

**Note: City Attorney's Office proposes to separate the Existing Article I (Administration) into two separate articles: Article I (Administration) and Article II (Permits and Procedures)**

## **ARTICLE I. – ADMINISTRATION**

### **DIVISION 1. - GENERAL PROVISIONS**

#### **Sec. 34-1. - Enabling legislation; state law references.**

(a) This chapter establishes the City's zoning ordinance, as authorized by the various provisions of the Virginia Code, Title 15.2, Chapter 22. The zoning ordinance consists of (i) a map or maps, referred to within **Sec. X**, showing the division of the city into areas or districts, and (ii) text setting forth regulations applying within each district.

(b) Where specific procedures or requirements are prescribed by state law, reference is given within the zoning ordinance to the governing statutory provision(s). All references within this chapter to specific titles, chapters, articles and sections of the Virginia Code shall refer to those in effect on the effective date of this chapter, and shall also be construed as references to successor titles, chapters, articles and sections.

#### **Sec. 34-X. Title; effective date**

(a) This chapter shall be known and may be officially cited as "The Zoning Ordinance of the City of Charlottesville, Virginia."

(b) This chapter, including the zoning district map of the city, shall become effective on X, 20X.

#### **Sec. 34-2. – General applicability.**

(a) This chapter applies to the use and development of all land within the corporate limits of the City of Charlottesville, including any new territory which comes within the City limits by annexation, boundary adjustment or otherwise.

(b) Any new territory that comes within the territorial jurisdiction of the city by annexation or otherwise shall be temporarily assigned a zoning district classification most like its previous zoning in terms of permitted uses, as determined by the NDS Director, pending the orderly amendment of the comprehensive plan and Zoning Map by City Council.

#### **Sec. 34-3. – General purpose and intent.**

City Council has adopted this chapter to promote the health, safety, convenience and general welfare of the community and to plan for the future development of the community, to the end that transportation systems will be carefully planned; that new community centers be developed with adequate streets, utilities, health, educational and recreational facilities; that the needs of industry and business be recognized in future growth; that residential areas be provided with healthy surroundings for family life; that open spaces be provided; and that the growth of the community be consonant with the efficient and economical use of public funds. To these ends,

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<sup>1</sup> Va. Code 15.2-2200; -2283, and -2284

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the provisions set forth within this chapter have been designed to give reasonable consideration to the following purposes:

- (1) To provide for adequate light, air, and convenience of access, and to protect against obstruction of light and air;
- (2) To regulate and restrict the location of trades, industries and residences;
- (3) To reduce or prevent congestion in the public streets, to facilitate transportation and to provide for safe and convenient vehicular and pedestrian travel;
- (4) To facilitate the creation of a convenient, attractive and harmonious community, to protect against overcrowding of land and undue density of population in relation to the community facilities existing or available, and to protect the natural beauty and special features of the city;
- (5) To provide for safety from fire, flood, crime and other dangers, and to facilitate the provision of adequate public safety services, disaster evacuation, civil defense, and flood protection;
- (6) To facilitate the provision of water, sewerage, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements;
- (7) To protect and enhance the character and stability of neighborhoods;
- (8) To protect against destruction of or encroachment upon historic areas;
- (9) To encourage economic development activities that provide desirable employment and enlarge the tax base;
- (10) To provide a balance of housing opportunities suitable for meeting the current and future needs of residents of the city;
- (11) To protect and maintain the environmental quality in the city; and
- (12) To assure the orderly subdivision of land and its development.

(b) The zoning regulations and zoning districts established within this chapter have been established with reasonable consideration given to the matters set forth in Virginia Code §15.2-2284.

**Sec. 34-4. - Severability**

(a) Except where otherwise expressly provided, should any section or provision of this chapter be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect the validity of the remainder of this chapter and such remainder shall continue in full force and effect.

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(b) Should the application of any section or provision of this chapter to any particular land, building, structure or use be adjudged invalid by a court of competent jurisdiction such judgment shall not affect the application of said section or provision to any other land, building, structure or use.

**Sec. 34-5. - Effect of prior ordinance.**

The provisions of this chapter, insofar as they are the same as those in effect immediately preceding this chapter shall be considered as continuations thereof and not as new enactments.

## **DIVISION 2. ZONING AMENDMENTS**

**Sec. 34-X. – Amendments to the zoning ordinance**

<sup>2</sup> (a) Whenever the public necessity, convenience, general welfare or good zoning practice requires, the city council may, by ordinance, amend the zoning ordinance established by sec. 34-1. Zoning amendments may be initiated as follows:

- (1) Resolution of the city council;
- (2) Motion of the planning commission; or
- (3) Petition of the landowner (*e.g., the landowner, the landowner's agent, or a contract purchaser, with the landowner's written consent*), where such petition proposes a change of the zoning district classification of such land ("zoning map amendment").

(b) The procedures for zoning amendments and proffered development conditions are set forth in article II, division 1 of this chapter.

(c) As part of a zoning amendment initiated by petition of a landowner pursuant to sec. ~~34-X(a)(3)~~, the city council may, in addition to the regulations provided for in a zoning district, adopt reasonable development conditions proffered by the petitioner. The conditional zoning authority set forth within this section is enacted pursuant to Code of Virginia Sec. 15.2-2296 and 15.2-2303, and shall be applied and interpreted in accordance with those statutes.

(d) After a petition seeking a zoning amendment has been advertised for a public hearing, then city council will not consider another petition which is substantially the same as that advertised, for a period of one (1) year from the last date on which the advertisement was published.

## **DIVISION 3. - COMPREHENSIVE PLAN**

**Sec. 34-26. - Adoption**

In accordance with the requirements of Title 15.2, Chapter 22, Article 3 of the Code of Virginia, as amended, the planning commission shall prepare and recommend, and the city council shall adopt, a comprehensive plan for the physical development of the city. The comprehensive plan shall be general in nature, in that it shall designate the general or approximate location, character and extent of each feature referenced in Virginia Code §15.2-2232(A). The comprehensive plan shall comply with the requirements of Virginia Code §15.2-2223 et seq.

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<sup>2</sup> Va. Code 15.2-2286(7)

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**Sec. 34-27. – Periodic review; amendment**

The comprehensive plan may be amended, in accordance with Virginia Code § 15.2-2229. The planning commission shall review the comprehensive plan periodically, but no less frequently than once every five (5) years, in accordance with Virginia Code Sec. 15.2-2230, to determine whether amendment is advisable.

**Sec. 34-28. - Review of public facilities for consistency with plan**

Unless otherwise provided in Va. Code §15.2-2232, no street, connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the planning commission as being substantially in accord with the adopted comprehensive plan or part thereof. The commission's review of such facilities shall be conducted in accordance with the provisions of Virginia Code §15.2-2232.

**DIVISION 5--ADMINISTRATION**

**Sec. X. Zoning administrator**

(a) City council hereby designates the NDS Director as its zoning administrator. The NDS Director shall have all necessary authority on behalf of city council to administer and enforce this chapter, as zoning administrator for the City.

(b) The terms "NDS Director" and "zoning administrator" are used interchangeably throughout this chapter. The NDS Director may exercise the authority and perform the duties of zoning administrator himself or herself, or may delegate authority or duties for administration and enforcement of this chapter to one or more employees under his or her supervision or control. Upon such delegation each such employee shall be deemed the agent of the zoning administrator and an "administrative officer". Wherever this chapter makes reference to the "NDS Director" the reference shall include the NDS Director as well as any city employee performing delegated duties. Whenever this chapter authorizes or requires any action by the "zoning administrator" such action may be performed by the NDS Director or any employee(s) to whom authority or duties have been delegated by the NDS Director.

- (1) The scope of authority of each administrative officer shall be limited to the specific duties delegated by the NDS Director. Any such officer, in performing such duties, may use the title "zoning administrator" or may execute such duties "on behalf of the zoning administrator"; in either case, the actions taken and duties performed by such officer shall be deemed the actions and duties of the zoning administrator.
- (2) The NDS Director may adopt policies and procedures to provide for uniformity of administration and enforcement of the city's zoning regulations by the

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employee(s) to whom any aspect(s) of the zoning administrator's authority has/ have been delegated.

(c) No provision of this section shall be construed as granting the NDS Director or any other administrative officer the power to rezone land, or to base his or her orders, requirements, decisions or determinations on (i) the purpose and intent of any provisions of this chapter, (ii) the purpose and intent of the provisions of any other ordinances adopted by city council, or (iii) on his or her judgment as to the merits of any such provisions.

**Sec. X. Board of zoning appeals**

(a) The board of zoning appeals ("BZA") shall consist of five (5) residents of the city, appointed by the circuit court of the city. Their appointments and terms of office shall be as set forth within Va. Code §15.2-2308.

(b) The BZA shall have the powers and duties set forth within Virginia Code § 15.2-2309. The BZA's powers and duties shall include the authority to decide, after notice and hearing, such special exceptions as are authorized within **sec. X (Flood Protection Districts)**, with such conditions and safeguards as it may deem necessary in the public interest, and with the authority to require a guarantee or bond to ensure that any conditions imposed are being and will continue to be complied with.

(c) No provision of this section shall be construed as granting the BZA the power to rezone land, or to base its decisions on (i) the purpose and intent of any provisions of this chapter, (ii) the purpose and intent of the provisions of any other ordinances adopted by city council, or (iii) on its judgment as to the merits of any such provisions.

(d) Transaction of BZA business:

- (1) The BZA may adopt such rules and forms as it may deem necessary to carry out its powers and duties, and to implement the various processes and procedures set forth within Virginia Code Sec. 15.2-2308 through 15.2-2312.
- (2) Each application or appeal to the BZA shall be accompanied by a fee to defray the expense of processing such application or appeal, as set forth within the most recent fee schedule adopted by city council. In the event the final decision in the appeal is favorable to the applicant, the city shall refund this fee.
- (3) The BZA shall fix a reasonable time for the hearing of an application or appeal, and shall give public notice in accordance with applicable provisions of Virginia Code Sec. 15.2-2309 through 15.2-2312. In addition to the notice required by state law: within three (3) working days of the filing of an application for a variance or special exception, the landowner or the zoning administrator shall post a sign on each lot that is the subject of the application. The sign shall state that an application has been filed with the BZA seeking a variance or special

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exception. Such signs shall be furnished by the zoning administrator and shall be placed on the subject lot so as to be visible from adjacent streets or other public places.

- (4) A majority of the members of the BZA shall constitute a quorum for the transaction of business.
- (5) The BZA shall keep minutes of its proceedings.
- (6) The BZA shall submit a report of its activities to the city council at least once each year.

(e) Any person(s) aggrieved by any decision of the BZA, any taxpayer, or any officer, department, board or bureau of the city, may file with the Charlottesville Circuit Court a petition specifying the grounds on which the petitioner is aggrieved. The petition shall be filed and considered by the court in accordance with the requirements of Virginia Code Sec. 15.2-2314.

## **DIVISION 6. - COMPLIANCE AND ENFORCEMENT**

### **Sec. 34-81. - Compliance with chapter required**

(a) Except as otherwise expressly provided within this chapter, or as modified through an authorized approval process, all land, buildings, structures and premises shall be used, and all buildings and structures shall be erected, constructed, altered, removed or demolished, only in conformity with the regulations of this chapter.

(b) Nothing set forth within this ordinance shall preclude the construction of a building containing a single dwelling unit on a lot of record existing before January 21, 1958.

### **Sec. 34-82. – Administrative Inspections**

As authorized within Va. Code §15.2-2286(A)(16), the zoning administrator may present sworn testimony to a magistrate or court of competent jurisdiction, and if such sworn testimony establishes probable cause that a zoning ordinance violation has occurred, may request that the magistrate or court grant an inspection warrant to authorize the zoning administrator or agent to enter onto land, or into a building or structure, for the purpose of determining whether violations of the requirements of this chapter exist.

### **Sec. 34-84. – Violations as criminal offenses**

With the exception of violations which may be subject to civil penalties as set forth within **Sec. X**, violations of this chapter shall be criminal misdemeanor offenses, punishable as set forth within City Code Sec. 1-11.

### **Sec. 34-X. – Enforcement authority**

The zoning administrator's enforcement authority shall include, without limitation:

- (1) ordering in writing the remedying of any condition found in violation of this chapter;

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- (2) giving written notice of a violation of this chapter;
- (3) the imposition of civil penalties;
- (4) bringing legal action, including injunction, abatement, criminal prosecution or any other appropriate action.

**Sec. 34-85. - Violations—Civil summons or ticket**

- (a) For the zoning violations referenced in section 34-86(a), the zoning administrator may issue a civil summons or ticket imposing civil penalties.
- (b) The issuance of a violation notice and correction order shall not be deemed a precondition to the issuance of a civil summons or ticket.
- (c) The civil summons or ticket shall be in a form approved by the clerk of the city's general district court.
- (d) Any person summoned for a scheduled violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the city treasurer prior to the date fixed for trial in court. A person so appearing may enter a waiver of trial, admit liability and pay the civil penalty established for the offense charged. A signature to an admission of liability shall have the same force and effect as a judgment of court. However, such an admission shall not be deemed a criminal conviction for any purpose.
- (e) If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the Charlottesville General District Court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.
- (f) The designation of a particular violation in the schedule of civil penalties under section 34-86 shall be in lieu of any criminal penalty under section 34-84 and, except for any violation resulting in injury to persons, such a designation shall preclude the prosecution of the particular violation as a criminal misdemeanor, but shall not preclude any other remedy available under this chapter. The existence of a civil penalty shall not preclude action by the zoning administrator under subdivision A 4 of Virginia Code § 15.2-2286, any action under Virginia Code § 15.2-2208, or any other action authorized within Title 15.2, Chapter 22 of the Virginia Code.
- (g) Each day during which a violation is found to exist shall be a separate offense. However, the same scheduled violation arising from the same operative set of facts may be charged not more than once in a ten (10) day period, and the total civil penalties from a series of such violations arising from the same set of operative facts shall not exceed five thousand dollars (\$5,000.00).

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**Sec. 34-86. – Civil penalties**

(a) A person who violates any of the following provisions of the zoning ordinance shall be subject to a civil penalty of two hundred dollars (\$200.00) for the first violation, and a civil penalty of five hundred dollars (\$500.00) for each subsequent violation arising from the same set of operative facts:

<i>[insert list of scheduled violations and penalties—no changes to the existing list]</i>	No change is proposed to the current civil penalty provision	

**Comment [RL1]:** Reference current provisions of City Code sec. 34-86

(b) Any person who demolishes, razes or moves any building or structure in violation of sections 34-277 or section 34-340 shall be subject to a civil penalty not to exceed twice the fair market value of the building or structure, as determined by the city real estate tax assessment at the time of the demolition, razing or moving.

- (1) An action seeking the imposition of the penalty shall be instituted by petition filed by the zoning administrator in the Circuit Court of the City of Charlottesville. The action shall be tried in the same manner as any action at law. It shall be the burden of the city to show the liability of the violator by a preponderance of the evidence. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.
- (2) The defendant may, within twenty-one (21) days after the filing of the petition, file an answer and, without admitting liability, agree to restore the building or structure as it existed prior to demolition. If the restoration is completed within the time agreed upon by the parties or as established by the court, the petition shall be dismissed from the court's docket.
- (3) The filing of the action pursuant to this section shall preclude a criminal prosecution for the same offense, except where the demolition, razing or moving has resulted in personal injury.

**State Law reference—** Code of Virginia, § 15.2-2209; City Charter §50.6

**City Charter reference—**Sec. 50.6

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**Sec. 34-87. - Violations—Injunctive relief, court order to correct and other remedies**

(a) Upon finding a violation of this chapter, the zoning administrator may bring an action to restrain, enjoin, correct, or abate such violation or to obtain other appropriate relief (including, but not limited to, a court order directing a person determined to have engaged in conduct declared unlawful by this chapter to conform to the requirements of this chapter or any authorized regulations and to the provisions, requirements, conditions or standards contained in any required plan, permit, certificate, variance or approval issued thereunder).

(b) The issuance of a violation notice and correction order shall not be deemed a precondition to the initiation of legal action seeking an injunction, or to any other legal action seeking to restrain, correct or abate a violation of this chapter. Further, commencement of a civil or criminal action under this division shall not be deemed a precondition to, nor shall such actions be deemed to preclude the initiation of, an injunction or other appropriate action.

State Law reference—Code of Virginia §15.2-2208; 15.2-2286(4); 15.2-2299

**Sec. 34-89. - Remedies not exclusive**

The remedies provided for in this division are cumulative and not exclusive and shall be in addition to any other remedies provided by law.

## **DIVISION 7. INTERPRETATIONS**

**Sec. 34-6. - Interpretation of district boundaries**

When uncertainty exists as to the boundaries of any zoning district(s), a request for interpretation of the boundaries shall be made by application to the BZA. The provisions of Va. Code Sec. 15.2-2309(4) shall govern such applications, and the BZA shall apply the following rules of construction:

- (1) Boundaries indicated as approximately following the centerlines of streets, rights-of way, or alleys shall be construed to follow such centerlines;
- (2) Boundaries indicated as approximately following platted lot lines shall be construed to follow such platted lot lines;
- (3) Boundaries indicated as approximately following the centerlines of bodies of water shall be construed to follow such centerlines. In the event such centerlines move as the result of natural forces, the boundaries shall also move; and
- (4) Whenever any dedicated street, alley or other public right of way is vacated by the city council, the zoning district boundaries adjoining each side of such street,

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alley or public right of way shall automatically be extended to the centerline of the vacated premises.

**Sec. 34-X. – Interpretation of zoning ordinance**

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

(b) The following rules shall apply in the interpretation of the city's zoning ordinance:

- (1) If any regulation or standard specified in this chapter is in conflict with the requirements of any other lawfully adopted rules, regulations or laws, then the more restrictive regulation or standard shall govern.
- (2) If any regulation or standard specified in this chapter conflicts with any other regulation or standard set forth within this chapter, then the more restrictive regulation or standard shall govern. When two regulations or standards apply to the same subject matter, the more specific shall prevail over the more general. When multiple sections within this chapter apply to the same subject matter, all of the provisions within such sections shall be read and construed together and effect given to all of their provisions. Every part of this zoning ordinance shall be presumed to have some effect; no provision shall be treated as meaningless unless such provision appears to have been inserted through inadvertence or mistake, and is incapable of any sensible meaning..
- (3) This chapter is intended to be inclusive, permitting only such uses, buildings, structures and activities as are specifically named herein. Unless otherwise specifically indicated, any uses, buildings, structures and activities not expressly provided for within the provisions of this chapter shall be deemed prohibited.
- (4) The headlines of the several articles, divisions, and sections of this chapter are intended as mere catchwords to indicate the contents thereof and shall not be deemed or taken to be titles of such sections, nor any part thereof.
- (5) The word "shall" is mandatory. The word "may" is permissive.
- (6) A word importing the masculine gender shall extend and be applied to females as well as to males.
- (7) A word importing the singular number may extend and be applied to several persons or things as well as to one (1) person or thing. A word importing the plural number may extend and be applied to one (1) person or thing as well as to several persons or things.

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- (8) In the absence of a definition, words within this chapter shall be presumed to have their usual and ordinary meaning, within the context of this zoning ordinance.
- (9) The regulations and standards set forth within this chapter shall be held to be the minimum requirements for the promotion of the public safety, necessity, convenience, general welfare, and good zoning practice.
- (10) Where a time limitation or requirement is expressed in a number of days, it shall be interpreted as referring to the number of calendar days, unless otherwise specifically stated.
- (11) Any parcel of land unclassified by the official Zoning Map, and to which none of the rules of interpretation in this chapter apply, shall be deemed to be within the "R-1" zoning district classification, until otherwise designated by the city council.
- (12) Height—
  - (i) In any zoning district where minimum or maximum permitted height is expressed in building stories rather than feet, the maximum permitted height of a building with the specified number of stories shall not exceed the following:
    - Two (2) stories: Thirty-five (35) feet.
    - Three (3) stories: Forty-five (45) feet.
    - Four (4) stories: Fifty (50) feet.
    - Five (5) stories: Sixty (60) feet.
    - Six (6) stories: Seventy (70) feet.
    - Seven (7) stories: Eighty (80) feet.
    - Eight (8) stories: Ninety (90) feet.
    - Nine (9) stories: One hundred one (101) feet
  - (ii) The height of a building or structure is the distance measured from "grade", as defined in §34-1200, to the highest point on such building or structure. The highest point on a building is the level of a flat roof, the deck line of a mansard roof, or, for gable hip or gambrel roofs, the average height level between the eaves and ridge.
  - (iii) For the purposes of measuring the height of a telecommunications facility, all antennas or other equipment or attachments mounted on an attachment structure or support structure shall be included in measurements to determine overall (i.e., combined) height.
- (13) Wherever this chapter refers to the "zoning administrator" the term shall refer to the Director of NDS, and shall include any city employee(s) authorized to act on the Director's behalf in accordance with sec. 34-XXX of this chapter. Any employee performing delegated

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duties of the zoning administrator shall be deemed to be acting as the agent of the zoning administrator.

- (c) <sup>3</sup>Nothing in this zoning ordinance shall be construed to authorize the impairment of any vested right.

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<sup>3</sup> Va. Code 15.2-2307

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**Sec. 34-1122. - Interpretation of lot and yard designations.**

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