personal, private or economic gain, or uses or attempts to use the official position of said elected official, appointee or town employee to secure special privileges or exemptions for said elected official, appointee, town employee, or others, except as provided by law.
- (2) Interferes with the ordinary course of law enforcement within the town, or suggests or requests special favors, consideration or disposition of any law enforcement-related official, supervisor or adviser of the town, including the president, chief of police, police officers, code enforcement officers, town attorney or administrative support staff, concerning any town law enforcement matter, including, but not limited to, parking tickets, traffic tickets, citations, municipal infractions, or the enforcement of town ordinances.
- (3) Takes any action, or creates an appearance, that adversely affects the confidence of the public in the integrity of the town government.

(Ord. No. 2016-04, § 4, 12-13-2016)

**Sec. 2-80. Gifts and gratuities.**

(a) Elected officials, appointees and town employees shall not, directly or indirectly, solicit any gift or accept or receive any gift, whether it is money, services, a loan, travel, entertainment, hospitality, promise, or any other form, under the following circumstances:

- (1) It could be reasonably inferred or expected that the gift was intended to influence them in the performance of their official duties; or
- (2) The gift was intended to serve as a reward for any official action on their part.

Elected officials, appointees and town employees may not accept meals or beverages from town businesses but may accept de minimis gifts such as, but not limited to, calendars, coffee mugs, flowers, candy, and other similar items that are given as a customary business practice and have no material significance to the recipient, with such gifts from any one source not to exceed \$100.00 in value in any 12-month period. Town officials and employees should report any gift to their immediate supervisor or the president.

(b) This section shall not apply to gifts made to the town as an entity. All such gifts shall be given to the president for official disposition.

(Ord. No. 2016-04, § 5, 12-13-2016)

**Sec. 2-81. Confidential information; disclosure prohibited.**

Elected officials, appointees and town employees shall not, except as required or reasonably believed to be required for the performance of said elected official's, appointee's, or town employee's duties, disclose confidential information gained by reason of said elected official, appointee, or town employee's official position or use such information for said elected official's, appointee's, or town employee's own personal interest or the personal interest of another. The term "confidential information" means all information, whether transmitted orally or in writing, that the official or employee has been informed, is aware, or has reason to believe is intended to be used only for town purposes, is not intended for public disclosure, or is otherwise of such nature that is not, at the time, a matter of public record or public knowledge. Confidential information includes, but is not limited to, personal information regarding town officials and employees; private financial and other personal information provided by town taxpayers, license holders, contractors, and customers; intelligence and information, including the identity of persons filing complaints; formulas, designs, drawings, and research data obtained or produced by the town; and legal opinions and recommendations concerning town policies and actions. Any elected or appointed official who is uncertain as to whether certain information is confidential should consult the president or, if appropriate, the town attorney.

(Ord. No. 2016-04, § 6, 12-13-2016)

**Sec. 2-82. Specific complaints; board actions.**

(a) Any person may submit a written complaint to the president alleging one or more violations of this division by an elected official, appointee or employee. If said complaint or allegation is against the president, the complaint shall be submitted to the town attorney. The allegation shall set forth specific facts with precision and

detail, sufficient for a determination of sufficiency. Complaints should be signed by the person submitting said complaint and include the submitter's correct name, address at which mail may be personally delivered to the submitter, and the telephone number at which the submitter may be contacted.

(b) The president or designee shall inform the elected official and the board of commissioners of the complaint and shall submit the complaint to the board of commissioners for determination of sufficiency of the complaint within 15 days of its receipt. Voicemail, email or similar notification of the respondent is acceptable if actual notice is not immediately practicable. A copy of the complaint shall also be sent to the respondent by registered mail within 21 days of receipt. A complaint cannot be sufficient unless it precisely alleges and describes unjustified acts which constitute a prima facie showing of a violation of a specified provision of this division.

(c) The complainant shall have the responsibility for proving the allegations in the complaint by a preponderance of the evidence.

(d) Complaints shall be subject to a one-year statute of limitations. The limitations period shall commence from the date that information on completion of the alleged misconduct was reasonably available to the public.

(e) Complaints may be amended as authorized by the decision-maker as justice requires; provided that the timeframes of the review process provide the respondent with a fair opportunity to respond.

(f) All elected officials, appointees and employees, excluding the alleged violator, shall observe strict confidentiality as to the complaint and alleged violator until the review is complete, to the extent that the information is acquired as a result of a person's status as an elected official or employee.

(g) In the event the final determination by the board of commissioners provides that the individual against whom the complaint has been filed has violated this division, the board shall convene and render its decision within 30 days of the receipt of said determination unless an extension is requested by the respondent and granted by the board. In the event that the town commissioners agree by majority vote that one or more of the violations occurred, then as to the violations, the board may vote to take enforcement action pursuant to section 2-76 and/or take any of the following actions approved by a majority vote of the board; provided that penalties may only be based upon violations alleged in the complaint or amended complaint and not upon other violations discovered during the complaint process, unless the complainant amends the complaint at or prior to the time in which the board deliberates to decide the case:

- (1) *Admonition.* An admonition shall be a verbal nonpublic statement made by the president or designated commissioner to the subject individual.
- (2) *Reprimand.* A reprimand shall be administered to the individual by letter. The letter shall be approved by the board of commissioners and shall be signed by the president or designee. If the individual objects to the content of such letter, such individual may file a request for review of the letter of reprimand with the board. The board shall review the letter of reprimand in light of the report and the request for review, and may take whatever action appears appropriate under the circumstances. The action of the board of commissioners shall be final and not subject to further review.
- (3) *Censure.* A censure shall be a written statement administered personally to the subject individual or respondent. The individual shall appear at a time and place directed by the board of commissioners to receive the censure. Notice shall be given at least five days before the scheduled appearance at which time a copy of the proposed censure shall be provided to the individual. Prior to the scheduled appearance, the individual may file a request for review of the content of the censure along with any statement of justification. The board of commissioners shall review the proposed censure in light of the report and the request for review, and may take whatever action appears appropriate under the circumstances. The action of the board of commissioners shall be final and not subject to further review. If no such request is received, the censure shall be administered at the time and place set. It may be given publicly, and the individual shall not make any statement in support of or in opposition thereto or in mitigation thereof. A censure shall be deemed administered at the time it is scheduled whether or not the individual appears as required.
- (4) *Removal.* In the event the individual against whom the complaint has been filed is a member of a town board, commission, committee, or other multi-member body appointed by the president with the approval

of the board of commissioners, the board of commissioners may, by a majority vote, remove the individual from such board, commission or committee; provided, however, that nothing in this section authorizes the board of commissioners to remove an elected official from the office of said elected official.

(h) Action by the board of commissioners shall be by majority vote. If the proceeding involves a member of the board of commissioners, said member does not vote on any matter involving the member. Deliberation by the board of commissioners may be in executive session; however, upon request of the person complained against, the meeting shall be open to the public. A complaint cannot be sufficient unless it specifically alleges and describes unjustified acts, which constitute a prima facie showing of a violation of a specified provision of this division.

(i) Specific complaint against a town employee. In the event the individual against whom the complaint has been filed is a town employee, the town shall follow the appropriate discipline, through the employee's supervisor and/or department head, and procedures as outlined in the employee handbook, and/or standard operating procedures.

(j) A violation of this division by an employee shall be considered grounds for disciplinary action, including termination.

(Ord. No. 2016-04, § 7, 12-13-2016)

**Sec. 8. Severability.**

~~If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance.~~

(Ord. No. 2016-04, § 8, 12-13-2016)

**Secs. 2-83--2-107. Reserved.**

## ARTICLE IV. PUBLIC RECORDS

**Sec. 2-108. Records management.**

(a) *Definitions.*<sup>3</sup> The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

~~*Records Retention* is defined as:~~

~~*Nonrecord* means the types of materials defined as nonrecord by section 179, article 41, of the Annotated Code of Maryland, 1957.~~

~~*Photographs* means photographs, photocopies, or micro-photographs.~~

~~*Public record* does not include:~~

- (1) A digital photographic image or signature of an individual, or the actual stored data of the image or signature, recorded by the state motor vehicle administration; or
- (2) A record or any information submitted to the public access ombudsman or the board under Ann. Code of Md., General Provisions article, § 4-101(k).

~~*Record* means any book, paper, photograph, map or other documentary material, regardless of physical form or characteristic, created or received by any department in pursuance of law or in connection with the transaction of public business, and preserved or deemed appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, procedures, decisions or operations of such department, or because of the informational value of the data contained therein.~~

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<sup>3</sup> Legal or Editorial Change: Ord. No. 06-04, § II. Definitions. Altered the definition of nonrecord per instructions.

*Record retention schedule* means an itemized list of the retention periods established for the records of the town pursuant to the provisions of this section and Ann. Code of Md., State Government article, §§ 10-608—10-611 and COMAR 14.18.02.<sup>4</sup>

*Records management officer* means the town ~~Administration administrator~~ and/or the town clerk, or any other person so designated by the town.

*Records management program* means and includes records storage; forms management; microfilm and information retrieval; creation of record retention schedules; and disposal of records.

*Retention period* means the period of time for which a record shall be retained.

(b) *Records management officer; powers and duties; department heads.*

(1) The records management officer shall have primary responsibility for the development and administration of a continuing records management program for the records of each department of the town. In addition to, and not by way of limitation of, the records management officer's general responsibility for the records management program, the records management officer shall have the following express responsibilities, duties and powers in connection with the records activities of each department of the town:

- a. Establish standards, procedures and techniques for the effective management of town records.
- b. Prepare record retention schedules providing for the retention of town records of continuing value and for the prompt and orderly disposal of county records no longer possessing sufficient administrative, legal or fiscal value to warrant their further preservation. Prior to becoming operative, such retention schedules shall receive the written approval of the ~~Chief Administrative Officer~~ president and the ~~Hall of Records Commission~~ records management division of the state department of general services.
- c. Review proposals for the purchase or rental of filing equipment, microfilm or photocopying devices, and make recommendations thereon to the department heads.
- d. Review all proposals to microfilm records, whether or not the ultimate destruction of the original records is involved.
- e. Consult with and advise the departments in an effort to achieve uniformity of new forms.
- f. Inspect records and records management practices of all executive departments.
- g. Organize and administer a records storage center for the inactive records of the town.
- h. Develop, publish and enforce standards of classifying, indexing and filing records.
- i. Require such reports as the records management officer deems necessary.
- j. Assist office and department heads in training files and records personnel.

(2) The head of each department shall:

- a. Cooperate with the records management officer in the preparation of records retention schedules made by said records management officer pursuant to the provisions of this subsection (b).
- b. Comply with the rules, regulations, standards and procedures issued by the records management officer with respect to the retention, disposal and storage and photographic reproduction of departmental records.
- c. Designate an employee to provide liaison with the records management officer and assist said records management officer in carrying out the program in the department.

(c) *Maintenance of records involving town interests.* The ~~Chief Administrative Officer~~ town clerk, acting as custodian, shall maintain all deeds, bonds, contracts, releases, executive orders and directions, and other papers and

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<sup>4</sup> Legal or Editorial Change: Revised per instructions.

instruments involving the legal interest of the town and any of its agencies, offices and departments. The papers and instruments referenced in this section shall be maintained solely for reference and examination by the public. Any person may have access to said papers and instruments during business hours. Said papers and instruments shall be in addition to those maintained for any other purpose.

(d) *Disposal of records.*

- (1) Records created or received by the town government in the course of official business are the property of the town government and shall not be destroyed, sold, transferred or otherwise disposed of except in a manner prescribed by record retention schedules approved as provided in this section.
- (2) When records are disposed of, a certificate of disposal listing the records and certifying to their disposal shall be filed with the hall of records of the state.
- (3) Records of archives of the town which are deemed to have historical significance may, at the discretion of the records management officer and with the approval of the town president, be lent to any responsible organization or group. They shall be properly preserved, displayed, indexed and made available for reference purposes by such organization.

(Ord. No. 06-04, § II, 10-10-2006)

**Sec. Iii.**

~~BE IT FURTHER ENACTED that this ordinance shall take effect 20 days after its adoption by the town of Upper Marlboro, Maryland.~~

~~(Ord. No. 06-04, § III, 10-10-2006)~~

**Sec. 2-109. Records retention schedules.<sup>5</sup>**

The provisions of Ann. Code of Md., State Government article, §§ 10-608—10-611 and COMAR 14.18.02 require retention schedules. A retention schedule gives town officials and employees authority to destroy records that have no further use. No town records shall be destroyed unless with proper authority pursuant to an approved records retention schedule.

~~— The following is a list of schedules for the various offices/departments for the Town of Upper Marlboro.~~

~~— General Documents~~

<del>(a)</del>	<del><i>Accident Reports and Claims (settled cases)</i></del>	<del>7-year retention period</del>
<del>(b)</del>	<del>Correspondence (routine) with members, Customers or vendors</del>	<del>1 year retention period</del>
<del>(c)</del>	<del>Correspondence (general)</del>	<del>1 year retention period</del>
<del>(d)</del>	<del>Correspondence (legal and important matters)</del>	<del>Permanently</del>
<del>(e)</del>	<del>Employee personnel records (after termination/Separation)</del>	<del>3 year retention period</del>
<del>(f)</del>	<del>Employment applications</del>	<del>6 month retention period</del>
<del>(g)</del>	<del>Insurance policies (expired)</del>	<del>3 year retention period</del>
<del>(h)</del>	<del>Insurance records, current accident reports, claims, policies, etc.</del>	<del>Permanently</del>
<del>(i)</del>	<del>Preventive Maintenance Records on</del>	<del>5 year retention period</del>

<sup>5</sup> Legal or Editorial Change: Ord. No. 06-04, att. Records retention schedules. Revised per instructions.

## vehicles

(i)

## — Administrative Office

- |     |                                     |                         |
|-----|-------------------------------------|-------------------------|
| (a) | <i>Approved Minutes of meetings</i> | <i>Permanently</i>      |
| (b) | Audio/video recording of meetings   | 2-year retention period |

## — Financial Records

- |     |  |                                |
|-----|--|--------------------------------|
| (a) | <i>Accounts payable ledgers and schedules</i>  | <i>7-year retention period</i> |
| (b) | Accounts receivable ledgers and schedules  | 7-year retention period        |
| (c) | Audit reports  | Permanently                    |
| (d) | Bank reconciliations   | 2-year retention period        |
| (e) | Capitol stock and bond records; ledgers, transfer registers, stubs showing issues, record of interest coupons, options, etc.   | Permanently                    |
| (f) | Cash books   | Permanently                    |
| (g) | Charts of accounts   | 7-year retention period        |
| (h) | Checks   | 7-year retention period        |
| (i) | Checks (cancelled for important payments, i.e. taxes, purchases of property, special contracts, etc.) (check should be filed with the papers pertaining to the underlying transaction) | Permanently                    |
| (j) | Contracts and leases (current/still in effect)   | Permanently                    |
| (k) | Contracts and leases (expired)   | 3-year retention period        |
| (l) | Deed, mortgages, and bills of sale   | Permanently                    |
| (m) | Depreciation schedules   | Permanently                    |
| (n) | Duplicate deposit slips  | 2-year retention period        |
| (o) | Financial statements (end of year, other months optional)  | Permanently                    |
| (p) | General and private ledgers (and end-of-year Trail balances)   | Permanently                    |
| (q) | Invoices (customers, taxes, etc.)  | 3-year retention period        |
| (r) | Payroll records and summaries  | 7-year retention period        |
| (s) | Petty cash vouchers  | 3-year retention period        |
| (t) | Property appraisals by outside appraisers  | Permanently                    |
| (u) | Property records including costs, depreciation reserves, end of year   | Permanently                    |

- ~~(v)                      trial balances, depreciation schedules,  
blueprints and plans~~
- ~~(w)                      Purchase orders                                      3-year retention period~~
- ~~(x)                      Stock and bond certificates                      7-year retention period  
(cancelled)~~
- ~~(x)                      Vouchers for payments to vendors,  
employees, etc.                                      7-year retention period~~

~~— Department of Public Works~~

~~(a)~~

~~— Public Safety~~

- (a)                      Town Citations (paid)                                      1-year retention period*
- (b)                      Town Citations (unpaid out of state)                                      2-year retention period*
- (c)                      Citations (unpaid in state)                                      3-year retention period*

(Ord. No. 06-04, att., 10-10-2006)

**Secs. 2-110--2-131. Reserved.**

**ARTICLE V. FINANCE**

**Sec. 2-132. Duties of clerk and treasurer.**

The town clerk and treasurer shall make a list of all real and personal property in the town from the assessment records of the supervisor of assessments for the county with the amount assessed.

(Ord. No. 86-2, § 1, 10-14-1986)

**Sec. 2-133. County assessments adopted.**

The state and county assessments made by the county council, from time to time, against all real and personal property in the town, are hereby adopted as the assessments for the town on which all property taxes shall be levied.

(Ord. No. 86-2, § 2, 10-14-1986)

**Sec. 2-134. Annual levy.<sup>6</sup>**

On or before June 30 of each year the board of commissioners shall make the annual levy of taxes for general town purposes and such levy shall be applicable to the property shown on the list provided for in this article. Taxes shall be due and payable on July 1, and shall bear interest from October 1, at the rate of ~~1%~~ two-thirds of one percent per month if not so paid. Immediately after the levy, the clerk and treasurer shall prepare and send tax bills to the owners as shown on the tax records.

(Ord. No. 86-2, § 3, 10-14-1986)

**Sec. 2-135. Fiscal year.**

All taxes shall be levied for the fiscal year pursuant to ~~Article 81 of the Annotated Code of Maryland (1957 edition, as amended)~~ Ann. Code of Md., Local Government article, § 16-101.

(Ord. No. 86-2, § 4, 10-14-1986)

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<sup>6</sup> Legal or Editorial Change: Ord. No. 86-2 § 3. Annual Levy. Per Ann. Code of Md., Tax-Property article, § 14-603, altered so the interest rate is 2/3 of one percent.

**Sec. 2-136. Deposit of money collected by the clerk and treasurer.**

The clerk and treasurer shall turn over to the town, at least once a week, all money collected by said clerk and treasurer for the use by the town, by depositing the same to the credit of the board of commissioners for the town in such banking institutions as shall be hereafter designated by said board of commissioners; provided, however, that the treasurer shall be and is hereby authorized to keep an amount not to exceed \$100.00 at any one time as a petty cash fund.

(Ord. No. 86-2, § 5, 10-14-1986)

**Sec. 2-137. Town tax; minimum personal property tax.**

For personal property taxes owed to the town for \$2.00 or less, pursuant to the assessment of the state department of assessments and taxation or the county, the town may ignore such statements so generated and may consider such amount paid in full without the taxpayer having paid that amount.

(Ord. No. 90-3, § 1(6), 9-11-1990)

**Secs. 2-138--2-157. Reserved.****ARTICLE VI. PROCUREMENT****Sec. 2-158. Purpose.**

The purpose of this article is to:

- (1) Provide for fair and equitable treatment of all persons involved in public purchasing and contracting administered by the town;
- (2) Ensure the maximum purchasing value of public funds in procurement;
- (3) Provide safeguards for maintaining a procurement and disposition system of quality and integrity; and
- (4) Protect the town from liability or controversy and ensure legal sufficiency of written agreements entered into by the town using municipal funds.

(Ord. No. 2022-06, § 1, 11-22-2022)

**Sec. 2-159. Definitions.**

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

*Contractual services* includes all types of services required by the town, but typically not furnished by its own employees, except for professional services typically provided by independent contractors which are by their nature typically not subject to competition. Contracts may be oral or written.

*Employment contract* means an agreement or term of hire that is extended from the town as an employer to a town employee to set the terms and conditions of employment. While usually a written document, these agreements can also be verbal.

*Independent contractor* includes professionals such as lawyers, accountants, contractors, subcontractors, surveyors, or auctioneers and the like who are in an independent trade, business, or profession in which they offer their services to the general public. An individual is typically an independent contractor if the town has the right to control or direct only the result of the work and not what will be done and how it will be done.

*Public improvement* means any improvement undertaken by the town, including construction or reconstruction in whole or in part of any road, bridge, street, building or water, sewer or storm drain facility or any similar structure or facility necessary in carrying out the activities of the town government.

*Purchasing agent* means the town administrator or department head, as applicable.

*Supplies* includes all commodities, materials, equipment and all other articles or things furnished to be used by any department or town official or employee.

(Ord. No. 2022-06, § 2, 11-22-2022)

## Sec. 2-160. Specific regulations.

(a) *Under \$10,000.00.* Expenditures for supplies, materials, equipment, construction of public improvements or contractual services involving less than \$10,000.00 shall be made by the mayor, provided the amount of the procurement is appropriated within the approved budget and the term is for one year or less.

(b) *\$10,000.00 to \$75,000.00.* Except as otherwise provided in this section, expenditures for supplies, materials, equipment, construction of public improvements or contractual services involving \$10,000.00 to \$75,000.00 shall be made by the board without requiring any quotes, advertisements offering sale, or proposals or through the use of any other competitive procurement methods; however, a majority of the board present and voting may elect to require any such competitive method so designated be used.

(c) *\$75,000.01 or above.* Except as otherwise provided in this section, expenditures for supplies, materials, equipment, construction of public improvements or contractual services involving \$75,000.01 or above shall be subject to a competitive procurement process determined by the board unless the board, by supermajority vote of the full board, finds another method of procurement, as prescribed by this article, to be more advantageous. The board shall advertise for competitive sealed bids or another method of procurement in such manner as shall be prescribed by this article for all such competitive or other methods of procurement. All such competitively procured and other contracts exceeding \$75,000.00 shall be in writing and approved by the board before becoming effective.

(d) *Sole-source procurement.* Notwithstanding anything herein to the contrary, a contract involving \$75,000.01 or more may be awarded without using competitive procurement methods when the town administrator, under the supervision of the mayor, determines, after a review of available resources and the receipt of a written recommendation of the department head where applicable, that there is only one source reasonably available for the required item or service or there is limited time to efficiently and cost-effectively accomplish both the competitive procurement process and the public service or project in need of completion. The town administrator or department head shall negotiate, as appropriate, regarding price, delivery, and terms. A sole-source procurement shall be approved by the board.

(e) *Professional services.*

(1) For architectural, engineering, surveying, and planning services or the like, anticipated to be \$75,000.00 or less, the town administrator shall obtain multiple proposals when practical. The town administrator shall submit one or more proposals, with a recommendation, to the board for its determination. Services anticipated to be in amounts less than \$10,000.00 shall be subject to the provisions of subsection (a) of this section.

(2) All contracts for other professional services, such as accounting, auditing, legal and insurance, anticipated to be in excess of \$75,000.00 shall be subject to competitive procurement requirements but shall be approved subject to use of an alternative method of procurement as prescribed by the board on an individual basis by the board.

(f) *Employment contracts.* Employees are normally recruited and hired as "at-will" employees without an employment contract and the terms of employment are governed by the employee handbook and other personnel policies and regulations; however, the board may enter into employment contracts with individuals having unique skills, experience or special training and education. Employment contracts and recruitment shall not be subject to the competitive bid requirements governed by this article but shall be approved on an individual basis in accordance with the Charter and any other applicable law or policy.

(g) *Multiple purchases.* No anticipated contract or purchase shall be divided to avoid the requirements of subsection (b) of this section.

(h) *Awarding contracts.* Competitively procured contracts shall be awarded to the bidder or offeror who offers the lowest or best bid or offer, quality of goods and work, time of delivery or completion, and responsibility of bidders or offerors being considered. The board shall have the right to reject all bids, proposals or offers and re-advertise.

(i) *Alternative methods.* When the advertisement for sealed bids is impractical, unreasonable, or disadvantageous to the town, the purchasing agent may institute an alternative method by utilizing the open market. The purchasing agent shall obtain at least one price quote or offer and present it to the board with a recommendation.

The board may reject the method or the bids or offers or accept such as is in the best interests of the town.

(Ord. No. 2022-06, § 3, 11-22-2022)

**Sec. 2-161. Emergency purchases.**

(a) An emergency for purposes of this article shall be deemed to exist when a breakdown in equipment, machinery, and/or a threatened curtailment of essential services or a dangerous condition develops, or when any unforeseen circumstance arises causing curtailment or diminution of an essential service.

(b) In cases of emergency, the purchasing agent may directly purchase the required supplies or services. The purchasing agent shall, whenever practical, obtain three competitive informal bids and order from the lowest responsible bidder. The mayor shall be notified of the emergency, and a written record shall be prepared as promptly as possible concerning the circumstances of the emergency. A tabulation of any bids and the amount expended shall be presented to the mayor and board at its next meeting.

(c) The purchasing agent shall endeavor to reduce emergency purchases to a minimum by use of service contracts or other arrangements for standby services.

(d) This section shall be construed in harmony with section 10-27.

(Ord. No. 2022-06, § 4, 11-22-2022)

**Sec. 2-162. Written contracts.**

All supplies, contractual services, and capital improvements, where the estimated cost exceeds \$75,000.00, or a multi-year contract, shall be purchased by formal written contract with the lowest responsible bidder as detailed in section 2-164 unless another procurement process is authorized in accordance with the Charter. The following procedures shall be observed:

- (1) The purchasing agent shall cause appropriate written specifications to be prepared. The town may, but is not required to, use "value engineering" and/or "design/build" clauses in specifications and contracts for construction projects of sufficient size to offer reasonable opportunities for cost reduction. The town is encouraged to liberally include reasonable termination clauses for both cause and convenience in the contracts.
- (2) Advertisement to prospective bidders shall be given in at least one issue of a newspaper having general circulation in the town at least 15 days before the date for the opening of bids. The purchasing agent may also advertise in any publication, website or other platform which is particular to the proposed project, including advertisement on any state-mandated online procurement system. Such advertisement shall include a general description of the supplies or contractual services involved or the capital improvement to be undertaken and shall state where bid forms and specifications may be obtained and the place and time of opening bids.
- (3) Sealed bids shall be opened publicly by the purchasing agent and recorded by the town clerk. The purchasing agent shall review and evaluate the bids, then make a recommendation to the board at its next meeting. The board, by motion, shall award the contract to the lowest or best responsible bidder, except that the board may reject all bids, parts of all bids or all bids for any one or more items included in the proposed contract, or waive technical defects whenever, in its judgment, the public interest will be served thereby.
- (4) All contracts for supplies, contractual services, and capital improvements shall be signed on behalf of the town by the mayor or purchasing agent.

(Ord. No. 2022-06, § 5, 11-22-2022)

**Sec. 2-163. Negotiated adjustments.**

(a) If the lowest responsible bid exceeds the available funds as certified by the treasurer, the town administrator is authorized to negotiate an adjustment of the bid price in order to bring the bid within the amount of available funds when:

- (1) This can be achieved without materially changing the scope of the procurement; and

(2) When time or economic considerations preclude solicitation of work of a reduced scope.

(b) Any such negotiated adjustment shall be based only on eliminating independent deductive items specified in the invitation for bids.

(c) Regardless of the amount by which the bid exceeds available funds, the town may reduce the scope of the project during the budget year and allow for completion of the project in the next budget year.

(Ord. No. 2022-06, § 6, 11-22-2022)

**Sec. 2-164. Lowest responsible bidder or offeror.**

(a) In determining the lowest responsible bidder and the lowest or best bid or offer, the town shall consider:

(1) The ability, capacity, and skill of the bidder or offeror to perform the contract or provide the service required;

(2) Whether the bidder or offeror can perform the contract or provide the service promptly or within the time specified without delay or interference;

(3) The character, integrity, reputation, judgment, experience, and efficiency of the bidder or offeror;

(4) The quality of performance of previous contracts or services, with the town and/or with references provided;

(5) The previous and existing compliance by the bidder or offeror with laws and ordinances relating to the contract or service;

(6) Whether the bidder or offeror is in arrears on debt or contract or is a defaulter on surety or whether the bidder's or offeror's taxes or assessments are delinquent;

(7) Such other information as may have a bearing on the decision to award the contract.

(b) The town reserves the right to disqualify any bidder or offeror, whether an individual or an entity, who has been debarred or suspended from consideration for contracts by the town or any other state or local governmental entity.

(Ord. No. 2022-06, § 7, 11-22-2022)

**Sec. 2-165. Correction or withdrawal of bids or proposals.**

Correction or withdrawal of inadvertently erroneous bids or proposals before or after bid opening, or cancellation of awards based on such bid or proposal mistakes, may be permitted by the town administrator under the following conditions:

(1) Bids or proposals with mistakes discovered before bid opening may be modified or withdrawn upon written notice received by the town before the time of bid opening;

(2) After bid or proposal opening, no changes in bid or proposal totals, prices, or other provisions prejudicial to the town's interest or to fair competition shall be permitted;

(3) In lieu of bid or proposal correction, a bidder or proposer alleging a material mistake of fact may be permitted to withdraw its bid if:

a. The mistake is clearly evident on the face of the bid document or proposal; or

b. The bidder or proposer submits evidence which adequately demonstrates that a mistake of fact was made;

(4) All decisions to permit bids or proposals to be corrected or withdrawn based on bid or proposal mistakes shall be at the town's sole discretion.

(Ord. No. 2022-06, § 8, 11-22-2022)

**Sec. 2-166. Cooperative purchasing.**

In lieu of the competitive bid process outlined in this article, the town administrator may participate in cooperative or "piggyback" purchasing with other governments or intergovernmental associations, providing the

public notice for the bid, proposal or contract is in accordance with the rules and regulations of the soliciting entity.  
(Ord. No. 2022-06, § 9, 11-22-2022)

**Sec. 2-167. Purchase order procedures.**

(a) All purchase orders ~~will~~shall be signed by the town administrator or designee.

(b) Before any payment on a delivery ~~will~~shall be made, the purchasing agent will ensure that the item or services have been delivered in good condition.

(Ord. No. 2022-06, § 10, 11-22-2022)

**Sec. 2-168. Sale of any items, including supplies, equipment, and other materials.**

(a) The purchasing agent is authorized to exchange or trade in obsolete equipment or surplus supplies in lieu of full payment for new supplies or equipment.

(b) The purchasing agent may sell any town-owned items, including supplies, equipment and other materials which are determined to be surplus, obsolete, or no longer needed.

(c) Any personal property of the town exceeding \$10,000.00 in estimated potential market value shall be approved as surplus for disposal by the board of commissioners.

(d) The provisions of this section shall not apply to materials sold to the general public, including commemorative items, collectible items, or items marked with the town seal or name.

(Ord. No. 2022-06, § 11, 11-22-2022)

**Sec. 2-169. Credit cards.**

Certain employees may be authorized to utilize debit or credit card accounts established by the town in accordance with the financial policy adopted by resolution. These accounts shall not be used for personal business by any such employee. Receipts and all other documentation of any credit card use shall be provided to the town's finance team as soon as practicable after the use.

(Ord. No. 2022-06, § 12, 11-22-2022)

**Sec. 2-170. Additional provisions.**

(a) Except as provided in section 2-160(a), no elected official, department head, town administrator, clerk, treasurer or subordinate employee is authorized to enter into any contract for non-budgeted items for the town without the approval of the board, and the town shall not be liable on any such contract.

(b) No elected official shall direct that the town administrator, or a department head, procure goods or services from any specific person or entity except as provided by this article.

(c) Every contract, purchase or binding transaction shall be documented appropriately by written contract, receipt, invoice, voucher, or memoranda delivered in hard copy or electronically to the town's finance team.

(d) All vendors conducting business with the town must to be registered with the state department of assessments and taxation (SDAT) and found to be in good standing with the state.

(e) All requests for bids (RFBs) or other procurements exceeding \$50,000.00 shall be placed on eMaryland Marketplace in accordance with Ann. Code of Md., State Finance and Procurement article, § 17-502.

(Ord. No. 2022-06, § 13, 11-22-2022)

**~~Sec. 14. Severability.~~**

~~If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this ordinance, it being the intent of the Town that this ordinance shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase or portion thereof.~~

**~~Sec. 15. Sec. Headings, titles.~~**

~~Section headings, and titles, etc., are for the purpose of description or ease of use and do not form a part of the text of this Ordinance or any Code or text adopted hereby.~~

**~~Sec. 16. Existing liabilities.~~**

~~This Ordinance shall not discharge, impair, or release any contract, obligation, duty, liability, or penalty whatever existing on the date of its enactment. All suits and actions, both civil and criminal pending or which may hereafter be instituted for causes of action now existing or offenses already committed against any law or ordinance affected by the adoption of this Ordinance shall be instituted, proceeded with, and prosecuted to final determination and judgment as if this Ordinance had not become effective.~~

~~SECTION 17. BE IT FURTHER ENACTED AND ORDERED that this Ordinance shall take effect 20 calendar days after its final approval by the Board of Commissioners of the Town of Upper Marlboro, Maryland, provided that Charter Amendment Resolution 01-2022 amending Section 82-56 of the Town Charter is effective; otherwise, this Ordinance will become effective immediately after said resolution becomes effective pursuant to State law.~~

~~SECTION 18. BE IT FURTHER ENACTED AND ORDERED that this Ordinance shall repeal and replace Ordinance 2011-02 passed on July 5th, 2011.~~

**Sec. 2-171. Methods of sale of town property.<sup>7</sup>**

(a) Goods which have been found by the board of commissioners to have become surplus, obsolete or unusable, and whose current estimated value is \$10,000.00 or less, may be disposed of by competitive offers, price quotations or by public auction, trade or exchange for goods, or by price quotations or offers as provided for in goods over \$10,000.00 set forth herein.

(b) All goods which have been found by the board to have become surplus, obsolete or unusable and whose current estimated value exceeds \$10,000.00 shall be sold by one of the following methods:

- (1) Competitive sealed bid;
- (2) Competitive sealed proposal;
- (3) Competitive auction sale; or
- (4) Trade in or exchange for goods which are currently needed.

**Sec. 2-172. Appeals and remedies.<sup>8</sup>**

(a) Submission of bid protest. Any bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract must first seek resolution of such complaint by submitting a protest to the board of commissioners in writing. A protest, with respect to an invitation for bids or request for proposals, shall be submitted prior to the opening of said bids or proposals, unless the protestor did not know and did not have reason to know of the facts giving rise to the protest until after such date, in which case the protest must be submitted within ten calendar days after the facts became known, but in no event after the execution of a binding contract with the successful bidder.

(b) Suspension of procurement. In the event of a timely protest under subsection (a) of this section, procurement shall not proceed further until the dispute is resolved or until the board of commissioners makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the town.

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<sup>7</sup> Legal or Editorial Change: Ord. No. 2011-02, § 7. Method of sale of town property. While Ord. No. 2011-02 was specifically repealed, § 7 of such ordinance has been retained at the direction of the town attorney.

<sup>8</sup> Legal or Editorial Change: Ord. No. 2011-02, § 9. Appeals and remedies. While Ord. No. 2011-02 was specifically repealed, § 9 of such ordinance has been retained at the direction of the town attorney.

(c) *Submission and resolution of contract claim or protest.* Claims by a contractor against the town relating to a contract or bid shall be submitted in writing to the board of commissioners for a decision. Claims include, without limitation, controversies arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or revision.

(d) *Board of commissioners' decision.* The decision of the board of commissioners shall be promptly issued in writing and mailed or otherwise furnished to the contractor. This decision shall state the reasons for the decision and inform the contractor of the contractor's right of appeal under subsection (e) of this section.

(e) *Appeal to court.* The decision by the board of commissioners shall be final except that a contract dispute, bid protest, or controversy involving the sale of surplus property exceeding \$7,500.00 may be appealed to the circuit court for the county in accordance with title 7, chapter 200, "Judicial Review of Administrative Agency Decisions" of the Maryland Rules, provided that, notwithstanding the provisions of said title 7, chapter 200, the decision of the circuit court for the county shall be final and no further appeal may be filed with the state court of appeals or any other state appellate court, either by way of mandamus, injunction, certiorari, declaratory judgment, or otherwise.

**Sec. 2-173. Contract modification, change or adjustment.<sup>9</sup>**

Every contract modification, change order, or price adjustment under a contract with the town which exceeds \$5,000.00 shall be subject to prior approval by the board of commissioners after receiving a report from the president.

**Sec. 2-174. Right to reject bids, proposals and offers; bid security.<sup>10</sup>**

Whenever one or more bids, proposals or offers are submitted under the provisions of this article, the awarding authority, whether it is the board of commissioners or the president or designee, shall have the right to reject any and all such bids, proposals, or offers. All written contracts may be protected by such bonds, penalties, and conditions as the town may require.

**Secs. 2-175--2-201. Reserved.**

**ARTICLE VII. BOARDS, COMMISSIONS AND COMMITTEES**

**DIVISION 1. GENERALLY**

**Sec. 2-202. Authority, purpose, scope and definitions.**

(a) *Authority.* Pursuant to Ann. Code of Md., Local Government article, tit. 5, subtit. 2 (Ann. Code of Md., Local Government article, § 5-201 et seq.) and sections 82-16(2)(p) and 82-17 of the town Charter, the board of commissioners and the president shall be authorized pursuant to this division or any other duly enacted ordinance to create and establish certain offices, committees and other appointive bodies as deemed necessary to serve the best interests of the town.

(b) *Purpose.* In addition to authority stated in subsection (a) of this section, the purpose of this division is to authorize and set forth the practices, procedures and requirements for all town-appointed bodies serving the town. Every committee or other appointed body shall have a specific statement of purpose and function as approved by the appointing authority or otherwise prescribed by law. The size of each body shall be no less than three and no more than five people.

(c) *Scope.* Unless otherwise provided elsewhere in the ordinances of the town, the town Charter or by

<sup>9</sup> Legal or Editorial Change: Ord. No. 2011-02, § 11. Contract modification, change or adjustment. While Ord. No. 2011-02 was specifically repealed, § 11 of such ordinance has been retained at the direction of the town attorney and modified as directed by the town attorney.

<sup>10</sup> Legal or Editorial Change: Ord. No. 2011-02, § 12. Right to reject bids, proposals, proposals and offers, bid security. While Ord. No. 2011-02 was specifically repealed, § 12 of such ordinance has been retained at the direction of the town attorney and modified as directed by the town attorney.

authorized resolution, the provisions of this division shall apply to all committees or other appointed bodies established by the Charter, separate legislation of the board of commissioners, or by order of the president, as permitted by law.

(d) *Definitions.* The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Appointed official* means a person designated by an appointing authority to occupy a town office or perform some delegated power, function or duty on behalf of the town government. An appointed official includes a person appointed to serve on a board, commission, body or committee of the town.

*Appointing authority* means the board of commissioners or the president, as permitted by the town Charter or state law.

*Committee* means an ad hoc or standing body or individual to whom either the president or the board of commissioners have delegated or committed a particular duty in the expectation of their acts or recommendations being confirmed by the appointing authority. A committee's purpose may be solely advisory in nature. A committee may also include a standing group of persons with managerial, supervisory, governmental, planning or investigatory functions having certain expressly delegated powers or functions.

(Ord. No. 2019-02, § 1, 5-14-2019; Ord. No. 2022-08, § 1, 12-20-2022)

### **Sec. 2-203. Practices, procedures and governance.**

(a) *General.* All appointees of the various committees and other appointed bodies of the town shall abide by the rules, policies and practices stated in this division or by any other duly approved ordinance or resolution, including any approved organizational bylaws, or order to ensure the proper conduct of town business, proper administrative interaction with agencies outside of the town, and proper administration of employees, appointees and other bodies of the town.

(b) *Reports.* At each town regular or other designated meeting, a report from each committee or other appointed body shall be made by the chairperson or other proper designee to the board of commissioners.

(c) *Limitations.* Unless otherwise provided by state law, the town Charter, an ordinance or written resolution, including any organizational bylaws passed pursuant to this division, or another enabling ordinance, a committee or other appointed body shall not have any authority to act on behalf of the board of commissioners or the president, nor shall such committees or other appointed bodies conduct hearings or take testimony or public comment unless specifically authorized by resolution or recorded motion of the board of commissioners or as otherwise permitted by law. Organizational bylaws shall be approved by the board of commissioners.

(d) *Compensation and budget.*

(1) Appointed body members shall receive no compensation, although they may be reimbursed for actual expenses incurred in the performance of their duties in accordance with appropriations for the various bodies or purposes as made by the board of commissioners.

(2) In general, an individual committee or other body may not always have a defined budget. If a committee or other appointed body anticipates a need to expend funds not currently budgeted, it may request such funds through the president's office. Such a request must be reviewed and evaluated for need, and availability of funds, and approved by the president and board of commissioners. For those bodies having budgeted funds set aside for their purposes, no contract shall be entered into except as authorized by town procurement law.

(e) *Qualifications.* The president shall appoint all members of any appointed bodies created by ordinance or authorized resolution unless otherwise prescribed by other law. Unless prescribed otherwise by law, including any approved bylaws of the body, all bodies shall have appointees who shall meet the following qualifications for appointment:

(1) A member shall be a resident or business owner (including non-stock and not-for-profit organizations) residing or doing business in either the town's corporate limits or the greater Upper Marlboro area as described by the appropriate corresponding postal address;

- (2) A member shall not be a person employed by or under contract to the town except as a non-voting member or liaison; and
- (3) A member shall not be a convicted felon, unless otherwise waived by a unanimous vote of the board of commissioners.

(f) *Terms of appointment and removal.* Unless otherwise prescribed by law, the terms of appointment for the various appointed bodies shall generally be one year; however, certain appointments may be for two years. Bodies formed for specific purposes may not have definite terms and may exist only until the ordained or ordered purpose is accomplished. The following requirements shall also apply to terms of appointment, and removal or suspension of members:

- (1) Committee members shall be appointed in January of every even year and serve for a term of two years;
- (2) Upon appointment and as a condition thereof, an appointed official shall take and subscribe to the oath or affirmation of office as provided for in section 82-85 of the town Charter;
- (3) Members are free to resign at any time, should their personal circumstances prevent continued effective service. A letter of resignation or other writing shall be submitted to the town clerk; and
- (4) Excessive absenteeism, excluding short-term illness or necessary travel, is cause for removal of a committee member or other appointee. Unless otherwise prescribed by law, a body's appointee may be removed from office for cause or without cause by the president.

(g) *Meetings.* The body or committee shall be responsible for setting the proposed meeting agenda, unless the body decides on another procedure. A commissioner and/or a staff member may be assigned to coordinate with each body and may assist in drafting the agenda, scheduling meetings, and in the preparation and distribution of meeting materials. The following operating policies and procedures shall also apply:

- (1) Except for those committees and other bodies that have adopted their own bylaws or rules of procedure, as approved by the board of commissioners, and unless otherwise specified by law, the most recent edition of Robert's Rules of Order, Newly Revised, shall generally be followed when conducting meetings;<sup>11</sup>
- (2) All committee and other body meetings shall be open to the public after reasonable notice is given and conducted in accordance with the Maryland Open Meetings Law Act (Ann. Code of Md., General Provisions article, § 3-101 et seq.). A body may convene in closed session only for those reasons set forth in ~~State Government Article, Section 10-508(a) of the Annotated Code of Maryland~~ Ann. Code of Md., General Provisions article, § 3-305 and a body should consult with the town clerk prior to considering doing so;
- (3) Certain bodies may have standing meeting times, while others may meet on an as-needed basis. Unless otherwise prescribed by law, each committee or body may meet as frequently as necessary to carry out its responsibilities. A body may also cancel a meeting from time to time if there are no agenda items in need of consideration or if a quorum cannot attend. A quorum for conducting business shall be a simple majority of the membership of the committee or other body;
- (4) Minutes should be kept in accordance with state law and town regulations regarding meetings, be brief and should essentially reflect decisions, motions, consensus, votes or recommendations of the body. A copy of the minutes should be sent to the town clerk for custodial purposes, who shall forward a copy to the appointing authority; and
- (5) The board of commissioners recognizes the importance of civil discourse at all levels of the government, including for those who volunteer their time and services on behalf of the town. Bodies and committees should conduct themselves so as to maintain public confidence in their municipal government and in the performance of the public trust. Disruptive behavior may result in removal from the meeting by the

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<sup>11</sup> Legal or Editorial Change: Ord. No. 2019-02, § 2(G). Meetings—Robert's Rules. Altered to reference the most recent edition of *Robert's Rule of Order, Newly Revised*.

chairperson or the committee of any person responsible for such behavior.

(h) *Town property.* Property purchased with town funds either directly or through reimbursement is the property of the town. Items donated to a committee are the property of the town and shall not be disposed of without proper authority.

(Ord. No. 2019-02, § 2, 5-14-2019; Ord. No. 2022-08, § 2, 12-20-2022)

**Sec. 2-204. Liability and indemnification; communications.**

(a) *Member liability.* Appointed officials or members of a town-appointed body are considered municipal officials, regardless of whether they receive compensation. Subject to certain exceptions and limitations, state law allows a municipality to indemnify its officials and employees from personal financial loss, while acting in a discretionary capacity, without malice, and within the scope of the official's authority. The town has purchased liability insurance policies for this purpose and intends to indemnify and defend its duly appointed committee or other body members in substantially the same manner as its other appointed and elected officials.

(b) *Email usage.* The use of electronic mail creates certain issues related to the state open meetings and public records laws. There is no distinction in the law between written and electronic records. As a result, it is likely that email messages written or received in the capacity of a committee or body member are public records which must be made available for public inspection in the same manner as hardcopy documents. Use of one's own home computer and personal email accounts may not exempt such communications, depending on the context. Unless subject to a privilege provided for by law, employees and committee members acting in their official capacity should have no expectation of privacy in the use of electronic mail for town purposes. Appointees are encouraged to establish or obtain separate email accounts from the town or another provider dedicated solely for their use as a town official.

(c) *Public speaking and communication from town or town committee email or social media accounts.* An individual appointed member has a right to speak publicly as a private citizen but should not purport to represent the town, the body or committee or exercise the authority of the body or committee except when specifically authorized by that body to do so. If members identify themselves as members when speaking as private citizens, it may be perceived that they speak for the body or committee. Such a perception should be avoided. A member who creates this perception may have their access removed from town and committee accounts and may be removed from the committee by the appointing authority.

(Ord. No. 2019-02, § 3, 5-14-2019; Ord. No. 2022-08, § 3, 12-20-2022)

**Secs. 2-205--2-231. Reserved.**

DIVISION 2. HISTORICAL COMMITTEE

**Sec. 2-232. Established.**

There is hereby established the town historical committee.

(Ord. No. 2022-07, intro, 11-22-2022)

**Sec. 2-233. Reports and budget.**

The historical committee shall report to the board of commissioners, in accordance with its bylaws and section 2-203, and submit a proposed budget during the month of March of each year, to the town president.

(Ord. No. 2022-07, § 1, 11-22-2022)

**Sec. 2-234. Open meetings.**

The meetings of the historical committee are subject to the Open Meetings Act (Ann. Code of Md., General Provisions article, § 3-101 et seq.).

(Ord. No. 2022-07, § 2, 11-22-2022)

**Sec. 2-235. Bylaws.**

The historical committee shall adopt new bylaws in accordance with this article for approval by the board of

commissioners as soon as practicable.

(Ord. No. 2022-07, § 3, 11-22-2022)

~~RESOLUTION: 2020-01<sup>12</sup>~~

~~SESSION: Regular Town Meeting~~

~~DATED: January 14th, 2020~~

~~A RESOLUTION FOR THE PURPOSE OF DESIGNATING THOSE PERSONS IN ADDITION TO THE TREASURER WHO SHALL BE AUTHORIZED TO SIGN CHECKS, CERTIFICATES OF DEPOSIT AND OTHER BANK INSTRUMENTS ISSUED ON BEHALF OF THE TOWN WHEN THE NEED ARISES AND THE TREASURER IS UNAVAILABLE, AND ESTABLISHING THE DOLLAR AMOUNT ABOVE WHICH ALL CHECKS MADE PAYABLE BY THE TOWN SHALL BE ISSUED AND SIGNED BY THE TREASURER AND PRESIDENT OR TWO OTHER PERSONS DESIGNATED HEREIN OF WHICH AT LEAST ONE IS TO BE A COMMISSIONER.~~

~~WHEREAS, Charter Section 82-46 of The Town of Upper Marlboro, as amended by Charter Amendment Resolution 01-2012 effective October 31, 2012, requires that all checks issued in payment of salaries or other municipal obligations shall be issued and signed by the Treasurer, and that the Board of Commissioners may further authorize persons other than the Treasurer when the need arises and the Treasurer is unavailable to sign checks issued by the Town, and furthermore, the Board shall establish a dollar amount above which all checks must be co-signed by the Treasurer and President, or in their absence, two other designated persons of which at least one shall be a commissioner; and~~

~~WHEREAS, the Town Commissioners wish to carry out the intent of said Charter Section 82-46 by naming the designated persons to sign checks when the need arises, and the Treasurer is unavailable and establish the dollar amount above which checks require two authorized signatures.~~

~~WHEREAS, the Town Election conducted on January 6, 2020 has resulted in a change in the members of the Board of Town Commissioners, specifically the Commissioner designated and named in Resolution 2019-09 as an authorized alternate signer of checks in the absence of the President, and/or, the Treasurer.~~

~~NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners for The Town of Upper Marlboro, sitting in regular session this 14th day of January, 2020, that Commissioner Kai Bernal LeClaire, who is the duly appointed Treasurer, is authorized to sign any forms, contracts, or agreement on behalf of the Town for the establishment of safety deposit boxes and general banking and financial services for the Town, to include checking and savings accounts, CDs, money market accounts and other similar financial and investment instruments, and to perform all general activities associated therewith to, including serving as the required signatory or authorized individual on all checks, deposits, withdrawals and fund transfers as needed and in accordance with the Town's Charter and fiscal policies, and be it~~

~~FURTHER RESOLVED, that President Linda Pennoyer shall serve as substitute or additional signatory on all checks, deposits, withdrawals and fund transfers in the event there is a need and the Treasurer is unavailable, provided that all checks above \$5,000.00 made payable by the Town shall be issued and co-signed by the Treasurer and President, and if either or both or their unavailability or incapacities, the following two other designated persons shall so serve of which at least one is a commissioner: 1.) Commissioner Wanda M. Leonard, and 2.) Town Clerk, M. David Williams, and be it~~

~~FURTHER RESOLVED, that this Resolution will supersede Resolution 2019-09 immediately upon the date of its passage, and be it~~

~~FURTHER RESOLVED, that any financial institution doing business with the Town is hereby authorized to honor, receive, certify, or pay all checks, CDs or other instruments signed by persons as authorized by the Town~~

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<sup>12</sup> Legal or Editorial Change: Res. No. 2020-01. Authority to sign checks, etc. Deleted as not of a general and permanent nature. This resolution authorizes specific named individuals to take action.

~~Charter and this Resolution, and be it~~

~~FURTHER RESOLVED, that the foregoing Resolution and designation of persons authorized to sign checks or other instruments pursuant hereto, shall remain in full force and effect until written notice of its amendment, modification or repeal, shall have been received by the Town's banks or financial institutions and that receipt of such notice shall not affect any action taken by a financial institution prior thereto, and be it~~

~~FURTHER RESOLVED, that this Resolution shall take effect immediately upon passage.~~

~~(Res. No. 2020-01, 1-14-2020)~~

PROOFS

Chapter 3  
**RESERVED**

PROOFS

Chapter 4  
ANIMALS  
(RESERVED)

*ORDINANCE:*            ~~No. 83-2~~<sup>13</sup>  
*SESSION:*             Regular  
*Date:*                    March 8, 1983

~~An ordinance to prohibit the use of public paved streets and sidewalks in the corporate limits of the Town of Upper Marlboro by horses and their riders.~~

~~BE IT ENACTED AND ORDAINED by the Board of Town Commissioners for the Town of Upper Marlboro, Maryland, that a new ordinance, Ordinance No. 83-2, be and is hereby enacted and is to read as follows:~~

~~**Sec. I:**~~

~~It shall be unlawful for persons to ride or lead horses along the paved streets and sidewalks in the corporate limits of the Town of Upper Marlboro.~~

~~(Ord. No. 83-2, § I, 3-8-1983)~~

~~**Sec. II: penalty.**~~

~~Any person, firm, or corporate corporation violating any of the provisions of this Ordinance shall be liable to a fine or penalty of not less than Fifty Dollars (\$50.00) or more than One Hundred Dollars (\$100.00) for each offense.~~

~~(Ord. No. 83-2, § II, 3-8-1983)~~

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<sup>13</sup> Legal or Editorial Change: Ord. No. 83-2. Horses on streets and sidewalks. Deleted as obsolete.

Chapter 5  
**RESERVED**

PROOFS

Chapter 6  
BUILDINGS AND BUILDING REGULATIONS  
ARTICLE I. IN GENERAL

SESSION: Regular<sup>14</sup>  
DATE: September 13, 1988  
ORDINANCE: Ordinance 88-2

~~An Ordinance relating to traffic and parking control by restricting building heights and prescribing penalties for its violation.~~

**Sec. 1.**

BE IT ENACTED AND ORDAINED by the Board of Town Commissioners for the Town of Upper Marlboro, that a new Ordinance, Ordinance 88-2, be and hereby is, enacted to read as follows:

**Sec. 88-2.1. Applicability of ordinance.**

~~— The provisions herein shall apply to any new construction within the current corporate limits of the town.~~  
(Ord. No. 88-2, § 1(88-2-1), 9-13-1988)

**Sec. 88-2.2. Declaration of legislative intent.**

~~— The Board of Town Commissioners finds and determines that the continuous growth and development of the town requires the reasonable and effective control and regulation of the excessive automobile and pedestrian traffic and automobile parking and that the governmental buildings be provided predominance.~~  
(Ord. No. 88-2, § 1(88-2-2), 9-13-1988)

**Sec. 88-2.3. Building height.**

~~— It shall be unlawful for any person as owner or agent in charge of construction to build any building that e Legal Analysis xceeds two stories in height above ground level.~~  
(Ord. No. 88-2, § 1(88-2-3), 9-13-1988)

**Sec. 88-2.4. Violations; penalties.**

~~— If it is determined by the Board of Town Commissioners or its designee that any owner or agent in charge of construction builds or attempts to build any building exceeding the proscription 88-2-3, a fine of \$250.00 shall be imposed.~~

~~— Each day the violation continues is deemed a separate offense and is subject to an additional citation and fine in the same dollar amount as mentioned in paragraph (a) of this section.~~  
(Ord. No. 88-2, § 1(88-2-4), 9-13-1988)

**Sec. 88-2.5. Action upon noncompliance.**

~~— If the violation is not corrected within a reasonable time period, the Town is hereby authorized and empowered to seek injunctive relief in the Circuit Court for Prince George's County, Maryland, to have the owner or agent in charge of construction remove the violation.~~

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<sup>14</sup> Legal or Editorial Change: Ord. No. 88-2. Building height. Per the town attorney, deleted as ultra vires. This is an attempted exercise of zoning powers.

(Ord. No. 88-2, § 1(88-2-5), 9-13-1988)

**Sec. 2.**

~~BE IT FURTHER ENACTED that this Ordinance shall take effect 20 days after its adoption by the Town of Upper Marlboro, Maryland.~~

(Ord. No. 88-2, § 2, 9-13-1988)

<i>ORDINANCE:</i>	<i>88-3 Flood Control</i> <sup>15</sup>
SESSION:	Regular
DATE:	November 8, 1988

~~AN ORDINANCE concerning~~  
~~Flood Control~~

~~FOR the purpose of protecting land and property in the area designated as a flood hazard area and provisions for penalties for the violation of its provisions.~~

**Sec. 1.**

~~BE IT ENACTED AND ORDAINED by the Board of Town Commissioners for the Town of Upper Marlboro, that a new Ordinance, Ordinance 88-3, be and hereby is, enacted to read as follows:~~

**Sec. 88-3.1. Definitions.**

(a) ~~Flood hazard area: "Flood hazard area" means an area of title or non title inundation resulting from a one hundred year flood event as established by the Department of Natural Resources of the State of Maryland. Pursuant to §8-9A-03 of the Natural Resources Volume of the Annotated Code of Maryland the environment pursuant to Ann. Code of Md., Environment article, § 5-803.~~

(b) ~~One hundred year flood event; one hundred year flood: "One hundred year flood event" or "one hundred year flood" means a flood that has a one percent chance of being equalled or exceeded in any given year.~~

(c) ~~Person: Any person, corporation, association, partnership, firm, syndicate, joint venture, or organization of any kind holding title to any land or lot within the Town; a lessee, tenant, or principal occupant of any land or lot within the Town or an agent of a person holding title to such land or lot, having care, custody, control or management of the land or lot; or a fiduciary holding title to or having the care, custody, control, or management of such land or lot within the Town for another.~~

(d) ~~Town: The Incorporated Town of Upper Marlboro, Maryland.~~

(Ord. No. 88-3, § 1(88-3-1), 11-8-1988)

**Sec. 88-3.2. Construction in flood hazard area prohibited.**

~~No person shall construct any structure requiring a building permit in the flood hazard area within the corporate limits of the Town of Upper Marlboro.~~

(Ord. No. 88-3, § 1(88-3-2), 11-8-1988)

**Sec. 88-3.3. Same exceptions.**

~~Upon the appropriate showing with the Department of Natural Resources of the State of Maryland, Prince George's County, and the United States Army Corps of Engineers, any land owned by any federal, state or local government may be utilized for building provided the said building will be for a public purpose.~~

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<sup>15</sup> Legal or Editorial Change: Ord. No. 88-3. Flood control. Deleted per the town attorney as ultra vires. This is an attempted exercise of zoning powers.

(Ord. No. 88-3, § 1(88-3-3), 11-8-1988)

**Sec. 88-3.4. Applicability.**

The provisions herein shall apply to any improved or unimproved real property located within the Town.

(Ord. No. 88-3, § 1(88-3-4), 11-8-1988)

**Sec. 88-3.5. Notice to remove.**

Whenever the Town finds that the requirements set forth in Section 88-3-2 of this Ordinance have been violated, it shall notify in writing, the owner, or the person responsible for the maintenance of the property, to remove or properly dispose of the structure from the subject property. Such notice shall be by certified mail and addressed to said owner, or other responsible person, at the last known address or the address shown on the real property tax records in the Treasurer's Office for Prince George's County. Such notice shall be deemed complete and sufficient. In the event that such notice is returned by the postal authorities, the Town shall cause a copy of the notice to be personally served by an authorized representative upon the owners or occupants of the property or upon any agent of the owner thereof. In the event that personal service cannot be accomplished, as aforesaid, after reasonable efforts, then notice shall be accomplished by physical posting upon said property.

(Ord. No. 88-3, § 1(88-3-5), 11-8-1988)

**Sec. 88-3.6. Appeals to violations.**

A written appeal may be accepted by the Board of Town Commissioners within 30 days of the notice of violation as defined in Section 88-2-5. If such a written appeal is filed, it shall be the duty of such person filing the appeal to appear before the Town Commissioners, at a time and date set by the Town Commissioners, when a hearing shall be accorded such person.

(Ord. No. 88-3, § 1(88-3-6), 11-8-1988)

**Sec. 88-3.7. Violation; penalties.**

— If the owner or responsible party fails to correct the violation within the prescribed time period, then he shall be subject to a monetary fine of Two Hundred Fifty and no/100 (\$250.00) Dollars for the first violation, Two Hundred Fifty and no/100 (\$250.00) Dollars for a repeat of the same violation, Two Hundred Fifty and no/100 (\$250.00) Dollars for the third violation, and Five Hundred and no/100 (\$500.00) Dollars for each repeat violation in excess of three violations.

— Each day the violation continues is deemed a separate offense and is subject to an additional citation and fine in the same dollar amount as the initial or repeat citation.

(Ord. No. 88-3, § 1(88-3-7), 11-8-1988)

**Sec. 2.**

BE IT FURTHER ENACTED that this Ordinance shall take effect 20 days after its adoption by the Town of Upper Marlboro, Maryland.

(Ord. No. 88-3, § 2, 11-8-1988)

**Secs. 6-1--6-18. Reserved.**

**ARTICLE II. BUILDING AND PERMITTING**

**Sec. 6-19. Scope.**

This article applies to all residential and commercial properties within the corporate boundaries of the town.

(Ord. No. 2017-01, § 1, 3-14-2017)

**Sec. 6-20. Town code enforcement.**

(a) The administration and enforcement of the provisions of this article are assigned to the code enforcement official or designated representative.

(b) The code enforcement official or designated representative shall be the authorized person responsible for

the enforcement of the provisions of this article, including the assessing of fines and penalties for violations of the provisions of the article.

(Ord. No. 2017-01, § 2, 3-14-2017)

**Sec. 6-21. Powers, duties, and functions.**

The code enforcement official or designated representative shall have the following powers, duties and functions:

- (1) Upon issuance of a county building permit, the code enforcement official or designated representative shall endeavor to monitor and may further inspect all construction projects and ensure strict adherence to the approved plans and specifications.
- (2) In the event of violation, deviation, or irregularity, the code enforcement official or designated representative shall:
  - a. Notify and consult with the board of commissioners;
  - b. Advise the property owner and/or contractor of the infraction and specify the time by which said infraction shall be corrected;
  - c. Issue a stop work order should the infraction not be corrected promptly;
  - d. Remove a stop work order when reason for said stop work order has been corrected.
- (3) The code enforcement official, in accordance with the town administration procedures, shall keep on file all applications, plans, and other pertinent building records associated with the issuance and active review by the town of a building permit.
- (4) The code enforcement official or designated representative shall have the right, upon proper identification, to enter upon private property so far as is necessary for the performance of duties.

(Ord. No. 2017-01, § 3, 3-14-2017)

**Sec. 6-22. Building code.<sup>16</sup>**

The building code of the town shall be the current building code of the county, as amended from time to time. ~~The official Building Code of Prince George's County substantially adopting the International Building Code, 2015 Edition, and other related codes together with the changes, deletions, or modifications prescribed in said codes, as amended from time to time.~~ Such code shall apply to all buildings being constructed in the town.

(Ord. No. 2017-01, § 4, 3-14-2017)

**Sec. 6-23. Building permits.**

(a) A county building permit is required for all construction within the corporate limits of the town when required by the county code.

(b) For the purposes of this article, the issuance of a county building permit including any conditions placed on the permit for property located with town by operation of law shall be considered the town's building permit.

(c) County building permits must be posted in full view on the property where work is being performed. Upon request, the permittee shall be obligated to provide the town with copies of any other permit records, forms or plans that were submitted in support of the relevant county building permit application.

(d) Except as stated herein, it shall be unlawful to deviate in any manner from the approved building permit unless written approval is obtained from the code enforcement official or designated representative. Any post-issuance order or modification approved in writing by the county pertaining to a county building permit shall be considered by operation of law to be an authorized modification of the town building permit.

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<sup>16</sup> Legal or Editorial Change: Ord. No. 2017-1. Building Code. Changed to reference only the Prince George's County reference.

(e) Failure to comply will result in a town "stop work order" notice being posted at the property by the code official, in which all construction shall immediately cease until the order is lifted.

(Ord. No. 2017-01, § 5, 3-14-2017)

**Sec. 6-24. Roll-off container permits.**

(a) A town roll-off container permit shall not be required whenever a roll-off container (dumpster, portable storage unit, or other container) is placed on private commercial, industrial or residential property for less than 15 calendar days.

(b) Any roll-off container unit placed on town property or any town right-of-way or town street shall require a permit prior to being placed. The permittee accepts all responsibility for any damage caused by placement of the container.

(c) If any roll-off container is found to remain on the property for over 15 days, the owner must submit a roll-off container permit application in a timely manner to the town for review by the board of commissioners. If the permit is denied by the board of commissioners, the roll-off container shall be removed immediately after 15 calendar days of being placed on the property.

(d) The property owner shall make the best attempt to have the unit sited on asphalt, concrete, gravel, or hard paved surface. The roll-off container cannot encroach on neighboring property or on town property or on a town right-of-way, sidewalk or street without the prior approval of the board of commissioners and/or the neighboring property owner.

(e) The roll-off container unit may not be used as a transfer station to which building or construction debris, other materials or waste is brought from another site and deposited into the roll-off container unit sited on a property situated in the town.

(f) All roll-off units shall be in good condition, free of rust, peeling paint or other visible forms of deterioration.

(g) When a town permit is issued after 15 days of the container being placed on the property, said permit shall be conspicuously visible from the street. Failure to obtain a permit after 15 days shall result in a daily fine until the container is removed or a permit is obtained.

(Ord. No. 2017-01, § 6, 3-14-2017)

**Sec. 6-25. Right of appeal.**

(a) Any person, firm or corporation aggrieved by a decision of the code enforcement official or other designated representative authorized to enforce this article shall have a right of appeal to the board of commissioners.

(b) Any person affected by any notice of violation which has been issued in connection with the enforcement of any provision of this article may request and shall be granted a hearing on the matter by the board of commissioners, provided such person shall, within 15 calendar days after service of a notice of violation, file with the board of commissioners a signed written notice of appeal requesting a hearing and setting forth a brief statement of the reasons therefor. Upon receipt of such notice of appeal, the board of commissioners shall set a time and place for such hearing and shall decide appeals as promptly as practicable.

(c) The board of commissioners, with a quorum present, shall hear appeals. After such hearing, the board of commissioners may, by a majority of members present, affirm, amend, modify or withdraw the notice of violation that has been appealed. Any person who shall fail, refuse or neglect to comply with the decision of the board of commissioners shall be guilty of violating the provisions of this article.

(d) In the event a person wishes to contest the decision of the board of commissioners, such person may notify the town of said person's intent within ten days after the rendering of the decision by the board of commissioners. In that event, the town shall issue a municipal infraction citation to the aggrieved person, who may request a hearing in the district court of the state pursuant to the municipal infraction procedure found in Ann. Code of Md., Local Government article, § 6-101 et seq. The decision of the board of commissioners in such a case shall be stayed, pending a decision by the district court.

(e) To the extent of this section, all violations of this article will be considered municipal infractions of the town.

(Ord. No. 2017-01, § 7, 3-14-2017)

**Sec. 6-26. Rules and regulations.**

The board of commissioners may pass such rules and regulations from time to time as are consistent with the purpose, intent and enforcement of this article.

(Ord. No. 2017-01, § 8, 3-14-2017)

**Sec. 6-27. Violations and enforcement.**

Violation of any provision of this article shall be subject to a fine and/or penalty, as laid out in this article. Failure to pay a fee or a fine will result in the amount of any fines incurred being recorded as a lien against the property and collected in the same manner as delinquent taxes after 60 calendar days of issuance. It shall be the duty and responsibility of the town to enforce the provisions of this article as herein provided.

(Ord. No. 2017-01, § 9, 3-14-2017)

**~~10. Separability.~~**

~~Should any part of this Ordinance be held invalid, the Board of Town Commissioners declares that it would have adopted all other provisions notwithstanding such illegality of a part and all remaining parts shall remain in effect.~~

~~(Ord. No. 2017-01, § 10, 3-14-2017)~~

**Sec. 6-28. Fines.**

(a) The fine for failure to obtain a town roll-off container permit after 15 calendar days shall be \$25.00 per day the property remains in violation until container removal or issuance of a permit.

(b) The fine for failure to comply with a town-issued stop work order shall be \$150.00 per day construction continues.

(Ord. No. 2017-01, § 11, 3-14-2017)

**Sec. 6-29. Use of resolutions for fines, penalties and fees.**

The board of commissioners of the town may set the fines, penalties, and fees associated with violating this article from time to time by resolution.

(Ord. No. 2017-01, 3-14-2017)

**Secs. 6-30--6-46. Reserved.**

**ARTICLE III. RESIDENTIAL EXTERIOR PROPERTY STANDARDS**

**Sec. 6-47. Definitions.<sup>17</sup>**

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

*Abandoned, junked, wrecked, or non-road-worthy motor vehicle* means any motor vehicle which is unregistered, improperly registered, or which is without current state license tags unless:

- (1) The state expressly exempts such vehicles from registration requirements;

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<sup>17</sup> Legal or Editorial Change: Ord. No. 2016-03, Residential Exterior Property Standards Ordinance, § 3. Definitions. In the definition of foreclosed property registry, corrected title of state official and state law reference. See Ann. Code of Md., Real Property article, § 7-105.2(a)(2).

- (2) It bears the license tags of another vehicle;
- (3) It is disabled or inoperable;
- (4) It is dismantled or partially dismantled;
- (5) It is substantially damaged or in disrepair; or
- (6) It is unable to pass inspection by the state motor vehicle administration.

*Accessory structure* means a building or structure, retaining wall, wall or fence that is incidental to the main building located on the property.

*Agent* means any person or company designated by the property owner to act for said property owner.

~~*Board of commissioners* means the president and commissioners of the town.~~

*Debris, litter, or garbage* means any quantity or combination of: putrescible animal, food and vegetable wastes resulting from the cooking, handling, preparing and serving of foods; combustible and noncombustible waste materials; bulk refuse; electronics or electronic recyclables; hazardous material or waste; household refuse; refuse; trash; and yard waste, excluding organic compost piles, that is thrown, deposited or stored in or on private property or creates a nuisance or a threat to public health, safety and welfare.

*Exterior property area* means all areas external to improvements on the property or on unimproved property including the town right-of-way and adjacent street curb and gutter. The term "exterior property area" specifically excludes any trees along the town right-of-way.

*Foreclosed property registry* means the foreclosed property registry established by the ~~Maryland Department of Labor, Licensing, and Regulation under the Maryland Annotated Code, Real Property Article, § 14-126.1.~~ state commissioner of financial regulation under Ann. Code of Md., Real Property article, § 7-105.14.

*Hazard* means a situation, condition or action by a person that creates an environment that is unsafe or threatens public health, safety, or welfare.

*Paved parking area* means any asphalt, bluestone, bricks, brick pavers, pervious pavers, crushed gravel, poured concrete, other hard rock surface or other masonry-like material completed in a professional manner, rolled to a smooth or level surface and maintained free of loose materials or excessive vegetative growth, situated on the property behind the property line and located and accessed in accordance with the provisions of the county zoning ordinance.

*Property owner* means one who has complete dominion over a particular property and in whom legal or equitable title rests, when applied to a building or land. The term "property owner" further means any part owner, joint tenant in common, tenant by the entireties, or joint tenant, of the whole or part of such building or land. The term "property owner" may also include the owner or possessor of a leasehold interest in real property.

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

*Registry law* means Ann. Code of Md., Real Property article, § ~~14-126.1~~ 7-105.14.

*Repeat violator* means any person that has been noticed for two violations of this article in an 18-month period.

*Vacant property* means a residence that is not occupied on a regular and habitual basis by the property owner or any other person for the usual and customary purposes for which the residence is designed and lawfully permitted.

*Weeds* means brush, plants, or any noxious growth that is injurious to public health, agriculture, recreation, wildlife or property. The term "weeds" excludes properly tended trees, ornamental plants, flowers, vegetable plants, or undisturbed woodland not otherwise in violation of this article.

(Ord. No. 2016-03, § 5, 10-11-2016)

**Sec. 6-48. Purpose and authority.**

(a) The purpose of this article is to establish standards for the exterior maintenance of residential properties in the town, and to prevent conditions that threaten public health, safety or welfare of residents of, or visitors to, the town. This article creates the office of code enforcement officer for the enforcement of this article and other ordinances, and also establishes a system of notifications and penalties for violations to enforce the standards and a process to appeal any penalties imposed.

(b) The authority to provide for the general protection of health, safety, comfort, convenience, and welfare of town residents and visitors is provided in section 82-16(1) of the town Charter.

(c) The authority to enact such regulations is provided in section 82-16(vv) of the town Charter.

(d) The authority to impose fees and penalties for violating the regulations is provided in section 82-18 of the town Charter.

(e) The authority to create new offices and appoint officers is provided in section 82-59 of the town Charter.  
(Ord. No. 2016-03, § 1, 10-11-2016)

**Sec. 6-49. Applicability and scope of article.**

(a) The provisions of this article shall apply to all residentially-zoned real property located within the corporate limits of the town, whether improved or unimproved.

(b) The county housing code adopting with amendment the International Property Maintenance Code, 2000 Edition, as found in subtitle 13 of the county code and all divisions thereof as enforced by county officials shall remain in full force and effect within the corporate limits of the town; provided, however, that any conflict between this article or any other ordinances of the town, and any provision of subtitles 4 and 13 of the county code shall be resolved in favor of the provision which establishes the higher standard for the promotion and protection of the health and safety of the people. Unless a provision of county legislation conflicts with a provision of this article, nothing herein shall be construed to prevent the jurisdiction, applicability or enforcement of the county's ordinances regarding property maintenance or nuisances within the corporate limits of the town.

(c) This article shall be construed liberally and justly to ensure the public health, safety and welfare insofar as it pertains to residential property maintenance standards.

(Ord. No. 2016-03, § 2, 10-11-2016)

**Sec. 6-50. Code enforcement officer.**

(a) This article shall be enforced by a sworn police officer or by an appointed code enforcement officer of the town. The office of code enforcement officer is hereby created, ratified and established by this article. The appointment of a code enforcement officer shall be approved by ordinance or written resolution. The code enforcement officer shall be responsible to the president of the town board of commissioners.

(b) A code enforcement officer, appointed by the president, with the approval of the board, shall have the following powers, authorizations, duties, qualifications and functions:

(1) Subject to the requirements of the board of commissioners, the code enforcement officer shall, in addition to such other duties as may be assigned to said code enforcement officer by the president, enforce such laws and ordinances relating to property, buildings and structures as may be specifically provided.

(2) The code enforcement officer shall not have any interest whatever, directly or indirectly, in the sale or manufacture of any material, process or device entering into or used in or in connection with property maintenance or building construction within the town.

(3) The code enforcement officer may be authorized by the board of commissioners to enforce the town's ordinances and may deliver a municipal infraction citation, criminal misdemeanor violation summons, charging document or criminal citation to any person alleged to be committing or to have committed a municipal infraction or other violation.

(4) The code enforcement officer shall examine premises and shall make necessary inspections to see that the provisions of applicable laws or ordinances are complied with and that maintenance or use therein is

implemented pursuant to applicable laws. The code enforcement officer shall, when requested by the board or when the interests of the town so require, make investigations in connection with matters referred to within town ordinances and render written reports on the same. For the purpose of enforcing compliance with law, to remove illegal, nuisance or unsafe conditions, to secure the necessary safeguards, or to require adequate facilities in improved properties, the code enforcement officer shall issue notices or orders as may be necessary.

- (5) Unless posted or informed otherwise (i.e., no trespassing), the code enforcement or police officer shall have the right, upon proper identification, to routinely enter upon private property so far as is necessary for the performance of duties. The code enforcement officer's right of entry upon residential property shall be limited to entry for the purposes of obtaining consent from the owner or occupant to conduct an inspection or as otherwise permitted by law.
- (6) The president is hereby authorized and empowered to establish additional regulations and duties for any assigned code enforcement officer provided that said officer shall not be vested with police powers of arrest. Code enforcement officers are not authorized to carry firearms, and they shall not carry firearms while on duty. Said officers shall be assigned such duties as are civilian and administrative in nature that the president, from time to time, may direct, that are not inconsistent with the limitations and responsibilities set forth in town ordinances or state law and, in addition, the code enforcement officer shall be vested with the authority to issue parking citations, criminal citations and citations for municipal infractions as expressly provided for in each applicable provision or section of the town's ordinances.
- (7) The code enforcement officer shall keep careful and comprehensive records of applications, of relevant permits or certificates issued, of inspections made, of reports rendered, and of notices, citations or orders issued.

(c) In the absence or disability of the code enforcement officer, the president, with approval of the board, shall designate, by ordinance or written resolution, a qualified official or subordinate to discharge the duties of the code enforcement officer. Nothing in this section shall be construed to prevent the appointment of an existing town employee ~~and or~~ from having the additional or collateral duties of code enforcement officer.

(Ord. No. 2016-03, § 3, 10-11-2016)

#### **Sec. 6-51. Violations.**

The following are considered violations of this article:

- (1) *Condition of exterior property areas.* All exterior property areas shall be maintained in a reasonably clean and sanitary condition, free from any accumulation of debris, litter, stagnant water, or garbage. If pests are found, the property owner shall initiate the extermination process, which shall not be injurious to the health of humans or domestic animals.
- (2) *Tall grass and weeds.* All exterior property areas shall be properly maintained and no grass or weeds more than 12 inches tall, other than annual or perennial cultivated flowers, and plants, bushes, shrubs, garden and yard plantings, and trees properly maintained by the property owner or agent, shall be allowed to accumulate or grow on any private property. No vegetation shall be allowed to grow in, or into, the public curb, gutter or paved area of the right-of-way.
- (3) *Discarded vehicles.* It shall be unlawful for any person to discard any vehicle on any residential lot within the corporate limits of the town.
- (4) *Vehicle condition and storage.* No property owner or agent shall permit an abandoned, junked, wrecked, unregistered, or non-road-worthy motor vehicle as defined in this article to remain on such property, except when enclosed in a garage.
- (5) *Motor vehicle parts.* Exterior property areas shall not be utilized for the storage of motor vehicle parts.
- (6) *Exterior property storage.* Exterior property areas shall not be utilized for the open storage of building materials, bathroom or kitchen fixtures, furniture, or lawn and garden equipment, irrespective of age or condition, except for routine garden maintenance equipment, outdoor lawn furniture, or materials used in construction or renovation projects with the appropriate county and town permits.

- (7) *Wood storage.* The storage of wood and other materials not proscribed by this article, including organic compost piles, shall be accomplished in a manner designed to avoid rodents, termites and other insect infestation. Wood shall be stored at least six inches above the ground.
- (8) *Vegetation.* All vegetation located on exterior property areas shall be maintained in such a way so as not to pose a danger or obstruction to adjoining property, pedestrians or vision of any motorist.
- (9) *Parking surfaces.* A paved parking area must be accessed by a curb cut if the property has a curb installed along the street unless granted an exception by the board. The curb cut shall be constructed of poured concrete completed in a professional manner, situated totally within the public right-of-way, where applicable; constructed in accordance with the road ordinance or construction codes of the county and located in accordance with the county zoning ordinance. Grassy yards or other unpaved areas shall not be used for the parking of boats, motorcycles, motor vehicles of any type, trailers or similar items on a residential property except during a snow emergency. All wheels of said vehicle must be parked on an approved paved parking area in order to be in compliance with this article.
- (10) *Building security.* No property owner or agent shall allow vacant structures or property to become a public nuisance, safety or health hazard, or be in a condition that could encourage trespassing.
- (11) *Accessory structures.* No accessory structure shall pose a public health or safety hazard, or fall into disrepair. All accessory structures shall comply with county and town ordinances and any improvements to such accessory structures shall be duly permitted. A code enforcement officer or other town-designated representative may require a property owner, at the property owner's expense, to repair or replace a fence not in compliance with the county zoning ordinance. Any fence repair or replacement shall comply with provisions regarding location, height, and material in the county zoning ordinance.
- (12) *Premises identification.* All premises shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property.

(Ord. No. 2016-03, § 6, 10-11-2016)

**Sec. 6-52. Notice of violation of standards and penalty for violation.**

(a) Except for violations of the registry law, whenever the code enforcement officer, a sworn police officer or other designated town representative determines that there are reasonable grounds to believe that there has been, or is, a violation of any provision of this article or of any rule or regulation adopted pursuant thereto, the code enforcement officer, sworn police officer or designated representative shall give notice of such alleged violation to the person responsible therefor, as hereinafter provided, unless otherwise noted in this article. Such notice shall:

- (1) Be in writing;
  - (2) Include a description of the real property sufficient for identification;
  - (3) Include a statement of the reason why the notice is being issued with reference to the section of this article violated;
  - (4) Allow time, as set forth in this article, for the remedial action required to correct the violation; and
  - (5) Contain:
    - a. An outline of the remedial action which, if taken, will effect compliance with the provisions of this article and with the rules and regulations adopted pursuant thereto, if any; and
    - b. The requirement that the violation must be fully corrected within the timeframe specified in section 6-55. For each additional prescribed period that the violation is not fully corrected, notice will be issued of the fine amount as due and payable to the town. Fines for failure to take remedial action shall be established by resolution of the board of commissioners, but shall not exceed the amount of \$1,000.00. Failure to pay a fine may result in the amount of any fine imposed to be collected in the same manner as delinquent town taxes.
- (b) Service of notice that a person and/or property is in violation shall be as follows:
- (1) By delivery to the property owner or agent personally or by leaving the notice at the usual place of abode

of the property owner or office of the agent with a person of suitable age and discretion who shall be informed of the intent thereof; or

- (2) By appropriate means of mail addressed to the property owner or agent at the address provided to the town by the property owner or agent with postage prepaid thereon with return receipt requested; or
- (3) If the letter provided for in section (b)(2) of this section is returned with receipt showing non-delivery, then by posting a copy of the notice in a conspicuous place on the premises affected by such notice.

(Ord. No. 2016-03, § 7, 10-11-2016)

#### **Sec. 6-53. Town abatement.**

Provided that notice has been served pursuant to section 6-52, the town and its officials, employees and agents shall have the right, after 30 days of continued violation, to enter onto the premises of the property in violation to abate any violation. The costs of such abatement shall be charged to the property owner and, after attempting to deliver an invoice payable within 30 days to the property owner, may be collected in the same manner as delinquent town property taxes. If the property is vacant, upon serving notice, the town shall have the right to abate after 15 days of continued violation.

(Ord. No. 2016-03, § 8, 10-11-2016)

#### **Sec. 6-54. Vacant and foreclosed properties.**

(a) In the event that a code enforcement officer, sworn police officer or other town-designated representative determines that the condition of a vacant property constitutes a violation, a responsible person or occupant shall be notified of the violation of this article by certified mail and have 15 calendar days to correct the violation. If, after 15 days from the date of notification, the violation has not been corrected, the town and its officials, employees and agents shall have the right to enter upon the premises of the property in violation to abate any and all violations. Failure of the property owner to pay the town within 30 days for the cost of abatement upon the town's reasonable attempt to deliver an invoice may result in collection in the same manner as delinquent town property taxes.

(b) All foreclosed properties within the town shall register with the state foreclosed property registry. Failure to register a property located in the town under the registry law shall be a municipal infraction punishable by a fine of up to \$1,000.00 or as otherwise established from time to time by resolution.

(c) The code enforcement officer shall obtain access to the foreclosed property registry and maintain an updated list of all known vacant residential properties, and corresponding contact information, located within the town.

(Ord. No. 2016-03, § 9, 10-11-2016)

#### **Sec. 6-55. Timeframe for notices of standards and penalties of violation.**

~~The definitions below provide~~ Following are categories of timeframes for issuing the initial violation notice, a subsequent violation notice and assessment of penalties and fines:

- (1) *First offense.* For a first offense, a person shall have 15 days from the time the correction notice has been issued to correct the violation. If, after 15 days, the violation has not been corrected, another notice to correct which imposes a fine shall be issued. A recurring and cumulative fine and subsequent notice to correct shall be issued in seven-day intervals thereafter until the violation is corrected.
- (2) *Repeat offender.* For repeat offenders, a person shall have seven days from the time the correction notice was issued to correct the violation. If, after seven days, the violation has not been corrected, another notice to correct which imposes a fine shall be issued. A recurring fine and notice to correct shall be issued in seven-day intervals thereafter until the violation is corrected.

(Ord. No. 2016-03, § 10, 10-11-2016)

#### **Sec. 6-56. Repeat violations.**

(a) Unless otherwise noted in this article, two violations of the same type occurring within an 18-month period shall be considered a repeat of any previous violation and the property owner or agent shall be deemed a repeat violator. Repeat violations are subject to town abatement if not corrected within 21 days. The costs of such

abatement may be charged to the property owner and may be collected in the same manner as delinquent town taxes. A repeat violation may pertain to a subsequently noticed violation of the same or a different subsection of section 6-51.

(b) Unless otherwise noted in this article, if a property is issued three or more notices for the same violation occurring within an 18-month period, the property shall become subject to immediate fines.

(Ord. No. 2016-03, § 11, 10-11-2016)

**Sec. 6-57. Right to appeal.**

(a) Any person affected by any notice of violation and subjected to a fine may elect to appeal to the board of commissioners as follows:

- (1) Any person affected by any notice of violation which had been issued in connection with the enforcement of any provision of this article and subject to a fine may request and shall be granted a hearing on the matter by the board of commissioners, provided that such person shall, within ten days after service of a notice of violation, file with the board of commissioners a signed written notice of administrative appeal, requesting a hearing and setting forth a brief statement of the reasons therefor. Upon receipt of such notice of appeal, the board of commissioners shall set a time and place for such hearing and shall determine such appeals as promptly as practicable. The board of commissioners, with a quorum present, shall hear such appeals.
- (2) After such hearing, the board of commissioners may, by a majority of members present, affirm, amend, modify, rescind or withdraw the notice of violation with any assessed fine that has been appealed. Any person who shall fail, refuse or neglect to comply with the decision of the board of commissioners shall be deemed guilty of violating the provisions of this article.
- (3) In the event a person affected by a notice of violation and subjected to a penalty wishes to contest the decision of the board of commissioners, such person may notify the town clerk or designee of such person's intent within ten days after the rendering of the decision by the board of commissioners. In such event, the town shall issue a municipal infraction citation to the affected person, who may request a de novo trial in the district court of the state for the county pursuant to Ann. Code of Md., Local Government article, § 6-101 et seq. The decision of the board of commissioners in such a case shall be stayed, pending adjudication of the matter by the district court of the state for the county. To the extent of this section, any notice of violation of this article previously issued and made subject to adjudication shall be considered a municipal infraction of the town.

(b) Failure to pay any fine and/or cost of abatement included in a judgment awarded pursuant to adjudication may result in the amount of any fine, fee or cost imposed or sanctioned by the court to be collected in the same manner as delinquent town property taxes.

(c) An appeal of an assessment or collection of any fee or cost to abate any violation as permitted by this article that was not awarded pursuant to adjudication by the court may be sought pursuant to the procedures provided in Ann. Code of Md., Tax-General article, §§ 13-401 et seq., and 13-901 et seq.

(Ord. No. 2016-03, § 12, 10-11-2016)

**Sec. 6-58. Rental properties.**

All rental properties within the cooperate limits, regardless of zoning, shall be properly licensed and inspected, as required, by the county. The town shall notify the county in a timely manner of any unlicensed rental properties found as they are discovered.

(Ord. No. 2016-03, § 13, 10-11-2016)

**Sec. 14. Severability.**

~~If any section or part of a section of this Ordinance shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance.~~

~~(Ord. No. 2016-03, § 14, 10-11-2016)~~

**Sec. 6-59. Violation fines, fees and schedule.**

(a) Unless otherwise stated herein, violation of any provision of this article shall be subject to a fine and/or fee, which may be set or changed from time to time by resolution of the board of commissioners. Failure to pay any fee, fine, late fee and/or costs to abate, or incurred to repair damage to town property such as aprons, curbs, gutters, sidewalks, or streets will result in the amount of any fine, late fee or repair costs incurred being recorded as a lien against the property and collected in the same manner as delinquent taxes.

(b) A late fee not to exceed \$25.00 may be assessed for any fine, charge or invoice for abatement that is left unpaid for more than 30 days. A late fee may not be assessed unless included in the judgment if the violation is adjudicated in the district court.

(c) The initial fine and fee schedule established by this article is as follows:

<i>Category of Violation</i>	<i>Fine</i>	
	<i>1st Offense</i>	<i>Repeat, Multiple Offense</i>
Condition of exterior property areas (section 6-51(1))	\$50.00	\$100.00
Tall grass and weeds (section 6-51(2))	\$50.00	\$100.00
Discarded vehicles (section 6-51(3))	\$50.00	\$100.00
Vehicle condition & storage (section 6-51(4))	\$50.00	\$100.00
Motor vehicle parts (section 6-51(5))	\$50.00	\$100.00
Exterior property storage (section 6-51(6))	\$50.00	\$100.00
Wood storage (section 6-51(7))	\$50.00	\$100.00
Vegetation (section 6-51(8))	\$50.00	\$100.00
Parking surfaces (section 6-51(9))	\$25.00/incident	\$25.00
Building security (section 6-51(10))	\$50.00	\$100.00
Accessory structures (section 6-51(11))	\$50.00	\$100.00
Premises identification (section 6-51(12))	\$50.00	\$100.00

(Ord. No. 2016-03, § 15, 10-11-2016)

**Sec. 6-60. Resolution to set fines, penalties and fees.**

The board of commissioners may set the fines, penalties, and fees associated with violating this article from time to time by resolution.

(Ord. No. 2016-03, 10-11-2016)

**Sec. 6-61. Territorial applicability.**

This article shall be fully effective throughout the corporate territory of the town, including any subdivision governed by a homeowners or condominium association as defined by the Maryland Condominium Act (Ann. Code of Md., Real Property article, § 11-101 et seq.) and the Maryland Homeowners Association Act (Ann. Code of Md., Real Property article, § 11B-101 et seq.).

(Ord. No. 2016-03, 10-11-2016)

**Secs. 6-62--6-80. Reserved.**

## **ARTICLE IV. COMMERCIAL PROPERTY STANDARDS**

### **Sec. 6-81. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Where terms are not defined herein, or in any other applicable town ordinance, they shall have their ordinarily accepted meanings such as the context may imply. ~~Words used in the present tense include the future; words used in the masculine gender include feminine and neuter; and the singular includes the plural and the plural the singular.~~

*Abandoned, junked or wrecked motor vehicles* means any motor vehicle or not-over-the-road construction, grass cutting or like equipment which is without current license tags, required registration documents, inoperable, dismantled, or wrecked.

*Accessory structure* means a building or structure, the use of which is incidental to that of the main building, which is located on the property and under the control of the owners or operators of such premises.

*Agent* means a person authorized on behalf of the landlord/owner to make, contract for, and authorize repairs to a property; receive and comply with orders, notices and requests of the town; and accept all communications, notices, orders and all types of service of process, including, but not limited to, municipal violations and infraction citations relating to the property. The agent may be, but need not be, the operator of the property.

*Appurtenance or appurtenant structure* means all exterior decorative, aesthetic or other devices, such as, but not limited to, cupolas, flower boxes, and signage, that are attached to walls or railings, other parts of the structure, and exterior of the structure, which shall be maintained in a safe and weather-resistant condition.

~~E. Board of Commissioners means the sitting Board of Commissioners for Town of Upper Marlboro.~~

*Dumpster* means any container, receptacle, compactor unit, trailer, roll-off, or similar unit with or without wheels that is used for temporary storage, containment, or transport of refuse, debris, trash, garbage, food waste, solid waste, recyclable material, or other discarded or like materials.

*Exterior property areas* means all areas on unimproved real property or external to principal structures on improved real property, including state, county or town rights-of-way and adjacent street curbs, gutters and sidewalks. The term "exterior property areas" specifically includes any trees along or in the state, county or town rights-of-way.

*Extermination* means the control and elimination of insects, rats or other pests by eliminating their harborage places:

- (1) By removing or making inaccessible materials that serve as their food;
- (2) By poison spraying, fumigating, and trapping; or
- (3) By any other approved elimination methods.

*Garbage* means animal or human feces or animal, mineral or vegetable waste resulting from the cooking, handling, preparing and serving of foods or as otherwise defined in article III of this chapter and chapter 16, pertaining to solid waste.

*Graffiti* means the drawings or inscriptions that have been scratched, painted, rubbed, etched, gouged, cut, engraved, or built on property, buildings or any surface, public or private, usually so as to be seen by the public, which mar, blemish, deface, disfigure, blight (reduce in value), cause deterioration, damage, loss, erosion, mutilation, corrosion, or tarnish to said property, building or surface.

*Infestation* means the presence within, or contiguous to, a structure or premises of insects, rats, vermin or other pests.

*Litter* means garbage, rubbish or refuse, as defined in article III of this chapter or chapter 16, pertaining to solid waste, which:

- (1) Creates or tends to create a danger to the public health, safety, welfare or property, to the extent and in the manner that a lot, tract, or parcel of land is, or may reasonably become, infested or inhabited by rodents, vermin or wild animals;
- (2) May reasonably cause disease;
- (3) Adversely may affect and/or impair the economic welfare or status of adjacent property or the neighborhood; or
- (4) May reasonably constitute a present or potential fire hazard.

*Owner* means one who has complete dominion over particular property and who is the one in whom legal or equitable title rests, when applied to a building or land. The term "owner" means any part owner, joint tenant in common, tenant by the entireties, or joint tenant, of the whole or part of such building or land.

*Paved area* means any asphalt, bluestone, brick, brick paver, concrete, gravel or other hard rock or paved surface.

~~O. Person means any individual or entity as defined in Ordinance 88-1.~~

*Premises* means a lot, plot or parcel of land, including any structures thereon.

*Public nuisance* means any situation, condition or action whereby an agent, owner, occupant, property manager or tenant creates an environment that is unsafe or threatens the health and welfare of the surrounding area or disturbs the public peace. In addition to any specific public nuisances as declared by the common law of the state or elsewhere in this article, the conditions and violations enumerated in section 6-87 are hereby declared by the board of commissioners to be public nuisances pursuant to the authority granted by Ann. Code of Md., Local Government article, § 5-209(c) and section 82-16(2)(nn) of the town Charter.

~~R. Board of Commissioners means the sitting Town Board of Commissioners for Town of Upper Marlboro.~~

*Weeds* means grass, weeds, brush, or any noxious growth, excluding trees, ornamental shrubbery, plants, flowers, garden vegetables properly tended, cultivated crops, or undisturbed woodland, not otherwise in violation. (Ord. No. 2017-03, § 6, 10-10-2017)

#### **Sec. 6-82. Purpose and authority.**

(a) *Purpose.* The purpose of this article is to:

- (1) Promote the economic well-being of the town and to protect the health, safety, and welfare of town residents, and individuals employed in or visiting the town from excessive accumulation of garbage, litter, refuse, rubbish and weeds on any improved or unimproved real property in the zone as defined in the county zoning ordinance or on any improved or unimproved real property assessed or taxed as commercial property;
- (2) Require owners of same to maintain the appearance, upkeep and good repair of structures on said property and the equipment on the structures and surrounding grounds;
- (3) Require owners to maintain the appearance, upkeep and good repair of surrounding grounds, parking lots, compactors, commercial garbage or refuse containers or dumpsters and garbage, refuse or recycling areas, enclosed or screened, including the apron, curb, gutter and sidewalk in the state, county or town right-of-way, and the line striping of directional arrows, handicap parking stalls, parking stalls and painting of curbs on site; and
- (4) Require owners to keep property free of abandoned, junked, wrecked, untagged or unlicensed motor vehicles.

(b) *Authority.* The authority to provide for the protection of the health, safety, comfort, convenience, or welfare of the residents of and visitors to the town is generally provided for in section 82-16 of the town Charter.

(Ord. No. 2017-03, § 1, 10-10-2017)

#### **Sec. 6-83. Applicability of county zoning ordinance.**

The provisions herein shall apply to any improved or unimproved real property in the commercial zones

located in the corporate limits as defined in the county zoning ordinance or to any improved or unimproved real property assessed or taxed as commercial property located within the corporate limits of the town, including the abutting state, county or town rights-of-way.

(Ord. No. 2017-03, § 2, 10-10-2017)

**Sec. 6-84. Declaration of legislative interest.**

The board of commissioners finds and determines that:

- (1) Excessive accumulation of garbage, litter, refuse, rubbish and weeds on any improved or unimproved real property in the commercial zone as defined in the county zoning ordinance or any improved or unimproved real property assessed or taxed as commercial or industrial property; or
- (2) Failure to maintain the appearance, upkeep and good repair of structures on said property and the equipment on the structures and surrounding grounds; or failure to maintain the appearance, upkeep and good repair of surrounding grounds of said property, parking lots, compactors, commercial garbage or refuse containers or dumpsters and garbage, refuse or recycling areas, enclosed or screened or not, including the apron, curb, gutter and sidewalk in the state, county, or town right-of-way and the on-site aprons, curbs, gutters, sidewalks, parking lots, stormwater infrastructure, line striping of directional arrows, handicap parking stalls, parking stalls and painting of curbs; or failure to keep the property free of abandoned, junked, wrecked, untagged or unlicensed motor vehicles;

readily threatens or endangers the health, safety, comfort, convenience or welfare of the residents of and visitors to the town and is hereby prohibited and declared to be a public nuisance subject to the penalties and procedures hereinafter prescribed.

(Ord. No. 2017-03, § 3, 10-10-2017)

**Sec. 6-85. County zoning ordinance and regulatory agencies.**

(a) All applicable provisions of the county zoning ordinance shall be taken into consideration when enforcing this article. The commercial zones in the town are:

- (1) C-O (Commercial Office);
- (2) C-S-C (Commercial Shopping Center); and
- (3) C-M (Commercial Miscellaneous).

(b) The uses permitted in the commercial zones are listed in the uses permitted tables of section 27-461 of the county zoning ordinance.

(c) The rules and regulations of state or county agencies such as the state department of the environment and the county government shall be taken into consideration when enforcing this article.

(Ord. No. 2017-03, § 4, 10-10-2017)

**Sec. 6-86. Adoption of standards by reference; scope; conflict of provisions.<sup>18</sup>**

(a) The building code of the town shall be the current building code of the county as now or hereafter amended. The official building code of the county ~~substantially adopting the International Building Code, 2015 Edition~~, and the state rehabilitation code, as amended from time to time, and as adopted by the state, and other related codes, including the provisions of division 7 (Property Standards And Maintenance) of subtitle 13 of the county code, together with the changes, deletions, or modifications prescribed in said codes as amended from time to time, shall be and will remain effective within the town.

(b) This article establishes the minimum standards and requirements for commercial property maintenance within the town but does not replace or modify requirements otherwise established for the initial construction,

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<sup>18</sup> Legal or Editorial Change: Ord. No. 2017-1. Commercial Property Standards Ordinance. § 5. Adoption of standards by reference; scope; conflict of provisions. Altered to reference to county building code, deleting the obsolete IBC reference.

repair, alteration, maintenance or use of buildings, equipment, or facilities, except as provided in this article. Nothing herein shall be construed to prevent the jurisdiction, applicability or enforcement of the county's ordinances by county officials regarding property maintenance or nuisances within the corporate limits of the town.

(c) In any case where a provision or definition of this article is found to be in conflict with an applicable provision of any building, fire, mechanical, electrical, zoning, safety or health ordinance or code existing on the effective date of the ordinance from which this article is derived, the provision that establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail. In any case where a provision or definition of this article is found to be in conflict with a provision or definition of any other county or town ordinance or code existing on the effective date of the ordinance from which this article is derived that establishes a lower standard for the promotion and protection of the health and safety of the people, the provisions or definitions of this article shall be deemed to prevail.

(Ord. No. 2017-03, § 5, 10-10-2017)

### **Sec. 6-87. Violations.**

The following are considered violations of this article and subject to fines and penalties as set forth in section 6-97:

- (1) All exterior property areas shall be maintained in a clean, safe and sanitary condition, free from any accumulation of debris, garbage, litter, refuse or rubbish.
- (2) All premises and exterior property areas shall be properly maintained in an attractive, presentable appearance free from weeds or grass in excess of ten inches tall, and vegetative growth other than annual or perennial cultivated flowers and plants, bushes, shrubs, garden and yard plantings; and trees, properly maintained by the owner or occupant, shall be allowed to accumulate or grow on any private premises or property in the town. All noxious and bamboo plants shall be prohibited. No vegetation shall be allowed to grow in or into the apron or sidewalk, either on site or in the state, county or town rights-of-way.
- (3) All structures, exterior premises, and surrounding grounds or property shall be kept free from rodent harborage and infestation. Where rodents or an infestation of insects, termites, vermin or other pests are found, they shall be promptly exterminated at the owner's expense by any approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent re-infestation.
- (4) All premises and exterior property areas zoned as C-O, C-S-C, and C-M or residential property permitted to be used for a commercial purpose as defined in the county zoning ordinance shall be kept free of abandoned, junked, wrecked, untagged or unlicensed motor vehicles. No owner, lessee or occupant shall permit an abandoned, junked, wrecked, untagged or unlicensed motor vehicle to remain on such property except enclosed in a garage unless the vehicle is actively being inspected at a state police-authorized vehicle inspection station.
- (5) All aprons and sidewalks in the state, county, or town right-of-way or easement immediately abutting or within private property shall be kept free of debris, litter, refuse, rubbish, vegetation, snow and ice.
- (6) All shrubbery located on exterior property areas shall be maintained in such a way so as not to pose a danger or obstruction to adjoining property, to persons walking on designated walking areas or to the line of sight of passing vehicles or pedestrians at street intersections or along streets.
- (7) All bushes, shrubs, trees and other plantings on the premises or in the public right-of-way shall be maintained as necessary to prevent them from becoming overgrown, dead, decayed or diseased, and to prevent them from encroaching on streets, sidewalks and parking areas to the point where they prevent free movement thereon or otherwise create a hazard to persons using them. Trees shall be trimmed to a minimum height of 14 feet above the street and nine feet above the sidewalk.
- (8) Grass areas, yards and other unpaved areas shall not be used for the parking of boats, motor vehicles, trailers or similar items except where permitted in the commercial zone by the county zoning ordinance. Exempted are vehicles for which a written permit for same shall have been obtained from the chief of

police or by action of the board of commissioners for a period not to exceed one year and such permit may be renewed only by action of the chief of police or board of commissioners.

- (9) Exterior property areas shall not be utilized for the open storage of bathroom or kitchen fixtures, building construction materials, furniture, motor vehicle parts, or lawn and garden equipment, irrespective of age or condition, except for outdoor lawn furniture or tables and chairs for active restaurant facilities, or materials used in construction or renovation projects with county and town permits or where permitted.
- (10) The storage of wood and other materials not prescribed by this article, including compost piles, shall be accomplished in a manner designed to avoid rodents, termites and other insect infestation. All exterior property areas shall be kept free of debris to prevent infestation by insects, rodents, vermin and other pests. If rodents, termites or insect infestations are found, they shall be promptly exterminated by the property owner by acceptable processes at the owner's expense, which will not be injurious to the health of humans or animals.
- (11) It shall be the responsibility of any property owner, lessee, agent, or other occupant who possess animals on any property in the town to keep said animals in a safe and sanitary condition.
- (12) All on-site aprons, curbs, gutters, sidewalks, parking lots, parking spaces, stairs, stormwater infrastructure, walkways and similar areas shall be kept in a proper state of cleanliness, have a maintained appearance, be in good repair and structurally sound, and be maintained free from hazardous conditions. The owner shall maintain the appearance and keep in good repair all on-site line striping of directional arrows, handicap-parking stalls, parking stalls, painted curbs and signage.
- (13) All structures and accessory structures shall be kept in a proper state of cleanliness, have a maintained appearance, be in good repair and structurally sound, be maintained free from hazardous conditions or graffiti, and be painted, as appropriate, including all equipment on all structures, accessory structures and surrounding grounds and including, but not limited to, commercial garbage or refuse containers or dumpsters and garbage, refuse, recycling or rubbish areas, enclosed or screened, compactors, fences, garages, and walls or retaining walls of any type. All commercial garbage or refuse containers or dumpsters, compactors, and garbage, refuse, recycling or rubbish areas are to be screened from view of adjoining properties or streets in accordance with sections 6-89 and 16-3.
- (14) No owner shall allow uninhabited or vacant structures or property to become a public nuisance, safety or health hazard or condition to encourage trespassing.
- (15) All fences, walls, retaining walls and similar structures shall be of the height, size, type and location permitted by applicable county ordinances; be safe; have a maintained appearance; be painted, if appropriate; be in good repair and condition; and be structurally sound.
- (16) All property owners are required to maintain the appearance, upkeep and good repair of all structures and accessory structures on the property and the equipment on the structures and on the surrounding grounds in accordance with the rules and regulations adopted from time to time by the board of commissioners and any provisions of the building code of the county, as amended from time to time, and the state building rehabilitation code, as amended from time to time.
- (17) All aprons and sidewalks in the state, county or town right-of-way or easement immediately abutting or within private property shall have a maintained appearance, be in good repair and structurally sound, and be maintained free of hazardous conditions.
- (18) All premises shall be graded and maintained to prevent erosion of soil and to prevent the accumulation of stagnant water thereon or within any structure located thereon.
- (19) Identification. All premises shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property.

(Ord. No. 2017-03, § 7, 10-10-2017)

### **Sec. 6-88. Rental properties.**

In order to ensure all town residents and occupants reside in a safe environment, the town sets the following requirements for all rental properties used as dwellings located in commercial zones:

- (1) Upon providing notice for any violation pursuant to this article, it shall be the duty of the code enforcement officer to further verify and/or report the lack of proper licensure as required by the county code for any rental properties used for residential habitation located in commercially zoned areas.
- (2) Any property owner who operates a rental unit used as a dwelling that fails to comply with this article shall be reported by the code enforcement officer to the county rental housing enforcement officials for appropriate remediation under the applicable provisions of the county code.

(Ord. No. 2017-03, § 8, 10-10-2017)

**Sec. 6-89. Dumpsters, specialized trash and garbage receptacles.**<sup>19</sup>

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

*Specialized trash and garbage receptacles* means any receptacle larger than or different from a receptacle utilized for the collection of trash or recyclable materials from a single-family home as prescribed by section 16-2(a).

(b) *Enclosure required.* All dumpsters, including specialized/dedicated trash and garbage receptacles (including those that collect grease or other like material), shall be enclosed on all four sides. Such enclosures or screens shall be opaque and the location of the dumpster or other specialized/dedicated trash/garbage receptacle shall not be visible from major thoroughfares, including Main Street (Route 725), Water Street (Route 717), Church Street, Elm Street, Pratt Street, Judges Drive and West Court Drive.

(c) *Materials.* All such enclosure structures or screens shall be made of either masonry, evergreen vegetation wood, PVC, ~~and~~ or chain link fence in accordance with the county landscape manual.

(d) *Upkeep.* Property owners are responsible for ensuring the dumpster and enclosure or screen is in good repair, maintained, free from the accumulation of litter/debris, regularly emptied, and properly secured and locked at all times. All garbage, as defined in this article and in article III of this chapter and chapter 16, pertaining to solid waste, shall be placed in trash bags before being placed in the dumpster or other specialized/dedicated trash/garbage receptacle.

~~Existing dumpsters/dedicated trash/garbage receptacles: All existing dumpsters/specialized dedicated trash/garbage receptacles shall be enclosed by a structure or screen as noted above which shall be completed within 180 days/6 months from the effective date of this Ordinance.~~

(Ord. No. 2017-03, § 9, 10-10-2017)

**Sec. 6-90. Enforcement and waivers.**

(a) It shall be the duty and responsibility of a sworn police officer or the appointed code enforcement officer of the town to enforce the provisions of this article as herein provided.

(b) The town board of commissioners may waive applicability of this article to a property on application of the property owner if:

- (1) Adequate notice is given in a form and manner specified by the town;
- (2) The owner is afforded an opportunity to comment on the complaint or matter either in writing or in person;
- (3) The waiver would not threaten the health or safety of any resident;
- (4) The strict application of this article would impose an unnecessary hardship on the owner;
- (5) The hardship results from conditions that are peculiar to the property; and
- (6) The hardship is not a self-created hardship.

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<sup>19</sup> Legal or Editorial Change: Commercial Property Standards Ordinance, § 9. Dumpsters, specialized trash and garbage receptacles. Deleted subsection D as obsolete.

(Ord. No. 2017-03, § 10, 10-10-2017)

**Sec. 6-91. Notice of violations; penalties for violations; abatement and service of notice.**

(a) Whenever the code enforcement official or designated representative determines that there are reasonable grounds to believe that there has been or is a violation of any provision of this article or of any rule or regulation adopted pursuant thereto, the code enforcement official or designated representative shall give notice of such alleged violation to the person responsible therefor, as hereinafter provided. Such notice shall:

- (1) Be in writing to both the property owner and tenant, if applicable;
- (2) Include a description of the real property sufficient for identification;
- (3) Include a statement of the reason why it is being issued;
- (4) Allow time, as set forth in this article, for the performance of any act it requires; and
- (5) Contain an outline of remedial action, which, if taken, will effect compliance with the provisions of this article and with any rules and regulations adopted pursuant thereto.

(b) In cases where the code enforcement official or designated representative determines there has been a violation of section 6-87(1), (2), (3), (4), (5), or (6) whereby all exterior areas are not in a clean, safe and sanitary condition, free from any accumulation of debris, garbage, litter or refuse, or rubbish; or grass is more than ten inches tall; or premises is not free of rodents or an infestation; or premises is not free of abandoned, junked, wrecked, untagged or unlicensed motor vehicles; or all aprons and sidewalks in the state, county, or town right-of-way or easement are not free of debris, litter, refuse, rubbish, vegetation, snow or ice; or if all shrubbery located on exterior property areas are not maintained in such a way as to not pose a danger or obstruction to adjoining property, to persons walking on designated walking areas or to line of sight at street intersections or along streets, such notice shall contain the requirement that the violation must be fully corrected within ten days from the date of the notice and that, in the event the owner fails to do so within the ten-day period, a second notice shall be sent advising the owner of the imposition of a charge or fine payable to the town. In the event that the violation is not fully corrected within ten days of the date of the second notice, a third notice shall be sent advising the owner of the imposition of a further charge or fine. Each additional ten days thereafter that this violation exists will constitute an additional charge or fine. For each additional prescribed period that the violation is not fully corrected, notice will be issued of the fine amount as due and payable to the town. Fines for failure to take remedial action shall be established in this article and shall not exceed the amount of \$1,000.00 per violation. Failure to pay fines will result in the amount of any fines imposed being recorded as a lien against the property and collected in the same manner as delinquent town taxes.

(c) In cases where the code enforcement official or designated representative determines there has been a violation of section 6-87(7) through (11), such notice shall contain the requirement that the violation must be fully corrected within 15 days from the date of the notice and that, in the event the owner fails to do so within the 15-day period, a second notice shall be sent advising the owner of the imposition of a charge or fine payable to the town. In the event the violation is not fully corrected within 15 days of the date of the second notice, a third notice shall be sent advising the owner of the imposition of a further charge or fine. Each additional 15 days thereafter that this violation exists will constitute an additional charge or fine. For each additional prescribed period that the violation is not fully corrected, notice will be issued of the charge or fine amount as due and payable to the town. Fines for failure to take remedial action shall be established from time to time by resolution of the board of commissioners and shall not exceed the amount of \$1,000.00 per violation. Failure to pay fines will result in the amount of any fines imposed being recorded as a lien against the property and collected in the same manner as delinquent town taxes.

(d) In cases where the code enforcement official or designated representative determines there has been a violation of section 6-87(12) through (19), such notice shall contain the requirement that the violation must be fully corrected within 30 days from the date of the notice and that, in the event the owner fails to do so within the 30-day period, a second notice shall be sent advising the owner of the imposition of a charge or fine payable to the town. In the event that the violation is not fully corrected within 30 days of the date of the second notice, a third notice shall be sent advising the owner of the imposition of a further charge or fine. Each additional 30 days thereafter that this violation exists will constitute an additional charge or fine. For each additional prescribed period that the

violation is not fully corrected, notice will be issued of the charge or fine amount as due and payable to the town. However, the code enforcement official is authorized to work with the property owner to develop a corrective action plan and compliance time schedule to correct all infrastructure and equipment violations set forth in section 6-87(12) through (19) above and beyond the 30-day compliance schedule. Fines for failure to take remedial action shall be established from time to time by resolution of the board of commissioners and shall not exceed the amount of \$1,000.00 per violation. Failure to pay fines will result in the amount of any fines imposed being recorded as a lien against the property and collected in the same manner as delinquent town taxes.

(e) Abatement of original violation by town. Except in cases where the condition poses an imminent threat to public health or safety requiring immediate action, the town shall have the right, after ten calendar days of continued violation, to enter onto the premises of the property in violation to abate any violation, the costs of which will be charged to the property owner. Failure to pay these costs within 30 days of the date of the notice will result in the filing of a lien against the property and collection in the same manner as delinquent town taxes. Repeat violations may be abated in five calendar days and any subsequent repeat violations may be abated immediately. Abatement by the town does not constitute compliance as defined in this section. Action for abatement of section 6-87(14) may include the boarding up or razing of buildings on premises, the costs of which will be charged to the property owner. Failure to pay these costs within 30 days of the date of the notice will result in the filing of a lien against the property and collected in the same manner as delinquent town taxes.

(f) Service of notice that the premises or structure is in violation shall be as follows:

- (1) By delivery to the owner or the agent personally or by leaving the notice at the usual place of business of the owner or office of the agent with a person of suitable age and discretion who shall be informed of the intent thereof; or
- (2) By certified or registered mail addressed to the owner or agent at the address provided to the town by the owner as required by this article with postage prepaid thereon with return receipt requested; or
- (3) If the letter provided for in section (f)(2) of this section is returned with receipt showing non-delivery, then by posting a copy of the notice in a conspicuous place on the premises affected by such notice.

(Ord. No. 2017-03, § 11, 10-10-2017)

### **Sec. 6-92. Repeat violations.**

(a) Any violations reoccurring within a 12-month period shall be considered a repeat of the original violation. It shall be the responsibility of any owner or responsible person duly notified under the provisions of this section to fully correct the repeat violation charged within ten calendar days from the date of the notice for the repeat violation. Any subsequent repeat violation will be cause for immediate fine.

(b) Upon noncompliance with the violation notice within the time limits imposed in this section, a second notice shall be issued, in accordance with the notice requirements of this article, advising the person found in violation of the imposition of a fine payable to the town. In the event that the violation has not been fully corrected within the period prescribed in the second notice, a third notice shall be issued, in accordance with the notice requirements of this article, advising the person found in violation of the imposition of a further charge or fine payable to the town. For each additional prescribed period that the violation is not fully corrected, notice will be issued of the fine amount as due and payable to the town. Fines for failure to take remedial action shall be established by resolution of the board of commissioners and shall not exceed the amount of \$1,000.00 per violation. Failure to pay fines will result in the amount of any fines imposed being recorded as a lien against the property and collected in the same manner as delinquent town taxes.

(c) Abatement of subsequent violations. The town shall have the right, after five calendar days of continued violation, to enter onto the premises of the property in violation to abate any violation, the costs of which will be charged to the property owner. Failure to pay these costs within 30 days of the date of the notice will result in the filing of a lien against the property and collection in the same manner as delinquent town taxes. Repeat violations may be abated in five calendar days and any subsequent repeat violations may be abated immediately. Abatement by the town does not constitute compliance as defined in section 6-91. Action for abatement of violation of section 6-87(14) may include the boarding up or razing of buildings on premises, the costs of which will be charged to the property owner and, if not paid, the filing of a lien against the property and collection in the same manner as

delinquent town taxes.

(Ord. No. 2017-03, § 12, 10-10-2017)

**Sec. 6-93. Snow removal from sidewalks.**

Snow and ice shall be removed from sidewalks by the owner or occupant within 24 hours of the last snowfall.

(Ord. No. 2017-03, § 13, 10-10-2017)

**Sec. 6-94. Right to appeal.**

- (a) Any person affected by any notice of violation may elect to appeal to the board of commissioners.
- (1) Any person affected by any notice of violation which had been issued in connection with the enforcement of any provision of this article may request and shall be granted a hearing on the matter by the board of commissioners, provided that such person shall, on or before the expiration date of the subject notice of violation as defined in sections 6-91 and 6-92 after service of a notice of violation, file with the board of commissioners a signed written notice of appeal, requesting a hearing and setting forth a brief statement of the reasons therefor. Upon receipt of such notice of appeal, the board of commissioners shall set a time and place for such hearing and shall determine appeals as promptly as practicable. The board of commissioners, with a quorum present, shall hear appeals, according to any rules of procedure the board may prescribe.
- (2) After such hearing the board of commissioners may, by a majority of members present, affirm, amend, modify or withdraw the notice of violation that has been appealed. Any person who shall fail, refuse or neglect to comply with the decision of the board of commissioners shall be guilty of violating the provisions of this article.
- (3) In the event a person wishes to contest the decision of the board of commissioners, such person may notify the town of such person's intent within ten days after the rendering of the decision by the board of commissioners. In that event the town shall issue a municipal infraction citation to the aggrieved person, who may request a hearing in the district court of the state pursuant to the municipal infraction citation procedures as found in Ann. Code of Md., Local Government article, title 6, the decision of the board of commissioners in such a case shall be stayed, pending a decision by the district court. To the extent of this section, all violations of this article will be considered municipal infractions of the town.

(b) Failure to pay after adjudication or request of adjudication by the town will result in the amount of any fine and cost of abatement imposed being recorded as a lien against the property and collected in the same manner as delinquent town taxes.

(Ord. No. 2017-03, § 14, 10-10-2017)

**Sec. 6-95. Interpretation.**

The town board of commissioners shall decide questions of interpretation of this article. Upon written request, the board of commissioners may waive or vary particular provisions of this article as provided in section 6-90.

(Ord. No. 2017-03, § 15, 10-10-2017)

**Sec. 6-96. Rules and regulations.**

The board of commissioners may pass such rules and regulations as are consistent with the purpose, intent and enforcement of this article.

(Ord. No. 2017-03, § 16, 10-10-2017)

**Sec. 17. Separability.**

~~If any section or part of a section of this Ordinance shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance.~~

(Ord. No. 2017-03, § 17, 10-10-2017)

**Sec. 6-97. Fine schedule.**

In this section is the fine schedule for violations within this article. Changes to the fine schedule or any other fines, penalties or fees must be made by the board pursuant to an ordinance amendment or formal resolution, provided that said resolution shall be posted in the town office for a period of 30 days, and the resolution, or a fair summary thereof, shall be published at least once in a newspaper of general circulation in the town.

<i>Type #</i>	<i>Violations</i>	<i>1st Offense</i>	<i>2nd Offense</i>	<i>3rd Offense</i>
1	Sections 6-93, 6-87(1)--(8)	\$50.00	\$75.00	\$100.00
2	Section 6-87(9)--(19)	\$100.00	\$150.00	\$200.00
3	Section 6-89	\$150.00	\$200.00	\$250.00

If a violation is not specifically listed above, it falls under violation fine Type #1.

(Ord. No. 2017-03, § 18, 10-10-2017)

~~AND BE IT FURTHER ORDAINED AND ENACTED, by the Board of Commissioners of the Town of Upper Marlboro, Maryland that this Ordinance shall become effective at the expiration of 20 calendar days following approval by the Board of Commissioners.~~

~~AND BE IT FURTHER ORDAINED AND ENACTED, by the Board of Commissioners of the Town of Upper Marlboro, Maryland that this Ordinance shall be posted in the Town Hall office, and it or a fair summary thereof, shall be published once in a newspaper of general circulation in the Town.~~

**Secs. 6-98--6-122. Reserved.****ARTICLE V. VACANT PROPERTY REGISTRATION****Sec. 6-123. Definitions.**

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

*Lot* means an area of land designated as a separate parcel or unit of land on a legally recorded subdivision plat or deed filed among the land records of the county and assigned a property tax account identification number that is assigned to one or more such units or parcels of land.

*Occupied building or structure* means any building or structure wherein one or more persons actually conducts a business or resides in all or any part of the building as the business occupant, or as the legal or equitable owner/occupant or tenant on a permanent, non-transient basis, or any combination of the same. For purposes of this article, evidence offered to prove that a building is so occupied may include, but shall not be limited to, the regular receipt of delivery of regular mail through the United States Postal Service; proof of continual telephone, electric, gas, heating, water and sewer services; or a valid town business license.

*Owner* means any person, partnership, limited liability company, corporation or other entity who, alone or jointly with others, shall have legal title to any premises, with or without accompanying actual possession thereof; or who shall have charge, care or control of any dwelling unit as a cooperative shareholder or as executor, administrator, trustee, receiver or guardian of the estate or as a mortgagee in possession, title or control, including, but not limited to, a bank or lending institution, regardless of how such possession, title or control was obtained.

*Vacant building or structure* means a building or structure where no person actually currently conducts a business or resides or lives in any part of the building or structure as the legal or equitable owner or tenant-occupant, or owner-occupant, or tenant on a permanent, non-transient basis.

*Vacant developed property* means a lot or parcel of land that has a vacant building except as provided in section 6-129.

*Vacant lot* means a lot without a building or other valid and approved improvement which has an assessed value for taxation purposes as determined by the state department of assessments and taxation.

(Ord. No. 2022-05, § 1(B), 8-23-2022)

**Sec. 6-124. Intent and scope.**

The board of commissioners finds that the proliferation of vacant and abandoned buildings, structures, dwellings and lots in the town causes a deterioration of neighborhoods and areas within the town and has a negative impact on the value of property in close proximity to the vacant and abandoned buildings, structures, dwellings and lots. The board further finds that vacant and abandoned buildings, structures, dwellings and lots often cause a serious threat to the safety and welfare of the residents of the town and erode the quality of life of all who live and work in the town, and such properties are frequently places of infestation of rodents, vermin, insects, wild animals and other health-threatening creatures and diseases, provide shelter to criminals and vagrants who use such places to evade the police and to conduct illicit activities, and are a nuisance to children and adults alike.

(Ord. No. 2022-05, § 1(A), 8-23-2022)

**Sec. 6-125. Annual registration of vacant buildings or lots; local agent; registration fees.**

(a) *Vacant building or lot registration.* Any owner of any building or lot which has been vacant for more than 120 consecutive days shall file with the town administrator or designee a vacant building or lot registration. Said registration shall be in a form prescribed by the town administrator, which shall include the street address and parcel number of each such vacant building or lot, the names and addresses of all owners, in accordance with subsections (a)(1) through (7) of this section, and any other information deemed necessary by the town administrator. In no instance shall the registration of a vacant building or lot and the payment of registration fees be construed to exonerate the owner, agent or responsible party from responsibility for compliance with any other building code or town ordinance requirement. The registration fee, as required herein, shall be billed by the town treasurer or designee and shall be paid by January 1 of each year. For purposes of this article, the following shall also be applicable:

- (1) If the owner is a corporation, the names and addresses of the officers of the corporation shall be provided and shall be accompanied by the name of the resident agent filed with the state department of assessments and taxation;
- (2) If the owner is a limited liability company, the name and address of the managing member shall be provided;
- (3) If the owner is an estate, the name and address of the executor or administrator of the estate shall be provided;
- (4) If the owner is a trust, the name and address of all trustees or grantors shall be provided;
- (5) If the owner is a partnership, the names and addresses of all partners with an interest of ten percent or greater shall be provided;
- (6) If the owner is any other form of unincorporated association, the names and addresses of all principals or co-owners with an interest of ten percent or greater shall be provided; or
- (7) If the owner is an individual person, the name and address of that individual person shall be provided.

(b) *Local agent.*

- (1) If none of the persons listed in subsections (a)(1) through (7) are within the state, the registration statement also shall provide the name and address of a person who resides within the state and who is authorized to accept service of process on behalf of the owners.
- (2) The registration statement shall designate a responsible, local party or agent for purposes of notification in the event of an emergency affecting the public health, safety or welfare.

(c) *Fee.*

- (1) The owner of any vacant property located within the corporate limits of the town shall be responsible to register and pay the annual nonrefundable registration fee of \$250.00; thereafter, said fee shall be billed by the town treasurer annually on November 1. The board may revise or increase registration fees established under this article by written resolution, provided such fee does not exceed \$750.00.

- (2) One vacant building or lot registration may be filed to include all vacant buildings situated upon a single property of an owner so registering or on a series of abutting or adjoining vacant lots. The fee of \$250.00 shall apply to the property upon which the buildings are situated or multiple vacant lots adjoining one another. A separate fee need not be paid for each building upon a single property or for more than one lot in a series of abutting or adjoining vacant lots.
- (3) Appeal rights. The owner shall have the right to appeal the imposition of the registration fees to the board of commissioners upon filing an application in writing to the town administrator no later than 30 calendar days from the date of the billing statement. On appeal, the owner shall bear the burden of providing proof that the building is occupied, or the lot is improved with a building or assessed structure. The decision of the board may not be appealed as an administrative agency decision by filing a petition for judicial review but shall be enforced pursuant to section 6-131.
- (4) One-time waiver of registration fee. A one-time waiver of the registration fee for up to 90 days may be granted by the town administrator upon application of the owner and upon review and advice of the town attorney, within 30 calendar days from the date of the bill for the registration fee, or if denied by the town ~~manager-administrator~~, upon appeal to the board, if the owner:
  - a. Demonstrates with satisfactory proof that said owner is in the process of demolition, rehabilitation, or other substantial repair of the vacant building; and demonstrates the anticipated length of time for the demolition, rehabilitation, or other substantial repair of the vacant building; or
  - b. Demonstrates that said owner is actively attempting to sell or lease the property during the vacancy period; and
  - c. Is current on all registration fees and all other financial obligations and/or debts owed to the town which are associated with the vacant property.

(Ord. No. 2022-05, § 1(C), 8-23-2022)

**Sec. 6-126. One-year waiver.**

Upon application by the owner and satisfaction of section ~~e above 6-125(c)(4)~~, the town administrator may grant a one-time, one-year waiver of the registration fee, or if denied by the town administrator, upon appeal to the board, if the owner is a nonprofit or tax-exempt organization.

(Ord. No. 2022-05, § 1(F), 8-23-2022)

**Sec. 6-127. Delinquent registration fees as a lien.**

(a) After the owner is given notice of the amount of the registration fee due, except for those owners that have properly perfected an appeal as provided in section 6-125(c)(3), and the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the town.

(b) Any registration fees, when accrued or overdue, pursuant to this article, and any penalties assessed hereto shall be considered a lien in favor of the town on the applicable property and may be collected and enforced in the same manner as delinquent or accrued real property taxes.

(Ord. No. 2022-05, § 1(G), 8-23-2022)

**Sec. 6-128. Duty to amend registration statement.**

If the status of the registration information changes during the course of any calendar year, it is the responsibility of the owner, responsible party or agent for the same to contact the town administrator or designee within 30 days of the occurrence of such changes and advise the town ~~manager-administrator~~ in writing of those changes.

(Ord. No. 2022-05, § 1(H), 8-23-2022)

**Sec. 6-129. Exceptions.**

This article shall not apply to any building or lot owned by the United States, the state, the county, nor to any of their respective agencies or political subdivisions.

(Ord. No. 2022-05, § 1(I), 8-23-2022)

**Sec. 6-130. Duty of town administrator to maintain and notify.**

The town administrator or designee shall maintain the vacant building or lot registrations in the normal course of business and shall notify the town chief of police who shall notify local fire and ambulance services of all locations on the registry.

(Ord. No. 2022-05, § 1(J), 8-23-2022)

**Sec. 6-131. Enforcement.**

(a) *Penalties for offenses.* Any owner, or agent of an owner acting on behalf of the owner, who fails to register a vacant building or lot or to pay any fees required to be paid pursuant to the provisions of this article, within 30 days after they become due, shall constitute a municipal infraction violation punishable, upon conviction thereof, by a fine in the amount of \$1,000.00 for each failure to register, or for each failure to pay a required vacant building or lot registration fee.

(b) *Other enforcement.* The registration of a vacant building or vacant lot or absence thereof shall not preclude action by the town to obtain a court order to force abatement, maintenance or removal of a public nuisance or any other violation found on any vacant lot or building pursuant to any other provisions of this Code or other law. The town shall have the right to remove litter, trash, noxious weeds, tall grass, or unsanitary or flammable waste materials and to do such other maintenance or work as is necessary to bring the property into compliance with the general ordinances of the town. The cost of these actions shall be paid for by the owner. The town shall send the owner an invoice or bill for the costs of such work by certified mail, return receipt requested, and by regular mail to the owner's last known address or by any other means reasonably calculated to bring the bill to the owner's attention. Should the owner fail to pay the bill within one month after it is presented or mailed, the costs shall be considered a lien against the property and may be collected in the same manner as real property taxes. Nothing in this article shall be construed to limit the town from seeking any other legal damages or equitable and declaratory relief permitted by law to enforce this Code in a court of competent jurisdiction in the state.

(Ord. No. 2022-05, § 1(K), 8-23-2022)

**Sec. 6-132. Violations.**

Unless provided otherwise, any violation of this article shall be deemed a municipal infraction. The penalty for such violation shall be a \$250.00 fine for an initial offense together with a suspension of the license for no more than 90 days and \$500.00 for each repeat offense together with a revocation of the license. Each day any violation continues shall be a separate offense.

(Ord. No. 2022-05, § 1(L), 8-23-2022)

Chapter 7  
**RESERVED**

PROOFS

Chapter 8  
ELECTIONS

ARTICLE I. IN GENERAL

**Sec. 8-1. Voter registration.**

Registration of eligible voters wishing to vote in town elections shall be made in accordance with provisions of section 82-24 of the town Charter.

(Ord. No. 2001-2, § II(A)(1), 10-9-2001)

**Sec. 8-2. Maintenance of records.**

(a) The town clerk shall maintain the town supplemental voter registration records of voters not registered with the county.

(b) The town board of supervisors of elections shall, before each election, obtain from the county board of elections a list of registered voters of the county who reside in the town and will check the accuracy of that list with respect to town residents. The town board of supervisors of elections shall recommend any corrections required to the county board of elections.

(Ord. No. 2001-2, § II(A)(2), 10-9-2001)

**Sec. 8-3. Conducting electioneering activities near polling places prohibited.**

No person may canvass, electioneer or post any campaign literature or material in a polling place or within a 300-foot radius from the entrance and exit of the building closest to that part of the building in which voting occurs; nor shall anyone linger, be or remain within said distance of 300 feet of the polls except election officials and peace officers, unless it is in approaching the polls to vote, or in passing along the streets in the usual and orderly manner of travel.

(Ord. No. 2001-2, § II(A)(3), 10-9-2001)

**Sec. 8-4. Poll watchers--Selection.**

Each candidate for elective office may select one person, who shall be a qualified voter of the town, to serve as poll watcher and each candidate shall submit to the supervisors of elections the name of the poll watcher at least three days prior to the election. The poll watcher shall not be an employee of the town and shall serve without compensation.

(Ord. No. 2001-2, § II(A)(4), 10-9-2001)

**Sec. 8-5. Poll watchers--Duties.**

Each poll watcher shall have the right to observe every aspect of the conduct of an election. Each poll watcher shall be assigned a position at the polling place near the election judges, inside the polling area so as to enable said poll watcher to see each person as said person offers to vote. The poll watchers shall have the right to enter the polling place one-half hour before the opening of the polls. It shall be unlawful for any poll watcher to inquire or attempt to ascertain for which candidate any voter intends to vote, or has voted, or to converse in the polling place with any voter, or to assist any voter in the preparation of a ballot or in the operation of the voting machine, or follow or impede in any way a voter in the process of voting. Any poll watcher who violates the restrictions set forth in this section may be lawfully ejected by the election judges and is subject to penalties provided in section 8-16.

(Ord. No. 2001-2, § II(A)(5), 10-9-2001)

**Sec. 8-6. Posting of sample ballot.**<sup>20</sup>

At least four days before any election, the supervisors of elections shall conspicuously and securely post an accurate sample copy of the ballot to be used in the approaching election on the bulletin board at town hall and on the exterior of the building where the voting takes place. Said ballot shall be clearly marked "sample."

(Ord. No. 2001-2, § II(A)(6), 10-9-2001)

**Sec. 8-7. List of candidates.**

A correct list of the names of the candidates as they are to appear on the ballot shall be furnished on demand by the supervisors of elections to the candidates or their authorized agents. If any mistakes are discovered, it shall be the duty of the supervisors to correct the same without delay, ~~and if said Supervisors of Elections shall decline or refuse to make the correction, then upon the sworn petition of any qualified voter who would have the right to vote for such candidate at the approaching election, the Circuit Court for Prince George's County may, by order, require said Supervisors of Elections to correct such error or to show cause why such error should not be corrected.~~

(Ord. No. 2001-2, § II(A)(7), 10-9-2001)

**Sec. 8-8. Tie votes.**

(a) In case of a tie vote, the board of commissioners shall order and provide for a runoff election between the tied candidates within 21 days thereafter.

(b) Notices for runoff elections need to be published within one week of the election date.

(Ord. No. 2001-2, § II(A)(8), 10-9-2001)

**Sec. 8-9. Vote count observation and decorum.**<sup>21</sup>

After the last voter has voted and the polls have closed, and before the counting begins, candidates and members of the public may be permitted to enter the polling room. Once the counting begins, the door to the polling room will be closed and no one will be allowed to enter until the votes have been tallied. Once inside the room, anyone wishing to leave will not be readmitted until the counting has concluded. The use of cell phones, ~~papers and beepers~~ and other electronic devices will not be permitted in the polling room during the counting of the votes. Anyone who violates the restrictions set forth in this section may be, at the discretion of the election judges, ejected from the proceedings.

(Ord. No. 2001-2, § II(A)(9), 10-9-2001)

**Sec. 8-10. Absentee voting.**<sup>22</sup>

(a) Any qualified and registered voter who cannot be present at an upcoming town election, by reason of religious beliefs, physical condition, or absence from the town on the day of the election, may vote by absentee ballot. The individual shall apply for an absentee ballot on an application form provided by the town board of supervisors of elections not earlier than 30 days preceding such election. The individual ~~shall state in the application, the reason he or she cannot vote in person at the election,~~ shall sign the application and deliver the application by mail or other means, so that it reaches the town clerk not later than ten days immediately preceding the election.

(b) The board of supervisors of elections shall accept applications for absentee ballots after the tenth day immediately preceding the election only in the event that, after the tenth day immediately preceding the election, one of the following emergencies occurred:

<sup>20</sup> Legal or Editorial Change: Ord. No. 2001-2, § II(A)(6). Posting of sample ballot. Altered to avoid conflict with Charter § 8-25.

<sup>21</sup> Legal or Editorial Change: Ord. No. 2001-2, § II(A)(9). Vote county observation and decorum. Altered per instructions.

<sup>22</sup> Legal or Editorial Change: Ord. No. 2001-2, § II(A)(10). Absentee voting. Altered to avoid conflict with Ann. Code of Md., Local Government article, § 4-108.

- (1) The applicant has been notified that, as a condition of employment, such applicant will be unable to be present to vote on election day.
- (2) The applicant is unable to be present at the polls because of a serious illness or accident.
- (3) The applicant is unable to be present at the polls because of a death or serious illness in the applicant's immediate family.

(c) A qualified applicant may designate a duly authorized agent to pick up and deliver an absentee ballot who meets the following qualifications:

- (1) Must be at least 18 years of age;
- (2) May not be a candidate on the ballot;
- (3) Shall execute an affidavit under penalty of perjury that the ballot was:
  - a. Delivered to the voter who submitted the application, marked and placed in an envelope by the voter, or with assistance in the agent's presence; and
  - b. Returned to the local board by the agent.

(d) All such ballots returned shall reach the supervisors of elections not later than the closing of the polls on election day.

(e) The sealed envelope containing the returned ballot shall be so marked as to identify the sender, and the name of said sender shall be checked against the list of written applications for absentee ballots. If no written application has been filed, the ballot shall not be counted, but shall be destroyed.

(f) On election day, prior to the closing of the polls, the town clerk shall deliver the absentee ballots to the place designated by the board of supervisors of elections and shall make an accounting for the purpose of counting absentee ballots as to the number of absentee ballots issued and the number returned. The town clerk shall keep such record of the absentee ballots in a secure place as is kept with other voting records.

(g) Upon receipt of the absentee ballots, the judges of election, for the purpose of counting absentee ballots, shall open the outer signed and sealed envelope and remove the unmarked inner envelope and deposit it in the regular ballot box forthwith. Upon the closing of the polls, but not before, the judges of election shall open the unmarked envelopes and shall determine that no more than one ballot is contained in each envelope prior to conducting the count. If an envelope should contain more than one ballot, neither ballot shall be included in the count.

(h) Upon the issuance of an absentee ballot, the town clerk shall cross that person's name off the voter registration list and mark "absentee ballot" next to it.

(i) An attempt will be made to supply the voter with an absentee ballot for any runoff election as soon as official copies are available, and the regulations of this section shall apply to such runoff election.

(j) No voter who has been issued an absentee ballot for an election shall be authorized to cast a ballot in any manner other than by casting the absentee ballot. Should an absentee ballot be lost or destroyed, without being returned to the town clerk, a second ballot may be issued, if there is sufficient time. Prior to delivering the ballots to the judges of election, the town clerk shall verify that one ballot is being submitted for each absentee voter applicant. Should an absentee ballot be challenged by the town clerk or judges of election as to the ballot being cast by the person to whom it was issued, or as to the ballot being obtained and returned in accordance with the provisions of this section, the board of supervisors of elections shall determine the validity of any challenged absentee ballot.

(k) When the board of supervisors of elections determines from proof or investigation that any person who has marked and transmitted an absentee ballot has died before election day, such ballot of the deceased voter shall not be counted. However, if prior to the time of such counting, the board of supervisors of elections shall not have determined that the absentee resident who marked a ballot had died before election day, such ballot shall be counted, and the fact that said absentee resident may later be shown to have been actually dead on election day shall not invalidate said ballot or said election.

(Ord. No. 2001-2, § II(A)(10), 10-9-2001)

**Sec. 8-11. Assistance to voters.**

Any registered voter who requires assistance to vote by reason of blindness, disability, or inability to read the English language or write may be given assistance by a person of the voter's choice, not to include the voter's union or employer. Any person rendering assistance pursuant to this section shall execute a certification to be included in the instructions.

(Ord. No. 2001-2, § II(A)(11), 10-9-2001)

**Sec. 8-12. Voting secrecy.**

The board of supervisors of elections shall provide an enclosure to vote that ensures secrecy in the marking of the ballots and shall count the ballots only after the close of the polls as scheduled.

(Ord. No. 2001-2, § II(A)(12), 10-9-2001)

**Sec. 8-13. Certification of results.**

As soon as possible after the count is completed, the election judges shall certify in writing the number of votes cast in the election, the number of votes cast for each candidate, the number of votes cast in favor or opposed to each referendum question placed on the ballot, and the number of invalid ballots, and shall certify as to the names of those candidates elected and those candidates who must participate in a runoff election, if any, and the approval or disapproval of each referendum question.

(Ord. No. 2001-2, § II(A)(13), 10-9-2001)

**Sec. 8-14. Surplus ballots.**

All surplus ballots shall be destroyed within ten days after the election unless notified prior to that time of a pending contest to the election.

(Ord. No. 2001-2, § II(A)(14), 10-9-2001)

**Sec. 8-15. Spoiled, "not voted" and rejected ballots.**

Spoiled, "not voted" and rejected ballots shall be immediately cancelled by endorsing upon the back thereof, including the judge's initials, the word "spoiled," "not voted," or "rejected," as appropriate. The spoiled and "not voted" ballots shall be enclosed in an envelope to themselves, endorsed "spoiled and not voted," and sealed. The rejected ballots shall be enclosed in an envelope to themselves, endorsed "rejected," and sealed. Both envelopes shall be put in a secure place normally maintained with other voting records, and kept for the space-span of six months unless previously notified of a pending contest to the election.

(Ord. No. 2001-2, § II(A)(15), 10-9-2001)

**Sec. 8-16. Penalties.<sup>23</sup>**

Except for offenses and penalties relating to voting prescribed by Ann. Code of Md., Local Government article, § 4-108.1, any person who shall violate any of the provisions of this article shall, upon conviction, be sentenced to pay a fine of not more than \$1,000.00 or be sentenced to imprisonment for not more than six months, or both, in the discretion of the court.

(Ord. No. 2001-2, § II(A)(16), 10-9-2001)

**Secs. 8-17--8-35. Reserved.****ARTICLE II. ADVISORY QUESTIONS****Sec. 8-36. Definitions.**

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

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<sup>23</sup> Legal or Editorial Change: Ord. No. 2001-2, § II(A)(16). Penalties. Altered by instructions.

*Advisory question* means a ballot question commonly known as a "straw vote" placed on the ballot as a nonbinding vote taken to indicate the relative strength of public opinion and opposing issues or positions. Although nonbinding, an advisory question shall be initiated, pursuant to this article, by the voters essentially using the initiative process or by the legislative body essentially using the referendum process as provided herein.

*Initiative* means a process that allows citizens to propose new laws (i.e., ordinances) or changes to existing laws and to enact or reject them at the polls. The initiative process for amending the town Charter must follow the procedures set forth in Ann. Code of Md., Local Government article, § 4-305. Any other binding initiative process must be authorized by the town Charter.

*Municipal question* means an issue or question, relating to, or characteristic of, a municipal corporation, and consisting of subject matter over which the board has authority. The board shall have sole discretion in determining whether an issue is a municipal question.

*Petition* means a writing signed by a number of registered voters of the town which is required by law to place a question or ordinance on the ballot or demand a recall election, as permitted by Charter or statute. Such petitions for official action must be signed by a specified number of registered voters.

*Referendum* means a process that allows voters to petition an enactment of a legislative body to a vote of the people. The referendum process for amending the town Charter must follow the procedures set forth in Ann. Code of Md., Local Government article, § 4-304 et seq. Any other binding referendum process must be authorized by the town Charter.

(Ord. No. 2019-08, § 1, 12-10-2019)

**Sec. 8-37. Initiated by board; initiated by voters; post-election.**

(a) *General.*

- (1) An advisory question may be placed on the ballot at a regular or special town election by petition of the voters or by a vote of the board in conformity with the provisions of this section.
- (2) The board shall not call a special election for the sole purpose of entertaining or placing an advisory question on the ballot.
- (3) The number of ballot questions at any election shall not exceed seven in number, and shall be succinct, grammatically correct and free of vulgarities or slang.

(b) *Initiated by the board.*

- (1) The board, upon its own action and without a formal petition, may order by written resolution that an advisory question shall be placed on the ballot at any regular or special town election, provided that the question involves a municipal question.
- (2) Said resolution shall fix the exact language to appear on the ballot and shall be approved at least 15 days before the subject election.

(c) *Initiated by the voters.*

- (1) A proposal to place an advisory question on the ballot at a regular or special municipal election of the town may be presented to the board on a petition signed by at least ten registered voters of the town.
- (2) Said petition signed by at least ten registered voters shall be presented by the individual circulating the petition to the board at a regular or special town meeting stating a desire to have the question placed on the ballot at the next election. The board may, but need not, call or convene a special session solely to accept a petition under this section. The board may summarily reject the petition without further review if it finds that the sole question proposed, or all of the questions proposed within the petition are not deemed to be municipal questions.
- (3) The registered town voters signing said petition shall sign the same as their names appear on the town's election books, and under each signature shall be typed or printed each petitioner's name, and address where said voter is registered to vote in town elections.
- (4) At the bottom of each page of said petition, the individual circulating the petition shall sign the same and

make an affidavit before a notary public that such individual circulated the petition and saw each individual whose names appear thereon sign the same in said individual's presence.

- (5) The town clerk shall transmit the petition to the town board of supervisors of elections ~~supervisors~~, who shall have no more than 30 days after receipt of such a petition to certify the signatures of the registered voters of the town.
- (6) Upon certification of the signatures, the petition shall be presented to the board of commissioners for final approval before said election, provided that the question to be so placed on the ballot involves a municipal question and otherwise meets the requirements of this section.
- (7) If finally approved by the board, the clerk working in cooperation with the board of supervisors of elections shall cause the question to be placed on the ballot at the next regular municipal election held at least ten days after such approval by the board.

(d) *Post-election.* The chairman of the board of supervisors of elections shall certify to the town clerk who shall record the results in the minutes of the board of commissioner and announce the results of the vote on the advisory question at the next regular or special meeting of the ~~commission~~ board of commissioners.

(Ord. No. 2019-08, § 2, 12-10-2019)

PROOFS

Chapter 9  
**RESERVED**

PROOFS

Chapter 10

**EMERGENCY MANAGEMENT AND EMERGENCY SERVICES**

**ARTICLE I. IN GENERAL**

**Secs. 10-1--10-18. Reserved.**

**ARTICLE II. CIVIL EMERGENCIES**

**Sec. 10-19. Purpose and authority.**

(a) The purpose of this article is to supplement existing law and to provide certain authority and establish guidelines for the town to react and operate during periods of civil emergencies, and to prevent or mitigate conditions that threaten to destroy property and harm the public health, safety or welfare of residents of, or visitors to, the town.

(b) The authority to provide for the protection of health, safety, comfort, convenience, and welfare of the town residents and visitors is provided in section 82-16 of the Charter of the town, and Ann. Code of Md., Local Government article, § 5-101 et seq.

(c) The authority to enact such provisions or regulations is further provided in Ann. Code of Md., Public Safety article, § 14-101 et seq.

(Ord. No. 2020-04, § 1, 3-24-2020)

**Sec. 10-20. Applicability.**

(a) The provisions of this article shall apply to the entire corporate territory and populace of the town, and to all real property whether improved or unimproved located within the corporate limits of the town.

(b) Unless an intergovernmental agreement states otherwise, the county police department, the sheriff's department and the park police of the Maryland-National Capital Park and Planning Commission shall retain primary law enforcement jurisdiction over the courts, public buildings, parks and the lands under their respective jurisdictions.

(c) The town's police department shall cooperate with other police agencies operating within the corporate limits and its environs in accordance with any approved mutual aid agreements approved by the board of commissioners in accordance with state law.

(Ord. No. 2020-04, § 2, 3-24-2020)

**Sec. 10-21. Proclamation (executive order).<sup>24</sup>**

(a) Whenever riot, unlawful assembly, insurrection, other disturbance, the imminent threat thereof, or any fire, flood, storm, earthquake or other natural catastrophe or disaster occurs in the town and results in or threatens to result in the death or injury of persons or the destruction of property or the disruption of local government to such extent as to require, in the judgment of the ~~President~~ mayor, extraordinary measures to prevent the death or injury of persons and to protect the public peace, safety and welfare, and alleviate damage, loss, hardship or suffering, the ~~President~~ mayor shall forthwith proclaim the existence of a municipal emergency.

(b) Such civil emergency shall cease to exist within 30 days or sooner upon the issuance of an executive order by the ~~President~~ mayor or by a resolution passed by a vote of not less than two-thirds of all the members present and voting of the board of commissioners terminating the same. Such proclamation shall be issued by the ~~President~~ mayor or by a resolution passed by a vote of not less than two-thirds of all the members of the board of

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<sup>24</sup> Legal or Editorial Change: Ord. No. 2020-04, § 3. Proclamation (executive order) of civil emergency. Changed president to mayor and council to board.

commissioners present and voting when such extraordinary measures are no longer required for the protection of the public peace, safety and welfare. Before a civil emergency is declared terminated, either by proclamation by the ~~board-president-mayor~~ or by a resolution as stated herein, the ~~President mayor or Council or board~~ will consult with the town's police chief to determine if there are any fiscal, public safety response or disaster recovery imperatives that require the continuation of emergency measures.

(c) Any such executive order of a civil emergency by the ~~President mayor~~ shall, within 72 hours of issuance of the proclamation or as soon as practical, at the earliest practicable time be filed with the town clerk for presentation to the board of commissioners for possible ratification and confirmation, modification, or rejection. The board may, by resolution, modify or reject the proclamation and, if rejected, it shall be void. If the board modifies or rejects the proclamation, said modification or rejection shall be prospective only, and shall not affect any actions taken prior to the modification or rejection of the proclamation. The board may convene and act on any proclamation of civil emergency within 72 hours of the proclamation being presented to the board by the ~~President mayor~~. Except with the consent of the ~~governing body of the political subdivision-board of commissioners~~, a local state of emergency may not continue or be renewed for longer than 30 days pursuant to state law.

(Ord. No. 2020-04, § 3, 3-24-2020)

### **Sec. 10-22. Authority of mayor to issue certain orders.**<sup>25</sup>

(a) Upon the executive order of a civil municipal emergency by the ~~president mayor~~, and during the existence of such civil emergency, the ~~president mayor~~ may, in a form that meets the requirements of this article, make and proclaim any or all of the following orders:

- (1) An order imposing a general curfew applicable to the town as a whole, or to such geographical area of the town and during such hours as the ~~president mayor~~ deems necessary, which effective hours and affected area may be modified from time to time;
- (2) An order requiring any or all business establishments to close and remain closed until further order;
- (3) An order requiring the closure of any or all bars, taverns, liquor stores, and other business establishments where alcoholic beverages are sold or otherwise dispensed, provided that, with respect to those business establishments which are not primarily devoted to the sale of alcoholic beverages and in which such alcoholic beverages may be removed or made secure from possible seizure by the public, the portions thereof utilized for the sale of items other than alcoholic beverages may, in the discretion of the ~~president mayor~~, be allowed to remain open;
- (4) An order requiring the discontinuance of the sale, distribution or giving away of alcoholic beverages in any or all parts of the town;
- (5) An order requiring the discontinuance of the sale, distribution or giving away of firearms and/or ammunition for firearms in any or all parts of the town;
- (6) An order requiring the discontinuance of the sale, distribution or giving away of gasoline or other liquid flammable or combustible products in any container other than a gasoline tank properly affixed to a motor vehicle;
- (7) An order requiring the closure of any or all business establishments where firearms and/or ammunition for firearms are sold or otherwise dispensed, provided that, with respect to those business establishments which are not primarily devoted to the sale of firearms and/or ammunition and in which such firearms and/or ammunition may be removed or made secure from possible seizure by the public, the portions thereof utilized for the sale of items other than firearms and ammunition may, in the discretion of the ~~president mayor~~, be allowed to remain open;
- (8) An order closing to the public any or all public places, including streets, alleys, sidewalks, public ways, schools, parks, shorelines, amusement areas, and public buildings, provided that such an order is

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<sup>25</sup> Legal or Editorial Change: Ord. No. 2020-04, § 4. Authority of president to issue certain orders. In subsections A(22) and A(23), deleted reference to charter as not authorized.

- supplementary to and consistent with county, state and federal orders relating such closures;
- (9) An order prohibiting the carrying or possession of a firearm or any instrument which is capable of producing bodily harm and which is carried or possessed with intent to use the same to cause such harm, provided that any such order shall not apply to peace officers or military personnel engaged in the performance of their official duties;
  - (10) An order requesting federal, state and/or county assistance in combating such civil emergency;
  - (11) An order establishing economic controls in aid of and supplementary to and consistent with state and federal orders relating to price stabilization or controls, including:
    - a. The convening and establishing of rations;
    - b. Auditing retail and wholesale ration accounts;
    - c. Monitoring price control operations and reporting violations to appropriate authorities;
    - d. Assisting in providing essential supplies to disaster victims;
    - e. Advising appropriate authorities concerning rationing, price control, wage and rent controls; and
    - f. Allocation of food and other essential commodities;
  - (12) An order directing the use of all public and private health, medical, and convalescent facilities and equipment to provide emergency health and medical care for injured persons;
  - (13) An order authorizing, in cooperation with utility management and appropriate state and federal agencies, the shutting off, restoration, and operation of utility services in accordance with priorities established for combating such civil emergency;
  - (14) An order providing for the evacuation and reception of the population of the town or any part thereof;
  - (15) An order to set evacuation routes and the modes of transportation to be used during an emergency and to direct the control of ingress to and egress from an emergency area, the movement of individuals in the area, and the occupancy of premises in the area;
  - (16) An order to authorize the use of private property, in which event the owner of the property shall be compensated for its use and for any damage to the property;
  - (17) An order to provide for temporary housing for town residents;
  - (18) An order to authorize the clearance and removal of debris and wreckage;
  - (19) An order to control traffic and suspend or alter parking regulations within the town;
  - (20) An order, if medically necessary and reasonable, to appoint a public health officer, and to define and regulate the powers and duties of said public health officer, and to prevent and remove all nuisances, and to inspect, regulate, and abate any buildings, structures, or places which cause or may cause unsanitary conditions or conditions detrimental to health;
  - (21) An order, if medically necessary and reasonable to treat, prevent, or reduce the spread of the disease or outbreak believed to have been caused by the exposure to a deadly agent, designating a health official to:
    - a. Require individuals to submit to medical examination or testing;
    - b. Require individuals to submit to vaccination or medical treatment unless the vaccination or treatment likely will cause serious harm to the individual;
    - c. Establish places of treatment, isolation, and quarantine; or
    - d. Require individuals to go to and remain in places of isolation or quarantine until the designated official determines that the individuals no longer pose a substantial risk of transmitting the disease or condition to the public;
  - (22) An order to derogate express ~~charter or~~ ordinance provisions for conducting or postponing a municipal election or to prescribe the method of conducting a municipal election;

- (23) An order abrogating or modifying any relevant and existing ordinance, resolution, rule, ~~or regulation, or charter provision~~ to allow for extensions of permits, licenses, registrations, nomination certificates or other permissions, deadlines or mandated filings to extend or avoid lapsing of same for a period of time extending for up to 30 days after the emergency;
- (24) An order modifying employee salaries or hiring additional employees necessary for the purpose of meeting the emergency; and
- (25) Such other orders as are imminently necessary for the protection of life and property.

(b) The powers of the ~~president~~ mayor under this section are in addition to any other authority vested in the chief executive officer of a municipal corporation by law. Provided, however, that any such order shall, within 72 hours of issuance of the order or as soon as practical at the earliest practicable time, be filed with the clerk to the board of commissioners and presented to the board for ratification and confirmation, modification or rejection, and, if rejected, shall be void.

(c) The board of commissioners shall consider the statements and provisions set forth in this article and may, by resolution, modify, ratify, amend or reject the order. If the board modifies, amends or rejects the order, said modification, amendment or rejection shall be prospective only, and shall not affect any actions taken prior to the modification, ratification, amendment or rejection of the order. The board shall endeavor to act on any order within 72 hours of it being presented to the board by the ~~president~~ mayor; however, should the board fail to take action, the ~~president's~~ mayor's order will remain in effect throughout the duration of the declared emergency.

(Ord. No. 2020-04, § 4, 3-24-2020)

#### **Sec. 10-23. Contents of order.**

An order issued pursuant to this article shall contain the following:

- (1) A statement of the facts upon which the order is based;
- (2) A statement that the ~~president~~ mayor believes it is in the best interest of public safety, rescue and recovery efforts and the protection of property that the exercise of certain rights be temporarily limited; and
- (3) A statement that the conditions of the order are designed to provide the least necessary restriction on those rights.

(Ord. No. 2020-04, § 5, 3-24-2020)

#### **Sec. 10-24. Use of services and equipment of municipalities and citizens; other personnel.**

(a) In addition to and/or in connection with the exercise of the powers specified in this article, the ~~president~~ mayor shall, in carrying out the provisions thereof:

- (1) Utilize to the maximum extent practicable the services, equipment, supplies and facilities of existing departments, offices, and agencies of the town, including the town community emergency response team (CERT), state, counties and other municipal corporations organized under the laws of the state consistent with any applicable intergovernmental agreements (i.e., memoranda of understanding);
- (2) In the event of a disaster and upon the proclamation by the governor or the ~~president~~ mayor of the existence of such disaster, command the service and equipment of as many citizens as the ~~president~~ mayor considers necessary in the light of the disaster proclaimed, provided that citizens so commandeered shall be entitled during the period of such service to all privileges, benefits and immunities as are provided by this article and federal and state civil defense regulations for registered civil defense or emergency services workers; and

(b) The ~~president~~ mayor may at any time appoint or authorize the appointment of volunteer citizens to augment the personnel of any town activity in time of an emergency. Such volunteer citizens shall be enrolled as emergency management volunteers in cooperation with the heads of the town departments affected and shall be subject to any rules and regulations set forth by the ~~president~~ mayor. Except for town officials having subscribed to the oath pursuant to section 82-85 of the town Charter, each person serving as a member of the emergency operations committee or similar advisory council or committee, or as an employee or volunteer in any capacity in the town's

emergency management or similar organization shall, prior to assuming the duties of said emergency management volunteer, take an oath which shall be substantially as follows:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the constitution of this state against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter, and I do further swear (or affirm) that I do not advocate the overthrow of the government of the United States or of this state by force or violence; and that during such time, as I am a member of the town of Upper Marlboro's emergency management organization, I will not advocate nor become a member or an affiliate of any organization, group or combination of persons or of any political party that advocates the overthrow of the government of the United States or of this state by force or violence."

Emergency management volunteers assigned to duty during a period of natural disaster or civil emergency in the town shall be eligible for the benefits of the state ~~workmen's-workers'~~ compensation law at a rate of compensation commensurate with that of persons performing similar work under conditions of regular employment.

(Ord. No. 2020-04, § 6, 3-24-2020)

#### **Sec. 10-25. Disaster readiness and response plan.**

Plans and programs for executing emergency powers including a disaster readiness and response plan or emergency management/continuity of operations plan shall be prepared and kept current under the direction of the ~~president-mayor~~, who shall submit such plans and programs and proposed amendments thereto to the town board of commissioners for review and approval by resolution. Upon such approval, the ~~president-mayor~~ shall be authorized to exercise in accordance with such plans and programs the powers provided therein.

(Ord. No. 2020-04, § 7, 3-24-2020)

#### **Sec. 10-26. Emergency operations committee.**

There shall be an emergency operations committee, CERT team or similar advisory council, or town committee, consisting of such number of members as shall be appointed pursuant to chapter 2, article VII, division 1 or by the ~~president-mayor~~ and chaired by the town's director of emergency operations, or some other designated official, if so appointed, or the chief of police, in case an elected or appointed official is not so appointed or named to chair said committee. Members of the committee shall serve without compensation but may be reimbursed for reasonable and necessary expenses incurred in the performance of their duties. The committee shall meet at least annually at the places and times as shall be prescribed by the ~~president-mayor~~, and shall:

- (1) Advise the ~~president-mayor~~ on all matters pertaining to disaster readiness and response capabilities within the town;
- (2) Periodically review and make recommendations for the revision and/or maintenance of up-to-date disaster response plans for the town, including:
  - a. Preparations for and the carrying out of executive emergency powers;
  - b. The delegation and sub-delegation of administrative authority by the ~~president-mayor~~;
  - c. The performance or coordination of emergency functions, including firefighting, police, medical and health, welfare, rescue, engineering, transportation, communications and warning services, evacuation of persons from stricken areas, facility protection, restoration of utility services, and other functions relating to civilian protection together with all activities necessary or incidental to the preparation for and carrying out of such functions; and
  - d. Requirements for department and municipal operations, including management succession, procedures for providing 24-hour capability, mobilization procedures, special disaster response procedures, plans for records protection, personnel procedures, finance plans, and training procedures for disaster response;
- (3) Provide cooperation and coordination with the disaster response plans of other local organizations and agencies;

- (4) Prepare and recommend to the ~~president-mayor~~ plans for mutual aid operations with the state and the agencies or political subdivisions thereof; and
- (5) Recommend expenditures for disaster preparations and training.

(Ord. No. 2020-04, § 8, 3-24-2020)

**Sec. 10-27. Emergency purchases of supplies.**

Upon the executive order of a municipal emergency by the ~~president-mayor~~, and during the existence thereof, emergency purchases of supplies, materials and equipment are authorized to be made in accordance with chapter 2, article VI; this article; and the following procedure:

- (1) A log of all purchases made during any emergency shall be maintained by each department, the chief of staff, and by the town treasurer.
- (2) The heads of departments and the ~~president-mayor~~ shall account for all costs incurred in making such purchases.
- (3) Upon termination of the emergency, the treasurer and/or designee shall report all emergency purchases issued to the respective departments and offices, and shall verify and authenticate such orders, and submit a summary thereof to the board for review.

(Ord. No. 2020-04, § 9, 3-24-2020)

**Sec. 10-28. Authority of mayor to enter into contracts and incur obligations.**

- (a) Authority of ~~president-mayor~~; review and action by town commissioners.
- (1) Notwithstanding the emergency procurement provisions found in chapter 2, article VI, upon the proclamation by the ~~president-mayor~~ of a civil emergency resulting from a disaster caused by enemy attack, sabotage, or other hostile action, or by fire, flood, storm, or earthquake, or medical, epidemic, pandemic, or other natural cause, and during the existence of such civil emergency, the ~~president-mayor~~ shall have the power by order to enter into contracts and incur obligations necessary to combat such disaster, protect the health and safety of persons and property, and provide emergency assistance to the victims of such disaster. Such powers shall be exercised in the light of the exigencies of the situation without regard to time-consuming procedures and formalities prescribed by ordinance (excepting mandatory constitutional requirements), including, but not limited to, budget ordinance limitations and requirements of competitive bidding and publication of notices pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes, and the appropriation and expenditures of public funds, provided that the ~~president-mayor~~ shall, wherever practicable, advise and consult with the board of commissioners with respect to disaster response activities, and any such order shall at the earliest practicable time be presented to the board for review and appropriate legislation, including:
  - a. Findings by resolution with respect to actions taken;
  - b. Authorization of payment for services, supplies, equipment loans and commandeered property used during disaster response activities;
  - c. Approval of gifts, grants or loans accepted by the ~~president-mayor~~ during the emergency; and
  - d. Levy of taxes to meet costs of disaster response and recovery operations.
- (2) Upon such review, the board of commissioners may ratify and confirm, modify, or reject any such order, and, if rejected, any such order shall be void.

(b) The treasurer shall be authorized to draw and to pay the necessary warrants for expenditures made pursuant to order and authorized by the board of commissioners.

(c) Nothing in this article shall be interpreted to prevent or limit the ~~president-mayor~~ from invoking or utilizing any emergency purchasing provisions found in chapter 2, article VI, in circumstances where no executive order or resolution of a civil municipal emergency pursuant to this article has been issued by the ~~president-mayor~~

or board.

(Ord. No. 2020-04, § 10, 3-24-2020)

**Sec. 10-29. Line of succession and vacancies.**

(a) During the effective period of an official proclamation by the ~~president-mayor~~ or the governor that declares all or part of the municipal corporation to be in an actual or threatened emergency area, should the ~~president~~ mayor of the board of commissioners step down, resign or become unable to serve, the remaining commissioners shall decide amongst themselves who shall serve as ~~president-mayor~~ as outlined in the town Charter. Should there be a tie, the remaining commissioner with the highest vote count during the last election cycle shall break the tie or decide.

(b) In case of a vacancy, the board shall follow the town Charter to hold a special election for the replacement or filling of a seat on the board.

(c) In certain circumstances, this section may be superseded by and shall be controlled by the relevant provisions of Ann. Code of Md., Public Safety article, § 14-403.

(Ord. No. 2020-04, § 11, 3-24-2020)

**Sec. 10-30. Notification of governor, news media and public.**

The ~~president-mayor~~ shall cause any proclamation or order issued pursuant to the authority of this article to be delivered to the governor and, to the extent practicable, to all news media within or near the town, and shall utilize as many other available such means, including, but not limited to, posting on public facilities, signs, public address systems, newsletters, newspapers, town internet websites or social media accounts, as may be practical to use and as shall be necessary in the judgment of the ~~president-mayor~~, in order to give the widest dissemination of such proclamations and orders to the public.

(Ord. No. 2020-04, § 12, 3-24-2020)

**Sec. 10-31. Failure to obey; violations and penalties.**

A person or business entity's responsible party, owner or executive is guilty of failure to obey the ~~president~~ mayor's emergency order when such person or business entity's responsible party, owner, or executive knowingly violates any order issued under authority of this article. It is unlawful for anyone to fail or refuse to obey an order proclaimed by the ~~president-mayor~~ pursuant to the provisions of this article. Anyone convicted of a violation of this article shall be guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 or by imprisonment for not more than 180 days, or both such fine and imprisonment. Pursuant to Ann. Code of Md, Public Safety article, § 14-114, a person who willfully violates an order, rule, or regulation issued under the authority of the governor pursuant to the Maryland Emergency Management Agency Act is guilty of a misdemeanor and, upon conviction, is subject to imprisonment not exceeding one year or a fine not exceeding \$5,000.00, or both.

(Ord. No. 2020-04, § 13, 3-24-2020)

Chapter 11  
**RESERVED**

PROOFS

## Chapter 12

**ENVIRONMENT AND NATURAL RESOURCES****ARTICLE I. IN GENERAL**

**Secs. 12-1--12-18. Reserved.**

**ARTICLE II. URBAN FOREST REGULATIONS****Sec. 12-19. Definitions.**

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

*Park trees* means trees, shrubs, bushes and all other woody vegetation in public parks having individual park names and all open areas owned by the town, or to which the public has free access as a park. All street trees and park trees under the jurisdiction of the town, by law or intergovernmental agreement, are considered as part of the town's urban forest and are subject to the provisions of this article.

*Right-of-way of a public road* means that land the title to which, or an easement for which, is held by the state, the county, or the town for use as a public road.

*Street tree or roadside tree* means a plant that has a woody stem or trunk that grows all, or in part, within the right-of-way of a public road. The term "street tree" or "roadside tree" includes trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the town. For the purposes of this article, this definition and the other definitions found herein, they shall be consistent with the definitions found in Ann. Code of Md., Natural Resources article, §§ 5-401--5-423 and regulations made thereto found in the Code of Maryland Regulations (COMAR), Reg. 08.07.02.01 et seq. A roadside tree is any tree whose trunk grows all or in part within a public road right-of-way, regardless of ownership of the physical property.

*Street tree care* means:

- (1) Removal of a roadside tree;
- (2) Planting or maintenance, or both, of a roadside tree;
- (3) Application of pesticide to a roadside tree, or treatment that may affect the health or growth of a roadside tree; and
- (4) Any other activity or behavior regulated by this article.

*Town roadside tree care expert* means an individual representing the town who:

- (1) Is designated to supervise that government's roadside tree planting and maintenance operations;
- (2) Has passed the forest service's examination for roadside tree care experts; and
- (3) Has been approved by the forest service as qualified to supervise the town's tree care program.

(Ord. No. 2020-07, § 1, 12-8-2020)

**Sec. 12-20. Establishment of a shade tree board and the board's oversight.**

(a) There shall be created a board to be known and designated as the shade tree board composed of no less than three members appointed by the president with the approval of the board. The majority of the tree board shall be made up of town residents. It shall be the responsibility of the tree board to study, investigate, advise, inventory and develop and/or update and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such a plan will be presented to the town board of commissioners and upon its acceptance and approval shall constitute the official comprehensive tree plan for the town. The tree board shall choose its own officers, make its own rules and regulations for the conduct of meetings and keep records of its proceedings.

(b) A majority of the members shall be a quorum for the transaction of business. In the case that there are not enough interested residents to serve on a tree board or said board is unable to convene a quorum or function due to lack of members for a period of six weeks or more, the director of public works, or the town board of commissioners' designee, shall serve as the town's urban forest coordinator who shall oversee the program. If there is a tree board in place and functioning, the public works representative shall serve as the town's designee to assist the tree board as needed.

(c) Where applicable and not contrary to this article, the shade tree board shall be further governed by chapter 2, article VII, division 1.

(Ord. No. 2020-07, § 2, 12-8-2020)

### **Sec. 12-21. Public tree care.**

(a) To the extent permitted by the Maryland's Roadside Tree Law (Ann. Code of Md., Natural Resources article, §§ 5-401--5-423) and this article, the town shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the boundaries of all streets, avenues, squares and public grounds as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The shade tree board may recommend to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest.

(b) It shall be unlawful as a normal practice for any person, firm, or town department to top or prune any street tree, park tree or other tree on public property to such a degree so as to remove the normal canopy and disfigure the tree. It shall be unlawful for any person other than the town to cut down any street tree or park tree without written consent of the town. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this article as determined by the tree board. Every owner of any tree overhanging any street or right-of-way within the town shall prune the branches so that such view of any street intersection ~~and so that there shall be~~ have a clear space of 14 feet above the surface of the street or nine feet above the surface of the sidewalk, as is consistent with section 6-87(7). Said owners shall remove all dead, diseased, or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The town shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a streetlight or interferes with visibility of any traffic control device or sign. The street tree species to be planted shall be determined by the shade tree board.

(c) This article does not apply to:

- (1) Other governmental entities having jurisdiction over park lands within the town;
- (2) Routine maintenance of public utility rights-of-way by public utility companies or their contractors; or
- (3) The cutting or clearing of public utility rights-of-way for new transmission of distribution lines.

(Ord. No. 2020-07, § 3, 12-8-2020)

### **Sec. 12-22. Dead or diseased tree removal on private property.**

The town shall have the right to cause the removal of any dead or diseased trees on private property within the town; when such trees constitute a hazard to life and property, or harbor insects or disease which constitute a potential threat to other trees within the town, the town will notify, in writing, the owners of such trees. Removal shall be accomplished by said owners of such trees. Removal shall be done by said owners at their own expense within 60 days after the date of service of notice. In the event of failure of owners to comply with such provisions, the town shall have the authority to remove such trees and charge the cost of removal to the owners to be collected in the same manner as property taxes. The town code enforcement officers are charged with enforcing this article.

(Ord. No. 2020-07, § 4, 12-8-2020)

### **Sec. 12-23. Approval required to take action affecting the urban forest.**

No person shall remove or destroy or cause removal or destruction of a tree on any public property or undertake construction or other action that may significantly and prematurely detract from the health or growth of a tree located on public property without first having obtained written permission from the town administrator which shall

only be issued upon the presentation of an application bearing the approval of the state forester assigned to the town or the town's duly authorized roadside tree care expert. Any violation of this article shall constitute a municipal infraction for which a citation may be issued.

(Ord. No. 2020-07, § 5, 12-8-2020)

**Sec. 12-24. Review by board of commissioners.**

The town board of commissioners shall have the right to review the conduct, acts, and decisions of the town shade tree board. Any person may appeal from any ruling or order of the town tree board to the board of commissioners, who may hear the matter and make a final decision.

(Ord. No. 2020-07, § 6, 12-8-2020)

**Sec. 12-25. Administrative and judicial review.**

(a) A decision of the shade tree board or other official of the town under this article may be appealed for error to the town board of commissioners. Any municipal infraction citation issued under this article shall be stayed from judicial adjudication pending a final decision by the board of commissioners.

(b) Except as stated herein, any person aggrieved by a decision of the board of commissioners with regard to an application for a permit, consent or permission filed under the provisions of this article and who appeared before the board of commissioners in person, by an attorney, or in writing shall have the right to appeal the decision of the board to the circuit court for the county under the provisions of title 7, chapter 200 of the Maryland Rules of Procedure.

(Ord. No. 2020-07, § 7, 12-8-2020)

**Sec. 12-26. Penalty.**

Except as otherwise stated in this article, any violation of any section of this article shall be deemed a municipal infraction and any person, upon conviction thereof, shall be fined not more than \$1,000.00.

(Ord. No. 2020-07, § 8, 12-8-2020)

**~~Sec. 9. Severability.~~**

~~Should any part of this Ordinance be held invalid, all remaining parts shall remain in effect.~~

~~(Ord. No. 2020-07, § 9, 12-8-2020)~~

Chapter 13  
**RESERVED**

PROOFS

## Chapter 14

**LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS****ARTICLE I. IN GENERAL**

**Secs. 14-1--14-18. Reserved.**

**ARTICLE II. BUSINESS LICENSES****Sec. 14-19. Purpose and authority.**

(a) *Purpose.* The purpose of this article is to license any and all associations; corporations; industrial, institutional, rental, research, retail or service business establishments; limited liability corporations or partnerships; and professional associations or corporations doing business in the town.

(b) *Authority.* The authority to license business entities operating within the town and to charge a fee is provided for in section 82-16(2)(gg) of the town Charter and in Ann. Code of Md., Local Government article, §§ 5-204(e) and 5-205(d).

(Ord. No. 2018-07, § 1, 10-9-2018; Ord. No. 2021-01, § 1, 5-11-2021)

**Sec. 14-20. Required; exceptions.**

No association, business entity, commercial or residential property management association, corporation, entity, industrial, institutional, rental, retail, or service business establishment, limited liability association, corporation or partnership, organization, person or professional association, corporation or partnership shall sell, offer for sale, or otherwise dispose of for any valuable consideration any goods or services or engage in the dispensation of professional services within the town without first obtaining a business license for such purpose. Excepted are activities conducted by town organizations for fundraising, exclusively religious, charitable or educational fundraising organizations, and yard sales.

(Ord. No. 2018-07, § 2, 10-9-2018; Ord. No. 2021-01, § 2, 5-11-2021)

**Sec. 14-21. Multiple establishments.**

(a) If multiple businesses are conducted on any premises, lot or parcel within the town, a separate license and fee shall be required for each separate business establishment, unit or use described herein or by resolution adopted pursuant to this article that is operated on any single premises, lot or parcel located within the town.

(b) If a business conducted on any premises is also conducted on any other premises within the town, a separate license shall not be required for each branch or separate establishment, provided that warehouses and distribution facilities used in connection with a business are incidental to a business licensed under the provisions of this article and shall not be deemed to be separate places of business or branch establishments.

(Ord. No. 2018-07, § 3, 10-9-2018; Ord. No. 2021-01, § 3, 5-11-2021)

**Sec. 14-22. Biannual renewal.**

Business licenses shall be valid for two years, from July 1 through June 30, and must be renewed biannually. The town shall notify all business establishments operating within the town of the business license application requirement and fee in writing. An application not filed and/or fees not paid within 30 days from the date of the letter sent to the business establishment will be subject to a penalty of \$50.00 and will be subject to an additional penalty of \$25.00 for each month or partial month the business license application is not filed and/or fee is not paid after 60 days from the date of the letter sent to the business establishment. Any business establishment that fails to file an application or pay the business license fee may be reported to the state office of the comptroller, the state department of assessment and taxation, personal property tax division, and the clerk of the circuit court in the county. A business license is not transferable to a new owner or operator of an existing business. Licenses granted for a period after December 31 will be prorated at one-half the scheduled rate.

(Ord. No. 2018-07, § 4, 10-9-2018; Ord. No. 2021-01, § 4, 5-11-2021)

**Sec. 14-23. Fees generally.**<sup>26</sup>

(a) The fee schedule for this article as it pertains to certain enumerated businesses shall be set from time to time by resolution of the board of commissioners.

~~\_\_\_\_\_ The fee schedule shall become effective JULY 1, 2021, AND WILL SUPERSEDE ANY PRIOR APPROVED FEE SCHEDULES.~~

(Ord. No. 2018-07, § 5, 10-9-2018; Ord. No. 2021-01, § 5, 5-11-2021)

**Sec. 14-24. Fee schedule.**

The following business licensing fees and other fees in this section shall be established and collected pursuant to this article:

Bail bondsmen	\$300.00
Private investigations	\$300.00
Barber/beauty shops	\$300.00
Cleaning services companies	\$300.00
Convenience stores/marts	\$300.00
Dry cleaning and laundromats	\$300.00
Insurance agencies	\$300.00
Liquor stores	\$300.00
Home occupations	\$0.00
Lottery sales (per unit)	\$100.00
Medical/dental facilities	\$300.00
Nonprofit organizations/churches	\$0.00
Professional offices (per office)	\$300.00
Restaurants/bars	\$300.00
Vending machines (per unit)	\$25.00
Engineering/surveying firms	\$300.00
All other businesses	\$300.00
Supplemental town liquor license	20% of <del>eo. liquor bd.</del> <u>county liquor board license fee</u>

(Res. No. 2018-05, 10-9-2018)

**Sec. 14-25. Application.**

(a) Each business establishment subject to the provisions of this article shall file a business license application as part of the licensing procedure and shall provide on the application its state department of assessment and taxation (SDAT) number and its federal employer identification number. Failure to provide this information shall be considered a violation of this article.

(b) Each business establishment subject to the provisions of this article that owns the property from which

<sup>26</sup> Legal or Editorial Change: Ord. No. 2018-07, Business licenses, § 5. Fees. Delete subsection B as no longer needed.

the business is operated and fails to file a business license application and/or pay business and/or liquor license fees, fines or penalties imposed by this article shall result in the amount of any fee, fine or penalty imposed being recorded as a lien against the property and collected in the same manner as delinquent taxes.

(c) No application for a business will be approved for a business or activity which is in violation of the ordinances or laws of the town, county or state or which is a nuisance or constitutes a danger to the welfare, health or safety of the town or the public.

(d) All business licenses issued shall be subject to revocation by the town if it is shown that the manner in which such business is conducted constitutes a nuisance to the public, or if such business is being conducted in violation of any law or ordinance, or if such business otherwise constitutes a danger to the public health, safety or welfare of the residents of the town.

(Ord. No. 2018-07, § 6, 10-9-2018; Ord. No. 2021-01, § 6, 5-11-2021)

#### **Sec. 14-26. Property owner, property manager and/or rental agent notification.**

The property owner or duly authorized property manager or agent shall be required to notify the town of the name, address, telephone number, and date a new tenant moves in or an existing tenant relocates to another location owned by the property owner or of the date when a tenant ceases to be a tenant. Failure of the property owner to provide this information within 30 days of the event will be in default and subject to a reasonable penalty as provided in section 14-27 and failure to pay any fine or penalty imposed will result in the amount of any fine or penalty imposed being recorded as a lien against the property and collected in the same manner as delinquent taxes.

(Ord. No. 2018-07, § 7, 10-9-2018; Ord. No. 2021-01, § 7, 5-11-2021)

#### **Sec. 14-27. Violation; enforcement.**

(a) Violation of any provision of this article shall be a municipal infraction. The penalty for a violation shall be \$50.00 for each initial offense and \$250.00 for each repeat offense. Failure to apply for a town business license and pay the required fees within the specified timeframe as indicated in this article shall constitute a violation. Such violation shall not be considered corrected until the required application is filed and the proper fee paid. If an application has not been filed, nor the proper fees paid after the elapse of a 30-day period following the initial due date as stated in the letter of notification, this event shall constitute a separate offense. The board of commissioners shall have the authority to change the penalties of this article from time to time by resolution.

(b) In addition to the other remedies or penalties provided herein, the town may institute an action for injunctive, mandamus, or other appropriate action or proceedings to enforce the provisions of this article.

(Ord. No. 2018-07, § 8, 10-9-2018; Ord. No. 2021-01, § 8, 5-11-2021)

#### **Secs. 14-28--14-57. Reserved.**

### **ARTICLE III. RETAIL OR SERVICE ESTABLISHMENTS**

#### **Sec. 14-58. Definitions.**

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

*Retail or service establishment* means any establishment operated within the corporate limits of the town which caters to the public for sales of merchandise or services having 75 percent of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

(Ord. No. 2018-04, § 1, 8-14-2018)

#### **Sec. 14-59. Hours of operation.**

It shall be unlawful for any person, business entity or corporation to operate or cause to be operated any retail or service establishment in the town between the hours of 2:00 a.m. and 6:00 a.m. unless a 24-hour operation permit is approved by the board of commissioners.

(Ord. No. 2018-04, § 2, 8-14-2018)

**Sec. 14-60. Twenty-four-hour operation permit.**

Should a retail or service establishment wish to remain open 24 hours a day, a permit valid for two years must be obtained from the town and approved by the board of commissioners. A fee of \$2,000.00 shall be associated with the permit and is due within five days of the permit being granted. A permit certificate issued by the town shall be issued upon payment and conspicuously displayed on the premises.

(Ord. No. 2018-04, § 3, 8-14-2018)

**Sec. 14-61. Special permits.**

Should a retail or service establishment wish to remain open for a period longer than the hours of operation as prescribed in section 14-59, but less than 24 hours, a special permit having the same fee as prescribed in section 14-60 shall be obtained from the board of commissioners.

(Ord. No. 2018-04, § 4, 8-14-2018)

**Sec. 14-62. Revoking of 24-hour operation or special permit.**

Should the town find that a retail or service establishment is operating in violation of its 24-hour operation or special permit, or this article, a written warning notice shall be submitted to the property owner and establishment owner. If the ~~issue~~ violation continues after the warning notice, the board of commissioners may vote to revoke the permit and issue a written notice that the establishment must return to normal hours of operation within 30 calendar days of the notice. The full permit fee shall be refunded within 90 days by the board, provided that more than 365 days remain of the two-year permit term.

(Ord. No. 2018-04, § 5, 8-14-2018)

**Sec. 14-63. Penalty.**

Any person, business entity or corporation found in violation of this article shall be liable for a municipal infraction and, upon conviction thereof, shall be assessed a fine in the amount of \$1,000.00.

(Ord. No. 2018-04, § 6, 8-14-2018)

**Secs. 14-64--14-84. Reserved.****ARTICLE IV. MECHANICAL OR ELECTRICAL AMUSEMENT DEVICES****Sec. 14-85. Definitions.**

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

*Gross retail floor space* means the space within which the public is invited to conduct business and to which the public has access to displays, services and goods to be purchased.

*Mechanical or electrical amusement device* means any machine which, upon the payment for use or the insertion of a coin, slug, token, plate, or disk, may be operated by the public generally for use as a game, game of chance, entertainment, or amusement, whether or not registering a score. The term "mechanical or electrical amusement device" shall include such devices as marble machines, pinball machines, skill ball, mechanical grab machines, video games, games of chance and all games, operations, and transactions similar thereto under whatever name they may be indicated.

(Ord. No. 84-1, § I, 4-11-1984; Ord. of 5-9-1995, § 1)

**Sec. 14-86. License fee.**

(a) It shall be unlawful to place mechanical or electrical amusement devices in any location where it is available for public use or is used by the public unless it is first licensed by the board of commissioners. Applications shall be made to the town clerk.

(b) The fee for such license shall be \$50.00 per year or any portion of a year. The license period shall be the same as the calendar year.

(Ord. No. 84-1, § II, 4-11-1984)

**Sec. 14-87. License issuance.**

No license shall be issued except to a person of good character approved by the board of commissioners. Upon approval of the applicant and the payment of the license fee, the town clerk shall issue a stamp bearing a notation of the town indicating the issuance for the license for the appropriate year. One license shall be issued for each amusement device licensed and it shall be placed in a conspicuous location and so affixed that it cannot be transferred from one machine to another.

(Ord. No. 84-1, § III, 4-11-1984)

**Sec. 14-88. Devices to be in plan view without overcrowding.**

(a) All ~~such~~ amusement devices shall at all times be kept and placed in plain view of any person who may frequent or be in any place of business where such devices are kept or used.

(b) Nothing in this article shall be construed to authorize, permit or license any gambling device of any nature whatsoever.

(c) It shall be unlawful to place more than one mechanical or electrical amusement device in any establishment with less than 1,000 square feet of gross retail floor space per machine.

(Ord. No. 84-1, § IV, 4-11-1984)

**Sec. 14-89. Inspection.**

The chief of police shall inspect or cause the inspection of any place or building in which any ~~such~~ amusement devices are operated or set up for operation and to inspect, investigate and test such devices as seen fit by the board of commissioners.

(Ord. No. 84-1, § V, 4-11-1984)

**Sec. 14-90. Revocation.**

In addition to any penalty imposed, the board of commissioners may revoke ~~such an~~ amusement device license for any violation of this article or of any part of this article pertaining to the conduct of such business.

(Ord. No. 84-1, § VI, 4-11-1984)

**Sec. 14-91. Penalty.**

Any mechanical or electrical amusement device found to be unlicensed shall result in a penalty to the owner and/or lessee of the premises where the machine is located in the amount of \$250.00.

(Ord. No. 84-1, § VII, 4-11-1984)

**Secs. 14-92--14-110. Reserved.****ARTICLE V. TRANSIENT MERCHANTS, ITINERANT MERCHANTS AND ITINERANT VENDORS****Sec. 14-111. Definitions.**

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

*Transient merchant, itinerant merchant or itinerant vendor* includes any person, firm or corporation, whether as owner, agent, consignee or employee, whether a resident of the town or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within the town, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, and public room in hotels, lodginghouses, apartments, shops or any street, alley, or other place within the town, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction.

(Ord. No. 86-1, § 1(1-1), 9-9-1986; Ord. No. 04-01, § 1(1-1), 9-14-2004)

**Sec. 14-112. Prohibited generally.**

It shall be unlawful for any transient merchant, itinerant merchant or itinerant vendor to sell or deliver the goods of said transient merchant, itinerant merchant or itinerant vendor within the town limits.

(Ord. No. 86-1, § 1(1-2), 9-9-1986; Ord. No. 04-01, § 1(1-2), 9-14-2004)

**Sec. 14-113. Exceptions.**

(a) Exemptions from this article are yard sales, home hostess parties, such as Tupperware, and ice cream trucks.

(b) Upon approval of the board of commissioners, exception can be made for special town- or county-sanctioned celebrations or functions.

(Ord. No. 86-1, § 1(1-3), (1-4), 9-9-1986; Ord. No. 04-01, § 1(1-3), (1-4), 9-14-2004)

**Sec. 14-114. Penalty.**

Any person found guilty of violating any provision of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not more than \$100.00.

(Ord. No. 04-01, § 1(1-5), 9-14-2004)

~~Sec. 1-6. BE IT FURTHER ENACTED that this ordinance shall take effect 20 days after its adoption by the Town of Upper Marlboro, Maryland.~~

~~(Ord. No. 04-01, § 1(1-6), 9-14-2004)~~

PROOFS

Chapter 15  
**RESERVED**

PROOFS

Chapter 16  
**SOLID WASTE**

**Sec. 16-1. 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:

*Ashes* means any residue from fires used for cooking and for heating buildings.

*Garbage* means any wastes resulting from the handling, preparation, cooking and consumption of food; and wastes from the handling, storage and sale of produce.

*Refuse* means any solid waste materials, including garbage, rubbish and ashes, and street cleanings, but not human excreta or building construction wastes.

*Rubbish* means any non-putrescible solid wastes, excluding ashes, consisting of paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, metals and similar materials, tree trimmings, yard and street sweepings and weeds, but shall not include leaves.

*Trash* means household or office waste to be disposed of by the town and lawfully placed in the county sanitary landfill. The term "trash" does not include offal, hazardous waste or any waste that is dangerous to the environment. (Ord. No. 02-5, § II(A), 4-9-2002; Ord. of 12-12-2006, § II(A))

**Sec. 16-2. Collection from residential properties.**

(a) All trash, garbage and waste materials shall be placed in refuse containers that shall be made of metal or other suitable material, watertight, strong, durable, rodent- and insect-proof, and provided with two lifting handles on opposite sides and a tightly-fitting cover with handle. They shall have a capacity not to exceed 32 gallons.

(b) Trash and garbage shall be placed at the curbside no sooner than 12 hours preceding the scheduled time for collection. No emptied trash or garbage containers shall remain at curbside longer than 12 hours immediately after the pickup services. No such containers shall be stored on the front of properties. When it is impossible to store containers other than on the front of properties, the containers shall be stored in an enclosed area with an attached lid, which shall screen them from public view on all sides. The storage area shall be kept painted or made of material that is pleasing to the eye and shall be maintained in good repair at all times.

(c) Garbage, animal excrement, sweeper dust and small scraps for disposal shall be wrapped in plastic when being placed in the containers.

(d) Leaves, weeds, grass, shrubbery trimmings and other garden cuttings may be placed in synthetic bags for collection.

(e) Brush, long stems of bushes, tree limbs and cuttings ~~will~~shall be cut into four-foot lengths and tied securely into bundles weighing not more than 25 pounds and placed beside the trash container.

(f) Articles such as paper cartons or wood boxes that cannot be placed in a receptacle shall be prepared for collection by placing the smaller cartons and boxes in the larger boxes until the larger cartons or boxes are completely filled, and placing them beside the trash container.

(g) Unsatisfactory containers. Receptacles which do not meet the requirements outlined in this section, or receptacles which have deteriorated, or have been damaged to the extent that the covers will not fit securely, or those having jagged or sharp edges capable of causing injury to refuse collectors, are declared a nuisance and shall be condemned by the superintendent of the public works department. If such receptacles are not removed within five days after notice of such defective conditions to the owner or user, then such receptacles shall be confiscated.

(h) Bulky trash. Bulky trash from residences, such as old refrigerators, stoves, washing machines, water tanks and furniture, must be placed at curbside, and will be collected only after special pickup arrangements have been made at town hall. Refrigerators must have their doors removed as a safety precaution.

(i) Prohibited. No automobile parts, tree stumps, large tree trunks and limbs, stone, bricks, cement, cinderblocks, concrete blocks, explosives, propane gas containers, dangerous or corrosive chemicals, clothing taken from persons with infectious diseases, tires, crates, roofing shingles, or other refuse from construction or remodeling ~~will~~shall be picked up at any time.

(Ord. No. 02-5, § II(B), 4-9-2002)

**Sec. 16-3. Private collections; food-handling establishments.**

(a) *Requirements.* Garbage and refuse to be collected by private individuals, firms or corporations within the corporate limits of the town shall likewise be placed in approved sanitary containers with tight-fitting lids, such to remain covered at all times except when garbage, trash and refuse are actually being placed in or emptied from the container. The containers shall be maintained in good order and repair and in sufficient number or size to contain the garbage or trash that will accumulate on the premises between collections.

(b) *Placement of containers.* Containers ~~will~~shall be placed behind the building setback line, screened from public view and ~~will~~shall not extend over any public or residential property line. When a building setback line faces a public street, the containers ~~will~~shall be stored in an enclosed area on all sides with a lid so that the contents are not visible to the public. The enclosed storage area ~~will~~shall be painted or made of material that is pleasing to the eye and shall be kept in good condition at all times.

(c) *Food-handling establishments.* It shall be the duty of owners of food-handling establishments to remove or have removed daily the contents of their trash receptacles, with the exception of Saturdays and Sundays and those days that are national public holidays.

(Ord. No. 02-5, § II(C), 4-9-2002; Ord. No. 08-03, § 1, 10-14-2008)

**Sec. 16-4. Refuse in streams and drainage ditches prohibited.<sup>27</sup>**

(a) No person shall throw or deposit waste materials or garbage in any stream, pond, open branch, or drainage ditch within the town.

(b) Notwithstanding any other ~~penalties~~ provisions herein contained, a violation of this section is a municipal infraction and a fine of \$100.00 shall be imposed upon any person in violation of this section.

(Ord. No. 02-5, § II(D), 4-9-2002)

**Sec. 16-5. Littering during removal.<sup>28</sup>**

(a) No person engaged in the removal of any garbage and refuse in the town shall permit any paper or other article to drop or be blown ~~from refuse removal trucks or deposited on the ground or elsewhere as litter.~~ Loads shall be covered so that light articles or paper cannot be blown into the streets, lanes or alleys.

(b) Any person who violates this section is guilty of a municipal infraction and is subject to a fine of ~~ten dollars~~ \$100.00 for any single initial violation and a fine of ~~twenty-five dollars~~ \$50.00 for each repeat or continuing violation.

(Ord. No. 02-5, § II(E), 4-9-2002)

**Sec. 16-6. Unauthorized use of receptacles.**

(a) It shall be unlawful for any person to place, or permit another to place, any garbage or trash in any receptacle, at any refuse collection point or in any refuse container used in the town, unless the refuse is from the premises served by the container or from the premises at which the receptacle or collection point is located.

(b) It shall be unlawful for any person to place or deposit, or permit another to place or deposit, prohibited refuse in town service containers or to put anything on the ground at these locations.

<sup>27</sup> Legal or Editorial Change: Ord. No. 02-5, § II(D). Refuse in streams and drainage ditches prohibited. Altered so fine is a municipal infraction fine.

<sup>28</sup> Legal or Editorial Change: Ord. No. 02-5, § II(E). Littering during removal. Altered per instructions.

(c) The owner or occupant of any building, house, structure or land shall cause to be removed all refuse items of the nature which are prohibited to the regular collection service and which are located, owned or deposited on the property or on the public right-of-way adjacent to the property, and the existence of refuse or any other item on the property or the adjacent public right-of-way shall be prima facie evidence that such owner or occupant failed to remove, as provided by this chapter, at the expense of said owner or occupant, the refuse or other items so stored or located thereon. Removal within three days of notice by the town is required.

(Ord. No. 02-5, § II(F), 4-9-2002)

**Sec. 16-7. Compliance with placement requirements.<sup>29</sup>**

Refuse, rubbish, ashes and other material placed for collection in a manner which does not meet the requirements outlined in ~~Section II~~ of this chapter shall not be collected.

(Ord. No. 02-5, § II(G), 4-9-2002)

**Sec. 16-8. Storage of waste materials, building materials, etc., in public view.**

It shall be unlawful to accumulate or store in open view to the public any brush, trash, building materials or any waste material from building or remodeling operations or any debris, any packing boxes, rubber tires, tubes, automobile parts, disabled or unlicensed motor or other vehicles, trailers, and the like, except when active building construction is in progress.

(Ord. No. 02-5, § II(H), 4-9-2002)

**Sec. 16-9. Violation; penalty.<sup>30</sup>**

Any person who violates sections 16-2(a) through (d), 16-3, 16-6, ~~and or~~ 16-8 is guilty of a municipal infraction and is subject to a fine of ~~TEN DOLLARS AND 00/100 (\$10.00)~~ \$50.00 for each repeat or continuing violation. Each day that the violation continues is considered a separate violation.

(Ord. No. 02-5, § II(I), 4-9-2002)

**Sec. 16-10. Special needs.**

Any resident who, because of age, injury or infirmity, cannot place the trash of said resident at the curb, shall be entitled to special, reasonable accommodation by the town, which will provide arrangements to dispose of said resident's trash upon reasonable notice.

(Ord. of 12-12-2006, § II(I))

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<sup>29</sup> Legal or Editorial Change: Ord. No. 02-5, § II(G). Compliance with placement requirements. Altered per instructions.

<sup>30</sup> Legal or Editorial Change: Ord. No. 02-5, § II(I). Violation-Penalty. Altered per instructions.

Chapter 17  
**RESERVED**

PROOFS

## Chapter 18

**STREETS, SIDEWALKS AND OTHER PUBLIC PLACES****ARTICLE I. IN GENERAL****Sec. 18-1. Construction and repair of streets and sidewalks generally.**

(a) In order to protect the public health, safety, comfort, convenience and welfare of the town, it has become necessary to initiate construction and repair of the streets and sidewalks.

(b) The required work shall consist of the construction and repair of the streets and sidewalks, the drainage systems, the various utility systems, including the location or relocation of water, sewer, electric, telephone and cable transmission lines, street and sidewalk lights, landscaping, as well as maintaining existing entrances from public and private property to the streets and sidewalks, and to do all things necessary to accomplish same.

(c) To carry out the aforesaid street and sidewalk construction and repairs as duly authorized by the town Charter and ordinances, and state law, the town's employees and its agents and assigns shall have the right of entry, for the purpose of accomplishing said work, at all reasonable hours, upon any premises in the town which abuts a public street or sidewalk.

(d) Any restraint or hindrance offered to such entry by any owner, tenant, or person in possession, or the agent of any of them, or any other violation of the provisions of this section shall constitute a municipal infraction. Each day the violation continues shall constitute a separate offense. The penalty for such municipal infraction shall be a \$500.00 fine. Notwithstanding any penalty stated in this section, the town may further seek any other relief or remedy to enforce this section as provided by law to include injunctive or declaratory relief.

(Ord. No. 2015-02, §§ 1—4, 2-10-2015)

**Sec. 18-2. Vending machines, juke boxes, mechanical amusement devices and newspaper distribution boxes.**

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

*Juke box* means any music vending machine, contrivance or device which, upon the insertion of a coin, currency, slug, token, plate, disc, or key into any slot, crevice, or other opening, by the payment of any price, operates or may be operated for the emission of songs, music or similar amusement.

*Mechanical amusement device* means any machine which, upon insertion of a coin, currency, slug, token, plate, disc, or key, may be operated by the public generally for use as a game, entertainment or amusement, whether or not registering a score. The term "mechanical amusement device" shall include such devices as marble machines, pinball machines, skill ball, mechanical grab machines and all games, operations, or transactions similar thereto under whatever name they may be indicated.

*Newspaper distribution box* means any box, stand or shelf for the distribution of newspapers, whether for sale or complimentary.

*Vending machine* means any automatic vending machine used for the sale of merchandise and controlled by the insertion of a coin, currency, slug, token, plate, disc or key. The term "vending machine" shall include machines or devices used solely for the vending of service, food or confections.

(b) It shall be unlawful to place vending machines, juke boxes, mechanical amusement devices or newspaper distribution boxes along the streets, lanes, alleys, sidewalks and walkways in the corporate limits of the town.

(c) If it is found that a vending machine, juke box, mechanical amusement device or newspaper distribution box has been placed along any street, lane, alley, sidewalk or walkway in the corporate limits of the town and it is deemed by the board of commissioners to be a danger or hazard to the public safety, then and in that case, the said vending machines, juke boxes, mechanical devices or newspaper distribution boxes may be removed by the town employees at the expense of the owner of said vending machine, juke box, mechanical device or newspaper

distribution box.

(d) Any person, firm, or corporation violating any of the provisions of this section, in addition to the cost of removal of the vending machine, juke box, mechanical amusement device or newspaper distribution box, shall be liable to a fine or penalty of not less than \$100.00 nor more than \$250.00 for each offense.

(Ord. No. 2001-1, §§ I—IV, 1-9-2001)

**~~Sec. V.~~**

~~BE IT FURTHER ENACTED that this ordinance shall take effect 20 days after its adoption by the Town of Upper Marlboro.~~

~~(Ord. No. 2001-1, § V, 1-9-2001)~~

**Sec. 18-3. Skateboarding.**<sup>31</sup>

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

*Skateboard* means any platform of wood, fiberglass, metal, etc., mounted on two or more wheels used for the purpose of gliding, skating, coasting or sliding on a roadway, sidewalk or similar surface.

(b) *Acts prohibited.* No person shall use a skateboard for purposes of gliding, skating, coasting, or sliding on:

- (1) Main Street between the intersection of Old Crain Highway and Marlboro Pike (at its western terminus) and to the town limits to the east, either along the street itself or on the sidewalks between Main Street and properties that front thereon;
- (2) On the pedestrian mall or walkway between the county courthouse and the county administration building;
- (3) On the walkway between the pedestrian mall and the Gabriel Duvall Building;
- (4) On Governor Oden Bowie Drive, either along the street itself or on the sidewalk between Main Street and Elm Street and properties that front thereon;
- (5) On Elm Street itself between Main Street and Marlboro Pike or on the sidewalk along Elm Street and the properties that front thereon;
- (6) On Water Street itself from Main Street to the Water Street bridge, or on the sidewalk between Water Street and the properties that front thereon;
- (7) On Church Street itself from Old Crain Highway to Water Street or on the sidewalk along Church Street and the properties that front thereon; or
- (8) On Mill Road from Elm Street to Marlboro Pike.

(c) *Penalties.* A violation of this section shall be a municipal infraction. Any person who violates this section shall be subject to a penalty of not more than \$100.00.

(Ord. No. 94-1, § 2, 9-13-1994)

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<sup>31</sup> Legal or Editorial Change: Ord. No. 94-1, § 2. Skateboarding. In subsection C., made penalty a municipal infraction.

**Secs. 18-4--18-24. Reserved.**

**ARTICLE II. OBSTRUCTING AND LITTERING SIDEWALKS; OUTSIDE DINING AT FOOD ESTABLISHMENTS**

**Sec. 18-25. Definitions and interpretation.**

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

*Block* means to interfere with or obstruct travel by any means, including, but not limited to, standing on the part of the walk (that is fit for travel) or placing any object whatsoever (except previously approved objects such as signs) or any vehicle whatsoever on any street, sidewalk or alley.

*Sidewalk* means any sidewalk owned or maintained by the town. The term "sidewalk" shall not include sidewalks or walkways on private property in shopping centers, office sites or any other private property.

(b) If not defined herein, the words used shall have their ordinary meaning.

(c) This article shall not be interpreted as prohibiting any person from stopping on any sidewalk to talk or make a speech, provided that such person shall not stand in such a location that it is impossible for any pedestrian to travel along the sidewalk without leaving the sidewalk and walking on adjacent property or street.

(Ord. No. 90-4, § 1-1, 11-13-1990)

**Sec. 18-26. Prohibitions.**

(a) No street, sidewalk or alley shall be blocked by any merchandise offered for sale or rent.

(b) No street, sidewalk or alley shall be used for the stationary consumption of food or drink.

(c) No person, firm or corporation shall block or cause to be blocked any public sidewalk or any part of a public street so as to block same or inhibit the free flow of pedestrian traffic.

(d) No person shall permit any shrub, plant or tree to grow over any part of a sidewalk in such a manner as to block the sidewalk.

(e) No restaurant or food establishment shall provide outside dining furniture for its patrons on town property.

(f) No restaurant or food establishment shall allow any trash, debris or refuse to accumulate in the area where patrons are served and each restaurant or food establishment shall be responsible for providing adequate waste receptacles that are approved by the town.

(g) Any restaurant or food establishment serving patrons outside or providing outdoor seating shall designate such area by a partition or such structure that is at least 24 inches high, that is approved by the town, and clearly sets the dining area off from the area used by the general public.

(h) No restaurant or food establishment shall cook or allow any cooking to be done out of doors.

(Ord. No. 90-4, § 1-2, 11-13-1990)

**Sec. 18-27. Licensing.**

All outside dining areas ~~will be charged~~ shall incur a permit fee of \$50.00 per table per annum.

(Ord. No. 90-4, § 1-3, 11-13-1990)

**Sec. 18-28. Penalties.**

(a) The chief of police shall make or cause to be made sufficient inspection to ensure compliance with the provisions of this article.

(b) Any person, firm or corporation violating any provision of this article shall be fined not less than \$25.00 nor more than \$500.00 for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

~~The provisions of this Ordinance are severable and the invalidity of any part of this Ordinance shall not affect the~~

~~remaining provisions.~~

(Ord. No. 90-4, § 1-4, 11-13-1990)

**Secs. 18-29--18-59. Reserved.**

### ARTICLE III. STREET CONSTRUCTION AND UTILITY CUTS

#### Sec. 18-60. Definitions.

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

*Antenna* means that part of a wireless telecommunications facility designed to radiate or receive RF signals or electromagnetic waves for the provision of services, including, but not limited to, cellular, paging, personal communications services and microwave communications.

*Collocation* means the same as defined by the FCC in 47 CFR 1.40001(b)(2), as may be amended, which defines that term as the mounting or installation of transmission equipment on an eligible pole for the purpose of transmitting or receiving RF signals for communications purposes. As an illustration and not a limitation, the FCC's definition effectively means "to add" and does not necessarily refer to more than one wireless telecommunications facility installed at a single site.

*Communications facility.*

- (1) The term "communications facility" means, collectively, the equipment at a fixed location within a town right-of-way that enables communications services, including:
  - a. Radio transceivers, antennas, coaxial, fiber-optic or other cabling, power supplies, backup batteries, and comparable equipment, regardless of technological configuration; and
  - b. All other equipment associated with any of the foregoing.
- (2) The term "communications facility" does not include the pole, tower or support structure to which the equipment is attached.

*Communications support structure* means a pole located in the city right-of-way or proposed to replace an existing pole in the right-of-way to which communications facilities, such as small cells or other communications facilities, are attached or proposed or intended to be attached.

*FCC* means the Federal Communications Commission.

*Investor-owned utility pole* means a utility pole that is not owned by the town.

*Permittee* means the person that receives a permit to work in or install facilities, equipment or structures in the right-of-way under this article and the person that owns facilities, equipment or structures permitted to be installed under this article, including the permittee's officials, employees, agents, and contractors.

*Pole* means a single shaft of wood, steel, concrete, or other material typically at least 26 feet tall and capable of supporting the equipment mounted thereon in a safe and adequate manner, including an investor-owned utility pole.

*RF* means radio frequency or electromagnetic waves between 30 kHz and 300 GHz in the electromagnetic spectrum range.

*Substantial change* means the same as defined by the FCC in 47 CFR 1.40001(b)(7), as may be amended, and as applicable to facilities in the public right-of-way, which defines that term as a collocation or modification that:

- (1) Increases the overall height more than ten percent or ten feet (whichever is greater);
- (2) Increases the width more than six feet from the edge of the communications structure;
- (3) Involves the placement of any new enclosures on the ground when there are no existing ground-mounted enclosures;

- (4) Involves the placement of any new ground-mounted enclosures that are ten percent larger in height or volume than any existing ground-mounted enclosures;
- (5) Involves excavation or deployment of equipment outside the area in proximity to the installation and other wireless communications equipment already deployed on the ground;
- (6) Would defeat the existing concealment elements of the communications support structure as determined by any uniform guidelines promulgated by the board or the town president or designee; or
- (7) Violates a prior condition of approval of a permit for the site.

*Utility* means an organization franchised by the county, municipal or state government or otherwise authorized by law to install, operate and maintain facilities in public rights-of-way for the purpose of distribution of fuel or energy, for communication, or the distribution of a public water supply and collection and conveyance of sanitary sewage or stormwater.

(Ord. No. 2017-04, § 4, 10-10-2017; Ord. No. 2019-01, § 4, 1-22-2019)

#### **Sec. 18-61. Street construction and utility cuts or installations.**

It shall be unlawful for any person, firm or corporation to install any pole, structure, or equipment in the right-of-way or dig up, cut, excavate, break, destroy or in any way injure any sidewalk, curb, gutter, driveway, street or roadway within the town and under its jurisdiction without first obtaining a permit so to do from the board of commissioners.

(Ord. No. 2017-04, § 1, 10-10-2017; Ord. No. 2019-01, § 1, 1-22-2019)

#### **Sec. 18-62. Adoption of county law.**

The board of commissioners hereby adopts by reference herein the ordinance, as amended from time to time, entitled "The Road Ordinance of Prince George's County, Maryland," codified in subtitle 23 of the county code, and further adopts herein the minimum standards for street construction and repairs applicable to utility companies installing or maintaining utility facilities or improvements in the public ways as found in a document known as the "Prince George's County Policy and Specification for Utility Installation and Maintenance," as amended, sometimes further referenced herein as the county specifications manual, attached to the ordinance from which this article is derived as appendix A and incorporated by reference herein and made available for inspection at the town hall, as well as the county specifications and standards for roadways and bridges, and the state SHA standard specifications for construction and materials. Any references to officials or agents of the county government found in county law adopted herein shall be construed to apply to the applicable officials or agents of the town government.

(Ord. No. 2017-04, § 2, 10-10-2017; Ord. No. 2019-01, § 2, 1-22-2019)

#### **Sec. 18-63. Regulatory scope.**

Except as otherwise stated in this article, from and after the effective date of the ordinance from which this article is derived, no person or entity, including, but not limited to, a private or public utility company, or contractor shall grade, install, cut, construct, or reconstruct any surface material, subsurface material, paving, drainage structure, curb, gutter, sidewalk, driveway entrance, retaining wall, step, equipment, cable, pole, tower or any other structure within the right-of-way of any public street, road, highway, avenue, lane, alley, or public way under the jurisdiction of the town unless said person or entity shall first obtain a permit from the president of the board of commissioners or the president's designee, and complies with all applicable provisions of this article and referenced law.

(Ord. No. 2017-04, § 3, 10-10-2017; Ord. No. 2019-01, § 3, 1-22-2019)

#### **Sec. 18-64. Installation, restoration and patching standards.**

(a) *Technical standards.* The technical standards for acceptable temporary and permanent utility patching in flexible asphalt pavement for the town shall be the same as those found in standards 300.18 and 300.19, along with the mill and overlay requirements for roadways under the five-year moratorium period, attachment 6, as published in the county specifications manual.

(b) *Communications structures or facilities.* A permit shall not be issued for a proposed structure or facility

when the location selected in the application is in an area where there is an overconcentration of structures or facilities in, on or over the right-of-way, as determined by the president or designee or in the president's or designee's reasonable discretion and judgment. Any pole, equipment box, or other structure installed in a town right-of-way must:

- (1) Comply with all structural and safety standards specified in this article and by the president in the permit conditions or any uniform guidelines promulgated by the board by resolution;
- (2) Not obstruct pedestrian or vehicular traffic flow or sight lines;
- (3) Comply with the Americans with Disabilities Act;
- (4) If a pole, be at least 26 feet in height or comparable height with existing utility poles, but not exceed 50 feet above ground level;
- (5) If a replacement of an existing pole, not exceed the height of the existing pole by more than ten feet;
- (6) If an equipment box (ground-mounted), not exceed a size of 28 cubic feet and, if located in the floodplain, shall be elevated on platforms, and subject to other placement requirements established by the president in the permit conditions or any uniform guidelines promulgated by the board by resolution;
- (7) Not obstruct parking, including preventing persons from entering and exiting vehicles parked in the right-of-way and in such manner that will not interfere with the use of other property;
- (8) Have a color and finish determined in consultation with the president or the president's designee or any uniform guidelines promulgated by the board by resolution to minimize visual impact to the neighborhood, taking into consideration any historic area designations; and
- (9) Comply with such other requirements and conditions as the president may determine are appropriate. In the event that strict compliance with any provision of this article or any uniform guidelines promulgated by the board, as applied to a specific proposed communications facility or structure, would effectively prohibit the provision of services, the president may grant a limited, one-time exemption from strict compliance. Communications facilities and support structures, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electrical Code and all FCC, state, and local regulations.

(c) *Antennae and other attachments.* No person shall install any attachment to a pole or other structure in the town right-of-way without first obtaining a permit from the town. All attachments to structures in the town right-of-way must:

- (1) For each pole, have an equipment box (pole-mounted) no greater in collective size than six cubic feet in volume or the volume established by the president or designee or any uniform guidelines promulgated by the board by resolution;
- (2) Have a color and finish determined in consultation with the president or designee to minimize visual impact to the neighborhood, taking into consideration historic area designations;
- (3) If an antenna, be attached to an existing pole or replacement pole and be demonstrated to be the least visible antenna possible to accomplish the coverage objectives and be screened, shrouded, or concealed, or treated to minimize visual and acoustic impact, as determined in consultation with the president or designee, taking into consideration any historic area designations or any board promulgated guidelines. Antenna elements shall be flush-mounted, to the extent reasonably feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Antennas shall be situated so as to reduce visual and acoustic impact without compromising their function;
- (4) Comply with such other requirements and conditions as the president or designee may determine are necessary and appropriate. All wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electrical Code, and all FCC, state and local regulations.

(Ord. No. 2017-04, § 5, 10-10-2017; Ord. No. 2019-01, § 5, 1-22-2019)

### **Sec. 18-65. WSSC's exemption.**

Pursuant to Ann. Code of Md., Public Utilities article, tit. 27 (Ann. Code of Md., Public Utilities article, § 27-101 et seq.), the Washington Suburban Sanitary Commission (WSSC), as a state agency, is generally considered exempt from this article; however, WSSC is required by state statute to provide advance notice of its projects and to repair and leave the public roadway in the same or a superior condition to that existing before the public roadway was disturbed and furthermore to pay all costs for returning the public roadway to the same or superior condition.

(Ord. No. 2017-04, § 6, 10-10-2017; Ord. No. 2019-01, § 6, 1-22-2019)

### **Sec. 18-66. Completion and acceptance of improvements or repairs.**

Work permitted in an approved permit shall be completed within 120 days or the permit lapses. Upon completion, any construction, installations, improvements, repairs or other activity as certified by the town as being in full compliance with this article and the county specifications manual, as applicable, and notification thereof to the town, the road, sidewalk, or whatever work was performed in the right-of-way shall be deemed to be accepted for maintenance by the town from and after the acceptance date, except for privately-owned equipment or other public entity-owned infrastructure.

(Ord. No. 2017-04, § 7, 10-10-2017; Ord. No. 2019-01, § 7, 1-22-2019)

### **Sec. 18-67. Permit required, fees, application forms, and records.**

(a) A permit as required by this article obtained from the president or designee may be issued, and the regulatory or other related fees for which shall be established herein or amended by the town board of commissioners by written resolution adopted from time to time. Any applicant obtaining a town construction permit involving abutting real property, in addition to any permits required of this section, shall receive a credit for any additional permits issued under this article.

(b) Unless the board establishes utility permit or other related fees or fee schedule by resolution, all applicable fees found in county law as incorporated herein shall be calculated pursuant to the applicable county provision or county specifications manual using the town's version of the utility permit fee calculation sheet, which is a modified attachment of said county specifications manual. The various permit fees are initially established as follows:

- (1) *Special utility permit fee.* A special utility permit typically covers completely new utility pipeline or facility construction and includes an administrative and inspection fee, a moratorium fee, if applicable, and any required engineering fee as follows:
  - a. Administrative and inspection fee: A \$250.00 flat or lump sum fee, plus \$2.00 per linear foot of installed utility within the paved area, \$0.50 per linear foot for underground work outside the improved roadway, or \$0.20 per linear foot for aerial utility facility installations;
  - b. Moratorium or impact fee: \$10.00 per linear foot of roadway cut paid for disturbance of streets less than five years old since paving; and
  - c. Engineering fees: A variable lump sum as described in section 18-69.
- (2) *Maintenance utility permit fee.* A maintenance utility permit typically covers routine maintenance or repairs of existing facilities, which may be paid upon permit issuance or on a quarterly or other periodic basis in the form of an escrow account maintained by the treasurer, and includes an application and processing fee, an administration and inspection fee, and any engineering fees as follows:
  - a. Application and processing fee: \$250.00;
  - b. Administrative and inspection fee: \$125.00 for small cuts (i.e., less than 100 square feet) or \$300.00 for large cuts, including other fees as further described in section 3.3.2 of the county specifications manual; and
  - c. Engineering fees: A variable lump sum as described in section 18-69.
- (3) *Extension fee.* The special utility permit shall be issued for a standard duration of 90 calendar days. A \$100.00 fee shall be paid to extend the duration of a special utility permit.

(c) Any forms, applications, form letters, schedules, documents, worksheets, templates, or permit fee calculation sheets prepared or used by the county government pursuant to county law, as incorporated by reference in this section, may be modified for use by an applicant, subject to further modification and approval by the town for conformity to this section, when applying for any permits required by this article. The permit application may include and require any additional detail required by any uniform guidelines promulgated by the board by resolution, or as required by the president or designee.

(d) The town code enforcement officer or designee shall cause to be obtained and maintained photographs of the proposed and finished work areas in order to document the before and after condition of the affected municipal property. These photographs shall be maintained by the town records custodian with the permit file pursuant to the town's approved records retention schedule.

(e) An applicant may be required to obtain multiple permits (e.g., a special or maintenance utility permit to dig in the right-of-way and a communications facilities or communications support structures permit to install and operate a small cell) issued under this article depending on the scope of the installation or disturbance to the right-of-way.

(f) Notwithstanding any other provisions in this section to the contrary, permit applications, including those for communications facilities or communication support structures, shall be reviewed and a decision rendered according to the following time periods, or "shot clocks," as required by federal law:

- (1) Minor change applications (i.e., collocate small cell infrastructure on an existing pole) shall be reviewed and rendered within 60 days of the date of filing.
- (2) Substantial change applications (i.e., place small cell infrastructure on a newly installed pole) shall be reviewed and rendered within 90 days of the date of filing.

(g) Fees charged for permit applications for communications facilities or communications support structures shall be as follows:

- (1) An initial non-recurring fee of \$500.00 for a single up-front application that includes up to five communications facilities (i.e., collocated small cells), with an additional \$100.00 for each communications facility added beyond five;
- (2) A non-recurring fee of \$1,000.00 for a new or extended communications support structure or pole (i.e., not a collocation) intended to support one or more communications facilities; and
- (3) A recurring annual fee of \$270.00 per communications facility (e.g., a communications support facility having five collocated small cells or antennae is a \$1,350.00 annual fee) per year to cover permitted access to the right-of-way (ROW) or access including the attachment to town-owned structures located in the town ROW. A permittee who allows or agrees to collocation on or within its communications support facility located in the town ROW by another person, contractor, or lessee shall notify the town and said other person or entity shall make application for a permit under this article.

(Ord. No. 2017-04, § 8, 10-10-2017; Ord. No. 2019-01, § 8, 1-22-2019)

#### **Sec. 18-68. Authority to hire town engineer to supervise or inspect street improvements and installations.**

The president of the board of commissioners or designee is authorized to employ the services of an engineer for purposes of supervising or inspecting any street improvements or installations described in this article, and may require as a condition of granting a permit under this article that all street improvements or installations be subject to the supervision or inspection of the town's designated engineer.

(Ord. No. 2017-04, § 9, 10-10-2017; Ord. No. 2019-01, § 9, 1-22-2019)

#### **Sec. 18-69. Engineering fee.**

In making application for authorization to allow work within a town right-of-way, and a permit, as provided in section 18-67, the applicant shall designate whether or not the work will be performed under the supervision of the applicant's own licensed engineer. If the applicant has the service of said applicant's own engineer, the applicant shall, in addition, pay to the town the sum of three percent of the total cost of such improvements to cover the actual expense of inspection of the improvements by the town. If the applicant does not have the services of an engineer,

the applicant shall pay to the town the sum of six percent of the total cost of such improvements to cover the expense of preparing plans and specifications and for supervision and inspection of the improvements by the town. Any surplus or unused balance of this fee shall be refunded to the applicant once the project is certified and accepted by the town. Should the town incur additional costs for engineering services exceeding the amounts stated herein, the treasurer may invoice the permittee after giving reasonable notice and an opportunity to alter the extent of its maintenance project or improvements, if practical. These fee requirements are in addition to the various permit fees established by section 18-67 and which altogether or in part may be waived or modified by the board of commissioners by written resolution, or motion recorded in the journal.

(Ord. No. 2017-04, § 10, 10-10-2017; Ord. No. 2019-01, § 10, 1-22-2019)

**Sec. 18-70. Sunday and holiday work.**

(a) *Emergencies only.* No work shall be permitted on Sunday, except in cases of emergency, and then only to such extent as it is absolutely necessary and with written permission of the president of the board of commissioners. The permit holder shall not be permitted to work on any days which are legal town holidays as designated by the board of commissioners, unless granted permission by the president. If a permittee desires to work on any such legal holidays, permission shall be sought from the president in writing at least three days in advance of such holiday. The request shall state the place where such work is to be conducted.

(b) *Work hours.* No work shall be performed after 6:00 p.m. or before 7:00 a.m. without prior written approval by the president.

(Ord. No. 2017-04, § 11, 10-10-2017; Ord. No. 2019-01, § 11, 1-22-2019)

**Sec. 18-71. Responsibility for damages; installation removals.**

(a) The permit holder shall assume all responsibility for damages sustained to persons or property due to the carrying on of work and shall be responsible for all accidents to persons and property, saving and holding the town harmless from all damages resulting from any accidents which may occur to the construction operations. The permittee is responsible for the repairs of damages prior to release of any applicable bond. If the town is made a party to any action because of the granting of a permit to the permit holder, the permit holder shall be required to pay all costs and fees incurred by the town, including the legal fees of the town attorney or other legal counsel.

(b) Anything installed in the town right-of-way without a permit or in violation of the terms and conditions of a permit or otherwise abandoned shall be removed upon demand by the town, and the town shall have the authority to remove the installation or structure and restore the right-of-way and charge the cost of the removal and restoration to the person that caused the installation or disturbance.

(c) If applicable state, county or federal standards and regulations are amended, the owners of a communications facility or communications support structure governed by this article shall bring any facilities and/or structures into compliance with the revised standards and regulations within six months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring facilities and/or communications support structures into compliance with any revised standards and regulations shall constitute grounds for removal at the owner's expense.

(d) The operator or permittee shall remove and relocate the permitted improvements, infrastructure, communications facility and/or support structure at the operator's sole expense to accommodate construction of a public improvement project by or for the town.

(Ord. No. 2017-04, § 12, 10-10-2017; Ord. No. 2019-01, § 12, 1-22-2019)

**Sec. 18-72. Compliance with safety requirements.**

(a) The person or entity to whom a permit is issued pursuant to this article and any agents, servants and subcontractors shall comply with all written requirements of the president of the board of commissioners directed to the permittee, either before or during the course of construction or work, which are deemed necessary in the interest of public safety or for the avoidance of unnecessary inconvenience to the public during such construction.

(b) The permittee shall have the legal duty to provide for the following, whether or not included in the written requirements of the president:

- (1) Proper lighting and barricading of excavations or other hazards at all times;
- (2) Adequate access, including snow removal from the road to driveways and sidewalks abutting occupied residences;
- (3) Control of dust conditions, as directed by the inspector;
- (4) Correction of muddy or soft subgrade by placement of temporary gravel or stone thereon;
- (5) Prompt removal of any dirt and debris from streets in and adjacent to the work area during the construction period, as directed by the inspector; and
- (6) Other measures, as directed by the inspector or chief of police, to ensure the public safety.

(c) Any operator, owner or permittee who owns or operates communications facilities or communications support structures in the right-of-way shall indemnify, protect, defend, and hold the town and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees, to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the operator who owns or operates communications facilities and communications support services in the right-of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in the right-of-way.

(Ord. No. 2017-04, § 13, 10-10-2017; Ord. No. 2019-01, § 13, 1-22-2019)

#### **Sec. 18-73. Conflict of laws and waivers.**

Except as otherwise provided in this article, in any case where a provision of this article is found to be in conflict with a provision of any road construction, zoning, building, grading, housing, fire, safety, health or any other article or code of the town, the county, or the state existing on the effective date of the ordinance from which this article is derived, the provision which establishes the higher standard for the promotion and protection of the health, safety and welfare of the public shall prevail. The board of commissioners may expressly grant waivers from the strict application of this article.

(Ord. No. 2017-04, § 14, 10-10-2017; Ord. No. 2019-01, § 14, 1-22-2019)

#### **Sec. 18-74. Approval of the planning commission, sanitary commission of the county or other entities.**

If any design for anticipated work covered by the application for a permit required by this article requires further approval by the Maryland-National Capital Park and Planning Commission, Washington Suburban Sanitary Commission, "Miss Utility," the state department of the environment, the county, or the county soil conservation district, the applicant shall certify to the town that the proposed application for work has been properly approved by said agencies or entities and that the work shall conform to all other applicable municipal, county, state and federal laws, rules, regulations and ordinances.

(Ord. No. 2017-04, § 15, 10-10-2017; Ord. No. 2019-01, § 15, 1-22-2019)

#### **Sec. 18-75. Penalties for violation.**

(a) Any person or entity making street improvements, installations or repairs as described in this article without first obtaining the authorization and permit, in violation of the provisions of this article, which is declared to be a misdemeanor, shall, upon conviction thereof, be subject to a fine of not more than \$1,000.00 or imprisonment of not more than six months, or both.

- (b) The following violations of this article shall be considered municipal infractions:
  - (1) Knowingly submitting a false or incomplete permit application;
  - (2) Failure to respond to a corrective order issued by a town official or inspector;
  - (3) Construction which does not comply with an approved plan, specification or permit;
  - (4) Working on work days or during work hours prohibited by this article;

- (5) Working during the period of a stop work order; and
- (6) All other violations of provisions of this article.

(c) Except as stated in subsection (a) of this section, violations of this article shall be considered a municipal infraction and are subject to the maximum fine for a municipal infraction permitted by the town Charter. Each day a violation continues is deemed a separate offense and is subject to an additional citation and fine.

(d) In addition to any other fine, penalty, or remedy, a violator may be required to remove or restore, within five calendar days of the date of notification of the violation, any structure, alteration, addition or excavation, erected or commenced, and constituting the basis of the violation, and if so required, upon expiration of such five days, each additional day during which that person shall not have so removed or restored the same shall constitute a further and separate violation subject to such fine.

(e) The town also may correct or abate any such condition or discrepancy at the violator's expense and, after obtaining a judgment from the court, certify any costs thereof to the county finance office to be collected in the same manner as taxes.

(Ord. No. 2017-04, § 16, 10-10-2017; Ord. No. 2019-01, § 16, 1-22-2019)

**Sec. 18-76. Administrative and judicial review.**

(a) A decision of the president of the board of commissioners or other official of the town under this article may be appealed for error to the board of commissioners.

(b) Except as stated herein, any person aggrieved by a decision of the board of commissioners with regard to an application for a permit filed under the provisions of this article and who appeared before the board in person, by an attorney, or in writing, shall have the right to appeal the decision of the board to the circuit court for the county under the provisions of title 7, chapter 200 of the Maryland Rules of Procedure.

(c) Denial of a refund of any fee paid to the town as required by this article may be appealed pursuant to Ann. Code of Md., Tax-General article, title 13 (Ann. Code of Md., Tax-General article, § 13-101 et seq.) to the state tax court.

(d) The town shall advise the applicant in writing of its final decision supported by substantial evidence, findings and conclusions of law.

(Ord. No. 2017-04, § 17, 10-10-2017; Ord. No. 2019-01, § 17, 1-22-2019)

**Sec. 18-77. Fines, penalties and fee may be established by resolution.**

The board of commissioners may set the fines, penalties, and fees associated with violating this article from time to time by resolution.

(Ord. No. 2017-04, 10-10-2017)

**Secs. 18-78--18-97. Reserved.**

**ARTICLE IV. PARADES, SPECIAL EVENTS, AND OTHER USES OF PUBLIC PLACES**

**Sec. 18-98. Definitions.**

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

*Parade* means any parade, march, ceremony, show, exhibition, pageant, or procession of any kind, or any similar display, in or upon any street, park or other public place in the town.

*Special event* means any scheduled function not in the ordinary course of business taking place in the town that has a direct impact upon the streets, sidewalks, alleys, and footpaths or traffic, whether pedestrian or vehicular, within the town limits.

(Ord. No. 2018-10, § 2(I), 2-12-2019)

**Sec. 18-99. Permit required; exceptions.**

(a) *Permit required.* No person shall engage in, participate in, aid, form or start any parade or special event, unless a parade or special event permit shall have been obtained from the board of commissioners.

(b) *Exceptions.* This article shall not apply to:

- (1) Funeral possessions.
- (2) Students going to and from school classes or participating in educational activities, providing such conduct is under the immediate direction and supervision of the proper school authorities and does not have a direct impact on the streets, sidewalks, alleys, and footpaths or traffic within the town limits.
- (3) Town-sponsored and -organized events.

(Ord. No. 2018-10, § 2(II), 2-12-2019)

**Sec. 18-100. Application.**

A person seeking issuance of a parade or special event permit shall file an application with the town clerk on forms provided by the town.

- (1) *Filing period.* An application for a parade or special event permit shall be filed with the clerk not less than 30 days nor more than 90 days before the date on which it is proposed to conduct the parade or special event.
- (2) *Late applications.* The board of commissioners, where good cause is shown therefor, shall have the authority to consider any application hereunder which is filed less than 30 days before the date such parade or special event is proposed to be conducted.
- (3) *Fee.* There shall be paid, at the time of filing the application for a parade or special event permit, a fee of \$75.00.

(Ord. No. 2018-10, § 2(III), 2-12-2019)

**Sec. 18-101. Standards for issuance.**

(a) The board of commissioners shall issue a permit as provided for hereunder when, from a consideration of the application and from such other information of the application and from such other information as may otherwise be obtained, it finds that:

- (1) The conduct of the parade or special event will not substantially interrupt the safe and orderly movement of other traffic contiguous to its route;
- (2) The conduct of the parade or special event will not require the diversion of so great a number of police officers of the town to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection to the town;
- (3) The conduct of such parade or special event will not require the diversion of so great a number of ambulances as to prevent normal ambulance service to portions of the town other than that to be occupied by the proposed line of march and areas contiguous thereto;
- (4) The concentration of persons, animals and vehicles at assembly points of the parade or special event will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such assembly areas;
- (5) The conduct of such parade or special event will not interfere with the movement of firefighting equipment en route to a fire;
- (6) The conduct of the parade or special event is not reasonably likely to cause injury to persons or property, to provoke disorderly conduct or create a disturbance;
- (7) The parade or special event is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays en route;
- (8) The parade or special event is not to be held for the sole purpose of advertising any product, goods or

event, and is not designed to be held purely for private profit.

(b) It is the intent of the board of commissioners that generally one lane of traffic on the street will be available for travel during the parade or special event and that these parades or special events do not constitute an emergency for purposes of closing the streets, sidewalks, footpaths, and thoroughfares to all pedestrian and vehicular traffic.

(c) It is the intent of the board of commissioners not to authorize more than three parades or special events per month.

(d) Organizations sponsoring any parade or special event shall agree to provide such traffic control and security as deemed necessary by the board of commissioners.

(e) No event shall be held, or arrangements made, until a special event permit is received.

(f) Applicants may need to apply with the health department for food vending and ~~prepared~~preparing meals on site except for pre-packaged, unopened foods.

(g) If alcohol is to be consumed at the event, the applicant is responsible for obtaining the required permit in accordance with the county board of license commissioners (liquor board).

(h) Applicants granted a permit must coordinate all planning and logistics with the events coordinator for the town.

(Ord. No. 2018-10, § 2(IV), 2-12-2019)

#### **Sec. 18-102. Notice of rejection.**

The board of commissioners shall act upon the application for a parade or special event permit within 15 days after the filing thereof. If the board ~~disapproves~~denies the application, it shall notify the applicant within five days after the date upon which the application was filed by sending a notice of its action.

(Ord. No. 2018-10, § 2(V), 2-12-2019)

#### **Sec. 18-103. Appeal procedure.**

Any person aggrieved shall have the right to request a reconsideration of the denial of a parade or special event permit by the board of commissioners. The reconsideration shall be taken within 30 days after notice. The board of commissioners shall act upon the reconsideration within 15 days after its receipt.

(Ord. No. 2018-10, § 2(VI), 2-12-2019)

#### **Sec. 18-104. Alternative permit.**

The board of commissioners, in denying an application for a parade or special event permit, shall be empowered to authorize the conduct of the parade or special event on a date, at a time, or over a route different from that named by the applicant. An applicant desiring to accept an alternative permit shall, within ten days after notice of the action of the board, file a written notice of acceptance with the board. An alternate parade or special event permit shall conform to the requirements of and shall have the effect of a parade or special event permit under this article.

(Ord. No. 2018-10, § 2(VII), 2-12-2019)

#### **Sec. 18-105. Notice to town and other officials.**

Immediately upon the issuance of a parade or special event permit, the clerk shall send a copy thereof to the following:

- (1) The president of the board of commissioners;
- (2) The chief of police;
- (3) The fire chief;
- (4) The town public works department.

(Ord. No. 2018-10, § 2(VIII), 2-12-2019)

**Sec. 18-106. Duties of permittee.**

(a) *Permit compliance.* A permittee hereunder shall comply with all permit directions and conditions and with all applicable laws and ordinances.

(b) *Possession of permit.* The parade or special event chairperson or other person heading or leading such activity shall carry the parade or special event permit ~~upon said parade or special event chairman or other said person's person~~ during the conduct of the parade or special event.

(Ord. No. 2018-10, § 2(IX), 2-12-2019)

**Sec. 18-107. Public conduct during parade or special event.**

(a) *Interference.* No person shall unreasonably hamper, obstruct or impede, or interfere with any parade or special event or parade or special event assembly or with any person, vehicle or animal participating or used in the parade or special event.

(b) *Driving through parade or special events.* No driver of a vehicle shall drive between the vehicles or persons comprising a parade or special event when such vehicles or persons are in motion and are conspicuously designated as a parade or special event.

(c) *Parking on parade or special event route.* The town chief of police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a highway or part thereof constituting a part of the route of a parade or special event. The chief of police shall post signs to such effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. No person shall be liable for parking on a street unposted in violation of this article.

(Ord. No. 2018-10, § 2(X), 2-12-2019)

**Sec. 18-108. Revocation of permit.**

The board of commissioners shall have the authority to revoke a parade or special event permit issued hereunder upon the application of the standards for issuance as herein set forth.

(Ord. No. 2018-10, § 2(XI), 2-12-2019)

**Sec. 18-109. Penalties.**

Any person, business entity or corporation found in violation of this article shall be liable for a municipal infraction and, upon conviction thereof, shall be assessed a fine in the amount of up to \$1,000.00 for violation of provisions in ~~section 18-104~~ this article.

(Ord. No. 2018-10, § 2(XII), 2-12-2019)

Chapter 19  
**RESERVED**

PROOFS

Chapter 20  
**TAXATION**

**Sec. 20-1. Real property classifications and taxes.**

(a) Effective for the tax year beginning July 1, 2023, and for each tax year thereafter unless altered by a subsequent enactment of the board of commissioners, the classifications of property subject to municipal taxation, with respect to those properties, businesses or utilities located within the municipal boundaries of the town, shall be as follows:

<i>Property Classifications</i>	<i>*FY '24 rate/\$100.00</i>
Commercial real property	0.56
Noncommercial real property	0.34
Agricultural use real property	0.25
Vacant real property	1.25
Business personal property	0.53
Public utility property	2.10

\*These rates may have been established by previous legislation and are indicated herein for informational purposes only. Prior to the ordinance from which this chapter is derived, which shall apply beginning in FY '24 (July 1, 2023), all real property has been taxed at the same or different rates as two classes distinguished as to commercial or noncommercial real property.

(b) Real property that is lawfully used or leased substantially for residential dwelling purposes shall be classified as noncommercial real property. All other real property shall be classified as commercial real property, agricultural real property or vacant real property as defined by this chapter or state law. Property that is exempt from taxation shall remain exempt regardless of classification by the town.

(c) The treasurer or designee shall notify the special assistant to the director of the state department of assessments and taxation of the action taken under the provisions of this chapter and offer a copy hereof as soon as possible, but no later than December 1, 2022.

(d) The treasurer or designee shall coordinate with the state department of assessments and taxation regarding the requirement to obtain constant yield tax rate certifications for the net assessable real property base for the two separate classes of real property created by this chapter, no later than February 1, 2023, and each year thereafter.

(Ord. No. 2022-05, § 2, 9-27-2022)

**Sec. 20-2. Vacant developed real property tax; exemptions.**

(a) The definitions and classifications prescribed in sections 6-123 and 20-1 shall apply to this section.

(b) The municipal tax rate for vacant developed property shall be the amount established by the ordinance setting the tax rate for that fiscal year on assessments of property subject to municipal property tax.

(c) A lot or parcel shall be subject to the vacant developed property tax rate if it has a building that is registered or designated by the town administrator as a vacant building in accordance with chapter 6, article V.

(d) For mixed-use commercial and residential properties with a vacant commercial portion, the vacant developed property tax rates shall apply only to the assessed value of the improved area containing the vacant commercial portion, which shall be determined by multiplying the total assessed value of the improvements by the percentage of the improved area consisting of the vacant commercial portion.

(e) The vacant developed property tax rates shall not apply to a lot or parcel with a vacant building if the property also has an occupied building that has an above-grade area equal to or greater than that of a vacant building.

(f) Vacant developed property shall not be subject to the vacant developed property tax rate when it is under active construction or undergoing active rehabilitation, renovation or repair and there is a valid building permit to make the building fit for occupancy. The exemption from the vacant developed property tax rate under this subsection shall not exceed a total of two years while the property remains under the ownership of one person or related persons.

(g) The town administrator shall transmit to the county tax assessor a list of the property subject to the vacant developed property tax by May 1 of each year, and the vacant developed property tax rate will be levied upon the properties the following fiscal year.

(h) When a property becomes occupied or exempt from the vacant developed property tax rate pursuant to subsection (f) of this section, the owner shall notify the town administrator of the matter as may be prescribed by regulation approved by formal resolution or ordinance. If the request for termination of the vacant developed property tax rate is approved, determination shall be effective the following fiscal year.

(i) If the vacant developed property tax rate is paid on the property because of an error on the part of the town, the municipal property tax paid in excess of the taxes due under the regular municipal rate shall be refunded. Refunds pursuant to this subsection shall not exceed the value of the excess payment for the period of one year.

(j) The town administrator will, upon request, provide written notice to the lenders for prospective purchasers of vacant developed property, and that property will not be subject to the vacant developed property tax rate commencing the following fiscal year if the property is occupied or satisfies the requirements of subsection (e) of this section.

(k) Exemptions. A residential property that becomes vacant as a result of the death of an owner of the property who resided that property, for whom the property was the owner's domicile at the time of ~~their test death,~~ shall not constitute a vacant developed property for a period of two years after the date of death. To qualify for this death exemption, a representative of the estate of the deceased must provide the town administrator with a copy of the death certificate and proof that, on the date of death, the deceased resided at the property, or the property was the deceased's domicile. The term "domicile" means the place where a person has a true fixed permanent home, habitation and principal establishment without any present intention of removing therefrom and to which place such person has the intent to return when absent.

(l) Temporary exemptions for accidental damage. In occupied residential property that becomes uninhabitable as a result of a fire or flood, unless intentionally caused by the owner or the agent of said owner, or natural ~~death,~~ disaster shall not constitute a vacant developed property for a period of two years after the incident that caused the property to become uninhabitable. To qualify for this exemption, the owner must provide satisfactory proof to the town administrator that the property is uninhabitable as a result of a fire, flood, or natural disaster and the date said fire, flood, or natural disaster occurred. Examples of records that constitute satisfactorily proof include, but are not limited to, police and fire reports, insurance company correspondence and claims documentation, news and weather reports, photographs, videos and code enforcement inspection records.

(Ord. No. 2022-05, § 3, 9-27-2022)

~~ORDINANCE: 2018-08<sup>32</sup>~~  
~~SESSION: Regular Town Meeting~~  
~~INTRODUCED: September 25, 2018~~

~~AN ORDINANCE OF THE TOWN OF UPPER MARLBORO CREATING, DEFINING AND~~

<sup>32</sup> Legal or Editorial Change: Ord. No. 2018-08. Real property taxes and classifications. Deleted as superseded by Ord. No. 2022-05, § 2.

~~DESIGNATING CERTAIN TAX CLASSIFICATIONS FOR RESIDENTIAL AND COMMERCIAL REAL PROPERTY SITUATED WITHIN THE TOWN AND SUBJECT TO MUNICIPAL TAXATION, AND GENERALLY RELATING TO MUNICIPAL TAXATION.~~

~~WHEREAS, The Town of Upper Marlboro is an incorporated municipality governed pursuant to Article XI-E of the Constitution of Maryland; and~~

~~WHEREAS, pursuant to Section 5-202 of the Local Government Article of Md. Ann. Code, the legislative body of a municipality in this State shall have general power to pass such ordinances, not contrary to the Constitution of Maryland or public general law, as they may deem necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality; and~~

~~WHEREAS, pursuant to Article 15 of the Maryland Declaration of Rights, as initially adopted in 1867, "every person in the State, or person holding property therein, ought to contribute his proportion of public taxes for the support of the Government, according to his actual worth in real or personal property;" and~~

~~WHEREAS, pursuant to Section 82-47 of the Charter of the Town of Upper Marlboro (the "Charter"), all real property and all tangible personal property within the corporate limits of the Town, or personal property which may have a situs there by reason of the residence of the owner therein, shall be subject to taxation for municipal purposes, and the assessment used shall be the same as that for State and County taxes, and that authority is given by said section to impose taxes only on property over which the Maryland Constitution or any act of the General Assembly grants taxing authority to the Town of Upper Marlboro or to any municipality in the State of Maryland; and~~

~~WHEREAS, below is an extract of the 2018-2019 list of county and municipal tax rates, and property tax rates in effect on July 1, 2018 published by the Maryland State Department of Assessments and Taxation ("SDAT"):~~

<i>JURISDICTION</i>	<i>COUNTY RATE</i>			<i>TOWN/SPECIAL TAXING</i>		
				<i>DISTRICT TAX RATE</i>		
	<i>REAL</i>	<i>PERSONAL</i>	<i>UTILITY</i>	<i>REAL</i>	<i>PERSONAL</i>	<i>UTILITY</i>
PRINCE GEORGE'S	1.00	2.50	2.50			
Upper Marlboro	0.921	2.314	2.314	0.24	0.45	0.45

~~All rates are shown per \$100 of assessment; and~~

~~WHEREAS, property tax rates are set by each unit of government, such as the State, counties, and incorporated cities and towns, for properties assessed (i.e., valued) by the State enabling said governments to set tax rates at the level required to fund governmental services of which said rates may be increased, decreased, or remain the same from year to year; however, should a proposed tax rate increase the total property tax revenues for a given class of real property, the governing body must advertise that fact and hold a public hearing on the new tax rate pursuant to Tax Property Article, §6-308 of the Md. Ann. Code, which is called the Constant Yield Tax Rate process; and~~

~~WHEREAS, pursuant to the Tax Property Article, §6-303(a) of the Md. Ann. Code, if not otherwise prohibited by said Article, the governing body of a municipal corporation may set separate rates for any classes of property that is subject to the municipal corporation property tax, in each year after the date of finality (i.e., January 1) and before the following July 1, the governing body of each municipal corporation annually shall set the tax rate for the next taxable year on all assessments of property subject to municipal corporation property tax; and~~

~~WHEREAS, pursuant to the Tax Property Article, §6-303(c) of the Md. Ann. Code, unless otherwise provided by the governing body of the municipal corporation there shall be a single municipal corporation property tax rate for all real property subject to municipal corporation property tax; and~~

~~WHEREAS, the Town currently has only one class of real property, despite having the authority to create multiple classifications as provided in the Tax Property Article, §6-203(a) of the Md. Ann. Code whereby a "municipal corporation may impose municipal corporation property tax on those classes of property that it selects [i.e., the municipality itself is authorized to create and designate] to be subject to municipal corporation property tax;" and~~

~~WHEREAS, there are 14 administrative land use codes used by the Maryland State Department of Assessments and Taxation to describe every lot or parcel of real property as follows: agricultural, apartment, commercial, commercial condominium, commercial/residential, (residential) condominium, country club, exempt, exempt commercial, industrial, marsh, residential, residential/commercial, and town house; however, unlike the counties, the municipalities are not restricted to any enumerated statutory list or description when choosing to define classes of real property for municipal taxation purposes; and~~

~~WHEREAS, the Board finds that the following municipalities have classified real property in the same or similar manner (i.e., commercial/noncommercial) as is to be adopted herein by this Ordinance: Forest Heights (commercial and noncommercial), North Brentwood (commercial and noncommercial), Colmar Manor (commercial and noncommercial), Berwyn Heights (commercial and noncommercial), Cheverly (apartment and other), Cottage City (commercial and noncommercial) and Pocomoke City (owner occupied and non-owner occupied); and~~

~~WHEREAS, the Board further finds that \$31,986,930 or 40% of the Town's current gross assessable real property tax base of \$78,913,365 is made up of commercial (i.e., taxable nonresidential) properties; and~~

~~WHEREAS, the Board further finds that a one cent increase in the municipal tax rate on real property levied on commercial property in the Town would yield \$3,198.693 in revenues from commercial properties located within the Town; and~~

~~WHEREAS, the Board further finds that residential property is a necessity of life to the inhabitant from which the owner-occupant or tenant derives little to no income, unlike commercial or industrial property, and that such a classification of real property is rationally related to an important governmental purpose in relieving the tax burden on residential property owners thereby making housing more affordable, and promoting the policies of making the Town a more sustainable, livable and family-oriented community.~~

~~NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE TOWN OF UPPER MARLBORO, STATE OF MARYLAND, DOES ORDAIN AND ENACT THE FOLLOWING REGARDING THE CLASSIFICATION OF REAL PROPERTY FOR PURPOSES OF ASSESSMENTS AND TAXATION:~~

~~**A. Real property tax classes.**~~

~~Effective for the tax year beginning July 1, 2019, and for each tax year thereafter unless altered by a subsequent enactment of the Board of Town Commissioners, the classifications of property subject to municipal taxation, with respect to those properties, businesses or utilities located within the municipal boundaries of the Town of Upper Marlboro, shall be as follows:~~

<i>PROPERTY CLASSIFICATIONS</i>	<i>*FY' 18 RATE/\$100</i>
1. COMMERCIAL REAL PROPERTY,	0.24
2. NONCOMMERCIAL REAL PROPERTY,	0.24
3. BUSINESS PERSONAL PROPERTY, AND	1.35
4. PUBLIC UTILITY PROPERTY	0.00

~~(\* These rates were established by previous legislation and are indicated herein for informational purposes only. Prior to this ordinance, which shall apply beginning in FY'19 (July 1, 2019), all real property has been taxed at the same rate as one class without distinction as to commercial or noncommercial real property.)~~

~~(Ord. No. 2018-08, § A, 11-20-2018)~~

**~~B.~~**

~~Real property that is lawfully used or leased substantially for residential dwelling purposes shall be classified as noncommercial real property. All other real property shall be classified as commercial real property. Property that is exempt from taxation shall remain exempt regardless of classification by the Town.~~

~~(Ord. No. 2018-08, § B, 11-20-2018)~~

**~~C.~~**

~~The Treasurer, or their designee, shall notify the Special Assistant to the Director of the Maryland State Department of Assessments and Taxation of the action taken under the provisions of this ordinance and offer a copy hereof as soon as possible, but no later than December 1, 2018.~~

~~(Ord. No. 2018-08, § C, 11-20-2018)~~

**~~D.~~**

~~The Treasurer, or their designee, shall coordinate with the State Department of Assessments and Taxation regarding the requirement to obtain constant yield tax rate certifications for the net assessable real property base for the two separate classes of real property created by this ordinance, no later than February 1, 2019 and each year thereafter.~~

~~(Ord. No. 2018-08, § D, 11-20-2018)~~

~~AND BE IT FURTHER ORDAINED AND ENACTED, by the Board of Commissioners of the Town of Upper Marlboro, Maryland that any prior ordinances adopting and enacting any provision of this Ordinance or any other ordinance or resolution previously adopted pertaining to a subject or subjects embodied by the title of this Ordinance or the provisions found in conflict herein shall be deemed amended, repealed and/or superseded by the provisions of this Ordinance, as applicable, and should a previously enacted ordinance cover a provision or subject that is not covered by this Ordinance, it shall remain in full force and effect unless it directly conflicts with the express language of this Ordinance.~~

~~BE IT FURTHER ENACTED AND ORDAINED by the Board of Commissioners of the Town of Upper Marlboro, Maryland that this ordinance shall become effective at the expiration of 20 calendar days following approval by the Board of Commissioners.~~

~~BE IT FURTHER ENACTED AND ORDAINED by the Board of Commissioners of the Town of Upper Marlboro, Maryland that this Ordinance shall be posted in the Town Hall office, and it or a fair summary thereof, shall be published once in a newspaper of general circulation in the Town.~~

Chapter 21  
**RESERVED**

PROOFS

Chapter 22  
**TELECOMMUNICATIONS**  
**ARTICLE I. IN GENERAL**

**Secs. 22-1--22-18. Reserved.**

**ARTICLE II. CABLE COMMUNICATIONS**

**Sec. 22-19. General provisions.**

(a) *Title.* This article shall be known and may be cited as the "town cable communications regulatory code."

~~(b) *Effective date and repealer.* The provisions of the ordinance from which this article is derived shall take effect and be in force from and after passage. All prior ordinances or parts of ordinances in conflict with the provisions of this article are repealed as of said date.~~

(b) *Findings and purpose.*

(1) The town ~~council~~ board finds that the further development of cable communications may result in great benefits for the people of the town. Cable technology is rapidly changing, and cable plays an essential role as part of the town's basic infrastructure. Cable television systems occupy and extensively make use of scarce and valuable public rights-of-way in a manner different from the way in which the general public uses them and in a manner reserved primarily for those who provide essential services to the public subject to special public interest obligations, such as utility companies. The town ~~council~~ board finds that public convenience, safety, and general welfare can best be served by establishing regulatory powers vested in the town or such persons as the town ~~council~~ board so designates to protect the public and to ensure that any franchise granted is operated in the public interest.

(2) The town further finds that cable systems have the capacity to provide not only entertainment and information services to the town's residents, but can provide a variety of broad and interactive communications services to institutions and individuals.

(3) In light of the foregoing, the following goals, among others, underlie the provisions set forth in this article:

- a. Cable service should be available to all town residents.
- b. A cable system should be capable of accommodating both present and reasonably foreseeable future cable-related needs of the town.
- c. A cable system should be constructed and maintained during a franchise term so that changes in technology may be integrated to the maximum extent possible into existing system facilities.
- d. A cable system should be responsive to the needs and interests of the local community, and should provide a diversity of information sources and services to the public.
- e. A cable operator should pay fair compensation to the town for the use of local public rights-of-way.

(4) All provisions set forth in this article shall be construed to serve the public interest and the foregoing public purposes, and any franchise issued pursuant to this article shall be construed to include the foregoing findings and public purposes as integral parts thereof.

(c) *Delegation of powers.* The town ~~council~~ board may delegate the performance of any act, duty, or obligation, or the exercise of any power, under this article or any franchise agreement to any employee, officer, department or agency, except where prohibited by applicable law.

(Ord. No. 06-05, § 20-1, 11-28-2006)

## Sec. 22-20. Definitions and word usage.

~~(a) *Usage general.* For the purposes of this article, the terms, phrases, words, and abbreviations set forth in subsection (b) of this section shall have the meanings given therein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words "shall" and "will" are mandatory, and "may" is permissive.~~

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in 47 USC, as amended, and, if not defined therein, their common and ordinary meaning.

*Access channel* means any channel on a cable system set aside by a franchisee for public, educational, or governmental use.

*Affiliate* means any person who owns or controls, is owned or controlled by, or is under common ownership or control with a franchisee.

*Basic service* means any service tier that includes the retransmission of local television broadcast signals and/or public, educational, and governmental access signals.

*Cable Act* means the Cable Communications Policy Act of 1984, 47 USC 521 et seq., as amended from time to time.

*Cable service* means:

- (1) The one-way transmission to subscribers of video programming or other programming services; and
- (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

*Cable system or system* means:

- (1) A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple subscribers within the town, but the term "cable system" does not include:
  - a. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
  - b. A facility that serves subscribers without using any public rights-of-way;
  - c. A facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Communications Act, except that such facility shall be considered a cable system if such facility is used in the transmission of video programming directly to subscribers;
  - d. An open video system that complies with 47 USC 573; or
  - e. Any facilities of any electric utility used solely for operating its electric utility system.
- (2) Any part of a facility described in subsection (1) of this definition, including, without limitation, converters.

*Channel* means a six megahertz (MHz) frequency band, or equivalent capacity, which is capable of carrying either one standard video signal, a number of audio, digital or other non-video signals or some combination of such signals.

~~*Town* means the town of Glenarden, Maryland, and any agency, department, or agent thereof.~~

*Commission* means the town cable rate regulation commission.

*Complaints* means statements from any subscriber, former subscriber, or other town resident expressing concern or dissatisfaction with any aspect of the cable system or the franchisee's operations, including, without limitation, statements relating to employee courtesy.

*Converter* means an electronic device which may serve as an interface between a system and a subscriber's television receiver or other terminal equipment, and which may perform a variety of functions, including signal security, descrambling, electronic polling, frequency conversion and channel selection.

~~*Council or board* means the governing body of the town.~~

*Customer* means the same as "subscriber."

*Educational access channel* or *educational channel* means any channel on a cable system set aside by a franchisee for educational use.

*Fair market value* means the price that a willing buyer would pay to a willing seller.

*FCC* means the Federal Communications Commission, its designee, or any successor governmental entity thereto.

*Force majeure* means severe or unusual weather conditions, strike, labor disturbance, lockout, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, action or inaction of any government instrumentality or public utility including condemnation, accidents for which the franchisee is not primarily responsible, fire, flood, or other act of God, sabotage or other events to the extent that such causes or other events are beyond the reasonable control of the franchisee, and only to the extent that any such event affects the franchisee's capacity to perform.

*Franchise* means a non-exclusive authorization granted pursuant to this article to construct, operate, and maintain a cable system along the public rights-of-way to provide cable service within all or a specified area of the town. Any such authorization, in whatever form granted, shall not mean or include any general license or permit required for the privilege of transacting and carrying on a business within the town as required by the ordinances and laws of the town, or for attaching devices to poles or other structures, whether owned by the town or a private entity, or for excavating or performing other work in or along public rights-of-way.

*Franchise agreement* means a contract entered into pursuant to this article between the town and a franchisee that sets forth, subject to this article, the terms and conditions under which a franchise will be granted and exercised.

*Franchise area* means the area of the town that a franchisee is authorized or required to serve by its franchise agreement.

*Franchisee* means a natural person, partnership, domestic or foreign corporation, association, joint venture, or organization of any kind that has been granted a franchise by the town.

*Governmental access channel* or *governmental channel* means any channel on a cable system set aside by a franchisee for government use.

*Gross revenues.*

- (1) The term "gross revenues" means any and all cash, credits, property or other consideration of any kind or nature that constitutes revenue in accordance with generally accepted accounting principles and that arise from or are attributable to, or in any way derived directly or indirectly by a franchisee or its affiliates, or by any other entity that is a cable operator of the franchisee's system to provide cable services except as hereinafter specifically excluded, and including, without limitation, to the extent derived from the operation of a franchisee's cable system to provide cable services in the town, monthly fees collected from subscribers from any basic, optional, premium, per-channel, or per-program services, or cable programming service; installation, disconnection, reconnection, and change-in-service fees; fees, payments, or other consideration received from programmers for carriage of programming on franchisee's cable system; revenues from rentals or sales of converters or other equipment; studio rental; fees from third party unaffiliated programmers for leased access programming; production equipment, rental fee and personal fees, advertising revenues, net of normal agency commissions; revenues from the sale or carriage of other cable services; revenues from leased channel fees; late fees and administrative fees; fees, payments, or other consideration received from programmers for carriage of programming on the system; revenues from internet access services; revenues from home shopping and bank-at-home channels; and revenues from the sale of cable guides.

- (2) The term "gross revenues" shall not include any taxes on services furnished by a franchisee which are imposed directly on any subscriber or user by the community or another governmental unit and which are collected by the franchisee on behalf of said governmental unit. A franchise fee is not such a tax.
- (3) The term "gross revenues" shall not include:
- a. Any consideration paid by the town to a franchisee for an institutional network ("i-net"), or any expense reimbursement paid by the town or its agents, or by PEG users, to the franchisee;
  - b. Any compensation awarded to a franchisee based on the county's condemnation of property of the franchisee;
  - c. Any uncollected receipts (i.e., bad debt); provided, however, that all or any part of any such actual bad debt that is written off but subsequently collected shall be included in gross revenues in the period collected. Any amounts includable as gross revenues that are received by an affiliate or any other entity that is a cable operator of the franchisee's cable system shall not be counted as gross revenues to the extent that such amounts are also received directly by the franchisee, to ensure that no such revenue is counted twice.

*Installation* means the connection of system services to subscribers' television receivers or other subscriber-owned or provided terminal equipment.

*Leased access channel* or *commercial access channel* means any channel on a cable system designated or dedicated for use by a person unaffiliated with the franchisee.

*Net profit* means the amount remaining after deducting from gross revenues all of the actual, direct and indirect, expenses associated with operating the cable system, including the franchise fee, interest, depreciation, and federal or state income taxes.

*Normal business hours* means those hours during which most similar businesses in the community are open to serve customers, including some evening hours at least one night per week and/or some weekend hours.

*Normal operating conditions* means those service conditions that are within the control of a franchisee. Conditions that are not within the control of a franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe weather conditions. Conditions that are ordinarily within the control of a franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of a cable system.

*OVS* means an open video system that complies with 47 USC 653, as amended.

*PEG* means public, educational and governmental.

*Person* means an individual, partnership, association, joint stock company, organization, corporation, or any lawful successor thereto or transferee thereof, but the term "person" does not include the town.

*Programmer* means any person or entity that produces or otherwise provides program material or information for transmission by video, audio, digital or other signals, either live or from recorded traces or other storage media, to users or subscribers by means of a cable system.

*Public access channel* means any channel on a cable system set aside by a franchisee for use by the general public, including groups and individuals, and which is available for such use on a nondiscriminatory basis.

*Public rights-of-way* means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar property within the town, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a cable system. No reference herein, or in any franchise agreement, to a public right-of-way shall be deemed to be a representation or guarantee by the town that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a franchisee shall be deemed to gain only those rights to use as are properly in the town and as the town may have the undisputed right and power to give.

*Public service corporation* means any nonprofit, tax-exempt organization that has as its primary purpose the provision of services of education, health, civic, charitable, or similar nature on a town-wide basis.

*Security fund* means a performance bond, letter of credit, or cash deposit, or any or all of these, to the extent required by a franchise agreement.

*Service interruption* means loss of picture or sound on one or more cable channels, as described in FCC regulations as of December 1, 1998.

*Subscriber* means any person who legally receives any service delivered over a cable system.

*Transfer.*

- (1) The term "transfer" means any transaction in which:
  - a. Any ownership or other right, title, or interest cognizable under fee regulations of more than ten percent in a publicly traded corporation controlling a franchisee, its cable system, or any person that is a cable operator of the cable system (or in the franchisee itself, if it is a publicly traded corporation) is transferred, sold, assigned, leased, or sublet, directly or indirectly, to an entity that does not presently control the franchisee;
  - b. Any ownership or other right, title, or interest cognizable under fee regulations of 20 percent or more in an entity other than a publicly traded corporation controlling a franchisee, its cable system, or any person that is a cable operator of the cable system (or in the franchisee itself, if it is an entity other than a publicly traded corporation) is transferred, sold, assigned, leased, or sublet, directly or indirectly, to an entity that does not presently control the franchisee;
  - c. There is any transfer of control of a franchisee;
  - d. A franchise is transferred to another entity;
  - e. Any change or substitution occurs in the managing general partners of a franchisee, where applicable; or
  - f. A franchisee, or its corporate parents at any level, enter into any transaction that materially increases the debt that is to be borne by the system, directly or indirectly, in a manner that creates a risk of an adverse effect on system rates or services.
- (2) The term "transfer" shall not include transactions in which a franchisee is reorganized within another corporation owned by, owning, or commonly controlled with the franchisee, if such transaction does not materially affect the ultimate control of the franchisee or the sources and amounts of funds available to the franchisee.
- (3) The term "control," for purposes of this definition, means the legal or practical ability to exert actual working control over the affairs of the franchisee, either directly or indirectly, whether by contractual agreement, majority ownership interest, any lesser ownership interest, or in any other manner.

*User* means a person or organization using a channel or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a subscriber.

(Ord. No. 06-05, § 20-2, 11-28-2006)

#### **Sec. 22-21. Grant, term of franchise; operation.**

- (a) *Grant.*
  - (1) The town may grant one or more cable franchises, and each such franchise shall be awarded in accordance with and subject to the provisions of this article.
  - (2) Franchises shall be granted by action of the ~~council~~ board pursuant to applicable law.
  - (3) No person may construct or operate a cable system without a franchise granted by the town. No person may be granted a franchise unless such person has entered into a franchise agreement with the town pursuant to this article.
  - (4) The definition of the term "cable system" contained in section 22-20 shall not be deemed to circumscribe or limit the valid authority of the town to regulate or franchise the activities of any other communications system or provider of communications services to the full extent permitted by law.

(5) Notwithstanding the definition of the term "cable system" contained in section 22-20, any franchise agreement shall define the services any franchisee is authorized to use the public rights-of-way to provide and that agreement shall supersede any inference to the contrary which may arise from the definition of the term "cable system" contained in section 22-20.

(b) *Term of franchise.* No franchise shall be granted for a period of more than 15 years, except that a franchisee may apply for renewal or extension pursuant to applicable law.

(c) *Franchise characteristics.*

(1) A franchise authorizes use of public rights-of-way for installing cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the operation of a cable system to provide cable service within a franchise area, but does not expressly or implicitly authorize a franchisee to provide service to, or install a cable system on, private property without owner consent (except for use of compatible easements pursuant to section 621 of the Cable Act, 47 USC 541(a)(2) and common law), or to use publicly or privately owned conduits without a separate agreement with the owners.

(2) A franchise shall constitute both a right and an obligation to provide the cable services regulated by the provisions of this article and the franchise agreement.

(3) A franchise is non-exclusive and will not explicitly or implicitly preclude the issuance of other franchises to operate cable systems within the town; affect the town's right to authorize use of public rights-of-way by other persons to operate cable systems or for other purposes as it determines appropriate; or affect the town's right to itself construct, operate, or maintain a cable system, with or without a franchise.

(4) All privileges prescribed by a franchise shall be subordinate to (without limitation) the town's use and any prior lawful occupancy of the public rights-of-way.

(5) The town reserves the right to designate where a franchisee's facilities are to be placed within the public rights-of-way and to resolve any disputes among users of the public rights-of-way.

(d) *Franchisee subject to other laws, police power.*

(1) A franchisee shall at all times be subject to and shall comply with all applicable federal, state, and local laws. A franchisee shall at all times be subject to all lawful exercise of the police power of the town, including all rights the town may have under 47 USC 552. Nothing in a franchise agreement shall be deemed to waive the requirements of the various codes and ordinances of the town regarding permits, fees to be paid, or manner of construction.

(2) No course of dealing between a franchisee and the town, or any delay on the part of the town in exercising any rights hereunder, or any acquiescence by the town in the actions of a franchisee that are in contravention of such rights (except to the extent such rights are expressly waived by the town) shall operate as a waiver of any such rights of the town.

(3) The town may, from time to time, issue such reasonable rules and regulations concerning cable systems as are consistent with applicable law.

(e) *Interpretation of franchise terms.*

(1) The provisions of this article and any franchise agreement will be liberally construed in favor of the town in order to effectuate their purposes and objectives and to promote the public interest.

(2) Subject to federal law or regulation, a franchise agreement will be governed by and construed in accordance with the laws of the state.

(f) *Operation of a cable system without a franchise.*

(1) *Effect.* Any person who occupies the public rights-of-way of the town for the purpose of operating or constructing a cable system or an OVS and who does not hold a valid franchise (or other authority allowing such entity to be in the public rights-of-way to provide video services) from the town shall nonetheless, to the extent allowable by law, be subject to all provisions of this article, including, but not limited to, its provisions regarding construction and technical standards and franchise fees.

- (2) *Remedy.* Any person who occupies the public rights-of-way of the town for the purpose of operating or constructing a cable system or an OVS and who does not hold a valid franchise shall apply for a franchise within 30 days of receipt of a written notice by the town that a franchise agreement is required. The town may, in its discretion, require such person to remove such person's property and restore the area to a condition satisfactory to the town within a reasonable time period, as the town shall determine; remove the property itself and restore the area to a satisfactory condition and charge the person the costs therefor; and/or take any other action it is entitled to take under applicable law, including filing for and seeking damages under trespass. In no event shall a franchise be created unless it is issued by action of the town ~~council~~ board and subject to a written franchise agreement.

(g) *Acts at franchisee's expense.* Any act that a franchisee is or may be required to perform under this article, a franchise agreement, or applicable law, including, but not limited to, removal, replacement, or modification of the installation of any of its facilities and restoration to town standards and specifications of any damage or disturbance caused to the public rights-of-way as a result of its operations or construction on its behalf, shall be performed at the franchisee's expense, unless expressly provided to the contrary in this article, the franchise agreement, or applicable law.

(h) *Eminent domain.* Nothing in this article shall be deemed or construed to impair or affect, in any way or to any extent, the town's rights of eminent domain to the extent to which they may apply to any public utility or cable system.

(Ord. No. 06-05, § 20-3, 11-28-2006)

#### **Sec. 22-22. Franchise applications.**

(a) *Application required.*

- (1) A written application shall be filed with the town for grant of an initial franchise or modification of a franchise agreement pursuant to 47 USC 545.
- (2) To be acceptable for filing, a signed original of the application shall be submitted together with ~~twelve~~ (20) 12 copies. The application must be accompanied by any required application filing fee, conform to any applicable request for proposals, and contain all required information. All applications shall include the names and addresses of persons authorized to act on behalf of all applicants with respect to the application.
- (3) All applications accepted for filing shall be made available by the town for public inspection.

(b) *Application for grant of an initial franchise.*

- (1) A person may apply for an initial franchise by submitting an application containing the information required in subsection (c) of this section. Upon receipt of such an application, the town may either:
  - a. Evaluate the application pursuant to subsection (b)(3) of this section, conducting such investigations as it deems necessary; or
  - b. Issue a request for proposals (RFP), after conducting, if necessary, a proceeding to identify the future cable-related needs and interests of the community. Any such RFP shall be mailed to the person requesting its issuance and made available to any other interested party. The RFP may contain a proposed franchise agreement.
- (2) An applicant shall respond to an RFP by filing an application within the time directed by the town, providing the information and material set forth in subsection (c) of this section. The procedures, instructions, and requirements set forth in the RFP shall be followed by each applicant. Any applicant that has already filed materials pursuant to subsection (b)(1) of this section need not refile the same materials with its RFP response, but must amplify its application to include any additional or different materials required by the RFP. The town or designee may seek additional information from any applicant and establish deadlines for the submission of such information.
- (3) In evaluating an application for a franchise, the town shall consider, among other things, the following factors:

- a. Whether, and the extent to which, the applicant has substantially complied with the applicable law and the material terms of any existing cable franchise for the town;
  - b. Whether the quality of the applicant's service under any existing franchise in the town, including signal quality, response to customer complaints, billing practices, and the like, has been reasonable in light of the needs and interests of the communities served;
  - c. Whether the applicant has the financial, technical, and legal qualifications to provide cable service;
  - d. Whether the application satisfies any minimum requirements established by the town and is otherwise reasonable and likely to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests;
  - e. Whether, to the extent not considered under subsection (b)(3)d of this section, the applicant will provide adequate PEG access channel capacity, facilities, or financial support;
  - f. Whether issuance of a franchise is warranted in the public interest, considering the immediate and future effect on the public rights-of-way and private property that would be used by the cable system, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the public rights-of-way; the effect of granting a franchise on the ability of cable to meet the cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications;
  - g. Whether, and to what extent, granting the application will have effects on competition in the delivery of cable service in the town;
  - h. Whether an applicant has filed materially misleading information in its application or has intentionally withheld information that the applicant lawfully is required to provide.
- (4) The town shall provide an opportunity to an applicant to show that it would be inappropriate to deny it a franchise by virtue of the particular circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of cable systems.
  - (5) If the town finds that it is in the public interest to issue a franchise, considering, without limitation, the factors set forth in subsection (b)(3) of this section, and subject to the applicant's entry into an appropriate franchise agreement, it shall issue a franchise.
  - (6) If the town does not find that it is in the public interest to issue a franchise, considering, without limitation, the factors set forth in subsection (b)(3) of this section, it shall deny the franchise application, in which event the town shall issue a written decision explaining why the franchise was denied.
  - (7) Prior to deciding whether or not to issue a franchise, the town may hold one or more public hearings or implement other procedures under which comments from the public on an application may be received. The town also may grant or deny a request for a franchise based on its review of an application without further proceedings and may reject any application that is incomplete or fails to respond to an RFP.
  - (8) This article is not intended and shall not be interpreted to grant any party standing to challenge the denial of an application or the issuance of a franchise unless such standing is necessary to enforce a party's rights under its franchise agreement or applicable law.
- (c) *Contents of application.*
- (1) An RFP for the grant of an initial franchise shall require, and any such application shall contain, at a minimum, the following information:
    - a. Name and address of the applicant and identification of the ownership and control of the applicant, including:
      1. The names and addresses of the ten largest holders of an ownership interest in the applicant and affiliates of the applicant, and all persons with five percent or more ownership interest in the applicant and its affiliates;

2. The persons who control the applicant and its affiliates;
  3. All officers and directors of the applicant and its affiliates; and
  4. Any other business affiliation and cable system ownership interest of each named person.
- b. A demonstration of the applicant's technical ability to construct and/or operate the proposed cable system, including identification of key personnel.
- c. A demonstration of the applicant's legal qualifications to construct and/or operate the proposed cable system, including, but not limited to, representations, and factual documentation supporting such representations, regarding each of the following items:
1. Whether an applicant has had previous requests for a franchise denied by the town or other franchising authorities.
  2. Whether the applicant has the necessary authority under state law to operate a cable system.
  3. Whether the applicant has the necessary authority under federal law to hold the franchise and operate a cable system and that the applicant has, or is qualified to obtain, any necessary federal franchises or waivers required to operate the system proposed.
  4. Whether, at any time during the ten years preceding the submission of the application, the applicant or any officer, director, partner or major shareholder thereof was convicted of any act or omission of such character that the applicant cannot be relied upon to deal truthfully with the town and the subscribers of the cable system, or to substantially comply with its lawful obligations under applicable law, including obligations under consumer protection laws and laws prohibiting anticompetitive acts, fraud, racketeering, or other similar conduct.
  5. Whether any elected official of the town holds a controlling interest in the applicant or an affiliate of the applicant.
- d. A demonstration of the applicant's financial qualifications to complete the construction and operation of the cable system proposed.
- e. A description of any prior experience in cable system ownership, construction, and operation, and identification of communities in which the applicant or any of its principals have, or have had, a cable franchise or any interest therein.
- f. Identification of the area of the town to be served by the proposed cable system, including a description of the proposed franchise area's boundaries.
- g. A detailed description of the physical facilities proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities.
- h. Where applicable, a description of the construction of the proposed system, including an estimate of plant mileage and its location; the proposed construction schedule; and a description, where appropriate, of how services will be converted from existing facilities to new facilities.
- i. A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including PEG access channel capacity, facilities, or financial support to meet the community's needs and interests.
- j. If necessary, at the town's discretion, pro forma financial projections for the proposed franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules.
- k. Any other information that may be reasonably necessary to demonstrate compliance with the requirements of this article.
- l. Any additional information that the town may reasonably request of the applicant that is relevant to the town's consideration of the application.

m. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the application meets all federal and state law requirements.

(2) The town may, in its discretion and upon request of an applicant, waive in writing the provision of any of the information required by this subsection (c).

(d) *Application for grant of a renewal franchise.* The renewal of any franchise to provide cable service shall be conducted in a manner consistent with section 626 of the Cable Act, 47 USC 546, as from time to time amended.

(e) *Application for modification of a franchise.* An application for modification of a franchise agreement shall include, at minimum, the following information:

(1) The specific modification requested;

(2) The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through inter alia submission of financial pro formas;

(3) A statement as to whether the modification is sought pursuant to section 625 of the Cable Act, 47 USC 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 USC 545;

(4) Any other information that the applicant believes is necessary for the town to make an informed determination on the application for modification; and

(5) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all federal and state law requirements.

(f) *Public hearings.* An applicant shall be notified of any public hearings held in connection with the evaluation of its application and shall be given an opportunity to be heard. In addition, prior to the issuance of a franchise, the town shall provide for the holding of a public hearing within the proposed franchise area, following reasonable notice to the public, at which every applicant and its applications shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard.

(g) *Acceptance of franchise.* Following approval by the town, any franchise granted pursuant to this article, and the rights, privileges and authority granted by a franchise agreement, shall take effect and be in force from and after the first date on which both the franchisee and the town have accepted and signed the franchise agreement.

(Ord. No. 06-05, § 20-4, 11-28-2006)

### **Sec. 22-23. Filing fees.**

(a) *Amount of fee.* To be acceptable for filing, any application of a type listed in subsection (b) of this section submitted after the effective date of the ordinance from which this article is derived shall be accompanied by a nonrefundable filing fee of \$5,000.00, payable to the town, to cover costs incidental to the awarding or enforcement of the franchise, as appropriate.

(b) *Applications for which fee is required.* A fee is required for the following types of applications:

(1) Application for an initial franchise or for issuance of an RFP;

(2) Application for renewal of a franchise;

(3) Application for modification of a franchise agreement;

(4) Application for approval of a transfer.

(c) *Reimbursement of expenses, payments not deemed franchise fees.* To the extent consistent with applicable law:

(1) The town may require the franchisee, or, where applicable, a transferor or transferee, to reimburse the town for its reasonable out-of-pocket expenses in considering the application, including consultants' fees;

(2) No payments made hereunder shall be considered a franchise fee, but shall be deemed to fall within one

or more of the exceptions in 47 USC 542(g)(2).

(Ord. No. 06-05, § 20-5, 11-28-2006)

**Sec. 22-24. Provision of cable service.**

(a) *Availability of cable service.* A franchisee shall construct and operate its system so as to provide service, if requested, to all residences within town boundaries as they exist on the date of the franchise agreement. With respect to residences in areas of the town annexed thereafter, a franchisee shall construct and operate its systems so as to provide service to all parts of its franchise area having a density of at least 20 residences per mile of system. In addition, all areas which reach such density at any time during the franchise term shall be provided service upon reaching the minimum density.

(b) *Line extension requirement.*

- (1) Except as federal law may otherwise require, and subject to the universal service and minimum density requirements specified in subsection (a) of this section, a franchisee shall, upon request:
  - a. Extend its trunk and distribution system to any subscriber located within 250 feet of a main distribution cable located in the public rights-of-way at its standard installation charge, unless the franchisee demonstrates to the town's satisfaction that extraordinary circumstances exist; and
  - b. Extend its trunk and distribution system to any potential subscriber outside the 250-foot limit, provided that the franchisee may charge the potential subscriber for the cost of the actual length of the installed drop, or the shortest distance to the point where the franchisee would be required to extend its distribution system, whichever is shorter, except where the franchisee has demonstrated to the town's satisfaction that extraordinary circumstances exist.
- (2) In areas where the minimum density requirement is not met, or where extraordinary circumstances exist, a franchisee shall, upon request, extend its cable system to a potential subscriber, provided that the subscriber shall pay the additional extension costs.

(c) *Cost sharing.*

- (1) The term "additional extension costs," as used in subsection (b)(2) of this section, shall mean a subscriber's pro rata share of a franchisee's total construction costs at the actual density of affected potential subscribers, less the total construction costs that the franchisee would incur if it were extending its system to make service available to the same number of potential subscribers at a density of 20 residences per mile.
- (2) The term "total construction costs" shall mean, for purposes of this subsection (c), the actual turn-key cost to construct the entire extension including electronics, pole make-ready charges, and labor, but not the cost of the house drop.

(d) *Continuity of service.*

- (1) It is the right of all subscribers in the franchise area to receive all available services from a franchisee, as those services become available, as long as their financial and other obligations to the franchisee are satisfied.
- (2) A franchisee shall ensure that all subscribers receive continuous uninterrupted service. At the town's request, a franchisee shall, as trustee for its successor in interest, operate its system for a temporary period (the "transition period") following the termination, sale, or transfer of its franchise as necessary to maintain service to subscribers, and shall cooperate with the town to ensure an orderly transition from it to another franchisee.
- (3) During such transition period, a franchisee shall not sell any of the system assets, nor make any physical, material, administrative or operational change that would tend to reduce the quality of service to subscribers, decrease the system's income, or materially increase expenses without the express permission, in writing, of the town.
- (4) The town may seek legal and/or equitable relief to enforce the provisions of this section.

- (5) The transition period shall be no longer than the reasonable period required to ensure that cable service will be available to subscribers, and shall not be longer than 36 months, unless extended by the town for good cause. During the transition period, a franchisee will continue to be obligated to comply with the terms and conditions of the agreement and applicable laws and regulations.
- (6) If a franchisee abandons its system during the franchise term, or fails to operate its system in accordance with the terms of its franchise agreement during any transition period, the town, at its option, may operate the system, designate another entity to operate the system temporarily until the franchisee restores service under conditions acceptable to the town or until the franchise is revoked and a new franchisee selected by the town is providing service, or obtain an injunction requiring the franchisee to continue operations. If the town is required to operate or designate another entity to operate the cable system, the franchisee shall reimburse the town or its designee for all reasonable costs and damages incurred that are in excess of the revenues from the cable system.
- (7) A franchisee shall forfeit its rights to notice and hearing, and the town ~~council~~ board may, by resolution, declare the franchisee's franchise immediately terminated, in addition to any other relief or remedies the town may have under its franchise agreement, this article, or other applicable law, if:
  - a. The franchisee fails to provide cable service in accordance with its franchise over a substantial portion of the franchise area for 96 consecutive hours, unless the town authorizes a longer interruption of service or the failure is due to force majeure, as characterized in its franchise agreement; or
  - b. The franchisee, for any period, willfully and without cause refuses to provide cable service in accordance with its franchise over a substantial portion of the franchise area.
- (8) No charge shall be made to the town or any board, bureau or department of the town, or any municipal government for use of the government access channels.

(Ord. No. 06-05, § 20-6, 11-28-2006)

**Sec. 22-25. Design and construction.**

- (a) *System construction schedule.* Every franchise agreement shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the cable system.
- (b) *Construction procedures.*
  - (1) A franchisee shall construct, operate and maintain its cable system in strict compliance with all applicable laws, ordinances, rules and regulations, including, but not limited to, the National Electrical Safety Code and the National Fire Protection Association National Electrical Code, as such may be amended from time to time.
  - (2) The system, and all parts thereof, shall be subject to the right of periodic inspection by the town.
  - (3) No construction, reconstruction, installation, or relocation of the system or any part thereof within the public rights-of-way shall be commenced until all applicable written permits have been obtained from the proper town officials. In any permit so issued, such officials may impose such conditions and regulations as a condition of the granting of the permit as are necessary for the purpose of protecting any structures in the public rights-of-way and for the proper restoration of such public rights-of-way and structures, and for the protection of the public and the continuity of pedestrian and vehicular traffic.
  - (4) A franchisee shall, by a time specified by the town, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the town by reason of traffic conditions; public safety; public right-of-way construction; public right-of-way maintenance or repair (including resurfacing or widening); change of public right-of-way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work or improvement or any government-owned utility; public right-of-way vacation; or for any other purpose where the convenience of the town would be served thereby; provided, however, that a franchisee shall, in all such cases, have the privilege of abandoning any property in place, after obtaining permission from the town, such permission to be given or withheld in the town's sole discretion.

- (5) If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another person that is authorized to use the public rights-of-way, a franchisee shall, after reasonable advance written notice, take action to effect the necessary changes requested by the responsible entity. The town may resolve disputes as to responsibility for costs associated with the removal, relaying, or relocation of facilities as among entities authorized to install facilities in the public rights-of-way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or a state or federal law or regulation.
- (6) In the event of an emergency, or where a cable system creates or is contributing to an imminent danger to health, safety, or property, the town may remove, relay, or relocate any or all parts of that cable system without prior notice.
- (7) A franchisee shall, on the request of any person holding a building moving permit issued by the county or the town, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and a franchisee shall have the authority to require such payment in advance, except in the case where the requesting person is the town, in which case no such payment shall be required. A franchisee shall be given notice not less than 72 hours in advance to arrange for such temporary wire changes.
- (8) A franchisee shall participate in any "Miss Utility" program active in its franchise area with regard to giving and receiving notice of the location of facilities and excavations.
- (9) Wherever all electrical and telephone utility wiring is located underground, either at the time of initial construction or subsequently, at the direction of the county or the town, the television cable shall also be located underground at no expense to the town.
- (10) The franchisee shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits or other facilities whether on public property or on privately owned property until the written approval of the town is obtained. However, no location of any pole or wire-holding structure of the franchisee shall be a vested interest and such poles or structures shall be removed or modified by the franchisee at its own expense whenever the town department of public works determines that the public convenience would be enhanced thereby.
- (11) The franchisee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the supervision and direction of the town. Trimming of trees on private property shall require written consent of the property owner. All trimming of trees performed by the franchisee shall be done in accordance with the guidelines of the National Arborist Association.
- (12) Notwithstanding any other provision of this subsection (b), a franchisee shall take all necessary steps to avoid damage to any trees, streets, and public or private driveways and any public right-of-way.

(c) *Restoration.* Any and all public rights-of-way, public property or private property that is disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or construction of a cable system shall be repaired, replaced and restored, as appropriate, in substantially the same condition and in a ~~good workmanlike~~ skilled, timely manner, in accordance with the standards for such work set by the town. With respect to damage or disturbances to public rights-of-way, public property, or private property, all repairs and restoration shall be performed in accordance with any applicable state, county or town law or regulation. All repairs, replacements and restoration shall be undertaken within no more than 30 days after the damage is incurred, and shall be completed as soon as reasonably possible. A franchisee shall guarantee and maintain such restoration for at least one year against defective materials or ~~workmanship~~ quality or cuts or cracks in pavement surfaces or until such time as pavement is overlaid, whichever is longer.

- (d) *Use of public property.*
  - (1) Should the grades or lines of the public rights-of-way that the franchisee is authorized by a franchise to use and occupy be changed at any time during the term of a franchise, the franchisee shall, if necessary, relocate or change its system so as to conform with the new grades or lines at no cost or expense to the town.

- (2) Any alteration to the water mains, sewerage or drainage system or to any town, county, state or other public structures in the public rights-of-way required on account of the presence of a franchisee's system in the public rights-of-way shall be made at the sole cost and expense of the franchisee. During any work of construction, operation or maintenance work on a system, the franchisee shall also protect any and all existing structures belonging to the town or to any other person. All work performed by the franchisee shall be done in the manner prescribed by the town or other officials having jurisdiction therein.

(e) *Interference with public projects.* Nothing in this article or any franchise agreement shall be in preference or hindrance to the right of the town and any board, authority, commission or public service corporation to perform or carry on any public works or public improvements of any description, and should a franchisee's system in any way interfere with the construction, maintenance or repair of such public works or public improvements, the franchisee shall protect or relocate its system, or part thereof, as reasonably directed by any town official, board, authority, commission or public service corporation.

(Ord. No. 06-05, § 20-7, 11-28-2006)

### **Sec. 22-26. Channels and facilities for public, educational and governmental use.**

(a) *Management of channels.* The town may designate one or more entities, including a nonprofit access management corporation, to perform any or all of the following functions:

- (1) To manage any necessary scheduling or allocation of capacity on the institutional network; and/or
- (2) On the town's behalf, to program any public, educational, or governmental access channel. Educational and public access channels shall not be managed by the same entity; provided, however, that, until such entities have been designated, the town shall be responsible for these functions.

(b) *Public access programming rules.* For any public access channel, the entity managing such channel shall establish:

- (1) Rules that prohibit the presentation of any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office), lottery information, and obscene matter;
- (2) Rules requiring first-come, nondiscriminatory access; and
- (3) Rules permitting public inspection of the complete record of the names and addresses of all persons and groups requesting access time. Such a record shall be retained for a period of two years.

(c) *Use of access channels.* PEG access channels shall be for the noncommercial use of the town and shall be available at no expense to the town and to PEG access users.

(Ord. No. 06-05, § 20-8, 11-28-2006)

### **Sec. 22-27. Consumer protection.**

(a) *Generally.* A franchisee must satisfy the customer service standards set forth in this section. In addition, the franchisee shall at all times satisfy any additional or stricter requirements established by FCC regulations, or other applicable federal, state, or local law or regulation, as the same may be amended from time to time.

(b) *Construction of article.*

- (1) Nothing in this article may be construed to prevent or prohibit the town from the following:
  - a. Agreeing with a franchisee on customer service requirements that exceed the standards set forth in this article;
  - b. Enforcing, through the end of a franchise term, preexisting customer service requirements that exceed the standards set forth in this article and are contained in current franchise agreements;
  - c. Enacting or enforcing any customer service or consumer protection laws or regulations; or
  - d. Waiving, for good cause, requirements established in this article.
- (2) Nothing in this article in any way relieves a franchisee of its obligation to comply with other applicable consumer protection laws and its franchise agreement.

(c) *Installations, connections, and other franchisee services.*

- (1) *Installation of drops.* A subscriber's preference as to the point of entry into a residence shall be observed whenever feasible. Runs in building interiors shall be as unobtrusive as possible. A franchisee shall use due care in the process of installation and shall repair any damage to a subscriber's property caused by said installation. Such restoration shall be undertaken within 30 days after the damage is incurred and shall be completed as soon as reasonably possible thereafter.
  - (2) *Location of drops.* In locations where a franchisee's system must be underground, drops must be placed underground as well. In all cases where new developments and subdivisions are to be constructed and to be served in whole or in part by underground power and telephone utilities, the owner or developer of such areas shall provide reasonable notice to the franchisee of the availability of trenches, backfill and specifications of all necessary substructures in order that the franchisee may install all necessary cable facilities. In no event shall such location of cable facilities underground be at any cost or expense to the town.
  - (3) *Time for extension/installation.* Where a franchisee is required under section 22-24 to provide service to a person that resides within 250 feet from the franchisee's distribution system, the franchisee must provide such service within seven business days of the person's request. If the person resides more than ~~one hundred twenty five (205)~~ 125 feet from the franchisee's distribution system, the town may waive this seven-day requirement upon a showing of good cause by the franchisee and provided the franchisee specifies the time period within which service will be provided. This standard shall be met 95 percent of the time, measured on a quarterly basis.
  - (4) *Antennae and antenna switches.* A franchisee shall adhere to fee regulations regarding antenna switches. A franchisee shall not, as a condition to providing cable service, require any subscriber or potential subscriber to remove any existing antenna structures for the receipt of over-the-air television signals.
  - (5) *Delinquent accounts.* A franchisee shall use its best efforts to collect on delinquent subscriber accounts before terminating service. In all cases, the franchisee shall provide the customer with at least ten working days' written notice prior to disconnection.
- (d) *Telephone and office availability.*
- (1) Each franchisee shall maintain offices within the town of ~~Glenarden~~ at locations convenient to subscribers or as specified in its franchise agreement, that shall be open during normal business hours to allow subscribers to request service, pay bills, and conduct other business.
  - (2) Each franchisee shall maintain at least one local, toll-free or collect call telephone access line which will be available to subscribers 24 hours a day, seven days a week. Trained representatives of a franchisee shall be available to respond to subscriber telephone inquiries during normal business hours.
  - (3) Each franchisee shall be subject to the following standards, except that such franchisee shall not be subject to penalty as long as it meets such standards under normal operating conditions at least 90 percent of the time, measured quarterly:
    - a. Telephone answering time shall not exceed 30 seconds, and the time to transfer the call to a customer service representative (including hold time) shall not exceed an additional 30 seconds.
    - b. A customer ~~will~~ shall receive a busy signal less than three percent of the time.
    - c. When the business office is closed, an answering service where a person receives and records service complaints and inquiries shall be employed. Inquiries received after hours must be responded to by a trained representative of a franchisee on the next business day. To the extent possible, the after-hours answering service shall comply with the same telephone answer time standard set forth in this section.
  - (4) In any case, at all times a franchisee shall provide an answering machine so that callers will have the option to leave messages.
  - (5) A franchisee must hire sufficient competent customer service representatives and repair technicians so that it can adequately respond to customer inquiries, complaints, and requests for service in its office,

over the phone, and at a subscriber's residence; provide prompt and effective service to subscribers; and, as a rule, complete repairs within a subscriber's home upon a single visit.

(e) *Scheduling and completing service.* Under normal operating conditions, each of the following standards shall be met by all franchisees at least 95 percent of the time, as measured on a quarterly basis:

- (1) *Prompt service.* Excluding conditions beyond the control of the franchisee, repairs and maintenance for service interruptions must begin promptly and in no event later than 24 hours after the subscriber reports the problem to the franchisee or its representative or the interruption or need for repairs otherwise becomes known to the franchisee. All such work must be completed within three days from the date of the initial request, except installation requests, provided that a franchisee shall complete the work in the shortest time possible where, for reasons beyond the franchisee's control, the work could not be completed in those time periods even with the exercise of all due diligence; the failure of a franchisee to hire sufficient staff or to properly train its staff shall not justify a franchisee's failure to comply with this provision.
- (2) *Service times.*<sup>33</sup> A franchisee shall perform service calls, installations, and disconnects at least during normal business hours. In addition, maintenance service capability enabling the prompt location and correction of major system malfunctions shall be available Monday through Friday from the end of normal business hours until ~~20:30 a.m.~~ 8:30. p.m., and from 8:00 a.m. until ~~20:30 a.m.~~ 8:30 p.m. on Saturdays, Sundays, and holidays or per customer service standards found in the relevant franchise agreement.
- (3) *Appointments.* The appointment window for installations, service calls, and other installation activities shall be during normal business hours, either at a specific time or within a specified period of no longer than two hours' duration, or such greater duration as the town may authorize. Where a subscriber cannot conveniently arrange for a service call or installation during normal business hours, a franchisee shall also schedule service and installation calls outside normal business hours for the express convenience of the subscriber.
- (4) *Cancellations.* A franchisee may not cancel an appointment with a subscriber after the close of business on the business day preceding the appointment. If a franchisee's representative will be late for a scheduled appointment with a subscriber or will not be able to keep the appointment, the franchisee shall contact the subscriber, and reschedule the appointment, as necessary, at a time which is convenient for the subscriber.
- (5) *Emergency maintenance.* A franchisee shall keep an emergency system maintenance and repair staff, capable of responding to and repairing system malfunctions or interruptions, on a 24-hour basis.
- (6) *Other inquiries.* Under normal operating conditions, billing inquiries and requests for service, repair, and maintenance not involving service interruptions must be acknowledged by a trained customer service representative within 24 hours, or prior to the end of the next business day, whichever is earlier. A franchisee shall respond to all other inquiries within five business days of the inquiry or complaint.
- (7) *Missed appointments.* If a subscriber experiences a missed appointment due to the fault of a franchisee, the franchisee shall credit the subscriber's account in the amount of \$20.00 for each missed appointment, or grant the subscriber such other equivalent remedy as the subscriber and franchisee may agree upon. The credit or compensation required by this subsection is in addition to any other penalties or liquidated damages to which the franchisee may be subject.
- (8) *Pickup and replacement of equipment.* Upon subscriber request, a franchisee shall arrange for pickup and/or replacement of converters or other franchisee equipment at the subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer). At a subscriber's request, a

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<sup>33</sup> Legal or Editorial Change: Ord. No. 06-05, Cable television franchises, § 20-9. Consumer protection. Subsection (E)(2) references 20:30 a.m. Changed to 8:30 p.m. and altered per instructions.

franchisee shall make such pickup or replacement at the same time as any disconnection or other related service call, so as to avoid an additional visit. If a franchisee charges a fee for such pickup or replacement, such fee shall be clearly disclosed at the time of the subscriber's request.

(f) *Interruptions of service.*

- (1) A franchisee shall, when practicable, schedule and conduct maintenance on its cable system so that interruption of service is minimized and occurs during periods of minimum subscriber use of the cable system. The franchisee shall provide reasonable prior notice to subscribers and the town before interrupting service for planned maintenance or construction, except where such interruption is expected to be one hour or less in duration. Such notice shall be provided by methods reasonably calculated to give subscribers actual notice of the planned interruption.
- (2) A franchisee may intentionally interrupt service on the cable system after 7:00 a.m. and before 1:00 a.m. only with good cause and for the shortest time possible and, except in emergency situations, only after publishing notice of service interruption at least 24 hours in advance of the service interruption. Service may be intentionally interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance, and repair, without notification, on any night except Friday, Saturday, or Sunday, or the night preceding a holiday.

(g) *Notice to subscribers.*

- (1) Unless otherwise provided for herein, a franchisee shall provide the following materials to each subscriber at the time cable service is installed, at least annually thereafter, and at any time upon request. Copies of all such materials provided to subscribers shall also be provided to the town.
  - a. A written description of products and services offered, including a schedule of rates and charges, a list of channel positions, and a description of programming services, options, and conditions;
  - b. A written description of the franchisee's installation and service maintenance policies, delinquent subscriber disconnect and reconnect procedures, and any other of its policies applicable to its subscribers;
  - c. Written instructions on how to use the cable service;
  - d. Written instructions for placing a service call;
  - e. A written description of the franchisee's billing and complaint procedures, including the address and telephone number of the town office responsible for receiving subscriber complaints;
  - f. A copy of the service contract, if any (at installation or on request, but need not be provided annually);
  - g. Notice regarding subscribers' privacy rights pursuant to 47 USC 551;
  - h. Notice of the availability of universal remote controls and other compatible equipment (a list of which, specifying brands and models, shall be provided to any subscriber upon request).
- (2) Subscribers will be notified of any changes in rates, programming services or channel positions, and any significant changes in any other information required to be provided by this section, as soon as possible, in writing, unless such notice is waived by operation of applicable law. Notice must be given to subscribers a minimum of 30 days in advance of such changes if the change is within the control of the cable operator. Notwithstanding the ~~above provisions of this subsection~~, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any federal agency, state, or franchising authority on the transaction between the operator and the subscriber.
- (3) All franchisee promotional materials, announcements, and advertising of residential cable service to subscribers and the general public, in which price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all promotional materials must clearly and accurately disclose price terms and, in the case of telephone orders, a franchisee shall take appropriate steps to ensure that price terms are clearly and accurately

disclosed to potential customers before the order is accepted.

- (4) Copies of all notices provided to subscribers under these customer service standards, as well as all promotional or special offers made to subscribers, and of any agreements used with subscribers, shall be filed promptly with the town.
- (h) *Billing.*
  - (1) Bills shall be clear, concise, and understandable. Bills must be fully itemized with itemizations, including, but not limited to, basic service, cable programming service, premium service charges and all equipment charges. Bills shall clearly delineate all activity during the billing period, including optional charges, rebates, and credits.
  - (2) Refund checks to subscribers shall be issued promptly, but no later than the later of:
    - a. The subscriber's next billing cycle, or 30 days, following resolution of the refund request, whichever is earlier; or
    - b. The return of all equipment supplied by the franchisee, if service is terminated.
  - (3) Credits for service shall be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted.
  - (4) A franchisee's first billing statement after a new installation or service change shall be prorated as appropriate and shall reflect any security deposit.
  - (5) Late fees will not be assessed for payments after the due date until 45 days after the beginning of the service period for which the payment is to be rendered. In addition, subscribers will receive the benefit of any change in the late fee amount, and of any increases in the time allowed before assessment of late fees, that may result from litigation over late fees pending as of the effective date of the ordinance from which this article is derived.
  - (6) A franchisee must notify the subscriber that said subscriber can remit payment in person at the franchisee's business office and inform the subscriber of the address of that office.
  - (7) Subscribers shall not be charged a late fee or otherwise penalized for any failure by a franchisee, including failure to timely or correctly bill the subscriber, or failure to properly credit the subscriber for a payment timely made.
  - (8) A subscriber who asks a franchisee for credit for an outage shall receive credit for the actual time period of the outage as a pro rata fraction of the monthly charges for any outage lasting between two and six hours, without reference to the time the subscriber contacts the franchisee. A subscriber shall receive credit for one full day's monthly charges for any outage of between six and 24 hours, whether or not the subscriber reports such an outage, if the franchisee becomes aware of such outage, either through reports by subscribers or otherwise. Each franchisee shall place a message in subscribers' bills at least quarterly, explaining how to report an outage, how to obtain a credit, and under what conditions credits are available. A franchisee shall also establish a mechanism by which subscribers may reliably and immediately contact the franchisee by telephone and report an outage for credit purposes, either by ensuring that they can reliably and immediately reach a live person or by another method (for example, by leaving a voice message or entering the subscriber's telephone number). Upon receiving such reports, the franchisee shall promptly contact the subscriber to confirm that the report has been received, and apply the credit to the subscriber's bill unless the franchisee reasonably concludes that the subscriber's report is false.
  - (9) Franchisee shall respond to all written billing complaints from subscribers within 30 days.
    - (i) *Disconnection/downgrades.*
      - (1) A subscriber may terminate service at any time.
      - (2) A franchisee shall promptly disconnect or downgrade any subscriber's service at such subscriber's request. No period of notice prior to voluntary termination or downgrade of service may be required of subscribers by any franchisee. So long as the subscriber returns, or permits the franchisee to retrieve, any

equipment necessary to receive a service within five business days of the disconnection no charge may be imposed by any franchisee for any cable service delivered after the date of the disconnect request.

- (3) A subscriber may be asked, but not required, to disconnect a franchisee's equipment and return it to the franchisee's business office.
- (4) Any funds due a subscriber on disconnected accounts shall be refunded after any equipment provided by the franchisee has been recovered from the customer's premises by the franchisee. The refund must be made within 30 days or by the end of the next billing cycle, whichever is earlier, from the date disconnection was requested (or, if later, the date on which any customer premises equipment provided by the franchisee is returned).
- (5) If a subscriber fails to pay a monthly subscriber fee or other fee or charge, a franchisee may disconnect the subscriber's service; however, such disconnection shall not be effected until at least 45 days after the bill is due, plus at least ten days' advance written notice to the subscriber of the franchisee's intent to disconnect the subscriber's service, but in no event before the date when the franchisee would be entitled to charge a late fee. If the subscriber pays all amounts due, including late charges, before the date scheduled for disconnection, the franchisee shall not disconnect service. After disconnection, upon payment by the subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the franchisee shall promptly reinstate service.
- (6) A franchisee may immediately disconnect a subscriber's service if the subscriber is damaging or destroying the franchisee's cable system or equipment. After disconnection, the franchisee shall restore service if the subscriber provides adequate assurance that said subscriber has ceased the practices that led to disconnection and has paid all proper fees and charges, including any reconnection fees and amounts owed to the franchisee for damage to its cable system or equipment.
- (7) A franchisee may also disconnect service to a subscriber who causes signal leakage in excess of federal limits. A franchisee may disconnect a subscriber's service without notice to the subscriber where signal leakage is detected originating from the subscriber's premises in excess of federal limits, provided that the franchisee shall immediately notify the subscriber of the problem and, once the problem is corrected, reconnect the subscriber.
- (8) The disposition of cable home wiring in residential single-family homes shall be governed by FCC rules regarding cable home wiring as of December 1, 1998.
- (9) A franchisee shall reconnect service to customers wishing restoration of service, provided such a customer shall first satisfy any previous obligations owed.
- (j) *Changes in service.*
  - (1) At the time a franchisee alters the service it provides to a class of subscribers, it must provide notice to each subscriber 30 days in advance, which notice shall explain the substance and full effect of the alteration and provide the subscriber the right to opt to receive any combination of services thereafter offered by the franchisee.
  - (2) No charge may be made for any service or product that the subscriber has not affirmatively indicated said subscriber wishes to receive.
- (k) *Program blocking option.* A franchisee shall make available to any subscriber, upon request, the option of blocking the video or audio portion of any channel of programming entering the subscriber's home. The control option described herein shall be made available when any cable service is provided, or reasonably soon thereafter.
  - (l) *Enforcement.*
    - (1) A franchisee shall keep such records as are necessary to show compliance with these customer service standards and FCC customer service standards.
    - (2) The town shall have the right to observe and inspect a franchisee's customer service procedures.
    - (3) Except as prohibited by federal law, a franchisee shall be subject to penalties, forfeitures and any other remedies or sanctions available under federal, state or local law, including, without limitation, this article

and a franchisee's franchise with the town, if it fails to comply with the standards herein.

- (4) A franchisee shall not be subject to penalties or liquidated damages as a result of any violations of these customer service standards that are due to force majeure as characterized in its franchise agreement.
- (m) *Anticompetitive acts prohibited.*
- (1) No franchisee or OVS operator shall demand the exclusive right to provide cable service to a person or location as a condition of extending cable service or a cable system. This provision is not intended and shall not be interpreted:
- a. To prohibit voluntary exclusive agreements to provide cable service;
  - b. To create any private cause of action for any person; or
  - c. To prohibit exclusive agreements permitted by federal law.
- (2) No franchisee or OVS operator shall engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor, as defined in federal law, from providing cable service similar to cable service in the town. This provision does not apply to methods, acts or practices allowed by federal or state law. Any allegation that a franchisee has engaged in methods, acts or practices that would be prohibited by this subsection will be considered by the town only after exhaustion of federal remedies. This subsection is not intended to create a private cause of action.

(Ord. No. 06-05, § 20-9, 11-28-2006)

**Sec. 22-28. Rate regulation; enforcement of consumer protection, customer service standards.**

- (a) *Legal authority.*
- (1) The town shall enforce the rate regulations promulgated by the fee in 47 CFR 76.922 et seq., for the establishment of initial basic cable service and associated equipment rates and for basic cable service and associated equipment rate increases. The commission shall further enforce the provisions of this article and any franchise agreement issued pursuant thereto with respect to customer service and consumer protection standards.
- (2) With regard to the cable programming service tier, as defined by the Cable Act, and the FCC rules and regulations, and over which the town is not empowered to exercise rate regulation, the cable operator shall give notice to the town of any change in rates for the cable programming service tier, any change in the charge for equipment required to receive the tier, and any changes in the nature of the services provided, including the program services included in the tier. The cable operator shall provide such notice 30 days before the changes are to become effective.
- (b) *Submission.* The franchisee shall submit all rate filings on the proper federal forms. All town rate proceedings shall be consistent with the rules and regulations promulgated by the FCC.
- (c) *Notice.* Following the receipt by the town of the franchisee's request for review of its existing rates for the basic service tier and associated equipment costs, or the franchisee's request for a proposed increase in these rates, or following the receipt by the town of information indicating that a violation of any customer service or consumer protection standards imposed by this article or by any franchise agreement issued pursuant to this article may have occurred, the town shall hold a public hearing prior to making a final decision on the request for rate review. The public hearing shall be held to provide the franchisee and all other interested persons an opportunity to be heard concerning the request.
- (d) *Effective date of rates; tolling orders.* The existing rates will remain in effect or the proposed rates, as appropriate, will become effective after 30 days from the date of receipt of the request; provided, however, that, if the town is unable to reach a decision, based upon the material submitted by the franchisee, it may toll the 30-day deadline by issuing a brief written order within the 30-day period explaining that it needs additional time to request and/or consider additional information or to consider the comments from interested persons. The town may request an additional 90 days in cases not involving cost-of-service showings, or an additional 150 days in cases involving cost-of-service showings. The proposed rates shall go into effect or existing rates will remain in effect, as

appropriate, at the end of the 90- or 150-day period, subject to refunds, if the town issues a subsequent written decision disapproving any portion of such rates. In order to issue such refunds, the town must issue a brief written order to the franchisee by the end of the 90- or 150-day period, directing the franchisee to keep an accurate account of all amounts received by reason of the rate in issue and on whose behalf such amounts were paid. The maximum 180-day period may be extended by mutual agreement of the town and the franchisee.

(e) *Proceedings.*

- (1) Any proceeding conducted by the town under this section shall provide a reasonable opportunity for consideration of the views of any interested party, including, but not limited to, the town ~~council~~ board or designee, the franchisee or cable operator, subscribers and residents of the franchise area.
- (2) The town may require such additional testimony or evidence, including technical data, as it deems necessary to its determination.
- (3) The town shall conduct its proceedings in accordance with rules and regulations adopted by the commission. The town shall maintain a record of all testimony, evidence and written submissions in its proceedings.
- (4) The commission may exercise all powers under the laws of evidence applicable to administrative proceedings under the laws of the state to discover any information relevant to the rate regulation proceeding, including, but not limited to, subpoena, interrogatories, production of documents and deposition.
- (5) The town may require the attendance as a witness of one or more representatives of the cable operator.
- (6) The town shall have authority to administer oaths and affirmations; issue subpoenas; examine witnesses; rule upon questions of evidence; take or cause depositions to be taken; and issue notices and orders, take actions and make decisions or recommendations in conformity with this ~~law~~ article.

(f) *Additional information; confidentiality.* In addition to any material or evidence submitted by any party at the hearing, the town may require a franchisee to submit any additional information it reasonably deems necessary to its decision. A franchisee, upon submitting information required to be produced in the course of a rate proceeding, may request that such information not be made routinely available for public inspection. The franchisee must identify information it claims is confidential and explain why it is confidential. If the request for confidentiality is denied, the franchisee has five working days to seek a review of that decision from the FCC.

(g) *Schedule of fees and charges.*

- (1) A franchisee shall publish and make available to each potential subscriber a schedule of all applicable fees and charges for providing cable television service and must notify subscribers that basic cable service is available. Said notification shall include the following information:
  - a. That basic tier service is available;
  - b. The cost per month for basic tier service;
  - c. A list of all services included in the basic service tier.
- (2) The franchisee shall provide written notice to subscribers and the franchise authority of any change in the price to be charged for the basic service tier or associated equipment, together with any proposed changes in programming services or channel positions, at least 30 days before any proposed change is effective. The notice should include the name and address of the franchising authority.

(h) *Waiver, reduction or suspension of fees.* A franchisee may, at its own discretion, waive, reduce, or suspend connection fees for specific or indeterminate periods and/or monthly service fees for periods not to exceed 30 days for promotional purposes, where allowed by federal regulations. The franchisee shall not, with regard to fees, discriminate or grant any preference or advantage to any person; provided, however, that the franchisee may establish a uniform bulk discount rate structure for basic cable service and associated equipment provided to ten or more dwelling units within an apartment building, condominium, garden apartment, or townhouse complex under common ownership, or to ten or more rooming units within hotels and motels, or to commercial establishments engaged in the sale of television receivers. The franchisee may offer reasonable discounts to senior citizens or other

economically disadvantaged ~~group discounts~~ groups.

(i) *Decision of the town.* Upon completion of the rate proceedings, the town shall with reasonable promptness adopt a written decision. All changes in subscriber fees shall be determined by the town in accordance with the federal regulations.

(j) *Remedies.* In addition to any other penalties contained in this article, the town may:

- (1) Order the franchisee to implement a reduction in basic service tier or associated equipment rates where necessary to bring rates into compliance with the federal standards;
- (2) Prescribe a reasonable rate for the basic service tier or associated equipment after it determines that a proposed rate is unreasonable;
- (3) Order the franchisee to refund to subscribers that portion of previously paid rates determined to be in excess of the permitted tier charge or above the actual cost of equipment, unless the franchisee has submitted a cost-of-service showing which justifies the rate charged as reasonable. The town shall give the franchisee notice and an opportunity to comment prior to ordering the franchisee to refund previously paid rates. The franchisee's liability for refunds is limited to a one-year period, except that a franchisee that fails to comply with a valid rate order shall be liable for refunds commencing from the effective date of such order until such time as it complies with such order;
- (4) Impose fines or monetary forfeitures, in accordance with section 22-32, on a franchisee that does not comply with a rate decision or refund order.

(k) *Nondiscrimination.*

- (1) Subject to applicable law, a franchisee shall establish rates that are nondiscriminatory within the same general class of subscribers and which must be applied fairly and uniformly to all subscribers in the franchisee area for all services. Nothing contained herein shall prohibit a franchisee from offering, by way of illustration and not limitation:
  - a. Discounts to senior citizens or economically disadvantaged groups;
  - b. Discounts to commercial and multiple-family dwelling subscribers billed on a bulk basis;
  - c. Promotional discounts; or
  - d. Reduced installation rates for subscribers who have multiple services.
- (2) The provisions of this section shall apply to all rates, whether or not they are otherwise subject to rate regulation, except to the extent specifically prohibited by law.

(Ord. No. 06-05, § 20-10, 11-28-2006)

**Sec. 22-29. Franchise fee.**

(a) *Finding.* The town finds that public rights-of-way of the town to be used by a franchisee for the operation of a cable system are valuable public property acquired and maintained by the town. The town further finds that the grant of a franchise to use public rights-of-way is a valuable property right without which a franchisee would be required to invest substantial capital.

(b) *Payment of franchise fee.* Each franchisee shall pay a franchise fee of five percent of gross revenues.

(c) *Method of payment.* The franchisee shall file with the town, within 30 days after the expiration of each of the franchisee's fiscal quarters, a financial statement clearly showing the gross revenues received by the franchisee during the preceding quarter. The quarterly portion of the franchise fee shall be payable to the town at the time such statement is filed.

(d) *Not a tax or in lieu of any other tax or fee.*

- (1) Payment of the franchise fee shall not be considered a tax or in lieu of other taxes or fees of general applicability imposed by the town. The franchise fee is in addition to all other taxes and payments that a franchisee may be required to pay under its franchise agreement or any federal, state, or local law, and to any other tax, fee, or assessment imposed by utilities and cable operators for use of their services,

facilities, or equipment, including any applicable amusement taxes, except to the extent that such fees, taxes, or assessments must be treated as a franchise fee under section 642 of the Cable Act, 47 USC 522.

(2) No franchisee may designate the franchise fee as a tax in any communication to a subscriber.

(e) *Late payments.* In the event any franchise fee payment or recomputation amount is not made on or before the required date, the franchisee shall pay additional compensation and interest charges computed from such due date, at an annual rate equal to the commercial prime interest rate of the town's primary depository bank during the period such unpaid amount is owed, in addition to any applicable penalties or liquidated damages.

(f) *Audit.*

(1) The town shall have the right to inspect records, to require a franchisee to provide copies of records at the franchisee's expense, and to audit and to recompute any amounts determined to be payable, whether the records are held by the franchisee, an affiliate, or any other entity that collects or receives funds related to the franchisee's operation in the town, including, but not limited to, any entity that sells advertising on the franchisee's behalf, for a period of five years from the date a payment was made or, if no payment was made, from the date on which the town believes payment was owed, after which time all payments are final.

(2) A franchisee shall be responsible for providing to the town all records necessary to confirm the accurate payment of franchise fees, without regard to who holds such records. Such records shall be made available pursuant to the requirements of this article. The franchisee shall maintain such records for the term of its franchise agreement, and any renewals or extensions thereof.

(3) The town's audit expenses shall be borne by the town unless the audit discloses an underpayment of five percent or more of the amount due, in which case the costs of the audit shall be borne by the franchisee as a cost incidental to the enforcement of the franchise. Any additional amounts due to the town as a result of the audit shall be paid within 30 days following written notice to the franchisee by the town of the underpayment, which notice shall include a copy of the audit report. If recomputation results in additional fees to be paid to the town, such amount shall be subject to a ten percent interest charge.

(g) *No accord or satisfaction.* No acceptance of any payment by the town shall be construed as a release or an accord and satisfaction of any claim the town may have for further or additional sums due or for the performance of any other obligation of a franchisee, or as an acknowledgement that the amount paid is the correct amount due.

(Ord. No. 06-05, § 20-11, 11-28-2006)

### **Sec. 22-30. Reports and records.**

(a) *Open books and records.*

(1) The town shall have the right to inspect records and to require a franchisee to provide copies of records at the franchisee's expense at any time during normal business hours at town hall. The records to which this section refers shall include all books, receipts, maps, plans, contracts, service complaint logs, performance test results, records of requests for service, computer records, disks or other storage media and other like material which the town deems appropriate in order to monitor compliance with the terms of this article, the town's franchise agreement, or applicable law. The records include not only the books and records of a franchisee, but also any books and records which the town reasonably deems relevant which are held by an affiliate, a cable operator of the cable system, or any contractor, subcontractor or any person holding any form of management contract for the cable system. A franchisee is responsible for collecting the information and producing it at the location specified ~~above~~ in this subsection, and by accepting its franchise it affirms that it can and will do so. A franchisee will be given reasonable advance written notice of any inspection request, which shall serve as notice that any or all of the ~~above~~ materials referenced in this subsection may be inspected.

(2) A franchisee shall maintain financial records that allow analysis and review of its operations in each individual franchise area.

(3) Access to a franchisee's records shall not be denied by such franchisee on the basis that said records contain proprietary information. Refusal to provide information required by this section to the town shall

be grounds for revocation. All confidential information received by the town shall remain confidential insofar as permitted by law.

- (4) A franchisee shall maintain a file of records open to public inspection in accordance with applicable FCC rules and regulations.
- (5) Each report filed by a franchisee pursuant to this article shall be certified by a corporate officer as accurate or complete.

(b) *Communication with regulatory agencies.*

- (1) A franchisee shall file with the town, in a form acceptable to the town, all reports and materials submitted to the FCC, the security and exchange commission, or any other federal or state regulatory commission or agency, including, but not limited to, any proof of performance tests and results, equal employment opportunity reports, and all petitions, applications, and communications of all types regarding the cable system, or a group of cable systems of which the franchisee's cable system is a part, submitted by the franchisee, an affiliate, or any other person on the behalf of the franchisee.
- (2) Materials filed with the town pursuant to subsection (b)(1) of this section shall be filed with the town at the time they are submitted to the receiving agency.
- (3) Upon accepting the franchise, the franchisee shall, within 60 days, file the documents required to obtain all necessary federal, state and local licenses, permits and authorizations required for the conduct of its business and shall submit monthly reports to the town ~~manager-administrator~~ on progress in this respect until all such documents are in hand. Within three months after receipt of a certificate of compliance from the FCC, the franchisee shall provide to the town ~~manager-administrator~~ a construction schedule and map, setting forth target dates by area for commencement of service to subscribers. The schedule and map shall be updated whenever substantial changes become necessary. The franchisee shall complete construction of the system throughout the franchise territory within three years, so that the system shall be capable of conforming with the availability of service requirements set forth in section 22-24.

(c) *Annual report.* Unless this requirement is waived in whole or in part by the town by April 1 of each year for the previous calendar year, a franchisee shall submit a written report to the town, in a form directed by the town, which shall include:

- (1) A summary of the previous year's activities in development of the cable system, including, but not limited to, descriptions of services begun or discontinued, the number of subscribers gained or lost for each category of service, the number of pay units sold, the amount collected annually from users of the system, and the character and extent of the services rendered to such users, including leased access channel users;
- (2) A summary of complaints, identifying both the number and nature of the complaints received and an explanation of their dispositions, to the extent such records are kept by the franchisee. Where complaints involve recurrent system problems, the nature of each problem and the corrective measures taken shall be identified;
- (3) A report showing the number of service calls received by type during the prior quarter, and the percentage of service calls compared to the subscriber base by type of complaint;
- (4) A certification of compliance with applicable customer service standards. If a franchisee is in noncompliance with any standard during any calendar quarter, it shall include in its annual filing a statement specifying the areas of noncompliance, the reason for the noncompliance, and a remedial plan;
- (5) A copy of the franchisee's rules and regulations applicable to subscribers of the cable system;
- (6) An annual statement showing the yearly gross revenues, prepared and audited by a certified public accountant acceptable to the town;
- (7) An annual financial report for the previous calendar year, audited and certified by an independent certified public accountant, including:
  - a. Year-end balance sheet;

- b. Income statement showing subscriber revenue from each category of service and every source of non-subscriber revenue, line item operating expenses, depreciation expense, interest expense, and taxes paid;
  - c. Statement of sources and applications of funds;
  - d. Capital expenditures; and
  - e. Depreciation schedule;
- (8) An annual list of officers and members of the board of directors or similar controlling body of the franchisee and any affiliates;
  - (9) An organizational chart showing all corporations or partnerships with more than a five percent ownership interest in the franchisee, and the nature of that ownership interest (such as, for example, limited partner, general partner, or preferred shareholder); and showing the same information for each corporation or partnership that holds such an interest in the corporations or partnerships so identified and continuing to identify such interests until the ultimate corporate and partnership interests of each corporation or partnership are identified;
  - (10) An annual report and Securities and Exchange Commission 10(k) filing for each entity identified in subsection (c)(9) of this section that generates such documents;
  - (11) A summary of the results of, and/or, at the franchisee's option, copies of, the system's technical tests and measurements performed during the past year;
  - (12) A detailed copy of updated maps depicting the location of all cable plants, showing areas served and locations of all trunk lines and feeder lines in the town, and including changes in all such items for the period covered by the report;
  - (13) A full schedule of all subscriber and other user rates, fees and charges;
  - (14) Such other information as the town may direct.

(d) *Semiannual report.* Unless this requirement is waived in whole or in part by the town, twice each year (by January 31 for the previous six months ending December 31, and by July 31 for the previous six months ending June 30) a franchisee shall submit written reports to the town in a form acceptable to the town.

(e) *Monthly report.* Unless this requirement is waived in whole or in part by the town, no later than ten days after the end of each month, a franchisee shall submit a written report to the town regarding the preceding month, in a form acceptable to the town, which shall include:

- (1) The active system plant in miles, specifying aerial and underground mileage;
- (2) The new system segments built, in miles, if any, specifying aerial and underground mileage;
- (3) The number of subscribers and the penetration rate for each type of service and equipment offered;
- (4) The number of subscriber service disconnections;
- (5) The number of outages, identifying separately:
  - a. Each outage; whether planned or unplanned; the time it occurred, its duration, when the franchisee responded and when the outage was corrected; and the estimated area and a description of the subscribers affected;
  - b. In addition, for each unplanned outage, its cause and the number of subscribers affected; and
  - c. The total hours of outages as a percentage of total hours of cable system operation;
- (6) The number of cases in which installation was not provided within the time established in this article;
- (7) The average telephone answering and hold times, and the number of instances in which those telephone answering and hold times exceeded the time limits established in this article;
- (8) The percentage of customer calls that received a busy signal;
- (9) The average and minimum number of customer service representatives on the franchisee's staff for

telephone answering purposes;

- (10) The number of times in which interruptions of service under section 22-27(f) was not in compliance with the times established in this article;
- (11) The number of times scheduling and completing customer service did not occur in accordance with section 22-27(e).

(f) *Special reports.* Unless this requirement is waived in whole or in part by the town, the franchisee shall deliver the following special reports to the town:

- (1) A franchisee shall submit quarterly construction reports to the town after the franchise is awarded for any construction undertaken during the term of the franchise until such construction is complete, including any rebuild that may be specified in the franchise. The franchisee must submit to the town as part of the quarterly construction report, or make available for inspection with notice of their availability as part of the quarterly construction report, updated as-built system design maps depicting construction completed in the previous quarter. The maps shall be developed on the basis of post-construction inspection by the franchisee and construction personnel to assess compliance with system design. Any departures from design must be indicated on the as-built maps, to assist the town in assessing operator compliance with its obligations.
- (2) A franchisee must submit to the town a copy of any notice of deficiency, forfeiture, or other document issued by any state, county or federal agency instituting any investigation or civil or criminal proceeding regarding the cable system, the franchisee, or any affiliate of the franchisee, to the extent the same may affect or bear on operations in the town. This material shall be submitted to the town within five days of its receipt by the franchisee or its affiliate, as the case may be.
- (3) The franchisee must submit to the town a copy of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the franchisee or by any partnership or corporation that owns or controls the franchisee directly or indirectly. This material shall be submitted at the time it is filed with the court having jurisdiction over the matter or within five days of receipt by the franchisee or related entity, as the case may be, whichever is sooner.

(g) *Additional reports.* A franchisee shall provide such other information or reports as the town may request for the purpose of enforcing any provision of the franchise agreement or this article.

(h) *Records required.* The franchisee shall at all times maintain:

- (1) Records of all complaints received. Complaints recorded may not be limited to complaints requiring an employee service call.
- (2) A full and complete set of plans, records, and as-built maps showing the exact location of all system equipment installed or in use in the town, exclusive of subscriber service drops.
- (3) A comprehensive record of all personnel transactions and utilization of contractors, subcontractors, vendors, and suppliers.
- (4) Records of outages, indicating date, duration, area and the subscribers affected, type of outage, and cause.
- (5) Records of service calls for repair and maintenance indicating the date and time service was required, the date of acknowledgement and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved.
- (6) Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.
- (7) A public file showing the franchisee's plan and timetable for construction of the cable system.

(i) *Performance evaluation.*

- (1) The town may, at its discretion, hold performance evaluation sessions. All such evaluation sessions shall be open to the public. The franchisee may be required by the town to notify subscribers of all such evaluation sessions by announcement on a designated local access channel on the system between the

hours of 9:00 a.m. and 9:00 p.m. for five consecutive days preceding each session.

- (2) Topics that may be discussed at any evaluation session may include, but are not limited to, system performance and construction, franchisee compliance with this article and its franchise agreement, customer service and complaint response, subscriber privacy, services provided, programming offered, service rate structures, franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions.
- (3) During the evaluation process, the franchisee shall fully cooperate with the town and shall provide such information and documents as the town may need to reasonably perform its review, including information and documents that may be considered proprietary or confidential.

(j) *Voluminous materials.* If any books, records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then the franchisee may request that the inspection take place at some other location, provided that:

- (1) The franchisee must make necessary arrangements for copying documents selected by the town after review; and
- (2) The franchisee must pay all travel and additional copying expenses incurred by the town in inspecting those documents or having those documents inspected by a designee.

(k) *Retention of records; relation to privacy rights.* The franchisee shall take all steps that may be required to ensure that it is able to provide the town all information which must be provided or may be requested under this article or its franchise agreement, including by providing appropriate subscriber privacy notices. Nothing in this section shall be read to require the franchisee to violate 47 USC 551. Each franchisee shall be responsible for redacting any data that federal law prevents it from providing to the town. The town retains the right to question any such redaction and to challenge it in any forum having jurisdiction over such a challenge. Records shall be kept for at least five years.

(l) *Waiver of reporting requirements.* The town may, at its discretion, waive, in writing, the requirement of any particular report specified in this section.

(Ord. No. 06-05, § 20-12, 11-28-2006)

### **Sec. 22-31. Insurance, surety, and indemnification.**

(a) *Insurance required.*

- (1) A franchisee shall maintain, and by its acceptance of a franchise specifically agrees that it will maintain, throughout the entire length of the franchise period, worker's compensation and employer liability insurance meeting all requirements of state law.
- (2) The franchisee shall maintain, and by its acceptance of the franchise specifically agrees that it will maintain, throughout the entire length of the franchise period, comprehensive general liability insurance insuring the town and the franchisee with respect to the construction, operation, and maintenance of the cable system, and the conduct of the franchisee's business in the town and including coverage for all risks from premises operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury, in the following minimum amounts, but in any event no less than the liability limits specified by the Local Government Tort Claims Act:
  - a. \$500,000.00 for property damage resulting from any one accident; \$1,000,000.00 for property damage aggregate;
  - b. \$1,000,000.00 for personal bodily injury or death for one person; \$2,000,000.00 for bodily aggregate per single accident and occurrence; and
  - c. \$2,000,000.00 for all other types of liability.
- (3) The franchisee shall maintain, and by its acceptance of the franchise specifically agrees that it will maintain, throughout the entire length of the franchise period, general comprehensive public liability insurance indemnifying, defending and saving harmless the town, its officers, boards, commissions,

agents or employees, from any and all claims by any person whatsoever on account of injury to or death of a person occasioned by the operations of the franchisee under the franchise herein granted or alleged to have been so caused or occurred, all risks from premises operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury, with a minimum liability of \$1,000,000.00 per personal injury or death of any one person and \$2,000,000.00 for personal injury or death of two or more persons in any one occurrence.

- (4) The franchisee shall maintain, and by its acceptance of the franchise specifically agrees that it will maintain, throughout the entire length of the franchise period, automobile liability insurance for owned or leased vehicles in the minimum amount of \$2,000,000.00 for bodily injury and consequent death per occurrence, \$1,000,000.00 for bodily injury and consequent death to any one person, and \$500,000.00 for property damage per occurrence.
- (5) In the event that the insurance requirements set forth in this section are increased by amendment during the term of an existing franchise, the franchisee shall increase its policy limits accordingly at the time of the next renewal of the franchisee's policy.

(b) *Endorsements.*

- (1) All insurance policies and certificates maintained pursuant to a franchise agreement shall contain the following endorsement:

It is hereby understood and agreed that this insurance coverage may not be canceled by the insurance company nor the intention not to renew be stated by the insurance company until 30 days after receipt by the town's secretary or clerk, by registered mail, of a written notice of such intention to cancel or not to renew.

- (2) All contractual liability insurance policies and certificates maintained pursuant to a franchise agreement shall include the provision of the following hold harmless clause:

The company agrees to indemnify, save harmless and defend each municipality, its agents, servants, and employees, and each of them against and hold it and them harmless from any or all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and reasonable attorneys' fees for or on account of ~~may any~~ injury to any person, or any death at any time resulting from such injury, or any damage to any property, which may arise or which may be alleged to have arisen out of or in connection with the work covered by this agreement. The foregoing indemnity shall apply except if such injury, death or damage is caused directly by the negligence or other fault of the town, its agents, servants, or employees or any other person indemnified hereunder.

(c) *Qualifications of sureties.* All insurance policies shall be with sureties qualified to do business in the state, with an A-1 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form acceptable to the town.

(d) *Policies available for review.* All insurance policies shall be available for review by the town, and the franchisee shall keep on file with the town certificates of insurance.

(e) *Additional insureds; prior notice of policy cancellation.* All liability insurance policies shall name the town, its officers, boards, commissions, commissioners, agents, and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless 30 days' prior written notice thereof has been given to the town. A franchisee shall not cancel any required insurance policy without submission of proof that it has obtained alternative insurance satisfactory to the town which complies with its franchise agreement.

(f) *Failure constitutes material violation.* Failure to comply with the insurance requirements set forth in this section shall constitute a material violation of a franchise.

(g) *Indemnification.*

- (1) A franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the town, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits,

causes of action, proceedings, and judgments for damages arising out of the construction, maintenance, or operation of its cable system; copyright infringements or a failure by the franchisee to secure consents from the owners, authorized distributors, or franchisees of programs to be delivered by the cable system; the conduct of the franchisee's business in the town; or in any way arising out of the franchisee's enjoyment or exercise of the franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this article or its franchise agreement.

- (2) Specifically, a franchisee shall fully indemnify, defend, and hold harmless the town, and in its capacity as such, the officers, agents, and employees thereof, from and against any and all claims, suits, actions, liability, and judgments for damages or otherwise subject to 47 USC 558, arising out of or alleged to arise out of the installation, construction, operation, or maintenance of the system, including, but not limited to, any claim against the franchisee for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark, or patent, or of any other right of any person, firm, or corporation. This indemnity does not apply to programming carried on any channel set aside for PEG use, or channels leased pursuant to 47 USC 532, except that this indemnity shall apply to any actions taken by a franchisee pursuant 47 USC 531(c) or 47 USC 532(c)(2) concerning the programming carried on PEG or leased access channels or an institutional network.
- (3) The indemnification required by this subsection (g) shall include, but is not limited to, the town's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding, in addition to the reasonable value of any services rendered by the town attorney or town staff or employees.

(h) *No limit of liability.* Neither the provisions of this section nor any damages recovered by the town shall be construed to limit the liability of the franchisee for damages under the franchise.

(Ord. No. 06-05, § 20-13, 11-28-2006)

#### **Sec. 22-32. Performance guarantees, penalties and revocation.**

(a) *Penalties.*

- (1) For violation of provisions of this article or a franchise agreement entered into pursuant to this article, penalties shall be assessable against a franchisee and shall be chargeable to the franchisee's security fund in any amount up to the limits specified ~~below as follows~~, at the town's discretion:
  - a. For failure to submit any required plans indicating expected dates of installation of various parts of the system: \$1,000.00 per day for each violation for each day the violation continues;
  - b. For failure to commence operations in accordance with the requirements of the franchise agreement: \$2,000.00 per day for each violation for each day the violation continues after a 30-day cure period, if the franchisee has not undertaken substantial corrective action to cure the violation within that 30-day period;
  - c. For failure to substantially complete construction in accordance with a franchisee's franchise agreement: \$3,000.00 per day for each violation for each day the violation continues after a 30-day cure period, if the franchisee has not undertaken substantial corrective action to cure the violation within that 30-day period;
  - d. For transferring the franchise without approval: \$2,000.00 per day for each violation for each day the violation continues;
  - e. For failure to comply with requirements for PEG use of the system: \$1,000.00 per day for each violation for each day the violation continues after a 14-day cure period, if the franchisee has not undertaken substantial corrective action to cure the violation within that 14-day period;
  - f. For failure to supply information, reports, or filings lawfully required under the franchise agreement or applicable law or by the town: \$500.00 per day for each violation for each day the violation continues after a 30-day cure period, which shall begin to run on the due date of any regularly scheduled report and on the date of a deadline reasonably set by the town for any report or information request not regularly scheduled, unless the franchisee shows that it was not in fact

- aware of the requirement in question, in which case the 30-day cure period shall begin to run upon written notice of such requirement by the town to the franchisee;
- g. For violation of customer service standards, or failure to file a compliance certification or noncompliance statement as required herein: \$500.00 per day or per event, as applicable;
  - h. For failure to pay franchise fees or liquidated damages: \$100.00 per day, in addition to any monetary payment due under a franchise agreement or this article, for each violation for each day the violation continues after a seven-day cure period, if the franchisee has failed to make payment within that seven-day period, provided that these penalties shall be in addition to any late fees that may apply;
  - i. For failure to file, obtain or maintain any required security fund in a timely fashion: \$200.00 per day;
  - j. For failure to restore damaged or disturbed property: \$200.00 per day, in addition to the cost of the restoration and any other penalties or fees as required elsewhere herein or in a franchise agreement, for each day the violation continues after a ten-day cure period, if the franchisee has not undertaken substantial corrective action to cure the violation within that ten-day period;
  - k. For violation of technical standards established by the fee: \$100.00 per day for each day the violation continues after a 30-day cure period after the town gives the franchisee notice of such violation;
  - l. For knowingly and intentionally signing a false report or statement: \$1,000.00 per report or document;
  - m. For any other violations of this article, a franchise agreement, or other applicable law: \$500.00 per day for each violation for each day the violation continues.
- (2) The franchisee shall pay any penalty assessed in accordance with this article within 14 days after receipt of notice from the town of such penalty.
  - (3) To the extent that penalties are applied to a franchisee under this section, a franchisee shall not be subject to liquidated damages payable to the town for the same violation.
  - (4) The town ~~council board~~, upon written request by a franchisee delivered to the town clerk within ten days of the date of the issuance of any citation pursuant to this article, may reduce or waive any of the penalties listed in subsection (a)(1) of this section for good cause shown.
  - (5) Pending litigation or any appeal to any regulatory body or court having jurisdiction over a franchisee shall not excuse the franchisee from the performance of its obligations under this article or its franchise agreement unless a stay is obtained or the franchisee is otherwise excused from performance by operation of law. Failure of the franchisee to perform such obligations because of pending litigation or petition, in the absence of a stay issued by a forum of competent jurisdiction, may result in forfeiture or revocation pursuant to the provisions of this article and/or its franchise agreement.
- (b) *Termination on account of certain assignments or appointments.*
- (1) Any franchise shall be deemed revoked ~~one hundred twenty (200)~~ 120 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of a franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. Provided, however, that a franchise may be reinstated at the town's sole discretion if, within that 120-day period:
    - a. Such assignment, receivership or trusteeship has been vacated; or
    - b. Such assignee, receiver, or trustee has fully complied with the terms and conditions of this article and the applicable franchise agreement and has executed an agreement, approved by a court of competent jurisdiction, under which it assumes and agrees to be bound by the terms and conditions of this article and the applicable franchise agreement, and such other conditions as may be established or as are required by applicable law.

- (2) Notwithstanding the foregoing, in the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of a franchisee, the town may revoke the franchise, following a public hearing, by serving notice on the franchisee and the successful bidder, in which event the franchise and all rights and privileges of the franchise will be revoked and will terminate 30 calendar days after serving such notice, unless:
- a. The town has approved the transfer of the franchise to the successful bidder; and
  - b. The successful bidder has covenanted and agreed with the town to assume and be bound by the terms and conditions of the franchise agreement and this article, and such other conditions as may be established or as are required pursuant to this article or a franchise agreement.

(c) *Remedies cumulative.* All remedies under this article and the franchise agreement are cumulative unless otherwise expressly stated. The exercise of a remedy or the payment of liquidated damages or penalties shall not relieve a franchisee of its obligations to comply with its franchise or applicable law.

(d) *Relation to insurance and indemnity requirements.* Recovery by the town of any amounts under insurance, the security fund, the performance bond or letter of credit, or otherwise does not limit a franchisee's duty to indemnify the town in any way; nor shall such recovery relieve a franchisee of its obligations under a franchise, limit the amounts owed to the town, or in any respect prevent the town from exercising any other right or remedy it may have.

(e) *Termination for other reasons.* Unless otherwise provided for in the franchise agreement:

- (1) Whenever the franchisee shall willfully and/or repeatedly fail, refuse or neglect to conduct, operate or maintain its cable system in accordance with the terms of this article and the franchise, or to comply with the conditions of street occupancy, or to make required extensions, or in other ways violate the terms and conditions of this article, the town ~~manager-administrator~~ may notify the franchisee in writing, setting forth the nature and facts of such noncompliance. If within 30 calendar days following such written notification the franchisee has not furnished proof that corrective action has been taken or is being actively and expeditiously pursued, or evidence that the alleged violations did not occur, the town ~~manager-administrator~~ shall place request for termination of the franchise on the agenda of the next meeting of the town ~~council~~ board.
- (2) If, after considering the town ~~manager's-administrator's~~ request for termination of the franchise and hearing all interested parties, the town determines that the noncompliance of the franchisee was with just cause, it shall direct the franchisee to comply within such time and manner and on such terms and conditions as are reasonable.
- (3) If the town determines that such noncompliance was without just cause, then the town may terminate the franchise.
- (4) No revocation or termination shall be effected unless the town, at any regular or special public meeting at which all interested parties have been heard, shall set further the reasons for the termination, and in the event the termination of said franchise depends upon a finding of fact, such finding of fact as made by the town ~~council~~ board after said hearing shall be deemed to be conclusive unless modified by a court of law of appropriate jurisdiction.
- (5) The franchisee shall not be declared in violation of or be subject to any sanction under provisions of this article in any case where the performance of the cable service is prevented for reasons beyond the franchisee's control. A violation shall not be deemed to be beyond the franchisee's control if committed by a corporation or other business entity in which the franchisee holds a controlling interest, whether held directly or indirectly.
- (6) The termination of the franchisee shall in no way affect any of the rights of the town under the franchise or any provision of law.

(Ord. No. 06-05, § 20-14, 11-28-2006)

### **Sec. 22-33. Transfers.**

- (a) *Town approval required.*

- (1) A franchise granted under this article shall be a privilege to be held in personal trust by the franchisee.
- (2) No transfer, including by forced or voluntary sale, merger, consolidation, receivership or other means, shall occur unless prior application is made by a franchisee to the town and the town's prior written consent is obtained, pursuant to this article and the franchise agreement, and only then upon such terms and conditions as the town deems necessary and proper. Any such transfer without the prior written consent of the town shall be considered to impair the town's assurance of due performance. The granting of approval for a transfer in one instance shall not render unnecessary approval of any subsequent transfer.

(b) *Application.*

- (1) A franchisee shall notify the town as soon as possible of any proposed transfer.
- (2) At least ~~one hundred twenty (200)~~ 120 calendar days prior to the contemplated effective date of a transfer, a franchisee shall submit to the town a written application for approval of the transfer. Such an application shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the transferee, and on the potential impact of the transfer on subscriber rates and service. At a minimum, the following information must be included in the application, unless these requirements are waived, reduced, or modified by the town as stated herein:
  - a. All information and forms required under federal law;
  - b. A detailed statement of the corporate or other business entity organization of the proposed transferee, together with an explanation of how decisions regarding the system will be made if the proposed transaction is approved;
  - c. Any contracts, financing documents, or other documents that relate to the proposed transaction, and all documents, schedules, exhibits, or the like referred to therein.
- (3) At a franchisee's option, the franchisee may notify the town of the proposed transaction in general terms at least 150 days prior to the contemplated effective date of a transfer, and request that the town waive some or all of the information requirements specified in section 22-22. To the extent consistent with applicable law, the town may waive in writing any such requirement that information be submitted as part of the initial application, without thereby waiving any rights the town may have to request such information after the initial application is filed.
- (4) For the purposes of determining whether it shall consent to a transfer, the town or its agents may inquire into all qualifications of the prospective transferee and such other matters as the town may deem necessary to determine whether the transfer is in the public interest and should be approved, denied, or conditioned. A franchisee and any prospective transferees shall assist the town in any such inquiry, and if they fail to provide such reasonable assistance, the request for transfer may be denied.

(c) *Determination by town.* In making a determination as to whether to grant, deny, or grant subject to conditions an application for a transfer, the town may consider, without limitation, the legal, financial, and technical qualifications of the transferee to operate the system; any potential impact of the transfer on subscriber rates or services; and whether operation by the transferee or approval of the transfer would adversely affect subscribers, the town's interest under a franchise agreement, this article, other applicable law, and is otherwise in the public interest.

(d) *Effect of transfer without approval.* Any transfer without the town's prior written approval shall be ineffective, and shall make the franchise subject to cancellation at the town's sole discretion, and to any other remedies available under this article, a franchise agreement, or other applicable law.

(e) *Notification of certain transactions.*

- (1) A franchisee shall give the town reasonable advance notice of any change of ownership or other right, title, or interest of more than five percent but less than ten percent in a publicly traded corporation controlling the franchisee, its cable system, or any person that is a cable operator of the cable system (or in the franchisee itself), or an interest of more than five percent but less than 20 percent in an entity other than a publicly traded corporation controlling the franchisee, its cable system, or any person that is a cable operator of the cable system (or in the franchisee itself, if it is not a publicly traded corporation),

directly or indirectly, to an entity that does not presently control such entity other than a publicly traded corporation. If the town does not have the right under a franchise agreement and applicable law to approve or deny a change of the type defined in this subsection, the franchisee shall warrant to the town the legal, financial, and character qualifications of the entity acquiring such an interest.

- (2) A franchisee will notify the town if at any time there is a mortgage or security interest granted on substantially all of the assets of a franchisee's cable system, and will provide the town with copies of all loan documents with respect to such transaction as soon as such documents become publicly available and, if such documents do not become publicly available within ten business days after loan closing, will make such documents available for inspection within ten business days after loan closing.

(f) *Approval does not constitute waiver.* Approval by the town of a transfer does not constitute a waiver or release of any of the rights of the town under this article or a franchise agreement, whether arising before or after the date of the transfer.

(Ord. No. 06-05, § 20-15, 11-28-2006)

### **Sec. 22-34. Open video systems.**

(a) *Applicability of article.*

- (1) This article shall apply to open video systems that comply with 47 USC 573, to the extent permitted by applicable law, except that the following sections shall not apply:

- a. Section 22-21(a) through (c) (Grant of franchise);
- b. Section 22-22 (Franchise applications);
- c. Section 22-23 (Filing fees);
- d. Section 22-24 (Provision of service);
- e. Section 22-25(a) (System construction schedule);
- f. Section 22-28 (Rate regulation);
- g. Section 22-29(b), (c) (Franchise fees);
- h. Section 22-31(f) (Failure to comply with insurance requirements a material violation of franchise);
- i. Section 22-32(a)(1)b, c and h (Certain penalties);
- j. Section 22-32(b) (Franchise termination due to bankruptcy).

- (2) In applying this article to an open video system, the term "franchisee" shall be taken to refer to the open video system operator, the term "cable system" to the open video system, and similar terms shall apply similarly.

(b) *Fee in lieu of franchise fee.* An open video system operator shall pay to the town a fee in lieu of the franchise fee required in section 22-29(b), pursuant to the procedures and conditions specified in section 22-29 and generally herein.

(c) *PEG access obligations.* An open video system operator shall be subject to obligations pertaining to PEG access pursuant to applicable law and to the requirements herein.

(d) *Right-of-way usage.* An open video system operator shall be subject to all requirements of state and local law regarding authorization to use or occupy the public rights-of-way, except to the extent specifically prohibited by federal law. Fee approval of an open video system operator's certification pursuant to 47 USC 573 shall not be taken to confer upon such operator any authority to use or occupy the public rights-of-way that such operator would not otherwise possess.

(Ord. No. 06-05, § 20-16, 11-28-2006)

### **Sec. 22-35. Rights of individuals protected.**

(a) *Discriminatory practices prohibited.*

- (1) A franchisee shall not deny service, deny access, or otherwise discriminate against subscribers,

programmers, or residents of the town on the basis of race, color, religion, national origin, gender, or age.

- (2) A franchisee shall not discriminate among persons or take any retaliatory action against a person because of that person's exercise of any right it may have under federal, state, or local law, nor may the franchisee require a person to waive such rights as a condition of receiving service.
- (3) A franchisee shall not deny access or levy different rates and charges on any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.
- (4) Subject to applicable law and except to the extent the town may waive such a requirement, a franchisee is prohibited from discriminating in its rates or charges or from granting undue preferences to any subscriber, potential subscriber, or group of subscribers or potential subscribers; provided, however, that a franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain subscribers, so long as such discounts are offered on a nondiscriminatory basis to similar classes of subscribers throughout the town; and a franchisee may offer discounts for the elderly, the handicapped, not-for-profit persons or organizations, or the economically disadvantaged, and other discounts in conformance with federal law, if such discounts are applied in a consistent and nondiscriminatory manner, and provided that a franchisee may provide such other bulk discounts as are permitted by the cable uniform rate structure provisions of federal law as they may exist from time to time. A franchisee shall comply at all times with all applicable federal, state, and town laws, and all executive and administrative orders relating to nondiscrimination.

(b) *Information accessibility.* Each document required to be maintained, filed or submitted under the provisions of this article or a franchise agreement, except those specifically designated as confidential by a franchisee, subject to the town's review, pursuant to applicable law, is a public document, available for public inspection and copying at the requestor's expense, at the office of the franchisee or the town during normal business hours.

(c) *Equal employment opportunity.* A franchisee shall not refuse to employ, discharge from employment, or discriminate against any person in compensation or in terms, conditions, or privileges of employment because of race, color, religion, national origin, sex, or age. A franchisee shall comply with all federal, state, and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.

(d) *Subscriber privacy.*

- (1) A franchisee shall at all times protect the privacy rights of all subscribers, including, but not limited to, those rights secured by the provisions of section 631 of the Cable Act, 47 USC 551.
- (2) The franchisee shall not permit the transmission of any signal, aural, visual or digital, including "polling" the channel selection, from any subscriber's premises without first obtaining such subscriber's prior voluntary affirmative authorization. Neither the franchisee nor any other person shall initiate in any form the discovery of any information on or about an individual subscriber's premises without prior voluntary affirmative authorization from the subscriber potentially affected. This provision is not intended to prohibit the transmission of signals useful only for the control or measurement of system performance or for detection of theft of service.
- (3) The franchisee shall not permit the installation of any special terminal equipment in any subscriber's premises that will permit transmission from such subscriber's premises of two-way services utilizing aural, visual or digital signals without such subscriber's prior voluntary affirmative authorization.
- (4) The franchisee shall strictly observe and protect the rights of privacy and property rights of subscribers and users at all times. Individual subscriber preferences of any kind, viewing habits, political, social or economic philosophies, beliefs, creeds, religions or names, addresses or telephone numbers shall not be revealed to any person, governmental unit, police department or investigating agency unless upon the authority of a court of law, a valid search warrant or subpoena, or upon prior voluntary affirmative authorization of the subscriber or as may be permitted by operation of law.
- (5) The franchisee shall not tabulate any test results that would reveal the commercial product preferences or opinions of individual subscribers, members of their families or their invitees, licensees, or employees,

nor permit the use of the system for such tabulation, without the subscriber's prior voluntary affirmative authorization.

- (6) A subscriber may at any time revoke any prior voluntary affirmative authorization to release information by delivering to the franchisee, in writing, by mail or otherwise, the subscriber's decision to revoke the authorization. Any such revocation shall be effective upon receipt by the franchisee.
- (7) A franchisee shall not condition subscriber service on the subscriber's prior voluntary affirmative authorization or grant or denial of permission to collect, maintain or disclose personally identifiable information, except to the extent that such information is necessary for credit check or billing purposes.

(Ord. No. 06-05, § 20-17, 11-28-2006)

#### **Sec. 22-36. Theft of service.**

It shall be unlawful for any person to attach or affix or to cause to be attached or affixed any equipment or device that allows access or use of the cable system without lawful payment to the franchise for same. A violation of this section shall be a municipal infraction punishable by a fine of \$250.00 for each offense.

(Ord. No. 06-05, § 20-18, 11-28-2006)

#### **Sec. 22-37. Miscellaneous provisions.**

(a) *Compliance with laws.* Each franchisee shall comply with all federal, state, and local laws and regulations heretofore and hereafter adopted or established during the entire term of its franchise.

(b) *No recourse against the town.* Without limiting such immunities as the town or other persons may have under applicable law, a franchisee shall have no recourse whatsoever against the town or its officials, boards, commissions, agents or employees for any loss, cost, expense or damage arising out of any provision or requirement of this article or because of the enforcement of this article or the town's exercise of its authority pursuant to this article, a franchise agreement, or other applicable law, unless the same shall be caused by criminal acts or by willful or gross negligence.

(c) *Rights and remedies.*

- (1) The rights and remedies reserved to the town by this article are cumulative and shall be in addition to and not in derogation of any other rights and remedies which the town may have with respect to the subject matter of this article.
- (2) The town hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this article or a franchise agreement.
- (3) Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.
- (4) No franchisee shall be relieved of its obligation to comply with any of the provisions of this article or a franchise agreement by reason of any failure of the town to enforce prompt compliance. Nor shall any inaction by the town be deemed to waive or void any provision of this article or a franchise agreement.
- (5) The town expressly reserves the right to cause the franchisee fee percentage stated in this article to be subject to negotiation in the event it is determined that the FCC lacks jurisdiction to impose percentage limitations on franchise fees, if the percentage limitation is revised by the FCC, or any other event occurs to permit negotiation or renegotiation.

(d) *Amendments to this article.* Notwithstanding any other provision in this article or a franchise agreement, nothing in this article or a franchise agreement shall preclude the town from exercising its police powers to enact, amend or supplement any law or regulation governing cable communications within the town.

(e) *Public emergency.* In the event of a major public emergency or disaster as determined by the mayor or designee, a franchisee shall immediately make the entire cable system, employees, and property, as may be necessary, available for use by the town or other civil defense or governmental agency designated by the town to operate the system for the term of such emergency or disaster for the emergency purposes. In the event of such use,

a franchisee shall waive any claim that such use by the town constitutes a use of eminent domain, provided that the town shall return use of the entire system, employees, and property to the franchisee after the emergency or disaster has ended or has been dealt with.

(f) *Connections to system; use of antennae.*

- (1) Subscribers shall have the right to attach devices to a franchisee's system and the right to use their own remote control devices and converters and other similar equipment, consistent with FCC equipment compatibility rules and other applicable law, and a franchisee shall provide information to consumers which will allow them to adjust such devices so that they may be used with the franchisee's system.
- (2) A franchisee shall not, as a condition of providing service, require a subscriber or potential subscriber to remove any existing antenna or disconnect an antenna, or prohibit or discourage a subscriber from installing an antenna switch, provided that such equipment and installations are consistent with applicable codes and technically able to shield the cable system from any interference.

(g) *Calculation of time.* Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this article or any franchise agreement, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first day and include the last day of the prescribed or fixed period of duration time.

~~— Severability.~~

~~If any term, condition, or provision of this chapter shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the town and shall thereafter be binding on the franchisee and the town.~~

(Ord. No. 06-05, § 20-19, 11-28-2006)

Chapter 23  
**RESERVED**

PROOFS

## Chapter 24

**TRAFFIC AND VEHICLES****ARTICLE I. IN GENERAL****Sec. 24-1. Visual obstructions at intersections.**<sup>34</sup>

(a) It shall be unlawful for any person and/or business to place any items or allow bushes or trees at any public street within the town to be placed or allowed to grow so as to obscure the view of oncoming traffic at an intersection. The term "items" means, but is not limited to, fences, signs, hedges or any other item that would obstruct the view of the street.

(b) Upon approval of the board of commissioners, an exemption can be granted after consideration of the circumstances.

(c) The penalty for said violation shall be \$100.00 and the removal of the item.

(Ord. No. 04-02, §§ II—IV, 10-12-2004)

~~**Sec. V.**~~

~~BE IT FURTHER ENACTED that this ordinance shall take effect 20 days after its adoption by the Town of Upper Marlboro, Prince George's County, Maryland.~~

~~(Ord. No. 04-02, § v, 10-12-2004).~~

**Secs. 24-2--24-20. Reserved.****ARTICLE II. TRAFFIC REGULATION****Sec. 24-21. Definitions.**<sup>35</sup>

Unless otherwise defined herein, words, terms and phrases, when used in this article, shall have the meanings ascribed to them in the Maryland Vehicle Law, Ann. Code of Md., Transportation article, tits. 11--27 (Ann. Code of Md., Transportation article, § 11-101 et seq.), as now in force or as hereafter amended, enacted or reenacted, except where the context clearly indicates a different meaning.

*Holiday* means and includes the following:

- (1) New Year's Day;
- (2) Martin Luther King, Jr.'s Birthday;
- (3) Washington's Birthday (President's Day);
- (4) Memorial Day;
- (5) Independence Day;
- (6) Labor Day;
- (7) American Indian Heritage Day;
- (8) Veterans' Day;
- (9) Thanksgiving Day;

<sup>34</sup> Legal or Editorial Change: Ord. No. 04-02. Visual obstructions at intersections Altered § II per instructions.

<sup>35</sup> Legal or Editorial Change: Ord. No. 2016-02, Traffic, § 3. Definitions. Revised the definition of holiday per instructions.

(10) Friday after Thanksgiving; and

(11) Christmas Day.

~~C. In this Ordinance, the singular shall include the plural; and the plural shall include the singular; the masculine shall include the feminine and the neuter.~~

(Ord. No. 2016-02, § 3, 7-12-2016)

**Sec. 24-22. Purpose and authority.**

(a) The purpose of this article is to establish standards for vehicle use and parking in the town, and to prevent conditions that threaten the public health, safety or welfare of residents of, or visitors to, the town. This article also establishes a system of notifications and penalties for violations to enforce these standards.

(b) The authority to provide for the regulation of vehicles, traffic and parking within the town for both residents and visitors is provided in section 82-16(2), Specific Powers, of the town Charter.

(c) The authority to impose fees and penalties for violating these regulations is provided in section 82-18, Enforcement, of the town Charter.

(Ord. No. 2016-02, § 1, 7-12-2016)

**Sec. 24-23. Applicability.**

All persons operating, parking, standing or storing vehicles on public streets or public rights-of-way within the corporate boundaries of the town shall obey and abide by the regulations and requirements herein stated.

(Ord. No. 2016-02, § 2, 7-12-2016)

**Sec. 24-24. Enforcement.**

Except for moving violations, which shall be enforced only by police officers, this article and the regulations adopted thereby may be enforced by any police officer of the state as well as those police and parking enforcement officers, code enforcement officers or such other persons as may be designated by the town.

(Ord. No. 2016-02, § 4, 7-12-2016)

**Sec. 24-25. Parking restrictions.**

(a) *Parking of vehicles for more than 48 hours.* No vehicle shall be parked upon any public street or public right-of-way in the town longer than 48 consecutive hours. Exempted are legally parked, properly licensed and operable vehicles which are parked on the public right-of-way directly adjacent to the property owner's or resident's premises to whom the vehicle is registered.

(b) *Commercial vehicles and recreational vehicles.* No person shall park any commercial vehicle or recreational vehicle on any public street, residential property, or public right-of-way in the town between the hours of 5:00 p.m. and 7:00 a.m., Monday through Friday, or at any time on weekends or holidays. Exempted are vehicles in the process of making deliveries which do not park for more than a two-hour period. Also exempted are vehicles for which a written permit for the same shall have been obtained from the town police chief. Such permit shall be issued only for good cause and for a period not to exceed 48 hours or unless a written permit for a longer period shall have been granted by action of the board of commissioners. In cases of unusual circumstances, the board of commissioners may grant a long-term permit for a period not exceeding one year, and such permit may be renewed only by action of the board of commissioners.

(c) *Abandoned vehicles.* No person shall abandon any motor vehicle in any place within the town and no owner, lessee, or custodian in charge of any lot, field, road, street, lane or other property shall permit any abandoned vehicle to remain on such property within the town.

(d) *Construction materials.* No construction materials of any kind shall be placed or stored on any public street or public right-of-way within the town without the approval of the board of commissioners. Exempted are items required by a contractor, building or public utility company working on a project where permission or necessary permits have been obtained from the town. Also exempted are public utility companies making emergency repairs.

(e) *Emergency minor repairs.* No person, firm or corporation shall service any motor vehicle on any public street or public right-of-way of the town. Exempted are emergency minor repairs such as brakes, electrical or fuel systems and tire repairs. All other repairs shall be considered major repairs.

(f) *Parking next to curbs.* All standing or parked vehicles must be placed with the right side parallel to and within 12 inches of the curb or edge of improved surface on the right-hand side of the public street or right-of-way. On public streets where traffic is permitted to move in one direction only, cars may park with either side parallel to the curb in the direction and flow of traffic unless otherwise posted.

(g) *Standing or parking vehicles.* No person shall stand or park a vehicle on any public street or public right-of-way in the town under the following conditions:

- (1) *Driveway entrances.* In front of a private driveway which provides access to a public street without the consent of the owner or occupant of the premises.
- (2) *Fire hydrants.* Within 15 feet of a fire hydrant.
- (3) *Crosswalks.* Within 20 feet of a crosswalk at an intersection.
- (4) *Traffic control devices.* Within 30 feet on the approach to any flashing signal, stop sign, yield sign, or traffic control signal located at the side of a roadway.
- (5) *Signs prohibiting parking.* At any place where standing or parking is prohibited by an official sign.
- (6) *Handicapped zones.* In a space or zone marked as restricted for the use of handicapped individuals, unless displaying a handicapped license plate or window sticker.
- (7) *Sidewalks.* On any sidewalk.
- (8) *Roadway passages.* At a location which will reduce the width of the open roadway in either direction to no less than 11 feet along a street or will obstruct a clear passageway along the same for fire apparatus or any other vehicle.
- (9) *Mailboxes.* Within five feet of any United States Postal Service mailbox mounted along the roadway.
- (10) *Truck parking.* Commercial vehicles over 10,000 pounds shall not be permitted to park upon public streets and ways within the town limits.
- (11) *Obstruction of traffic.* No motor vehicle, person, business, utility company, or other party may obstruct free vehicular passage of the roadway by standing, stopping, or parking in the traveled portion of the roadway.

(Ord. No. 2016-02, § 5, 7-12-2016; Ord. No. 2018-05, § 5, 8-14-2018; Ord. No. 2018-11, § 5, 12-11-2018)

#### **Sec. 24-26. Parking meters.**

(a) *Parking regulations.*

- (1) It shall be unlawful for any person to cause, allow or permit any vehicle registered in said person's name or any vehicle under their control to be or remain parked or stopped in any metered parking space, for any period of time, without immediately making the required payment in the parking meter pursuant to the directions on the meter controlling the parking space.
- (2) It shall be unlawful for any person to cause, allow, permit or suffer any vehicle registered in the name of or operated by such person to be parked overtime or beyond the period of legal parking time established for the parking space in question, or to deposit in any parking meter any payment for the purpose of parking beyond the maximum legal parking time, if any, for the particular parking meter zone or space.
- (3) It shall be unlawful for any person to park any vehicle across any line or marking of a metered parking space or in such position that the vehicle shall not be parked entirely within the parking space designated by such lines or markings.
- (4) The loading or unloading of a truck, van or other commercial vehicle may be conducted for a brief, reasonable period on a metered parking space without making the applicable payment.
- (5) It shall be unlawful for any person to deface, injure, tamper with, open, or willfully break, destroy or

impair the usefulness of any parking meter installed under the provisions of this article.

- (6) It shall be unlawful for any person to counsel, aid or abet any violation of this article or any failure to comply with this article.
- (7) A person who has handicapped plates or permits that have been issued by this state or any other state may park in a parking space equipped with a parking meter, free of charge, only for twice the maximum time period permitted on the parking meter, not to exceed four hours.
- (8) All vehicles registered in a state that issues two license plates intended to be affixed to a particular vehicle must have both plates properly displayed at all times on the vehicle.
- (9) Only one vehicle is allowed per parking space. No other vehicle (motorcycle, moped, scooter, or any other motor vehicle) shall be allowed in a parking space.

(b) *Parking violation procedure authorized.*

- (1) Authorized enforcement personnel as outlined in section 24-24 shall issue a report or ticket for each violation. The violation notice shall contain:
  - a. The location and number (as applicable) of the metered parking space where the vehicle occupying it is, or has been, parked in violation of any of the provisions of this section.
  - b. The state license number of such vehicle.
  - c. The date and approximate time of such violation.
  - d. Any other facts, knowledge of which is necessary to a thorough understanding of the circumstances, attending the violation.
  - e. An oath by the officer or designated employee attached and certifying, under penalty of perjury, that the matters set forth on said citation are, to the best of their knowledge, true.
- (2) It shall be the duty of the person issuing the ticket or report to submit to the appropriate town employee, official, or department written notice of each violation of or failure to comply with the parking requirements of this article.
- (3) The person issuing the ticket or report shall give the owner or driver a copy of the ticket or report of violation or, in the event that said vehicle is unattended, shall attach said notice in a conspicuous place upon the vehicle.

(c) *Parking meter maintenance.* It shall be the duty of the town to oversee the installation, maintenance, and collection of town-owned parking meters.

(d) *Establishment of parking meter zones.* The following areas are authorized by the board of commissioners to be designated as metered parking areas:

- (1) All street parking in the 14500, 14600, 14700, 14800 and 14900 blocks of Main Street (Route 725), the entirety of Water Street, and the entirety of Elm Street.
- (2) The town-owned Church Street parking lot located at 14525 Church Street.
- (3) The north side of Old Mill Road, and the south side of Pratt Street.
- (4) Five spaces of street parking along a portion of Judges Drive (OP 4662) near Pratt Street.
- (5) All street parking along the entirety of Governor Oden Bowie Drive.
- (6) Other areas as set by the board of commissioners by amending this section.

(Ord. No. 2016-02, § 6, 7-12-2016; Ord. No. 2018-05, § 6, 8-14-2018; Ord. No. 2018-11, § 6, 12-11-2018; Ord. No. 2019-07, § 6, 10-8-2019)

**Sec. 24-27. Moving violations.**

Consistent with the Maryland Manual on Uniform Traffic Control Devices, the board shall have authority to install any appropriate traffic control devices on streets and public ways under the jurisdiction of the town deemed prudent for the following moving violations, and said violations shall be enforced by the issuance of state citations

per state law:

- (1) *Maximum speed.* No person shall operate any motor vehicle upon any roadway, street, or alley within the town at a speed greater than reasonable or prudent or at a rate of speed greater than 25 miles per hour.
- (2) *Through trucks.* Provided the town has designated an adequate alternate route for diverted truck traffic, the board of commissioners may designate certain streets as "no through truck traffic" for purposes of preventing serious damage from deterioration, rain, snow, or any other condition or avoiding dangerous or heavy truck traffic flow or patterns in and upon Main Street from Route 202 (Largo Road) though Old Crain Highway at the western entrance of the town and Old Marlboro Pike at the northern entrance to the town and all residential streets.
- (3) *Unlawful turns.* No person shall execute a U-turn or back into Main Street, also known as Route 725 and also known as Marlboro Pike, between the intersection at Governor Oden Bowie Drive and 14504 Main Street.
- (4) *One-way traffic.* Pratt Street shall be one-way traffic only between Main Street and Judges Drive with traffic flowing in an easterly direction. No person shall operate a motor vehicle on a street posted for one-way traffic in the opposite or wrong direction.

(Ord. No. 2016-02, § 7, 7-12-2016)

**Sec. 24-28. Snow emergency parking restrictions.**

(a) Should the board of commissioners or the president declare a snow emergency, the following parking restrictions shall go into effect from declaration until 24 hours after last snowfall or revoked: There shall be no parking on the even-numbered side of Spring Branch Drive.

(b) Parking of vehicles on grass shall be permitted for the duration of the snow emergency.

(c) Any vehicle in violation of this section may be ticketed as "parked in a no-parking zone" and shall be impounded or moved if deemed necessary for snow removal operations.

(Ord. No. 2016-02, § 8, 7-12-2016)

**Sec. 24-29. Vehicle impound and towing.**

(a) The police department may immobilize using a boot or other device, or take into custody and impound:

- (1) Any unattended vehicle with three or more outstanding parking or parking meter violation citations issued within a consecutive 18-month period.
- (2) Any vehicle parked or disabled in a "no parking at any time, tow-away zone"; blocking a private driveway without the permission of the property owners; parked in an area designated as a fire lane; parked within ten feet of a fire hydrant; or parked on any sidewalk.
- (3) Any vehicle displaying improper, illegal or expired license plates or no plates at all parked or left standing, stored or operated on any public street or any property owned or leased by the town, or upon private property, except when the vehicle is parked within a fully enclosed garage, unless said vehicle shall have affixed or attached thereto license plates or markers displayed conspicuously on the front and rear of said vehicle in accordance with the provisions of the Annotated Code of Maryland or, in the case of a nonresident, the state, county or territory where such vehicle is registered.

(b) The provisions of Ann. Code of Md., Transportation article, tit. 25, subtit. 2 (Ann. Code of Md., Transportation article, § 25-201 et seq.) shall apply with respect to the removal, storage, reclamation and disposal of any vehicle taken into custody pursuant to subsection (a) of this section.

(c) Within four days from the initial date of the immobilization or towing, the owner may request an informal hearing before the chief of police or designee to determine whether probable cause exists to continue to immobilize, or tow and impound the vehicle. The right to a hearing shall be deemed to have been waived four days from the initial date of the immobilization or towing.

(d) Whenever a vehicle has been immobilized or impounded, the police officer or other authorized officer shall notify the registered owner by mail of any action taken.

(e) The town shall not be liable for any damage to a motor vehicle due to the actions of the owner or any other unauthorized person attempting to remove the boot device or operate such motor vehicle with such device attached.

(f) In addition to any information required to be contained in the notices given under Ann. Code of Md., Transportation article, tit. 25, subtit. 2 (Ann. Code of Md., Transportation article, § 25-201 et seq.), information as to the nature and circumstances of the traffic or parking violation on account of which a vehicle is impounded shall be given to the owner or other person normally in charge of such vehicle.

(g) In addition to paying all towing, preservation and storage charges or fees resulting from taking or placing the vehicle in custody, the owner or person normally in charge of such vehicle shall also be liable for any fine, fee, or forfeiture resulting from the violation for which the vehicle was impounded and/or immobilized, and such vehicle shall not be released until either written receipt is displayed showing payment of such fine, fee forfeiture and/or collateral, with said fine, fee, forfeiture and/or collateral amount to be set by ordinance or resolution of the board of commissioners, ~~and~~ or such violation is posted for appearance of the owner or person normally in charge of such vehicle in the district court of the county to answer the violation on account of which the vehicle was impounded.

(h) Any vehicle found in violation of this section is subject to impoundment.

(i) Vehicles immobilized or impounded pursuant to this article will be released to their lawful owner, or person entitled to possession, upon a showing of adequate evidence of a right to its possession and upon the payment of all accrued fines, fees and costs for each outstanding unpaid citation or summons and, in addition thereto, the charges for booting, towing and storage. The release shall be signed by an authorized officer or agent.

(Ord. No. 2016-02, § 9, 7-12-2016; Ord. No. 2019-07, § 9, 10-8-2019)

#### **Sec. 24-30. Penalties and fees.**

(a) *Misdemeanor.* Except for moving violations as enumerated in section 24-27, violation of any provision of this article shall be deemed a misdemeanor and any person convicted of such violation shall be fined not less than \$25.00 nor more than \$500.00.

(b) *State citations.* All moving violations, including those by any person violating section 24-27, shall be cited using the state uniform complaint and citation form, and, upon conviction, shall be fined and/or penalized in accordance with the schedule of fines and penalties determined by the state and set out in a document prepared by the chief administrative judge of the district court of the state and referred to as the "Schedule of Preset Fines and/or Penalty Deposits," as such document (Form #DC-CR-090) may be amended from time to time.

(c) *Town citations.* Any town citations and fine amounts are listed in section 24-31. Furthermore, when a citation is unpaid longer than 30 days following issuance the amount shall double ~~in amount~~. Should the citation remain unpaid after 45 days of the initial citation date, it shall become subject to the state flagging program.

(d) *Administrative flagging fee.* Any owner of a vehicle who shall receive a warning letter or notice from the town pursuant to the provisions of the state motor vehicle administration's parking violation and flagging procedures or shall seek to obtain a parking fine receipt from the town in order to remove the registration flag and register said vehicle shall be subject to a municipal flagging fee of \$20.00 in addition to those penalties or fees incurred as a result of other violations of this article.

(e) *Boot fee.* In addition to any other authorized charges, a boot or immobilization fee of \$150.00 (~~was \$50~~) shall be charged to a vehicle owner who violates this article or is otherwise responsible which results in immobilization as described in this article to defray the town's cost of installing, removing and maintaining the boot device.

(f) *Payment to town.* A person who elects to pay the charges of a town citation shall do so directly to the town clerk, 14211 School Lane, Upper Marlboro, MD 20772.

(g) *Election to stand trial.* A person who receives a town or state citation issued by the town has the option to stand trial for the violation. An election to stand trial for a town citation shall be made by sending a notice of intent to the town police department within 20 days of the date the citation was issued. If a person desires the presence at trial of the police officer who issued the citation, said person shall so indicate when notifying the police of intention to stand trial. If proper notification is not given, the police officer need not appear at trial, and a copy

of the citation bearing the certification of the officer is prima facie evidence of the facts stated therein.

(h) *Additional right of board of commissioners.* In addition to the fines and penalties herein described, the board of commissioners may avail themselves of any and all civil and equitable remedies for the purposes of stopping continuing offenses of this article.

(Ord. No. 2016-02, § 10, 7-12-2016; Ord. No. 2018-05, § 10, 8-14-2018; Ord. No. 2018-11, § 10, 12-11-2018)

#### **Sec. 24-31. Fine, fee and penalty changes.**

Violation of any provision of this article shall be subject to a fee, fine and/or penalty, which may be amended or established from time to time by written resolution of the board of commissioners. Any fine, fee or penalty established by this article may be individually or collectively modified in the form of a fine, fee and penalty schedule.

(Ord. No. 2016-02, § 11, 7-12-2016)

#### **Sec. 12.: separability.**

~~If any section or provisions or parts thereof in this Ordinance shall be adjusted invalid or deemed unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionally shall not affect the validity of this Ordinance as a whole or any other section or provision or part thereof.~~

(Ord. No. 2016-02, § 12, 7-12-2016)

#### **Sec. 24-32. Provisions changeable by resolution; temporary regulations.**

(a) The board of commissioners may set the fines, penalties, and fees associated with violating this article from time to time by resolution.

(b) The board of commissioners may set rates and timeframes for parking metered zones established by this article by resolution.

(c) The board of commissioners may establish and regulate parking zones, restricted parking zones, and permit parking zones by resolution, as long as it is advertised in a newspaper of general circulation no less than 15 days prior to the town meeting in which it is to be voted upon. However, the president of the board has the authority to temporarily enact such restrictions for special circumstances for a period no longer than 15 days without the approval of the board of commissioners.

(Ord. No. 2016-02, 7-12-2016; Ord. No. 2019-07, 10-8-2019)

#### **Sec. 24-33. Exemption from county ordinances and legislation.**

The town hereby specifically exempts itself from any county ordinances or other legislation as it applies to the regulation of parking and use of parking meters within the newly created municipal parking meter zone hereby designated along Judge's Drive within the corporate limits of the town as established by this article.

(Ord. No. 2016-02, 7-12-2016; Ord. No. 2018-05, 8-14-2018; Ord. 2018-11, 12-11-2018)

#### **Secs. 24-34--24-54. Reserved.**

### **ARTICLE III. SPEED MONITORING SYSTEMS AND RED LIGHT ENFORCEMENT PROGRAM**

#### **Sec. 24-55. Speed-monitoring systems.**

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

*Department* means the town police department.

*Erroneous violation* means a potential violation submitted by a speed-monitoring system contractor as defined in Ann. Code of Md., Transportation article, § 21-809(a)(3).

*Owner* means the registered owner of a motor vehicle or a lessee of a motor vehicle under a lease of six months or more, except that the term "owner" does not include:

- (1) A motor vehicle rental or leasing company; or

- (2) A holder of a special registration plate issued under Ann. Code of Md., Transportation article, tit. 13, subtit. 9, pt. III (Ann. Code of Md., Transportation article, § 13-940 et seq.).

*Program administrator* means a town employee or representative designated by the chief of police to oversee the contract with the speed-monitoring system contractor.

*Recorded image* means an image recorded by a speed-monitoring system on a photograph, a microphotograph, an electronic image, a videotape, or any other medium, and showing:

- (1) The rear of a motor vehicle;
- (2) At least two time-stamped images of the motor vehicle that include the same stationary object near the motor vehicle; and
- (3) On at least one image or portion of tape, a clear and legible identification of the entire registration plate number of the motor vehicle.

*Residential district* means an area that:

- (1) Is not a business district;
- (2) Adjoins and includes a highway where the property along the highway, for a distance of at least 300 feet, is improved mainly with residences or residences and buildings used for business; and
- (3) Has a speed limit established using generally accepted traffic engineering practices.

*School zone* means a designated roadway segment with a posted speed limit of at least 20 miles per hour and located within up to a half-mile radius of a school for any of grades kindergarten through grade 12 where school-related activity occurs as further defined in Ann. Code of Md., Transportation article, § 21-809(a)(7).

*Speed-monitoring system* means a device with one or more motor vehicle sensors producing recorded images of motor vehicles traveling at speeds at least 12 miles per hour above the posted speed limit.

*Speed-monitoring system operator* means a representative of the department or a designated person that operates a speed-monitoring system.

(b) Notice.

- (1) The board of commissioners, by ordinance or resolution, following reasonable notice to the public and a public hearing, may establish a school zone or residential district on any road under the town's jurisdiction or with permission of the county or state highway administration on any county or state road within one-half mile of a school or in a residential district and, for any school zone or residential district so established, shall set a maximum speed limit, as permitted by law, provided that the designation of such school zone or residential district and the maximum speed limit set for such zone shall not become effective until the town installs signs designating the school zone or residential district and indicating the maximum speed limit applicable in the school zone or residential district located in the town.
  - (2) The town may install or erect traffic control devices in the designated school zone or residential district in addition to the signs required by subsections (b)(1) and (3) of this section, including timed flashing warning lights and including a speed-monitoring system.
  - (3) If the town moves or places a mobile or stationary speed-monitoring system to or at a location where a speed-monitoring system had not previously been moved or placed, the town may not issue a citation for a violation recorded by that speed-monitoring system:
    - a. Until signage is installed in accordance with subsection (c) of this section; and
    - b. For at least the first 15 calendar days after the signage is installed.
- (c) Before activating a speed-monitoring system, the chief of police or their designee shall:
- (1) Publish notice of the location of the speed-monitoring system on the town's website and in a newspaper of general circulation in the town; and
  - (2) Ensure that each sign that designates a school zone or residential district is proximate to a sign that indicates that speed-monitoring systems are in use in the school zone or residential district and is in

accordance with the manual for and the specifications for a uniform system of traffic control devices adopted by the state highway administration.

- (d) A speed-monitoring system in a school zone may operate only Monday through Friday between 6:00 a.m. and 8:00 p.m.
- (e) Designated ombudsman.
  - (1) The chief shall designate an official or employee to investigate and respond to questions or concerns about the speed-monitoring system program.
    - a. The local designee or ombudsman shall review a citation generated by a speed-monitoring system if the person who received the citation requests review before the deadline for contesting liability under this section.
    - b. If said designee determines that the citation is an erroneous violation, the designee shall void the citation.
    - c. If said designee determines that a person did not receive notice of a citation issued under this section due to an administrative error, the designee may resend the citation in accordance with subsection (k) of this section or void the citation.
    - d. Should said designee take any action described under this subsection (e), they shall notify the speed-monitoring system contractor and/or the motor vehicle administration of the action for the purpose of rescinding any administrative penalties or fees that may have been imposed under this section.
  - (2) The designee may not be employed by the speed-monitoring system contractor or have been involved in any review of a speed-monitoring system citation, other than a review of a citation under this subsection (e).
  - (3) On receipt of a written question or concern from a person, the local designee shall provide a written answer or response to the person within a reasonable time.
  - (4) The designee or the town clerk shall make any written questions or concerns received under this subsection (e), and any subsequent written answers or responses, available for public inspection.
  - (f) A speed-monitoring system operator shall:
    - (1) Complete training by a manufacturer of speed-monitoring systems in the procedures for setting up and operating the speed-monitoring system.
    - (2) Fill out and sign a daily set-up log for a speed-monitoring system that states that the speed-monitoring system operator successfully performed or reviewed and evaluated the manufacturer-specified self-test of the speed-monitoring system prior to producing a recorded image.

The daily set-up log required by subsection (f)(2) of this section shall be kept on file and shall be admitted as evidence in any court proceeding for a violation of this section.

(g) A speed-monitoring system manufacturer shall issue a signed certificate to the speed-monitoring system operator on completion of the training, which certificate shall be admitted as evidence in any court proceeding for a violation of this section.

(h) Calibration.

- (1) A speed-monitoring system shall undergo an annual calibration check performed by an independent calibration laboratory that is:
  - a. Selected by the town; and
  - b. Unaffiliated with the manufacturer of the speed-monitoring system.
- (2) The independent calibration laboratory shall issue a signed certificate of calibration after the annual calibration check, which shall be kept on file and shall be admitted as evidence in any court proceeding for a violation of this section.
- (i) If the board authorizes or continues a program of speed-monitoring systems under this section:

- (1) The president shall designate a program administrator who may not be an employee or a representative of the speed-monitoring system contractor; and
- (2) The president shall ensure the contract with the speed-monitoring system contractor includes the following provisions:
  - a. For potential violations submitted by a contractor for review by the department, if more than five percent of the violations in a calendar year are erroneous violations, then the contractor shall be subject to liquidated damages for each erroneous violation equal to at least 50 percent of the fine amount for the erroneous violation, plus any reimbursements paid by the town; and
  - b. Under the terms of said altered contract, the town may cancel a contract with a contractor if the contractor violates the contract by submitting erroneous violations to the department that exceed a threshold specified in the contract or violates the law in implementing the contract.

The designated program administrator shall participate in a training program concerning the oversight and administration of a local speed-monitoring program administered by the state police training commission as soon as practical, and subsequently at least once every two years.

(j) Unless a driver of a motor vehicle received a citation from a police officer at the time of a violation, the owner or, in accordance with subsection (m)(5)a of this section, the driver of a motor vehicle is subject to a civil penalty if the motor vehicle is recorded by a speed-monitoring system while being operated at least 12 miles per hour above the posted speed limit.

(k) Citations.

- (1) Subject to the provisions of subsections (k)(2) through (4) of this section, the department shall mail or cause to be mailed to an owner liable under subsection (j) of this section a citation, upon a form to be prescribed by the district court of the state, that shall include the information required by of Ann. Code of Md., Transportation article, § 21-809.
- (2) The department may mail a warning notice instead of a citation to the owner liable under subsection (j) of this section and, for a period of 30 days after the town installs the first speed-monitoring system, the department shall mail only a warning notice and may not issue a citation.
- (3) Except as provided in subsection (m)(5) of this section, the town may not mail a citation to a person who is not an owner.
- (4) Except as provided in subsections (e) and (m)(5) of this section, a citation issued under this section shall be mailed no later than two weeks after the alleged violation if the vehicle is registered in this state, and 30 days after the alleged violation if the vehicle is registered in another state.
- (5) A person who receives a citation under subsection (k)(1) of this section may:
  - a. Pay the civil penalty, in accordance with instructions on the citation, directly to the town; or
  - b. Elect to stand trial in the district court for the alleged violation.

(l) Adjudication.

- (1) A certificate alleging that the violation of Ann. Code of Md., Transportation article, tit. 21, subtit. 8 (speed restrictions) occurred and the requirements under the Ann. Code of Md., Transportation article, § 21-809(b) have been satisfied, sworn to, or affirmed by a duly authorized law enforcement officer employed by or under contract with the town based on inspection of recorded images produced by a speed-monitoring system, shall be evidence of the facts contained in the certificate and shall be admissible in a proceeding alleging a violation under said subtitle without the presence or testimony of the speed-monitoring system operator.
- (2) If a person who received a citation under subsection (k) of this section desires the speed-monitoring system operator to be present and testify at trial, the person shall notify the court and the town in writing no later than 20 days before trial.
- (3) Adjudication of liability shall be based on a preponderance of evidence.

## (m) Defenses.

(1) Pursuant to Ann. Code of Md., Transportation article, § 21-809, the district court may consider in defense of a violation:

- a. Subject to subsection (m)(2) of this section, that the motor vehicle or the registration plates of the motor vehicle were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation;
- b. Subject to subsection (m)(3) of this section, evidence that the person named in the citation was not operating the vehicle at the time of the violation; and
- c. Any other issues and evidence that the district court deems pertinent.

(2) To demonstrate that the motor vehicle or the registration plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner shall submit proof that a police report regarding the stolen motor vehicle or registration plates was filed in a timely manner.

(3) To satisfy the evidentiary burden under subsection (m)(1)b of this section, the person named in the citation shall provide to the district court, submitted through the department, a letter, sworn to or affirmed by the person and mailed by certified mail, return receipt requested, that:

- a. States that the person named in the citation was not operating the vehicle at the time of the violation; and
- b. Includes any other corroborating evidence.

(4) Should the police department have cause or reason to believe that the operator was an employee or agent acting within the owner's scope of employment or agency, and was acting in furtherance of the owner's interests at the time of the violation, the department may file a motion using the court's form (i.e., Form DC 2) opposing the sworn request letter and stating the reasons why such request should be denied or otherwise stating why liability should be jointly shared by the operator and the owner. Said motion shall be reviewed by the town attorney, may be supported by affidavit and shall include any other corroborating evidence.

(5) Cases of cited person not operating vehicle.

- a. If the district court finds that the person named in the citation was not operating the vehicle at the time of the violation or receives evidence under subsection (m)(3) of this section identifying the person driving the vehicle at the time of the violation thereby transferring liability to the operator, the clerk of the court shall provide to the department a copy of any evidence substantiating who was operating the vehicle at the time of the violation.
- b. On receipt of substantiating evidence from the district court under subsection (m)(1) of this section pursuant to the state law, the department may issue a citation as provided in subsection (k) of this section to the person who the evidence indicates was operating the vehicle at the time of the violation.
- c. A citation issued under subsection (m)(5)b of this section shall be mailed no later than two weeks after receipt of the evidence from the district court.

(n) Pursuant to Ann. Code of Md., Transportation article, § 21-809, if a person liable under this section does not pay the civil penalty or contest the violation, the state motor vehicle administration:

- (1) May refuse to register or re-register the motor vehicle cited for the violation; or
- (2) May suspend the registration of the motor vehicle cited for the violation.

(o) Pursuant to Ann. Code of Md., Transportation article, § 21-809, a violation for which a civil penalty is imposed pursuant to state law under this section:

- (1) Is not a moving violation for the purpose of assessing points under Ann. Code of Md., Transportation article, § 16-402;

- (2) May not be recorded by the motor vehicle administration on the driving record of the owner or driver of the vehicle;
- (3) May be treated as a parking violation for purposes of Ann. Code of Md., Transportation article, § 26-305; and
- (4) May not be considered in the provision of motor vehicle insurance coverage.

(p) Pursuant to state law and this section, the department or its designee shall administer and process civil citations issued under this section and state law in coordination with the district court.

(q) An owner for whom the state motor vehicle administration refuses to register, or re-register a vehicle, or who receives a suspended registration pursuant to subsection (n) of this section but who subsequently pays the required fines, fees and penalties shall further remit to the town a release fee of \$35.00 in addition to any release fees that may be collected by the state motor vehicle administration prior to release of said restriction. The release fee established by this subsection may be modified from time to time by resolution of the board of commissioners.

(r) By October 31 of each year, the president, with the assistance of the treasurer and the chief of police, shall submit to the state police training commission a report for the previous fiscal year on the town's speed-monitoring system program including information required in accordance with state law.

(Ord. No. 2018-02, § 1, 3-27-2018; Ord. No. 2021-06, § 1, 12-14-2021)

#### **Sec. 24-56. Traffic control signal-monitoring systems.<sup>36</sup>**

(a) The use of traffic control signal-monitoring systems, also known as red-light cameras, for traffic control are authorized at locations within the town as determined by the chief of police subject to approval by the board. The red-light camera locations shall include, but not be limited to, the traffic signals at the intersections indicated in section 24-60.

(b) The town may enter into appropriate agreements with duly qualified vendors for the furnishing of labor, equipment and maintenance related to the installation and operation of a red-light camera enforcement program. The president is authorized to negotiate with such duly qualified vendors; provided, however, that no agreement for such labor, equipment or maintenance shall be effective until first having been duly approved by the board.

(c) The town's red-light camera enforcement program shall be conducted in compliance with all applicable provisions of Ann. Code of Md., Transportation article, § 21-202.1, as amended from time to time, and all other applicable laws.

(d) Unless the driver of a motor vehicle recorded by a red-light camera in violation of Ann. Code of Md., Transportation article, § 21-202(h), as amended from time to time, received a citation from a police officer at the time of the violation, the owner or the person driving the vehicle at the time of the violation, in accordance with Ann. Code of Md., Transportation article, § 21-202.1(g)(5), as amended from time to time, shall be guilty of a civil infraction and subject to a civil penalty. The town may also collect those administrative fees set forth in this article related to the implementation of a red-light camera enforcement program within the town.

(Ord. No. 2018-02, § 2, 3-27-2018; Ord. No. 2021-06, § 2, 12-14-2021)

#### **Sec. 24-57. Speed-monitoring system penalties; use of revenue.**

(a) A civil penalty in the amount of \$40.00 per violation is hereby established for speed-monitoring system violations, subject to an additional late fee if not paid within 30 days after the issuance of the citation. The penalty shall be paid to the town, and all unpaid violations shall be forwarded for collections actions, except that, in a contested case before the district court of the state, the penalty shall be collected by the district court in accordance with Ann. Code of Md., Courts and Judicial Proceedings article, § 7-302(a) and Ann. Code of Md., Transportation article, § 21-809 and distributed in accordance with Ann. Code of Md., Transportation article, § 12-118, as any of

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<sup>36</sup> Legal or Editorial Change: Ord. No. 2018-02, § 2. Traffic control signal monitoring systems. Ungarbled subsection (D) by inserting language from Ann. Code of Md., Transportation article, § 21-202.1(g)(5).

the foregoing may be amended from time to time.

(b) Revenue received by the town from this "Safety for Students" or other such program shall first be used to recover the costs of implementing and administering the "Safety for Students" or such other program. Any remaining balance shall be used for public safety purposes as permitted by state law and as set forth in the annual budget adopted by the board of commissioners.

(Ord. No. 2018-02, § 3, 3-27-2018; Ord. No. 2021-06, § 3, 12-14-2021)

#### **Sec. 24-58. Red-light enforcement penalties.**

A civil penalty in the amount of \$70.00 per violation is hereby established for traffic control signal-monitoring system or red-light camera violations. The penalty shall be paid to the town, and all unpaid violations shall be forwarded for collections actions, except that, in a contested case before the district court of the state, the penalty shall be collected by the district court in accordance with Ann. Code of Md., Courts and Judicial Proceedings article, § 7-302(a) and Ann. Code of Md., Transportation article, § 21-809 and distributed in accordance with Ann. Code of Md., Transportation article, § 12-118, as any of the foregoing may be amended from time to time.

(Ord. No. 2018-02, § 4, 3-27-2018; Ord. No. 2021-06, § 4, 12-14-2021)

#### **Sec. 24-59. Administrative fees; referral for collection.**

(a) In addition to any fees as established elsewhere in this article, the board of commissioners hereby imposes and may collect administrative fees related to the implementation of a program of speed enforcement using speed-monitoring systems in school zones, residential districts or red-light cameras within the town including a late fee of \$40.00 which shall be assessed for any fines paid more than 30 days from the date of issuance of a speed camera or red-light citation.

(b) Where any fees or fines are assessed or imposed in accordance with this article, and where such fees or fines are unpaid and outstanding for 30 or more days, the town, in its sole and absolute discretion and to the extent permitted by law, may refer such debt to a collection agency or an attorney for collection. For all accounts referred to a collection agency or an attorney for collection, such accounts shall be subject to a collection fee not to exceed two times the outstanding debt or the total sum indebted to the town, whichever is greater. The town may alternatively or further elect to file a civil suit against the debtor to recover such outstanding and unpaid fees or fines.

(Ord. No. 2018-02, § 5, 3-27-2018; Ord. No. 2021-06, § 5, 12-14-2021)

#### **Sec. 24-60. Designation of school zones, residential districts and red-light camera intersections.<sup>37</sup>**

(a) The board of commissioners shall designate certain roadways to be designated a residential district or a school zone, further defined as a designated roadway segment of up to a half-mile radius from a school for any grades kindergarten through grade 12 where school-related activity occurs, including travel by students to or from school on foot or by bicycle, or the dropping off or picking up of students by school buses or other vehicles on any county, municipal, or state road, and further approves and authorizes the use of mobile red-light camera systems provided for red-light camera enforcement at signalized intersections within the town. The term "residential district" is defined as an area that:

- (1) Is not in a business district; and
  - (2) Adjoins and includes a highway where the property along the highway, for a distance of at least 300 feet, is improved mainly with residences or residences and buildings used for business.
- (b) The initial roadways designated as a school zone are as follows:
- (1) School Lane from Old Crain Highway to Wilson Lane; and

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<sup>37</sup> Legal or Editorial Change: Ord. No. 2018-02, § 6. Designation of school zones; residential districts and red-light camera intersections. Added definition of residential district from Ann. Code of Md., Transportation article, § 21-101(s).

(2) Maryland Route 725 (Old Marlboro Pike) from Marlborough Drive to Elm Street.

(c) The initial intersections designated for deployment of traffic control signal-monitoring systems are as follows:

(1) Main and Water Streets; and

(2) Main Street and Governor Oden Bowie Drive.

(d) The board of commissioners may further establish and designate or remove designations of school zones, residential districts and red-light camera intersections by resolution.

(Ord. No. 2018-02, § 6, 3-27-2018; Ord. No. 2021-06, § 6, 12-14-2021)

**Sec. 24-61. Fines, penalties, and fees.**

~~And be it further enacted and ordained by the board of commissioners of the town that said~~ The board may set the fines, penalties, and fees associated with violating this article from time to time by resolution.

(Ord. No. 2018-02, final ¶, 3-27-2018; Ord. No. 2021-06, final ¶, 12-14-2021)

~~AND BE IT FURTHER ORDAINED AND ENACTED, by the Board of Commissioners of the Town of Upper Marlboro, Maryland that any prior ordinances adopting and enacting any provision of this Ordinance or any other ordinance or resolution previously adopted pertaining to a subject or subjects embodied by the title of this Ordinance or the provisions found in conflict herein shall be deemed repealed and superseded by the provisions of this Ordinance, and should a previously enacted ordinance cover a provision or subject that is not covered by this Ordinance, it shall remain in full force and effect unless it directly conflicts with the express language of this Ordinance.~~

~~AND BE IT FURTHER ORDAINED AND ENACTED, by the Board of Commissioners of the Town of Upper Marlboro, Maryland that this Ordinance shall become effective at the expiration of 20 calendar days following approval by the Board of Commissioners.~~

~~AND BE IT FURTHER ORDAINED AND ENACTED, by the Board of Commissioners of the Town of Upper Marlboro, Maryland that this Ordinance shall be posted in the Town Hall office, and it or a fair summary thereof, shall be published once in a newspaper of general circulation in the Town.~~