

CITY OF CHARLOTTESVILLE

LEGAL REVIEW and COMMENTS

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This document contains comments and recommendations for consideration by city council and staff, as to
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RECOMMENDATIONS FOR EDITS/ CHANGES THROUGHOUT CHAPTER 34	
	Substitute “land” OR “lot”, as appropriate, for “property”
	Use “NDS Director” consistently throughout as the designated administrator for ZO, Site Plans, Subdivision Plats, etc. (director may delegate functions/ duties to employees)
	Use “landowner” consistently throughout ZO, remove confusing references to “applicant”, “purchaser” etc.
	When a process or requirement is established by a mandatory provision of state law, delete text from Zoning Ordinance, substitute reference to applicable state law provision.
	USE MATRICES—modify, to provide a simpler format, and to reference only uses authorized in applicable zoning districts (delete lengthy lists of uses not allowed). Also, RECOMMEND moving to a format in which Use Categories are established, and typical uses identified for each category. Continue to utilize the SUP process to review potentially harmful USES.
RECOMMENDATIONS FOR EDITS/ CHANGES TO Article I (Administration)	
DIVISION 1. GENERAL PROVISIONS	
New §34-1. Enabling legislation; state law references	
§34-1. Title; effective date	Edit 34-1(1) to remove references to zoning district boundaries; move those provisions to New Article III (Zoning Districts); edit 34-1(2) to reference only the effective date of the updated Chapter 34.
§34-2. Jurisdiction	Edit 34-2(b) to conform to Va. Code 15.2-2286(A)(2); substitute “director of NDS” for PC
§34-3. Purposes of chapter	Edit to incorporate language from Va. Code 15.2-2200, 15.2-2283 and -2284
§34-4. Severability	
§34-5. Effect of prior ordinance	Edit out confusing, unnecessary reference to “repeal” of prior provisions
§34-6. Interpretation	Delete; Move to new Division X (Interpretations), end of Article I.
§34-7. References to Va. Code	Delete; Move to new §34-1.
§34-8. Disclosure real parties in interest	Delete; Move to new Article II (Zoning Procedures and Permits)
§34-9. Vested rights	Delete text provisions; substitute reference to Va. Code 15.2-2307. Keep statement that nothing in the chapter will be construed to authorize impairment of a vested right.
§34-10. Fee schedule; delinquent. Taxes	Delete; Move to new Article II (Zoning Procedures and Permits)
§34-11. Meetings open to public	Delete
§34-12. Affordable dwelling units	Delete from Article I; Move to new Division X (Zoning Districts). Otherwise, leave text as-is
§34-13. Unzoned parcels	Delete; Move to new Division X (Interpretations), end of Article I.
DIVISION 2. COMPREHENSIVE PLAN	
§34-26. Adoption	Edit language to conform to Va. Code 34-2223 et seq.
§34-27. Amendment	Delete text; substitute new, abbreviated text that refers to Va. Code 15.2-2229 and -2230.

§34-28. Review of public facilities	Delete text; SUBSTITUTE reference to Va. Code 15.2-2232
DIVISION 3. ZONING AMENDMENTS	DELETE; Move to new Article II (Zoning Procedures and Permits) (§§34-41 through 34-45)
DIVISION 4. CONDITIONAL ZONING	DELETE; Move to new Article II (Zoning Procedures and Permits)(§§ 34-61 through 34-66)
DIVISION 5. COMPLIANCE/ ENFORCEMENT	DELETE; Move to end of Article I
DIVISION 6. ZONING ADMINISTRATOR	
New § 34-XXX. Designation	Recommend that CC should designate the NDS Director as the Zoning Administrator, but authorize the NDS Director to delegate functions and duties to his or her employees (employees performing certain functions/ duties can use title “ZA” as appropriate)
§34-106. General powers and duties	Delete text; substitute reference to matters referenced in Va. Code 15.2-2286(A)(4)
§34-107. Inspections; investigations	Move (a) to New Article II (Zoning Procedures and Permits) (inspections should be done prior to permit issuance); (b) is unnecessary. Add new text referencing procedures for obtaining subpoenas and administrative inspection warrants, see Va. Code 15.2-2286(A)(4) and (15)
§34-108. Variances	Delete. (ZA cannot approve “variances”). Although 15.2-2286(A)(4) allows ZA to approve certain “modifications”, I strongly recommend against this. Exceptions to ZO provisions should be left to BZA (“variances”) or to City Council (“waivers” and “modifications”).
§34-109. Violations	Delete; unnecessarily repetitive of enforcement provisions in Division X (Compliance and Enforcement)
§34-110. Records and reports	Delete; substitute references to Va. Code 15.2-2300
§34-111. Written orders, decisions	Edit text; revise to incorporate references to 15.2-2286(A)(4); 15.2-2307; 15.2-2311
DIVISION 7. BOARD OF ZONING APPEALS	
§34-126. Composition; appointment	The BZA is a creature of state statute—the City is required to establish and support the board, but the members are actually appointed by the Court. Edit all sections to remove wording repetitive or paraphrasing of the appointment procedure, hearing procedures, decision guidelines, and appeals referenced in Va. Code 15.2-2308 through 15.2-2314. Insert simplified text referencing applicable state code requirements. In particular our ZA provisions relating to variances are outdated, not consistent with current state requirements. Practical Note: annual reports to city council from BZA are required. In practice, it is not currently being done and should be initiated as a routine practice of the BZA.
§34-127. No other public office	
§34-128. Selection and terms of officers	
§34-129. General powers	
§34-130. Quorum	
§34-131. Rules, meetings, records	
§34-132. Hearings	
§34-133. Required vote for action	
§34-134. Notification of decisions	
§34-135. Petitions	
§34-136. Grant of variances	
§34-137. Appeals from admin decisions	
§34-138. Fee for appeals	
§34-139. Judicial review of decisions	
DIVISION 8. SPECIAL USE PERMITS	DELETE. §§34-156 through 34-168 (move to new Article II (Zoning Procedures and Permits)
NEW DIVISION 8. INTERPRETATIONS	
§34-6. Interpretation	Substitute: §34-6. Interpretation of zoning district boundaries (BZA function, per 15.2-2309(4)) Add new §34-X. Interpretation of zoning ordinance (reference written determinations, per 15.2-2286(A)(4); 15.2-2309(1))

	and (3). Cross-reference provisions of new Article II (Zoning Procedures and Permits) requiring zoning verification by ZA prior to issuance of permits.
§34-13. Unzoned parcels	Retain
DIVISION 9. COMPLIANCE AND ENFORCEMENT	
§34-81. Compliance with chapter	In general: retain most language, but update and edit to be more concise and to mirror wording of state enabling legislation in 15.2-2208, -2209, -2286(A)(4) and -2299.
§34-82. Violations—general	
§34-83. Violation notice and corr'n order	
§34-84. Violations—criminal penalties	
§34-85. Civil summons or ticket	
§34-86. Schedule of civil penalties	
§34-87. Injunctive relief; other remedies	Recommend placing schedule of civil penalties into a chart, instead of a text listing.
§34-88. Suspension of time limits	Delete; not authorized by enabling legislation
§34-89. Remedies not exclusive	Retain
DIVISION 11. ENUMERATION OF ZONING DISTRICTS	DELETE. Move §34-216 into new or revised Article(s) containing the Zoning District Regulations.
NEW ARTICLE II. ZONING PROCEDURES AND PERMITS (NEW ARTICLE)	
Division 1. APPLICATIONS; FEES	
§34-X. Applications; schedule of fees	Insert new catch-all provision stating that, whenever ZO requires an application seeking an approval or decision, then applications will be filed on forms required by NDS Director, and payment of a fee will be included with the application, per the most recent fee schedule.
Division 2. PROCEDURES FOR ZONING ORDINANCE AMENDMENTS	
§34-41. Amend's to zoning ordinance	Retain portions of 34-41 that were recently revised (2015), edit other provisions for clarity and conformity with state law
§34-42. Comm'n study and action	In general, requirements are specified by state law. Edit to identify the info to be provided by Staff; otherwise allow PC and CC to consider all info/ materials deemed relevant
§34-43. Council study and action	
§34-44. Advertisement, notice	Edit, reference provisions of 15.2-2204 and -2285
§34-45. Affordable dwelling units	Delete, as being unnecessarily repetitive of the provisions of 34-12.
DIVISION 3. PROCEDURES FOR ACCEPTANCE OF PROFFERED DEVELOPMENT CONDITIONS	
§34-61. Authorization	Retain
§34-62. Applicability	Retain; edit to comply with current language of 15.2-2296 et seq.
§34-63. Form	Retain; minor editing
§34-64. Preliminary proffers	Retitle section: "Procedure for offer and acceptance of proffers" otherwise retain; minor editing
§34-65. Modification of final proffers	Delete; not consistent with state law
§34-66. Effect of approved proffers	Include reference to Va. Code 15.2-2299 (ZA authority to enforce proffers) and to 15.2-2300 (ZA is required to maintain a Proffer Index)
DIVISION 4. SPECIAL USE PERMITS	
§34-156. In general	Edit, to reflect authority conferred by Va. Code 15.2-2286(A)(3)
§34-157. General standards for issuance	Rework; these factors should be analyzed and discussed within a detailed Staff report to PC and CC. PC and CC will consider these, and any other factors and information they deem relevant. (As a practical matter, that's how these standards are currently applied). Ultimately, CC's decision is discretionary and there are no particular factors or criteria to be applied (other than consideration of the Comp Plan).
§34-158. Application generally	Edit: reference general application/ fee requirements; keep

	listing of materials to be submitted with application (as staff to review list of materials/ update)
§34-159. Application fee	Delete (general application/ fee requirements will be referenced at beginning of Article II)
§34-160. Review and action on app'n	Retain; minor edits only
§34-161. Initiation of application by PC or CC	Retain; minor edits only
§34-162. Exceptions and modifications as conditions of permit	Retain, but edit to reflect current practices as to application review and findings by decision-makers.
§34-163. Amendment	Retain; minor edits only
§34-164. Applicability; validity	Retain; minor edits only
§34-165. Infill development —concept and purpose	Either (i) DELETE (haven't had an Infill Development SUP Application in 3 years), or (ii) substantially revise, for use as a PUD SUBSTITUTE.
§34-166. Configuration, limitations	
§34-167. Effective date	
§34-168. Affordable dwelling units (SU))	DELETE; this won't be applicable going forward
DIVISION 5. PROVISIONAL USE PERMITS	
§34-181. In general	DELETE listing of specific provisional uses; incorporate list into a revised Matrix for each zoning district and cross reference standards set forth in 34-1170 thro -1174
§34-182. Application	Amend; edit to refer to general requirements for applications, fees, permits (new Article 2 (Zoning Procedures and Permits))
§34-183. Revocation or expiration	(a) Edit to remove unnecessary wording referring to "owners" or "operators". Otherwise, leave as is.
§34-184. General requirements	DELETE; move (a) to 34-181; move (b) to Article I (Administration) section re subpoenas and administrative inspections
DIVISION 6. TEMPORARY USE PERMITS	
§34-201. In general	Revise (a) to simply authorize the ZA to issue TUPs if a particular use is compatible with nearby established uses; Revise (b) to delete list of specific temporary uses; leave a simple reference to the fact that certain temporary uses are subject to additional regulations in Secs. X through Y (currently Article X, Division 10).
§34-202. Application	Delete (b), substitute reference to general application requirements and zoning fee schedule (see new Division 1)
New DIVISION 7. FLOODPLAIN PERMITS	
New §34-XXX. Permits required for activities within special flood hazard areas (SFHA)	(a) Prior to establishment or commencement of any use, activity or development within a SFHA, the same shall be submitted to the City's floodplain administrator for review. (b) Applications seeking interpretations or approvals from the floodplain administrator, or seeking floodplain variances/ special exceptions from the BZA, shall be submitted in accordance with Division 1 (general application requirements, reference to fee schedule). Applications will be reviewed and acted upon in accordance with the provisions of §§34-XXX (Floodplain Overlay).
New DIVISION 8. CERTIFICATES OF APPROPRIATENESS—DESIGN CONTROL DISTRICTS	
New §34-XXX. Permits required for construction or demolition within ADC districts	(a) <i>ADC districts</i> —as specified in §34-XXX, no building or structure within any ADC district, and no protected property, shall be demolished, constructed, reconstructed, altered or restored, unless and until a

	<p>certificate of appropriateness has been approved. Applications shall be submitted to the NDS Director in accordance with Division 1 (general application requirements, reference to fee schedule).</p> <p>(b) Applications will be reviewed and acted upon in accordance with the provisions of §§34-XXX (ADC Overlay).</p>
New §34-XXX. Permits required for construction within EC districts	<p>(a) <i>Entrance corridor districts</i>—as specified in §34-XXX: no building or structure within an EC district shall be constructed, reconstructed, altered, or restored, until a certificate of appropriateness has been approved. Applications shall be submitted to the NDS Director in accordance with Division 1 (general application requirements, reference to fee schedule).</p> <p>(b) Applications will be reviewed and acted upon in accordance with the provisions of §§34-XXX (EC Overlay).</p>
New §34-XXX. Permits required for construction within HC districts	<p>(a) <i>Conservation districts</i>—as specified in §34-XXX, no building or structure shall be demolished, razed, moved, constructed, reconstructed, altered or restored. unless and until a certificate of appropriateness has been approved. Applications shall be submitted to the NDS Director in accordance with Division 1 (general application requirements, reference to fee schedule).</p> <p>(b) Applications will be reviewed and acted upon in accordance with the provisions of §§34-XXX (HC Overlay).</p>
New DIVISION 9. SITE DEVELOPMENT PLANS	
New §§34-XXX. Site plans required for developments	<p>(a) Prior to issuance of any permit required by the USBC for or in connection with any development¹, a site plan shall be submitted to the NDS Director, to assure compliance with zoning regulations. Applications shall be submitted to the NDS Director in accordance with Division 1 (general application requirements, reference to fee schedule) and §§34-XXX (site plan submission requirements)</p> <p>(b) Applications will be reviewed and acted upon in accordance with the provisions of Va. Code §15.2-2259.</p>
New DIVISION 10. ZONING VERIFICATIONS; DETERMINATIONS	
New §§34-XXX	<p>(a) No permit(s) for any demolition, construction or land disturbing activity shall be approved or issued by the zoning administrator, the building code official, the floodplain administrator, the city's VESCP/ VSMP administrator(s), or any other administrative officer of the city, unless and until the Zoning Administrator verifies that such activity is permitted by zoning regulations. Upon receipt of a request for any such permit, the administrative officer shall notify the Zoning Administrator of the time in which a zoning verification must be provided.</p> <p>(b) Any person may request the zoning administrator to issue a written determination or decision as to matters within the lawful scope of the zoning administrator's duties, including determinations of rights accruing under Va. Code 15.2-2307 or 15.2-2311(C), provided that</p>

¹ See Va. Code 15.2-2286(A)(8)

	<p>conclusions of law regarding determinations of rights, and other determinations that may result in any binding effect(s) upon the city, must have the concurrence of the city attorney before being issued.</p> <p>(c) Applications for zoning verifications and determinations shall be submitted in accordance with Division 1 (general application requirements, reference to fee schedule). Applications will be reviewed and acted upon by the Zoning Administrator within 90 days, excluding any period(s) of time in which the ZA must wait for specific information or materials to be submitted by the applicant.</p>
New §34-XXX. Information and materials for zoning verification	<p>In addition to any information or materials submitted to a city officer as part of an application for a permit or approval referenced in §34-XXX(a), above, a landowner shall provide the ZA with additional information, documents and/or materials as necessary for the ZA to verify that the uses and activities for which the permit or approval is sought comply with the zoning ordinance. Such additional information, documents and/or materials may include one or more of the following, as appropriate:</p> <ol style="list-style-type: none"> (1) A valid final site plan; (2) A valid COA; (3) Survey plats; (4) Construction plans; etc...
New ARTICLE III. OVERLAY ZONING DISTRICTS	
§§34-240 through 34-349	Retain; Edit Divisions 2 (ADC), 3 (EC) and 5 (HC), to clarify: (i) the circumstances under which the BAR or EC's designated agent may grant administrative approvals; (ii) matters to be discussed and analyzed in Staff reports, and (iii) relationship between general "architectural compatibility" standard of 15.2-2306(A)(1) and the City's design guidelines.
DIVISION 4. PUBLIC PARK PROTECTION OVERLAY DISTRICT	Revise: some uses that are routine or required by law should be expressly mentioned, otherwise they might be deemed prohibited. For example: the regulations currently state that Park Property can be used for parking, Stormwater management, streets, roads and public improvements, [but <i>what about the obvious: recreational uses and facilities? What about Civic uses (demonstrations; festivals, etc.) What about other governmental uses?</i>]
Add New Division 6. AFFORDABLE HOUSING OVERLAY DISTRICT	Establish a new City-wide Affordable Housing Overlay District, establishing incentives (as recommended by the City's Housing Advisory Committee) in return for the provision of affordable dwelling units. See, e.g. Va. Code §15.2-2305.
ARTICLE IV. RESIDENTIAL ZONING DISTRICTS—CHANGE TO: ARTICLE IV. USE-SPECIFIC ZONING DISTRICTS	
DIVISION 1. GENERALLY	Modify to read as follows: DIVISION 1. LOW-DENSITY RESIDENTIAL DISTRICTS
New §34-XXX. Enumeration of districts	For the purposes enumerated in §34-3, there are hereby established the following use-based zoning districts, which the location(s) of which shall be as set forth on the Zoning Map: (R-1, R-1S, R-1U, R-1SU, and R-2)
§34-350. Purpose	Leave statements of purposes for (a) (R-1 districts) and (b) (R-2 districts). DELETE purpose statements in paragraphs

	(c) (Multifamily districts) and (d) (McIntire/Fifth Street Residential Corridor)—move (c) and (d) to a different article.
§34-351. Applicability	Delete references to R-3, RUND, RUHD, and MR.
§34-352. Uses	DELETE reference to §34-420 (Use Matrix). Prepare a Chart setting forth ONLY those USES allowed in R-1 and R-2 zones.
New §34-XXX. Building forms	Every building used, in whole or in part, for any residential occupancy shall be one of the following building types: <ul style="list-style-type: none"> (1) R-1 districts: SFD, accessory dwelling (external) (2) R-2 districts: SFD, SFA, TF; accessory dwelling (external) (3) MHP district: MH (4) All districts: temporary health care structure²
DIVISION 4. STANDARDS FOR TOWNHOUSES §§34-386 through 34-391	RECOMMEND: move to Article IX (“Generally applicable regulations”), because THs are allowed in a variety of zoning districts ALSO: update specifications/ standards for TH building forms. Are the existing standards too “suburban”? Would a different set of standards/ specifications be helpful to encourage this building form in the various MU Districts?
New §34-XXX. Lot area requirements	Insert lot area requirements from §34-1123, as applicable to building-types within R-1 and R-2 districts. (Question: should there be a MAXIMUM lot size?)
§34-353(a). Dimensional requirements	EDIT chart to remove reference to zoning districts other than R-1, R-2 and MHP. Also EDIT to remove inconsistencies and typos (for example, textual references to side yards indicated by asterisks shown in the chart—there are no such asterisks). Also: recommend changing height from being measured by feet, to being measured by stories (2 stories, max). §34-1100(b) establishes a not-to-exceed number of feet for a 2-story building.
§34-353(b) Exceptions to dimensional requirements	STAFF REVIEW provisions requiring front yards to be established by averaging (retain? Revise?). EDIT to remove all references to zoning districts other than R-1 and R-2 classifications.
DIVISION 2. COMMERCIAL/ INDUSTRIAL DISTRICTS	
New §34-XXX. Purpose	The purpose of the city’s commercial and industrial districts are to establish areas in which uses incompatible with residential uses can be located.
New §34-XXX. Enumeration of districts	For the purposes enumerated in §34-3, there is hereby established the following use-based commercial and industrial zoning districts, the location(s) of which shall be as set forth on the Zoning Map: Emmet Street Commercial Corridor (ES) ³
New §34-XXX. Applicability	The regulations in this division apply to areas within the ES district
§34-456. Uses	Create a new chart or matrix, listing only those uses permitted in the ES district

² Va. Code 15.2-2292.1

³ Per Use Matrix, 34-480, this is the only commercial district where all residential uses are prohibited. According to the Use Matrix, mixed use development appears to be allowed within IC, in multifamily/mixed use buildings, but it’s not clear.

§34-457. Dimensional requirements	EDIT to remove references to zoning districts other than ES. STAFF REVIEW: review ROW widths in areas zoned ES, and assess building height(s) and yard requirements according to the Corridor that's proposed to be created. (STW says that ES North is a "mixed use A" street typology)
§34-458. Mixed use development	DELETE. ES does not appear to have been intended as a "mixed use" district: (i) The Use Matrix does not allow ANY [normal] residential uses in ES ⁴ , and (ii) there is no guidance within the ordinance as to what "MIXED USE" is supposed to mean within the ES district.
§34-471. Additional regulations	DELETE. No confidence that the listed Cross-referencing is all-inclusive
GENERAL COMMENT	QUESTION: Are there any uses (large manufacturing/ bottling plants; package/mail warehouse/ distribution center/ other?) that the City wants to encourage, but that would only be appropriate in a district that's separated entirely from all residential uses? If so, where, and in what Zoning District Classification?
ARTICLE V. PUD DISTRICTS, change to: ARTICLE V. MIXED USE ZONING DISTRICTS	
<p>GENERAL NOTES:</p> <p>Zoning districts in which residential and varying amounts of non-residential uses are allowed include: R-3; R-UMD; R-UHD; MR; B-1; B-2; B-3; M-I; IC; PUD; and all of the "mixed use corridor" districts.</p> <p>COMP PLAN: (i) what's the Council's and PC's current vision for all of the areas in which "mixed uses" are allowed? There should be a clear correlation between CC/PC direction set forth within the Comp Plan, and zoning district regulations.</p> <p>One example: what's the difference between the residential density you want within the University High Density Residential District (RUHD) and the "high density" you're encouraging in other districts? Specifically: what are the density ranges to be associated with the terms "high density", "medium density" and "low density". The Comp Plan contains no density ranges or definitions.</p> <p>(ii) once the policy direction is clarified in the Comp Plan, staff can prepare meaningful recommendations for implementation by regulations within the ZO</p>	<p>24 zoning districts OTHER THAN "ES" and the low-density residential (I.E., the various R-1 and R-2 districts) appear to allow residential uses in the same district as a variety of non-residential uses</p> <p>RECOMMEND to Council, PC: review is necessary, to re-articulate what the City is trying to do within all of these other 24 districts, where a mixture of residential and non-residential uses ("mixed use") is allowed: how do you want to GROUP them? (i) by building forms/ street frontages, according to STW typologies? (ii) by the density of residential uses allowed? Density of land coverage (FAR)? (iii) By uses, or some other basis of grouping? Examples of (i) and (ii) could include:</p> <ul style="list-style-type: none"> • STW Typologies: "Downtown"; "Mixed Use A and B"; "Neighborhood A and B"; "Industrial"...OR • "Mixed-Use, with Medium Density Residential" ; "Mixed-Use, with High Density Residential"; etc. <p>HIGH PRIORITY: originally the ZO contained specific percentages of GFA that must be provided to qualify as a "mixed use" building or development (and to benefit from additional density or height allowed by right for MU); however, those percentages were removed circa 2005; since then, staff has struggled with how to review developments that have only minimal residential or commercial use components, but technically qualify for the "bonus" height or density authorized for MU projects. If you continue to offer bonus height or density, or other "bonus" type accommodations to promote MU, then the city urgently needs a new way to define/ measure the types of MU buildings or developments that will qualify for those bonuses.</p>

⁴ Other than a convent or monastery. That's such an outlier-type use, that it doesn't fit.

<p>§34-440. Purpose</p> <p>COMP PLAN—again: what’s envisioned when using terms such as “transitional”, and “neighborhood commercial”. The Comp Plan does not provide clear Direction as to what the current vision for these areas may be.</p>	<p>CC, PC AND STAFF: need to assess whether the current dimensional and use regulations have accomplished the purposes of the “Commercial” zoning districts 2003-present. (e.g., “transitional” district (B-1); clustered neighborhood commercial uses (B-2); accommodation of high-traffic commercial uses (B-3); industrial uses that generate traffic, noise, vibration, etc. (M-I)).</p> <p>Consider adding: standards/ specifications for building types/ forms allowed within these districts? Maximum lot frontage/ block sizes?</p>
<p>§34-420; §34-480, 34-796 (Use Matrix Tables)</p>	<p>RECOMMEND: delete/ discard current use matrices. After paring down/ regrouping the 31 mixed-use districts, create revised zoning-district-specific matrices/ use charts. Omit from USE charts/ matrices any reference to density, building types, etc.—(things OTHER THAN uses!)</p> <p>ALSO: need CC/PC/Staff direction as to what “light industrial” or “workshop” uses should be included in the MU districts Current Matrices and zoning definitions are outdated, and may not reflect the types of uses the City wishes to encourage</p>
<p>§34-457. Dimensional requirements (“Commercial districts”)</p>	<p>STAFF REVIEW: review ROW widths in areas zoned B-1, B-2, B-3, MI, ES and IS, and then assess current “dimensional requirements” (building height(s) and yard requirements) according to the applicable STW typologies .</p>
<p>§34-458. Mixed use development</p>	<p>DELETE. There is no guidance within the “Commercial District” Article as to what “MIXED USE” is supposed to mean. The text of 34-458 suggests that density of more than 21 DUA is allowed within a Mixed Use Development by SUP, but the Matrix allows for an SUP for density from 21-87 DUA for ANY development, not just mixed-use developments.</p>
<p>ARTICLE V. PLANNED UNIT DEVELOPMENT DISTRICTS</p>	
<p>§§34-490 through 34-519</p>	<p>RECOMMENDATION: DELETE this Article, in its entirety. Among the reasons for this recommendation:</p> <p>(i) based on comments of PC members and some CC members over the past several years, many seem to be of the opinion that the city is not receiving the type of “innovative”; “preservation of natural features”; “environmentally sensitive design” and “variety of housing types” intended by this floating district,</p> <p>(ii) there’s no uniform format for a PUD development plan, and this has led to much confusion and lack of clarity as to what uses are and are not permitted, what constitutes a “variety of housing types”, etc.</p> <p>(iii) the city has allowed developers to submit “conceptual” plans, and obtain approvals, sometimes without all of the components required by 34-517. A lack of specificity is very undesirable in a document that will, in fact, become the zoning district regulations applicable to a property, and makes a later site plan review process challenging.</p>
<p>Recommended substitution:</p>	<p>Many/ most of the PUDs have sought changes in the lot-size, lot-frontage, or other similar dimensional requirements for residential buildings. It would be much more straightforward to simply allow modifications of</p>

	<p>such dimensional requirements by SUP for residential developments within specific zoning districts.</p> <p>Alternatively: you could also consider bonus provisions that offer by-right deviations from lot-size or other dimensional requirements, for lots within a development that (i) contain affordable DUs, or specific residential building types/ forms, or (ii) offer Stormwater BMPs or water quantity/ quality benefits in excess of minimum state requirements, etc. Then you might actually get some of the innovative design or environmental features you had hoped for using the PUD structure.</p>
If the PUD is retained then:	
§34-517. PUD Development Plan—requirements—contents	If the PUD zoning district is retained, staff, (i) A standardized format should be developed, for each of the (7) required components; (ii) when an amendment is requested, the entire PUD Plan should be revised and updated, so staff doesn't have to keep track of multiple documents and piece them together over a course of years, (iii) only the layout of streets/ utilities is "conceptual", but it still needs to be specific enough so that it can be translated (with engineering data) into a later site plan—an applicant needs to be held to some standard of due diligence as to the feasibility of a proposed layout, and not have the benefit of an affirmative approval without having to represent that it can actually be built as proposed; and (iv) the Land Use Plan, landscaping plan, phasing plan components are NOT conceptual.
§34-519. Amendment	RECOMMEND deletion of par. (1), which allows NDS Director to approve minor changes or minor deviations. This should only apply to minor adjustments of road or utility layouts, once final engineering data is available. Neither the Director, nor the ZA or other staff member, has legal authority to waive, adjust, or make exceptions to zoning regulations and proffers approved by city council—even if deviations seem minor.
ARTICLE VI. MIXED USE DISTRICTS	
Reference comments provided above, as to the Mixed Use provisions contained in the "Commercial" Districts	
Specific problematic issues:	
§§34-541. MU districts—intent and description See COMP PLAN COMMENTS, above, beginning of comments for Article V.	The "descriptions" of each district don't uniformly identify the objectives intended to be achieved by the regulations for each district. Correspondingly: the regulations for each district are minimal—most focus on building height and density more than anything else, and this does not seem to have been achieving building forms and urban streetscapes that everyone is satisfied with. Also recommend: "purpose" statements might benefit from cross-references to relevant provisions of the Comp Plan.
§34-796. Use Matrix for MU Districts	Review zoning district classifications; regroup according to shared attributes. DELETE existing use matrix; substitute a new chart or matrix focused only on identifying the categories of uses (and typical uses within each category), instead of trying to identify a definitive list of uses. Allow uses other than those listed by SUP. Delete references to building types, density and other issues that are not "uses", because those

	issues are sometimes in conflict with textual provisions of the ordinance.
All Corridor Districts:	STAFF REVIEW: review ROW widths in Corridors and then assess current “dimensional requirements” (building height(s), streetwall and yard requirements) according to the applicable STW typologies .
	Identify minimum and maximum heights with reference to STORIES.
COMP PLAN: may need to be amended, to set forth more clear, more specific Direction for these areas. The zoning text regulations need to reflect specific Direction in the Comp Plan.	<p>CC, PC AND STAFF REVIEW: are density (DUA) restrictions promoting desirable developments appropriate in scale to each corridor? What other regulatory measures could be used (FAR/ lot coverage for buildings generally? # bedrooms for apartment buildings? Establishment of specific building type(s) permitted for specific types of street frontages?) What regulations will promote a greater variety of housing types (building forms mid-range [as to height, massing, and occupiable space, between SFD and large apartment buildings?)</p> <p>EVALUATION: what’s working in various MU Districts, and what’s not?</p> <p>BAR Input: For those portions of the MU Districts located within design control districts: need clarity in the ordinance, and amended Design Guidelines, to assure that height and massing regulations in the ZO don’t conflict with the BAR’s task of design review.</p> <p>Each set of district regulations needs to establish minimum requirements which, if satisfied, will promote the purposes/ objectives of the specific district AND [therefore] will serve community “baseline” consensus. Use SUPs sparingly, to allow tailoring at specific sites.</p>
	<p>MIXED USE developments—</p> <p>(1) DELETE any and all provisions that offer bonus height or density for MU buildings or developments; alternatively, provide specific guidance in the ordinance as to how “significant” each MU component needs to be in order to qualify for the bonus (X FAR; X% GFA, etc.)</p> <p>(2) After the site plan for a MU development is approved, what mechanisms need to be in place to assure that the required mixture of uses will be maintained in relation to the entire development ? (i.e., for a site containing multiple lots, nothing prevents a subsequent transfer of a lot to a new owner, who can develop or re-develop that lot as a stand-alone project, defeating the use(s) that the Lot previously contributed to the other, originally-approved MU development site.</p>
ARTICLE VII. SITE PLANS	
DIVISION 1. APPLICABILITY AND ADMINISTRATION	
§34-800. Intent	DELETE. SUBSTITUTE a statement that the Article is enacted pursuant to authority of Va. Code 15.2-2286(A)(8) and Va. Code §§15.2-2240 et seq.

§34-801. Administration	Retain
§34-802. Site plans—when required	DELETE. SUBSTITUTE a simple new provision that states that a site plan is required for all “subdivisions” and “other developments”. (Those terms are defined in 34-1200). Remove references to other activities, and deal with those via a ZONING VERIFICATION process (<i>see Article I, new Division (Zoning Verifications)</i>)
§34-803. Improvements—construction and bonding	Retain
§34-804. Pre-application requirements	Retain
§34-820 Preliminary plan submittal and review	RECOMMEND DELETION, or, alternatively, recommend allowing an optional PSP approval <i>only for subdivisions containing more than 50 lots</i> . Preliminary site plans are not required by law. In 2014 the General Assembly prohibited localities from mandating preliminary SP approvals for subdivisions involving 50 or fewer lots. In practice, given that most developments already have other “concept” approvals (PUD; SUP; COA; EC; etc.) preliminary approvals have been creating legal difficulties, have frequently deviated from the original zoning approvals (for various reasons), AND the General Assembly, over the past decade, has mandated that, once granted, preliminary SP approvals must remain valid for an extended period of time (more than 5 years).
§34-821. Preliminary site plan conference	
§34-822. Final site plan submittal	RECOMMEND DELETION
§34-823. Action required	RECOMMEND DELETION; SUBSTITUTE A new provision: “The site plan agent shall act on a site plan in accordance with the procedure and time periods specified in Va. Code 15.2-2259.”
§34-824. Signatures	Retain
§34-825. Validity of final site plans	Retain, but edit heavily. All that’s needed is a reference to Va. Code 15.2-2261
§34-826. Amendments to final site plans	Retain, but edit heavily. All that’s needed is a reference to Va. Code 15.2-2261
§34-827. Preliminary site plan contents	Retain, but re-title: “Required Site Plan Contents”
§34-828. Final site plan contents	EDIT; combine provisions with re-worked §34-827
ARTICLE VIII. REQUIRED IMPROVEMENTS (APPLICABLE TO DEVELOPMENT THAT’S SUBJECT TO A SITE PLAN)	
DIVISION 1. APPLICABILITY	Change to: DIVISION1. GENERAL
§34-850. Applicability	Retain
New §34-XXX. Variations, waivers	Establish one procedure for consideration by the Site Plan Agent of requests for variations or exceptions to requirements, consistent with Va. Code 15.2-2242(1)
DIVISION 2. LANDSCAPING AND SCREEING	General legal comment: provisions regarding trees should be grouped (clustered) better, and there should be better cross-referencing with site plan submission requirements
§34-861. Purpose	DELETE: individual purposes clauses such as this aren’t necessary for each article/ division of general regulations.
§34-862. Approved list of plantings	STAFF, tree commission, place, etc.: review list of plantings and make sure it’s up-to-date
§34-863. Size of plantings	STAFF, etc.: review/ update
§34-864. Bonding requirements	Retain (unless staff has had implementation issues that need to be addressed). COMBINE with §34-864 so all bonding requirements can be found in one location
§34-865. Reserved [no contents]	
§34-866. Preservation of existing	Legal comment: it seems that an issue that frequently comes

landscape features (ZO p. 2211)	up is whether or not some buildable area will be given up in order to comply with the requirements of this section. Trees shown on “preliminary” or “concept” plans may be indicated for protection/ preservation, but then later, at final site plan, it’s contended that the tree can’t actually be protected from construction activities. Question: is there a practical way to apply these provisions more effectively?
§34-867. Landscape plan contents (ZO p. 2212)	Retain (unless staff has recommendations for improvements). SUGGESTION: perhaps this section could be used as a “clearing house” location for pulling all other provisions as to trees/ landscaping into one central location.
§34-864. Bonding requirements	COMBINE with §34-864 so all bonding requirements can be found in one location
§34-865. Variations, waivers	DELETE (see recommendation for generally-applicable variation/ waiver provision, in Division 1 of this article)
§34-866. Preservation of existing landscape features. (ZO p. 2216)	DELETE; COMBINE with §34-866 set forth previously on p.2211 of ZO
§34-867. Landscape plan-contents (ZO p. 2216)	DELETE: COMBINE with §34-867 set forth previously on p. 2212 of ZO.
§34-868. Trees generally §34-869. Tree cover requirements §34-870. Streetscape trees	COMBINE with earlier sections (§§34-862 through 34-867) so that all tree requirements can be centrally located.
§34-871. Screening—generally	Retain (subject to any staff recommendations for changes/ improvements). CC/PC/STAFF: as part of reviewing regulations for MU districts, evaluate whether the application of screening types should be modified in particular locations or corridors.
§34-872. Screening—specific uses	No legal issue. Update if CC/PC/ Staff deems necessary or has experienced problems
§34-873. Parking lots—screening and interior landscaping	CC/ PC/ STAFF: consider whether the provisions of this section achieve the type of urban design you’re hoping to promote in the MU districts; if not, what alternative requirements for the location and screening of parking would be more appropriate to Urban, Mixed Use districts?
§34-874. Parking lots §34-880. Off-street parking and loading §34-881. Bicycle storage facilities §34-882. Bicycle parking requirements for WME and WMW ARTICLE IX §§34-970 through 34-986 (OFF-STREET PARKING)	Various Parking requirements are too scattered; RECOMMEND COMBINING all parking requirements into one comprehensive Division, within General Regulations. CC/ PC/ STAFF: for MU districts, need to consider whether existing parking standards are helping or hindering desirable new development (should minimum requirements be retained? Switch to maximum requirements? Control parking only through locational/ siting/ screening requirements, no max/min standards?) Shared parking: compare provisions with other localities, particularly those utilized in form-based ordinances, update, as necessary. Issue: where it’s important that a certain amount of parking be established/ maintained, what mechanisms will make sure that it will be maintained available for ongoing shared use? Parking structures: in what locations, and in what form/dimensions, are stand-alone parking structures desirable as a permitted building?

ARTICLE IX. GENERALLY APPLICABLE REGULATIONS	
DIVISION 1. PURPOSE	
§34-960. Purpose	DELETE; SUBSTITUTE an “applicability” provision that articulates that all land, buildings, structures, and the uses thereof within the city are subject to the regulations within this Division.
DIVISION 2. OFF-STREET PARKING §§34-970 through 34-986	SAME COMMENTS as set forth previously above, for ARTICLE VIII (Required Improvements). Optimally, all parking regulations would be in one location (recommend “Generally Applicable Regulations”)
§34-972. Location, yard areas, and driveways	Relative to MU districts: REVIEW locational regulations; update them to better achieve desired STW Streetscapes in MU Districts
DIVISION 3. OUTDOOR LIGHTING §§34-1000 through 34-1005	RECOMMEND: lighting standards are outdated; need to be reviewed and updated consistent with more modern notions of energy efficiency, etc. reflected in USBC and other communities' modern lighting ordinances. Consider INCENTIVES for use of fixtures, systems, etc. that achieve a specific level of energy efficiency, as authorized by Va. Code 15.2-2286(A)(10). Consider: what type of bonus could be given that would make energy-efficiency lighting measures worthwhile?
DIVISION 4. SIGNS §§34-1020 thro 34-1046	RECOMMEND: As a result of the U.S. Sup. Court’s decision in <i>Reed v. Town of Gilbert</i> , 135 S. Ct. 2218 (2015), Virginia’s local government attorneys have developed a Model Sign Ordinance. Our recommendation is that our existing sign regulations need to be updated, and that amendments to this Division should be undertaken using the Model Sign Ordinance provisions as a guide.
DIVISION 5. TELECOMMUNICATIONS FACILITIES §§34-1070 thro 34-1083	Recently comprehensively updated (2016). No revisions necessitated, at this point, by legal requirements. This Division will be monitored by City Attorney’s Office and staff, and amended as necessary to comply with the dynamic requirements of state and federal laws.
DIVISION 6. BUILDINGS AND STRUCTURES—GENERALLY	
§34-1100. Height—application of district regulations	The City’s approach to measuring building height MUST to be reviewed and updated. It’s one of the Top Priority problems that are causing problems and inconsistent/unexpected results. This text provision is a reasonable-enough approach (except that it doesn’t adequately identify at what point the “grade level” is to be measured, or whether a plane should be established by multiple points). Also, the text of this provision is in direct conflict with the provisions of the definition of “Building Height” within 34-1200. RECOMMEND that zoning district regulations be amended to establish height minimums/ maximums based on number of stories, subject to the maximum measurement in feet specified in current §34-1100(b).
§34-1101. Appurtenances	Although 34-1101 was revised in 2015, RECOMMEND additional revisions. Notwithstanding the definition in §34-1200, the word “appurtenance” has come to mean different things to different people; it’s outdated and is continuing to generate conflicts/ confusion. The section should be edited to remove the word “appurtenance” and SUBSTITUTE a list of

	the types of features that can be placed on a rooftop, or that can extend into a required yard.
§34-1102. Required building separation	DELETE. This section creates confusion, because it's not clear what it's intended to do. RECOMMEND SUBSTITUTION of Open Area standards applicable to lots that contain multiple buildings. (The standards should be referenced within individual zoning districts).
§34-1104. Compliance with building code	Retain basic provisions, but parcel them out to other provisions of the Code which require Zoning verification prior to issuance of permits under USBC (see proposed Article II) and/or that specify the bonding requirements for subdivisions and other developments. DELETE paragraph (a)(2) if the ZA does not physically place a signature on a COA.
§34-1105. Accessory buildings and structures	REVIEW how height of an accessory structure is to be measured. Otherwise, retain, unless staff has encountered problems in applying the requirements to specific situations. Need to specifically cross-reference the section governing exterior accessory apartments.
§34-1106. Side yards for dwellings above commercial buildings	RECOMMEND moving to the zoning district regulations for the MU districts, so that it can be found easier in the location where people expect to look for side yard requirements.
§34-1107. Portable storage containers	Retain
DIVISION 7. LOTS AND PARCELS	
§34-1120(a) <i>Frontage requirements</i>	Retain requirements. EDIT for greater clarity, and to avoid wording conflicts with subdivision regulations. This is a USE restriction, not a subdivision/ lot area requirement.
§34-1120(b) <i>Critical slopes</i>	Retain requirements. EDIT for greater clarity. Separate out the separate requirements that (i) each new lot must contain a suitable BUILDING SITE (which must be outside critical slopes), and (ii) no construction can take place on a critical slope, unless a waiver is obtained. CLARIFY different requirements for construction generally, versus location of necessary public facilities (streets, utilities, etc.).
§34-1121. Sight distance—required sight triangle	DELETE, or revise requirements. The current provisions are difficult to interpret and apply, and the Sight Triangle requirement (essentially a category of Required Yard) is getting confused with the concept of Sight Distance, which is a separate traffic engineering/ safety issue in locations where there is no signalized intersection.
§34-1122. Interpretation of lot and yard designations	UPDATE CHART to remove errors; then MOVE CHART to new Division (Interpretation of ZO) within Article I (Administration)
§34-1123. Lot area requirements—certain residential uses	Move this chart to the Article for Low-Density Residential Zoning Districts. DECISION POINT: do you want minimum lot size requirements for lots outside the Low Density Residentials?
§34-1124. Vacant lot construction, required sidewalks curbs and gutters	Retain
§34-1125. Required plans and approvals residential dwellings	DELETE from “Generally applicable Regulations”. Retain provisions and incorporate into Article II (Zoning Procedures and Permits) new division (Zoning Verifications)
§34-1126. Mixed Use development	DELETE from “Generally applicable Regulations”. Review and update provisions as part of establishing a Working

	Definition of “Mixed Use” for the MU zoning districts, and move provisions to the Article that contains regulations for the MU Districts.
DIVISION 8. NONCONFORMING USES, LOTS AND STRUCTURES	
§34-1140. Purpose	EDIT to reflect that the purpose of the regulations in this division is to implement the authority set forth within Va. Code §15.2-2307(C) through (H).
§34-1141 through 34-1146	Retain; minor editing to improve clarity
§34-1147. Expansion of nonconforming uses or structures	EDIT to improve clarity. This section is often difficult to apply to specific situations.
§34-1148. Nonconforming signs	Retain
§34-1149. Nonconforming uses and structures, floodplain districts	Retain, but SUBSTITUTE “SFHA” (special flood hazard areas) for the word “floodplain”
§34-1150. Verification of nonconforming uses	DELETE from “Generally applicable Regulations”. Retain provisions and incorporate into Article II (Zoning Procedures and Permits) new division (Zoning Verifications)
§34-1151. Limited applicability [to manufactured homes]	Retain provisions allowing existing manufactured homes to be replaced. That’s required by state law. Va. Code 15.2-2307(G).
DIVISION 9. STANDARDS FOR PROVISIONAL USES	The procedures and regulations within this Division seem to be working reasonably well. No legal updates; edit, if staff has any implementation issues that need to be clarified
§§34-1170. General standards	Retain
§34-1171. Standards-accessory apts.	Retain
§34-1172. Home occupations	Retain. Recently updated (2015) to incorporate Homestays.
§34-1173. Outdoor storage	Retain
§34-1174. Music halls and all-night restaurants	Retain
§34-1175. Mobile food unit	Retain
DIVISION 10. TEMPORARY USE PERMITS	
§34-1190	EDIT. Re-work par. (a) to state that Temporary Uses will be administered as a category of “Accessory” and/or “Ancillary Uses”. In other words: instead of trying to create an exhaustive list of temporary uses within the Use Matrix, state in this Section that Temporary Uses accessory to, ancillary to, and compatible with the established Uses at a particular location can be authorized by the ZA. Cross reference Article II (Zoning Procedures and Permits) new Division (Temporary Use Permits).
§§34-1190(b) through 34-1194	Retain standards for specified temporary uses
ARTICLE X. DEFINITIONS	
<i>Boarding</i>	Need updated definition that is general enough to be inclusive of fraternity/sorority houses; convents/ monasteries; and other room/board arrangements
<i>Building height</i>	DELETE reference to averaging of the height of each building wall. Edit, to provide clarity as to what is meant by the reference to “grade” and whether the grade will be a plane and at what point the measurement will be taken (or from multiple points around a building). Avoid conflicts with §34-1100(a).
<i>Building, principal</i>	This term is used throughout the ZO; a definition would be helpful
<i>Building, institutional</i>	A definition would be helpful, to allow distinctions between residential facilities that can be operated (mandated by state

	law) within a SFD, versus larger facilities that would occupy space within a building type other than a SFD
<i>Building site</i>	Move definition of “building site” out of the text of §34-1120(b)(3) and (4) and into this location
<i>Construction</i>	Definition of construction would be useful; the term is not necessarily synonymous with “improvement” or “development”, as used throughout the zoning ordinance
<i>Critical slope</i>	Move definition of “critical slope” out of the text of §34-1120(b)(2) and into this location
<i>Development site</i>	A definition would be helpful, particularly to assist in determining when, and under what circumstances an assemblage of lots comprise a unified development
<i>Driveway</i>	Review definition; clarify. The ZO prohibits private streets, but to avoid spending \$\$ to build a new public streets, developers argue that the vehicular access to a multifamily or mixed use development should be regarded as a driveway [May need to establish design stds/ specifications for driveways that serve more than one or two SFDs].
<i>Dwelling unit</i>	Recommend simplifying definition; current definition has too many “moving parts”
Change “SRO” to “ <i>Dwelling unit, SRO</i> ”	This will assure that the definition of SRO, which is a type of multifamily dwelling, can be found grouped with the other definitions of the types of residential buildings
<i>Land coverage</i>	<i>EDIT, as follows: Land coverage</i> refers to the area of a lot or development site that is occupied or to be occupied by the following: buildable lots , buildings, structures, improved parking, driveways, alleys, sidewalks and streets, and other improvements. [If all of the area of each “buildable lot” is included, there wouldn’t be room for any buildings]
<i>Micro-unit</i>	Need to develop a definition
<i>Mixed use</i> —this has been VERY problematic. RE-DEFINE OR DELETE	<i>Mixed use development</i> means a building or project containing residential uses in combination with commercial and/or institutional uses. No use that is or will be merely accessory to, or ancillary to, a residential use shall qualify as a commercial or industrial use, for purposes of this definition.
<i>Occupancy, residential</i>	Edit for clarity and to remove wording that’s repetitive of state law requirements (substitute the statutory reference)
<i>Residential treatment facility</i>	Edit to remove wording, and to substitute reference to Va. Code 15.2-2291
<i>Street, public</i>	Need a definition suitable for the ZO (currently, the only definition is in the subdivision ordinance). The two definitions should be consistent