

# **A G E N D A**

## **JAMES CITY COUNTY BOARD OF SUPERVISORS**

**County Government Center Board Room**

**August 9, 2011**

**7:00 P.M.**

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	<u>Page</u>
<b>A. CALL TO ORDER</b>	
<b>B. ROLL CALL</b>	
<b>C. MOMENT OF SILENCE</b>	
<b>D. PLEDGE OF ALLEGIANCE</b> – Blake Ozmer, a rising third-grade student at Rawls Byrd Elementary School	
<b>E. PUBLIC COMMENT</b>	
<b>F. BOARD REQUESTS AND DIRECTIVES</b>	
<b>G. CONSENT CALENDAR</b>	
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<b>J. PUBLIC COMMENT</b>	
<b>K. REPORTS OF THE COUNTY ADMINISTRATOR</b>	

**-CONTINUED-**

**L. BOARD REQUESTS AND DIRECTIVES**

**M. CLOSED SESSION**

1. Consideration of a personnel matter, the appointment of individuals to County boards and/or commissions, pursuant to Section 2.2-3711(A)(1) of the Code of Virginia.

**N. ADJOURNMENT to 7 p.m. on September 13, 2011**

080911bos\_age

**AT A WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 26TH DAY OF JULY 2011, AT 4:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. CALL TO ORDER**

**B. ROLL CALL**

Mary K. Jones, Chairman, Berkeley District  
Bruce C. Goodson, Vice Chair, Roberts District  
James G. Kennedy, Stonehouse District  
James O. Icenhour, Jr., Powhatan District  
John J. McGlennon, Jamestown District

Robert C. Middaugh, County Administrator  
Leo P. Rogers, County Attorney

**C. BOARD DISCUSSIONS**

Chairman Jones recognized Mr. Jack Fraley, Chairman of the Planning Commission.

**1. Stage II Zoning Ordinance Update for Development Standards and Cumulative Impacts**

**a. Sound Walls**

Mr. Middaugh discussed that eight out of the nine draft ordinances are representative of the County having a special character, which is an outcome of the County's new vision.

Ms. Tammy Rosario, Principal Planner, commented that the collection of items to be discussed is development standards. She discussed the first item, sound walls, which is a set of guidelines created to assist staff in working with the Virginia Department of Transportation (VDOT) on sound wall design and construction. The purpose of the policy is to communicate the County's expectations for aesthetically pleasing and cost effective walls before any design work is done and it also outlines how staff will communicate with VDOT.

Mr. Middaugh asked staff to explain why this is being done as opposed to doing an ordinance.

Ms. Rosario explained that sound walls are located on VDOT right-of-way which does not fall under the zoning ordinance.

Mr. Goodson asked staff about the cost of upgrading a sound wall. Previously, the County had to pay the extra cost of upgrading a sound wall. Mr. Goodson asked if this policy would require VDOT to pay for the upgrade.

Mr. Scott Whyte, Senior Planner I, commented that it would not. The County would attempt to be within budget and the budget is determined to be \$30,000 per effected household. The Federal government provides 80 percent, VDOT provides 20 percent, and if the County had gone over the projected budget, the County would have had to pick up the cost.

Mr. Goodson asked staff about having different styles of sound walls and why other localities have different architecture styles for sound walls.

Mr. Rogers responded that VDOT cannot be forced to build to County standards.

Mr. McGlennon commented that sound walls are a reflection of failure in planning and further commented that sound walls are used to address situations when noise intrudes into residential areas. He stated it would be his preference to include a statement that the County avoids sound walls if at all possible.

Mr. Whyte commented that VDOT determines when a sound wall is needed and conducts public meetings for citizens in reference to sound walls.

Mr. Icenhour asked staff if VDOT is bound by a policy or ordinance.

Mr. Rogers commented that the County does not have the authority under zoning provisions to regulate VDOT.

Mr. Middaugh stated that the policy helps with negotiations with VDOT.

Mr. Icenhour asked staff that if the standards exceeded the Federal budget, would the County have to fund the balance.

Mr. Allen Murphy, Jr., Director of Planning, commented that it would be a Board decision.

Ms. Jones asked staff if there was enough guidance from the Board for the planning staff.

Mr. Middaugh summarized that the consensus of the Board was to avoid sound walls if at all possible, but to make them look aesthetically pleasing if they are necessary.

b. Outdoor Lighting

Ms. Rosario stated that the draft ordinance for outdoor lighting is intended to apply dark sky principles to areas of development other than the existing parking lot lighting regulations, to promote energy efficient designs, and to protect citizens against the adverse effects of light pollution. The new ordinance consolidates all outdoor lighting requirements into one section of the zoning ordinance.

Mr. McGlennon asked about the issue of illuminated signs.

Ms. Rosario commented that it is cross-referenced in the policy.

Mr. Goodson asked if there is a maximum height for lighting in recreational areas.

Mr. Whyte responded there would need to be a height waiver.

Ms. Rosario replied that it would be determined on a district by district basis.

Mr. Goodson expressed support for allowing these waivers to be approved administratively.

Ms. Jones agreed.

Mr. McGlennon stated that it would be helpful if staff explained how changes make sense based on the experience the County has had under the existing ordinance.

Mr. Kennedy asked staff about secondary lighting.

Mr. Whyte commented that the Policy Committee recommended changing the policy from limiting light at the parcel line to limiting it to the right-of-way.

Ms. Rosario commented on ensuring that visitors coming to businesses are safe.

Ms. Jones asked the Board about administrative approval.

Mr. Icenhour stated that he was not comfortable with administrative approval as there had been some negative feedback about the lighting at the Warhill Sports Complex. He said that citizens should be able to comment on lighting in certain areas.

Mr. Icenhour stated concern about allowing trees to serve as a buffer to lighting.

Mr. Middaugh mentioned the language of the draft ordinance specifically prohibits using trees as a buffer.

Ms. Rosario asked the Board for direction about administrative approvals. The consensus was that height waivers for lighting should come to the Board for review.

c. Tree Preservation and Landscaping

Ms. Rosario provided a summary of the new proposed ordinance.

Mr. Goodson asked staff about phased clearing and how the exceptions work (such as removing all the soil off the site and then bringing it all back onto the site).

Ms. Rosario commented that all tree removal shall be limited to the area required for the practical development of the site. No clear cutting shall be permitted except when it can be shown that the removal of vegetation is necessary for the development of the site and she also explained that further definition is in the cut and fill section of the policy.

Mr. McGlennon asked staff if consideration was given to sustainability in restoring the tree population and not just minimizing the loss of trees.

Mr. Murphy replied that the focus is on tree preservation and landscaping.

Mr. McGlennon asked staff if restoring the trees and revising the stormwater criteria would be helpful.

Mr. Murphy replied that stormwater criteria and Chesapeake Bay Ordinance provisions are optional and are not mandated. He further commented that there are opportunities to build incentives to compensate.

Mr. McGlennon commented on the rate of tree loss and tree preservation in relation to the Comprehensive Plan and how to create the opportunity for preserving trees. Mr. McGlennon discussed that there are ways to address the issue and that tree preservation could be achieved.

Mr. Goodson stated that if it is incentive-based, he would support it.

Ms. Rosario commented on better incentives to promote better linkage to stormwater goals and landscaping.

Mr. Goodson asked staff about the importance of native trees.

Mr. Whyte stated that native trees are better equipped for this type of environment, but the ordinance only recommends and does not require their use.

Mr. Goodson asked how staff would interpret the language “strongly encourage” being used in the policy.

Mr. Murphy commented that there is not a plant requirement.

Mr. Goodson asked if the language could be added about drought tolerate plants.

Mr. Murphy replied that there is some language that addresses this issue.

Ms. Rosario commented that the language opens a dialog between the County and the designer.

The Board further discussed tree preservation and why it would not apply to a single-family residential community.

Mr. Icenhour asked if tree preservation could be encouraged for single-family residential areas.

Mr. Murphy commented that a policy could be proposed. New residential development would require a legislative decision, and significant tree preservation could also be offered as a proffer.

Mr. Icenhour noted that phased clearing only applies to areas over 25 acres.

Mr. Kennedy asked staff about the landscaping policy and the inspection process.

Mr. Whyte replied that landscaping is inspected for the Certificate of Occupancy (CO). Plants are usually under warranty for a year. He further commented that it is a problem to keep the plants alive and keeping everything in place as they should be and noted that the County holds a bond.

Mr. Kennedy asked staff if something should be written in the ordinance about planting seasons and overplanting and asked staff how the County can keep this from happening.

Mr. Whyte and Mr. Kennedy stated that a policy is needed.

Mr. Murphy commented that there is flexibility in the policy.

Ms. Rosario asked the Board about an incentives approach to linking the landscaping ordinance to stormwater goals and about adjustments to native species language and tree policy.

The Board supported linking the landscaping ordinance to stormwater goals and further

discussed tree preservation.

Mr. Icenhour asked if the Board would support language encouraging residents to preserve specimen trees.

Mr. Goodson commented on the difficulty of enforcement, but that he could support a policy of encouragement.

Mr. Murphy asked if the Board would prefer to have a separate policy on residential rezoning and the preservation of large trees on-site.

d. Community Character Corridor (CCC) Buffer Treatments and Parking Lot Landscaping

Ms. Rosario gave a summary to the Board on the Community Character Corridors (CCC) type designation.

Mr. Middaugh asked staff if they received feedback about the specimen tree preservation policy.

Ms. Rosario commented that was an option in the ordinance and wanted to make sure the Board supported it.

Mr. Icenhour asked staff if this would give the homeowner/landowner the ability to initiate the process.

Mr. Murphy commented that staff would have the opportunity to review the site plan and make an attempt to preserve the specimen tree. The applicant would receive credit for preserving the tree. The policy is incentive based.

Mr. Icenhour asked staff about streetscape guidelines and about the practical effect of the change from 20 percent coverage of the road being replaced with language that states that the tree canopy is established after 20 years.

Mr. McGlennon commented that whatever the tree canopy is, it will be the standard and not the minimum in 20 years.

Mr. Icenhour requested more clarity, realizing that it is only a goal.

Mr. McGlennon suggested a canopy that shades the roadway.

Ms. Jones suggested that the maintenance issue be considered as well.

Mr. Fraley commented that there were issues with the 20 percent.

The Board further discussed that the language is a little misleading and the ordinance needs to be very clear.

Ms. Rosario asked the Board for feedback on CCC buffer treatments and commented that there have been some provisions based on meeting with the Policy Committee.

Ms. Jones discussed how not every community corridor will be the same and having a variety of corridors based on different settings. She further gave examples of various areas that have different corridors.

Mr. Kennedy commented about having citizens' feedback about timbering and corridor buffering.

Ms. Whyte commented that it is not being changed and the requirements would still be the same.

Ms. Rosario asked the Board if it is in agreement on the policies submitted and being applied for the County based on the map.

The consensus of the Board was support of the proposed map.

e. Parking Standards

Ms. Rosario gave a summary to the Board and commented that the updated language gives the Planning Director discretion to allow a minimum parking standards waiver if the applicant demonstrates the minimum standards are too high. She commented that a parking capacity of 120 percent of the minimum requirement has been drafted, with waiver requests going to the Planning Director and appeals going to the Development Review Committee (DRC). Certain uses currently rated as high-demand parking have been redesigned as moderate-demand parking. The draft ordinance incentivizes side and rear parking for Urban/Suburban CCC.

Mr. McGlennon asked staff if the parking lanes have gotten narrower.

Mr. Luke Vinciguerra, Planner, responded that the minimum standards have not changed.

There was further discussion about parking structures and if it is parking garages for clarification.

f. Private Streets

Ms. Rosario gave a summary of the pavement of private roadways which shall meet the design and construction requirements of VDOT.

Mr. Icenhour asked staff about prohibiting multi-family in R-2 general, but allowing with Board approval in the R-2 cluster overlay.

Mr. Murphy commented about attached housing in clusters in areas of low-density residential. Outside of clusters, multi-family such as townhomes are prohibited.

Mr. Icenhour asked staff about qualifying industrial parks adjustments and would like clarification on other permitted development.

Mr. Murphy commented that staff would review this further.

Mr. Icenhour asked staff about Item No. 4, which states that the applicant shall also submit assurances satisfactory to the County Attorney that a property owner's community association or similar organization has been legally established under which the lots within the area of the final plan be assessed the cost of maintaining private streets. He further stressed his concern when the citizens do not have the funds to support the maintenance of private streets and the streets do not meet VDOT standards.

Mr. Murphy commented that this concern can be addressed through proffers. Establishing the criteria for critical mass for private streets is an important issue.

Mr. Rogers commented it is based on units and values.

Mr. Goodson asked staff if the cost of maintenance can be established.

Mr. Rogers stated that this would be difficult. Mr. Rogers discussed that the Declaration of Covenants must have a line item for street maintenance and further discussion on private streets and VDOT will encourage more private streets.

g. Pedestrian Accommodations (sidewalks)

Ms. Leanne Reidenbach, Senior Planner, gave a summary about pedestrian accommodations and further discussed the pedestrian map with the Board.

Mr. Icenhour asked staff how the ordinance would affect private streets and would it be required to put sidewalks on one side of the street in every subdivision.

Ms. Reidenbach responded that it would.

Mr. Icenhour asked staff about a developer requesting a waiver.

Ms. Reidenbach responded that the Planning Director could approve a waiver if an equivalent alternative pedestrian accommodation is provided.

Mr. McGlennon commented about Lake Powell Road and how a sidewalk could be accommodated, noting that it was mostly developed and residents have typically not wanted a sidewalk.

Ms. Jones asked about sidewalks on Jamestown Road and where the sidewalk would be placed.

Ms. Reidenbach commented that this is a long-term plan and placement in areas with existing development would be dependent on the availability of funding.

Mr. McGlennon asked about sidewalks on Brick Bat Road.

Ms. Reidenbach commented that they are recommended in the plan because it is adjacent to Greensprings West and within a half mile of Matoaka Elementary School.

Mr. Kennedy commented on his concern about sidewalk maintenance. The public does utilize the sidewalks, and the responsibilities for maintenance need to be clear.

Ms. Reidenbach noted that multi-use paths are cheaper to construct than sidewalks. She commented on maintenance of sidewalks and noted that sidewalks would be placed in VDOT right-of-way.

Ms. Jones asked Mr. Fraley if the Policy Committee reviewed the multi-use path versus sidewalks.

Mr. Fraley replied that the Policy Committee preferred the multi-use path on Brick Bat Road and also questioned the sidewalks on Lake Powell Road.

The Board expressed its support for a multi-use path along the entire length of Brick Bat Road.

Mr. McGlennon stated that exploring other alternative alignments for Lake Powell Road seems more appropriate than a sidewalk.

The Board endorsed removing the sidewalk requirement along Lake Powell Road.

Ms. Reidenbach noted that alternative alignments that did not follow rights-of-way would not show up on the pedestrian map, but may be included in a plan like the Greenways Master Plan.

Mr. McGlennon asked about improving pedestrian access at intersections.

Ms. Reidenbach replied that nothing was included in the ordinance and that it is looked at on a case-by-case basis primarily by VDOT.

Mr. Goodson asked how the County would assign the cost for pedestrian accommodations at intersections to development.

Mr. McGlennon stated that it was done for vehicular traffic.

The Board further discussed other areas for crosswalks and access for pedestrians.

h. Timbering

Ms. Reidenbach gave a summary in reference to the three options for timbering. Option One is based on staff's initial recommendation to the Policy Committee and includes verbal notification of timbering activity and is consistent with the Virginia Department of Forestry recommendations. Option Two includes a requirement that landowners submit a pre-harvest plan to the County at least 10 days prior to commencing timbering activities; Option Three includes requirements for submission of a pre-harvest plan and for setbacks for timbering on A-1 properties outside the Primary Service Area (PSA) and along CCCs. The Planning Commission recommended Option Three at its meeting in July. Ms. Reidenbach noted that the pre-harvest plan requirement would be to provide staff with advance notice of timbering activities and allow a chance to potentially acquire important buffer areas.

Mr. Goodson asked staff about Option Three pre-harvest plans.

Ms. Reidenbach commented that it is legally permissible.

Mr. Rogers further explained that the property owner can harvest the timber out of the setback area and receive revenue for the timber so it would not be considered a taking.

Mr. Icenhour asked Mr. Fraley, Chair of the Policy Committee, about the options in reference to timbering.

Mr. Fraley replied that they initially had concerns about the safety and crops lost to the property owners, but the provisions of Option Three ameliorated these concerns.

Mr. Icenhour asked staff about the CCCs located outside the PSA that would be affected by this option.

Ms. Reidenbach listed several roads outside the PSA.

Ms. Jones asked staff if the property owners were contacted about the changes.

Ms. Reidenbach stated that they had not.

Ms. Jones stated that she would like to receive input from the property owners.

Mr. Icenhour commented that he would support Option Three; however, he wanted to protect landowners from economic loss.

Mr. Kennedy commented about farmers and that they may suffer a financial hardship. He is concerned about harvesting within the 50-foot buffer and questioned if it could be done. He supports notifying property owners about the proposed options to get feedback. He also noted that if the County chose to purchase timbering rights, maintenance is a concern as well and he further commented that he is not comfortable with Option Three.

Ms. Reidenbach responded that she had discussed this issue with Mr. Billy Apperson of the Virginia Department of Forestry, about the three available options and that Option Three is modeled after the Department's practices inside streamside management zones and allows people to recoup the value of the timber. It is possible to remove timber in narrow areas and provisions are included in the draft ordinance to waive buffer requirements where impracticable or where a buffer would be a safety hazard.

The Board requested more information and notifying property owners about these options. It further discussed the notification to property owners with five acres or more, along the CCCs and outside the PSA.

Ms. Jones commented that the Board needs to know how many property owners would be impacted by this type of change.

Mr. Icenhour asked staff to explain the differences between Options One and Two.

Ms. Reidenbach responded a verbal notification in option one is by the Department of Forestry and a written notification in Option Two gives County staff something on file for notification. Either option provides 10 days of negotiating to acquire rights to the buffer area if desired.

Mr. Icenhour asked staff if they were comfortable with a verbal notification and if staff could track it versus a written notification.

Ms. Reidenbach responded that they could develop a system to handle either.

Mr. Icenhour expressed a preference for written notification.

Staff and the Board further discussed other easements the County has purchased for timbering buffers, which usually may last up to 20 to 25 years.

**D. RECESS**

At 6:24 p.m., the Board recessed until 7 p.m.

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Robert C. Middaugh  
Clerk to the Board

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**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 26TH DAY OF JULY 2011, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. CALL TO ORDER**

**B. ROLL CALL**

Mary K. Jones, Chairman, Berkeley District  
Bruce C. Goodson, Vice Chair, Roberts District  
James G. Kennedy, Stonehouse District  
James O. Icenhour, Jr., Powhatan District  
John J. McGlennon, Jamestown District

Robert C. Middaugh, County Administrator  
Leo P. Rogers, County Attorney

**C. MOMENT OF SILENCE**

**D. PLEDGE OF ALLEGIANCE** – Anthony Green, Jamestown High School Graduate, led the Board and citizens in the Pledge of Allegiance.

**E. PUBLIC COMMENT**

1. Ms. Linda Reese, 511 Spring Trace, stated that a site plan had recently been submitted for the Autumn West development and expressed her concern about it. She mentioned that the Army Corps of Engineers permit may have expired. She also commented on and showed photos of flooding in the area.

2. Mr. Ed Oyer, 139 Indian Circle, commented on public funding for economic development projects, the parking ordinance, and Virginia Power having excellent customer service. He mentioned the budget and commented on not being able to hear speakers at the Board meeting.

**F. BOARD REQUESTS AND DIRECTIVES**

Mr. Icenhour stated that he attended a meeting of the James City County Citizens Coalition (J4C) and received a case study on the Autumn West development. He suggested that staff and the Board read the document. He suggested that the County needs more effective tools in dealing with in fill development. He proposed a phased development plan that would expire in given time and that if the plan was not completed in that time, then the developer would have to come back to the Board for approval. In addition, he suggested that development comply with ordinances at the time of development.

Ms. Jones asked staff to look into improving the sound in the Board room and stated that she attended the opening ceremony of the Top Gun Football Camp which had 1,300 players in attendance.

**G. CONSENT CALENDAR**

Mr. McGlennon made a motion to adopt the Consent Calendar.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

1. Minutes – June 14, 2011, Regular Meeting
2. Grant Award – Chesapeake Bay Restoration Fund – \$3,600

**RESOLUTION**

**GRANT AWARD - CHESAPEAKE BAY RESTORATION FUND - \$3,600**

WHEREAS, the Chesapeake Bay Restoration Fund, which is funded through the sale of Chesapeake Bay license plates, has made funds available for the restoration and education of the Bay; and

WHEREAS, funds are needed to provide an enriching environmental component to the Parks and Recreation Division's REC Connect Camp Program.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby accepts the \$3,600 grant awarded by the Chesapeake Bay Restoration Fund to help with the additions to the summer camp program.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the Special Projects/Grants Fund:

**Revenue:**

From the Commonwealth	<u>\$3,600</u>
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**Expenditure:**

Chesapeake Bay Restoration Fund	<u>\$3,600</u>
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3. Grant Award – Criminal Justice Information Technology Improvement – \$18,950

**RESOLUTION**

**GRANT AWARD – CRIMINAL JUSTICE INFORMATION TECHNOLOGY**

**IMPROVEMENT – \$18,950**

WHEREAS, the James City County Police Department has been awarded a Criminal Justice Information Technology Improvement Grant through the Virginia Department of Criminal Justice Services (DCJS) for \$18,950 (\$14,212 DCJS; \$4,738, local match); and

WHEREAS, the funds will be used for the purchase of LiveScan and Forensic Recovery of Evidence Device (FRED); and

WHEREAS, the grant requires a match of \$4,738, which is available in the Special Projects/Grants fund.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following budget appropriation to the Special Projects/Grants fund:

**Revenues:**

DCJS – Technology Improvement	\$14,212
Grant Match Account	<u>4,738</u>
Total	<u>\$18,950</u>

**Expenditure:**

DCJS – Technology Improvement	<u>\$18,950</u>
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4. Modification and Reissuance of a Revenue Bond for Christopher Newport University (CNU) Education Foundation, Inc. – \$8,000,000

**RESOLUTION**

**MODIFICATION AND REISSUANCE OF A REVENUE BOND FOR CHRISTOPHER NEWPORT**

**UNIVERSITY (CNU) EDUCATION FOUNDATION, INC. - \$8,000,000**

WHEREAS, on May 18, 2001, the Economic Development Authority (EDA) of James City County, Virginia (the "Authority"), issued, for the benefit of the Christopher Newport University (CNU) Education Foundation, Inc. (the "Foundation"), formerly known as The Christopher Newport University Educational Foundation, Inc., the Authority's \$8,000,000 Revenue Bond (CNU Project) Series 2001 (the "Bond"), and pursuant to a Bond Purchase and Financing Agreement dated as of May 1, 2001, among the Authority, the Foundation and Bank of America, N.A. (the "Lender"), the Authority sold the Bond to the Lender and applied the proceeds of the Bond to assist the Foundation in: a) the acquisition of properties for student housing, parking, and other facilities associated with CNU (the "Project") (the current addresses of such properties are 12304

Warwick Boulevard, 12368 Warwick Boulevard (formerly known as 12346, 12352, 12366, and 12372 Warwick Boulevard), 12386 Warwick Boulevard, 39 Sweetbriar Drive, 411 University Place, and 414 University Place); b) financing the cost of issuing the Bond; and c) financing the costs of furnishings and other costs associated with the development of the properties; and

WHEREAS, the Board of Supervisors of James City County, Virginia (the "Board"), has been advised that the Authority has approved the modification of the Bond to extend its final maturity (currently September 1, 2011) for an additional period of up to ten years at a principal amount not to exceed \$3,000,000; and

WHEREAS, the Board has been advised that the Foundation, in its appearance before the Authority: a) described the continued educational and other benefits to the County of James City, Virginia (the "County") and the City of Newport News, Virginia (the "City"), derived from the Project and from the modification of the Bond; b) requested that the Authority designate the Bond, as modified, as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), for calendar year 2011; and c) requested that the Authority recommend to the Board that it approve the issuance of the Amended and Restated Bond, a form of which has been presented to this meeting (the "Amended Bond"), as required by the Code; and

WHEREAS, the Board has been advised that a public hearing was held by the Authority with respect to the modification of the Bond, as required by the Section 15.2-4906 of the Virginia Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the "Act"), and by Section 147(f) of the Code, and that after its hearing the Authority: a) found and determined that the modification of the Bond will benefit the inhabitants of the City and the Commonwealth of Virginia and promote their education, welfare, convenience, and prosperity; b) designated the Amended Bond as a "qualified tax-exempt obligation" for calendar year 2011; and c) recommended that the Board approve the issuance of the Amended Bond as required by the Code; and

WHEREAS, a copy of the Authority's resolution, a reasonably detailed summary of the comments expressed at the public hearing held by the Authority with respect to the modification of the Bond, a statement in the form prescribed by Section 15.2-4907 of the Act, and a concurring resolution of the City Council of the City of Newport News, Virginia, as required by Section 15.2-4905 of the Act, have been filed with the Board.

NOW THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia:

1. That the Board approves the modification of the Bond, the designation of the Amended Bond as a "qualified tax-exempt obligation" for calendar year 2011, and the issuance of the Amended Bond by the Authority to the extent required by the Code and the Act.
2. That the approvals herein do not constitute an endorsement to any owner of the Amended Bond of the creditworthiness of the Foundation or any other person, and the Amended Bond shall provide that neither the Commonwealth of Virginia, the County, nor the Authority shall be obligated to pay the Amended Bond or the interest thereon or other costs incident thereto except from the revenues and moneys pledged therefore and neither the faith or credit nor the taxing power of the Commonwealth of Virginia, the County nor the Authority shall be pledged thereto.
3. That this resolution shall take effect immediately upon its adoption.

The undersigned hereby certifies that the above resolution was duly adopted by the Board of Supervisors of James City County, Virginia, at a meeting duly called and held on July 26, 2011, and that such resolution is in full force and effect on the date hereof.

## **H. PUBLIC HEARINGS**

### **1. Ordinance to Amend Chapter 20, Taxation, Section 20-7.5, Fee for Passing a Bad Check to the County**

Mr. Max Hlavin, a William and Mary student and an Intern with the County Attorney's office, gave a presentation to the Board. The 2011 General Assembly amended and reenacted Section 15.2-106 of the Code of Virginia, which gives localities the authority to charge a fee for the passing of a bad check to the locality. The amendment raised the amount that the locality may charge for receiving a bad check from \$35 to \$50. The Treasurer asked that the County update the corresponding section of the County Code to reflect that change and give the County access to the full penalty provided to it by the State Legislature.

Mr. Goodson asked if the fee would apply to all County checks received.

Mr. Hlavin replied that it would.

Mr. Goodson asked why a \$50 fee.

Mr. Hlavin commented that it is based on the Code of Virginia.

Mr. Kennedy asked about the actual cost to the County to process a bad check.

Mr. Middaugh replied that the cost is more than \$50.

Mr. Rogers commented that the Treasurer's office requested this ordinance in order to recover cost.

Mr. Kennedy commented on the fees and that some customers may make honest mistakes.

Mr. Goodson asked if the County has the ability to waive the fee.

Mr. Rogers commented that the Treasurer does have that ability if it is determined that it is not the fault of the taxpayer.

Mr. McGlennon commented that a fee is already in place and the State is giving localities the option to raise it.

Mr. Kennedy asked about the Freedom of Information Act (FOIA) rate.

Mr. Rogers commented that the fee is approximately \$20 to \$21.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. McGlennon made a motion to adopt the ordinance.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

2. Ordinance Amendments to Reflect Name Changes for Two Divisions

Ms. Erin Waugh, an Appalachian State University student and an Intern with the County Attorney's office, gave a presentation about various ordinance chapter amendments needed to reflect name changes for two County divisions. The Environmental Division has been renamed the Engineering and Resource Protection Division. The Code Compliance Division is now the Building Safety and Permits Division. The functions of each division will remain unchanged. The name changes are intended to clarify the purpose of these divisions for citizens. The new names are currently in use, and by adopting the attached ordinances, the Board of Supervisors will formally add the changes to the James City County Code.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. McGlennon made a motion to adopt the ordinance.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

3. Ordinance to Amend Chapter 10, Garbage and Refuse, Section 10-4, Maintenance of Premises-Duty of Owners, Occupants, and Persons in Charge

Mr. Hlavin presented the proposed changes to Sections 10-4 and 10-5 of the County Code, which are amendments that will align the County's ability to control and penalize property mismanagement with the powers enumerated in the Code of Virginia. The County is not currently taking advantage of the ability to prescribe for the cutting of grass and weeds on occupied properties, a power granted specifically to James City County by the State legislature. These amendments allow the County to exercise its full power as defined by the State.

In summary, these amendments will 1) give the County the ability to prescribe the maintenance of occupied properties within certain zones, as well as all vacant properties; 2) ensure that the disposal of trash and waste is done properly; 3) eliminate potential Dillon Rule issues; and 4) allow for the Board to more easily prescribe varying levels of maintenance for different property types if the need should arise.

Mr. Goodson commented that he does not want the County to charge a high price.

Mr. Middaugh commented that staff is looking into an option where County staff would cut grass on weekends. This would result in a reduction in cost. Mr. Middaugh stressed that the cost would need to be reasonable, but not so low as to create the perception of an inexpensive grass cutting service.

Ms. Jones opened the Public Hearing.

Mr. Ed Oyer asked if the ordinance would also apply to the maintenance of buildings.

Mr. Middaugh replied that it would not.

As no one else wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Goodson made a motion to adopt the ordinance.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

4. Ordinance to amend Chapter 2, Section 2-16.3, Disposition of Unclaimed Bicycles and Mopeds

Mr. Hlavin stated that the James City County Police Department (JCCPD) has difficulty managing and storing unclaimed bicycles for the amount of time required by the current County Code. The JCCPD has requested that the County Code be updated to allow it the full range of options provided by Section 15.2-1720 of the Code of Virginia for dealing with unclaimed bicycles. These amendments to Section 2-16.3 of the County Code make the process of dealing with unclaimed bicycles quicker and easier for the JCCPD.

The first amendment allows for the JCCPD to sell unclaimed bicycles at public auction, as they are able to do with other unclaimed personal property, in addition to their ability to donate them to government agencies and charitable organizations. The proceeds of such sales will be handled in the same manner as the proceeds from the sales of other unclaimed property.

The second amendment allows the JCCPD to sell or donate bicycles and other mopeds after possessing them, unclaimed, for more than 30 days as opposed to 60 days. This will allow for the JCCPD to maintain a cleaner, less cluttered storage facility.

Mr. Middaugh commented that the Police Department can register individual serial numbers that would give it the capability to match the bikes with the owner(s).

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Icenhour made a motion to adopt the ordinance.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

Mr. McGlennon stated that the College of William and Mary has an auction that includes bicycles and mentioned that staff may want to look into partnering with the College on the auction.

5. Olde Towne Medical Center Lease Renewal

Mr. Hlavin stated that the County has been leasing a portion of the Human Services Building to the Williamsburg Area Medical Assistance Corporation (WAMAC) for the operation of the Olde Towne Medical Center. Under the terms of the Lease, the County will provide space in the Human Services Building to WAMAC for the Olde Towne Medical Center. The lease term is five years. WAMAC will occupy approximately 10,000 square feet. The annual rent is \$80,052 for the first year and increases at the rate of four percent each year of the lease term.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. McGlennon made a motion to adopt the ordinance.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

## **I. BOARD CONSIDERATIONS**

### **1. Resolution Requesting that Cox Communications Hampton Roads, LLC Carry a Richmond Area Television Station in James City County**

Mr. Leo Rogers, County Attorney, gave a presentation to the Board. On July 23, 2011, James City County was notified by Cox Communications Hampton Roads, LLC (Cox) that due to contractual obligations, Cox will no longer carry WWBT Channel 12 Richmond, effective August 1, 2011.

In an effort to find a solution, staff had several conference calls with Cox and further communications with the Federal Communications Commission (FCC). After hearing from County citizens and staff, Cox advised that it will seek another Richmond station to add to the Cox lineup which can be viewed by its James City County customers. The resolution below supports and encourages that effort.

Under FCC regulations, any locality can negotiate cable franchises for its communities but programming and rates are not part of those agreements. Although the County has no legal authority with regard to programming, Cox has been receptive to previous requests from the Board of Supervisors to better serve Cox customers in the County.

Mr. Goodson commented that many County citizens travel to Richmond and having Richmond information is important.

Mr. Goodson made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

## **RESOLUTION**

### **RESOLUTION REQUESTING THAT COX COMMUNICATIONS HAMPTON ROADS, LLC**

#### **CARRY A RICHMOND AREA TELEVISION STATION IN JAMES CITY COUNTY**

WHEREAS, Cox Communications Hampton Roads, LLC has notified James City County that it is no longer able to carry Channel 12, WWBT/NBC Richmond, on its Norfolk/Hampton Roads cable television system; and

WHEREAS, each commercial television station in the United States is assigned a local television market according to Nielsen Media Research, and James City County is located in the Norfolk/Hampton Roads media market; and

WHEREAS, it is unusual to have two local broadcasters from the same network affiliate but located in different markets; and

WHEREAS, a large percentage of James City County residents associate themselves more with the Richmond media market than Norfolk/Hampton Roads and desire a Richmond source of news, weather, and traffic; and

WHEREAS, County staff has contacted Cox Communications Hampton Road, LLC and the Federal Communications Commission to gather information on the issue and express the deep concern of residents about the loss of a Richmond area media source.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests that Cox Communications Hampton Roads, LLC explore all opportunities to bring a Richmond broadcaster to the James City County cable television system as soon as possible.

#### **J. PUBLIC COMMENT**

1. Ms. Dorothy Piper, Spring Trace, commented on setbacks on the road that connects to Autumn West Village and the fill that has been removed for this project.

2. Ms. Linda Reese, 511 Spring Trace, commented on the preservation of trees based on the Autumn West plan and also mentioned the traffic congestion along Longhill Road.

#### **K. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Middaugh discussed the Regional Surry Drill and the County's good report from the Virginia Department of Emergency Management and Federal Emergency Management Agency. He reminded the Board and citizens of the New Police Building Ribbon Cutting Ceremony to be held July 28, 2011, 5:30 p.m., at 4600 Opportunity Way.

Mr. Middaugh commented on the Closed Session pursuant for consideration of a personnel matter, involving the annual performance of County Administrator and County Attorney pursuant to Section 2.2-3711(A)(1) of the Code of Virginia and that then the Board will adjourn to 4 p.m. on Tuesday, August 9, 2011 for a work session.

#### **L. BOARD REQUESTS AND DIRECTIVES**

Mr. McGlennon mentioned his appreciation of the interns working with the County and recognized the pledge leader, Mr. Anthony Green, for his skills as an orator.

Mr. Icenhour commented on the pictures from Autumn West and discussed the delineation of the flood plain. He asked staff to contact the Corps of Engineers to verify the accuracy.

Mr. Middaugh commented that a Corps of Engineers permit was not required at the time of Autumn West's approval.

Ms. Jones commented on attending a Regional Issues Committee meeting where Williamsburg Area Transit Authority made a presentation about its plan for expanding services to other areas in the County. She mentioned the corridor enhancement for Route 60 along the entrance to Busch Gardens.

Mr. Goodson made a motion to amend the Board of Supervisors calendar to reflect that the Board will have a work session on August 9, 2011, beginning at 4 p.m.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

At 7:47 p.m., Ms. Jones recessed the Board into Closed Session.

At 7:52 p.m., Ms. Jones reconvened the Board.

#### **M. CLOSED SESSION**

Mr. Goodson made a motion to go into Closed Session pursuant to Consideration of a personnel matter, involving the annual performance of the County Administrator and the County Attorney pursuant to Section 2.2-3711(A)(1) of the Code of Virginia.

### **RESOLUTION**

#### **CERTIFICATION OF CLOSED MEETING**

WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(1) of the Code of Virginia, to consider personnel matters, the annual performance evaluation of the County Attorney and the annual performance evaluation of the County Administrator.

#### **N. ADJOURNMENT to 4 p.m. on August 9, 2011.**

Mr. Goodson made a motion to adjourn.

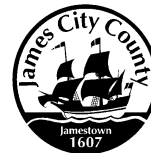
On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

At 8:44 p.m., Ms. Jones adjourned the Board until 4 p.m. on August 9, 2011.

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Robert C. Middaugh  
Clerk to the Board

072611bos\_min



## MEMORANDUM COVER

**Subject:** Local Aid to the State

**Action Requested:** Shall the Board adopt a resolution requesting the General Assembly eliminate the aid to localities reduction in the State budget submitted for FY13 and FY14?

**Summary:** Staff recommends adoption of a resolution requesting Governor Bob McDonnell and the General Assembly eliminate the aid to localities reduction in the State budget submitted for FY 13 and FY 14.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes ☒ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Resolution

**Agenda Item No.:** G-2

**Date:** August 9, 2011

**MEMORANDUM**

DATE: August 9, 2011  
TO: The Board of Supervisors  
FROM: Suzanne R. Mellen, Assistant Manager of Financial and Management Services  
SUBJECT: Local Aid to the State

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The Virginia Municipal League (VML) and the Virginia Association of Counties (VACO) have encouraged their membership to adopt the attached resolution to send a message to Governor Bob McDonnell and the General Assembly to eliminate the Local Aid to the State in the upcoming FY 13 and FY 14 budgets. The State allocated cost to James City County was \$313,331 in FY 11 and is \$329,339 for FY 12.

Staff recommends adoption of the attached resolution.

---

Suzanne R. Mellen

SRM/gb  
LocAid2St\_mem

Attachment

## **RESOLUTION**

### **LOCAL AID TO THE STATE**

- WHEREAS, State financial assistance for mandated and high priority programs, including public education, health and human services, public safety, and constitutional officers, is \$800 million less in FY 12 than in FY 09; and
- WHEREAS, cities and counties must balance their budgets during a time in which future State assistance is unreliable, Federal stimulus dollars are dwindling, and real estate assessments are declining; and
- WHEREAS, the Appropriation Act contains \$60 million in across-the-board cuts to cities and counties for both FY 11 and FY 12, under which localities are required to either elect to take reductions in particular State aid programs, or to send the State a check for the amounts determined by the Department of Planning and Budget (“Local Aid to the State”); and
- WHEREAS, the reductions are applied to essential services, including law enforcement, jail administration, foster care and child protection services, election administration, and social services; and
- WHEREAS, the County of James City does not have the authority to unilaterally decide to discontinue providing services such as election administration or to refuse to house and care for State prisoners in local and regional jails; and
- WHEREAS, the State budget cuts are not accompanied by any reductions in State-imposed mandates, standards, and service requirements, nor do they provide any administrative flexibility for local agencies; and
- WHEREAS, the County of James City remitted \$313,331 in FY 11 and will be required to remit another \$329,339 in FY 12; and
- WHEREAS, cities and counties will have provided the State with \$220 million by the close of FY 12 for this “Local Aid to the State” program; and
- WHEREAS, these reductions shift State costs to local taxpayers and artificially increase the amount of State surplus revenue; and
- WHEREAS, State revenues have begun to recover and the State is expecting to have a revenue surplus for the second year in a row; and
- WHEREAS, revenue collections for the County of James City continue to reflect the struggling housing market; and
- WHEREAS, the State should not shift its share of the costs for mandates and responsibilities to local governments.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, asks Governor Bob McDonnell to submit a budget amendment to the 2012 session of the General Assembly to reverse the \$60 million-a-year reduction for the current year, FY 12, and to eliminate the aid to localities reduction in the budget submitted for FY 13 and FY 14 without any other State funding reductions to State mandated, locality provided programs.

BE IT FURTHER RESOLVED that the members of the General Assembly support a budget amendment to the 2012 session of the General Assembly to reverse the \$60 million-a-year reduction for the current year, FY 12, and to eliminate the aid to localities reduction in the budget submitted for FY 13 and FY 14.

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Mary K. Jones  
Chairman, Board of Supervisors

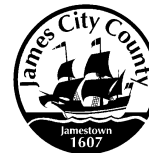
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of August, 2011.

LocAid2St\_res



## MEMORANDUM COVER

**Subject:** Changes to Chapter 3, Drug Free Workplace, of the Personnel Policies and Procedures Manual

**Action Requested:** Shall the Board approve the resolution that updates Chapter 3, Drug Free Workplace, of the Personnel Policies and Procedures Manual?

**Summary:** The policy was last updated in April 2009. A recent audit of Williamsburg Area Transit Authority (WATA), on behalf of the Federal Transit Administration (FTA), noted that a change was needed in order to keep the policy in full compliance. Since WATA follows the County's policy, the County needs to make the change. The change is to either list all instances of refusals to test and all substances tested or to refer to USDOT 49 CFR Part 40 and indicate that a copy is available. Staff recommends referencing USDOT 49 CFR Part 40 so that if other instances are added in the future, the policy will remain in compliance.

Staff also proposes a few additional changes that are largely housekeeping in nature and do not represent any substantive policy changes including:

**Section 3.2**

Removes reference to previous County's values

**Section 3.16**

Clarifies the language for testing employees in safety sensitive positions in the random testing pool who are removed from the random testing pool for more than 90 days for reasons such as a leave of absence or assigned alternative non-safety sensitive duty

**Various Sections**

Updates references from "James City County" to "James City County or James City Service Authority"

The 101 page USDOT 49 CFR Part 40 is available online at:  
[www.dot.gov/ost/dapc/NEW\\_DOCS/part40.html](http://www.dot.gov/ost/dapc/NEW_DOCS/part40.html).

Staff recommends adoption of the attached resolution.

**Fiscal Impact:** None

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Resolution

**Agenda Item No.:** G-3

**Date:** August 9, 2011

**MEMORANDUM**

DATE: August 9, 2011

TO: The Board of Supervisors

FROM: Carol M. Luckam, Human Resource Manager

SUBJECT: Changes to Chapter 3, Drug Free Workplace, of the Personnel Policies and Procedures Manual

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The attached resolution adopts the attached changes to Chapter 3 of the County's Personnel Policies and Procedures Manual to update the policy in accordance with 49 CFR Part 40. The policy was last updated in April 2009.

The primary revision relates to Section 3.4.N – Definition of Refusals to Test. The Federal Transit Administration (FTA) provides the option to list all instances of refusals to test and all substances tested for or to refer to 49 CFR Part 40 and indicate that a copy is available. Currently, the policy lists most, but not all, of the examples that constitute refusals to test. Staff recommends referencing 49 CFR Part 40 so that if other instances are added in the future, the policy will remain in compliance.

In addition to the revision above, staff is proposing a few additional changes that are largely housekeeping in nature and do not represent any substantive policy changes including:

- Section 3.2:  
Removes reference to previous County's values.
- Section 3.16:  
Clarifies the language for testing employees in safety sensitive positions in the random testing pool who are removed from the random testing pool for more than 90 days for reasons such a leave of absence or assigned alternative non-safety sensitive duty.
- Various Sections:  
Updating references from "James City County" to "James City County or James City Service Authority."

Staff recommends adoption of the attached resolution.

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Carol M. Luckam

CML/nb  
Chp3Update\_mem

Attachment

## **RESOLUTION**

### **CHANGES TO CHAPTER 3, DRUG FREE WORKPLACE,**

### **OF THE PERSONNEL POLICIES AND PROCEDURES MANUAL**

WHEREAS, the County's Drug Free Workplace Policy was last updated in April 2009 and since then the Department of Transportation has updated 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs; and

WHEREAS, the County is committed to ensuring policies and procedures are up-to-date; and

WHEREAS, the FY11 Triennial Review of the Williamsburg Area Transit Authority, prepared on behalf of the Federal Transit Administration, recommended a revision to the wording in the policy to either list all refusals to test or state that refusals to test are listed in 49 CFR Part 40 as amended or 49 CFR 40.161 as amended for urine collections and 49 CFR 40.261 as amended for breath tests and should then state that a copy of 49 CFR Part 40 is available upon request; and

WHEREAS, this modification brings the policy into compliance.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the attached revision to Chapter 3, Drug Free Workplace, of the James City County Personnel Policy and Procedures Manual.

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of August, 2011.

Chp3update\_res

## CHAPTER 3

### DRUG FREE WORKPLACE

<u>Section 3.1</u>	<u>Policy Statement</u>
<u>Section 3.2</u>	<u>Guiding Principles</u>
<u>Section 3.3</u>	<u>Legal Basis</u>
<u>Section 3.4</u>	<u>Definitions</u>
<u>Section 3.5</u>	<u>Coverage</u>
<u>Section 3.6</u>	<u>Prohibited Substances</u>
<u>Section 3.7</u>	<u>Prohibited Conduct</u>
<u>Section 3.8</u>	<u>Exceptions</u>
<u>Section 3.9</u>	<u>Required Compliance</u>
<u>Section 3.10</u>	<u>Non-Compliance with Testing Requirements</u>
<u>Section 3.11</u>	<u>Treatment</u>
<u>Section 3.12</u>	<u>Required Notification of Criminal Drug Conviction</u>
<u>Section 3.13</u>	<u>Drug Testing Procedures</u>
<u>Section 3.14</u>	<u>Alcohol Testing Procedures</u>
<u>Section 3.15</u>	<u>Employee Requested Testing</u>
<u>Section 3.16</u>	<u>Post-Offer Testing</u>
<u>Section 3.17</u>	<u>Reasonable Suspicion Testing</u>
<u>Section 3.18</u>	<u>Post-Accident Testing</u>
<u>Section 3.19</u>	<u>Random Testing</u>
<u>Section 3.20</u>	<u>Return-To-Duty Testing</u>
<u>Section 3.21</u>	<u>Consequences</u>
<u>Section 3.22</u>	<u>Information Disclosure</u>
<u>Section 3.23</u>	<u>Records Retention and Disposition</u>
<u>Section 3.24</u>	<u>Employee and Supervisor Training</u>
<u>Section 3.25</u>	<u>Prior Substance Abuse Violations</u>
<u>Section 3.26</u>	<u>System Contacts</u>

## CHAPTER 3

### DRUG FREE WORKPLACE

#### Policy

##### Section 3.1 Policy Statement

James City County is committed to a work environment free from the use of alcohol and illegal drugs.

##### Section 3.2 Guiding Principles

- ~~A.~~ ~~Support the County's values of "Diversity, mutual respect, trust, honesty and personal responsibility" and "Demonstrating high standards of excellence, efficiency and commitment to service."~~
- ~~B~~ **A**. Assure that employees are not impaired in their ability to perform assigned duties in a safe and productive manner and to protect our employees and the public from the risks posed by the misuse of alcohol and the use of prohibited drugs.
- ~~C~~ **B**. Create a workplace free from the adverse effects of drug abuse and alcohol misuse.
- ~~D~~ **C**. Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances.
- ~~E~~ **D**. Encourage employees to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.
- ~~F~~ **E**. Use and apply all aspects of this policy in a fair and equitable manner. Disregarding the requirements or deliberate misuse of this policy is unacceptable.
- ~~G~~ **F**. Protect individual dignity, privacy, and confidentiality throughout the testing process.

### Section 3.3    Legal Basis

James City County is committed to ensuring that our Personnel Policies are in compliance with all applicable Federal regulations governing workplace anti-drug and alcohol programs, to include:

- A.     The Federal Transit Administration of the United States Department of Transportation 49 Code of Federal Regulations (*"USDOT 49 CFR"*) Part 655, as amended, which mandates urine drug testing and breath alcohol testing for safety-sensitive positions and prohibits performance of safety-sensitive functions when there is a positive test result.
- B.     ~~Department of Transportation 49 Code of Federal Regulations~~ *USDOT 49 CFR* Part 40, as amended, which sets standards for the collection and testing of urine and breath specimens.
- C.     ~~49 Code of Federal Regulations~~ *USDOT 49 CFR* Part 29, "The Drug-Free Workplace Act of 1988," which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the Federal Transit Administration.
- D.     Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812), as further defined by *USDOT 21 Code of Federal Regulations CFR* 1300.11 through 1300.15, which identifies illegal drugs or substances.

**~~Bolded text is James City County Policy and is not specifically required by Department of Transportation regulations.~~**

### Section 3.4    Definitions

- A.     Alcohol Screening Device – a device that measures the level of alcohol in either breath or other bodily fluids.
- B.     *Blood Alcohol Concentration (BAC) - measurement of the percentage of alcohol in the blood (gram/deciliter)*
- B C.   Breath Alcohol Technician – a person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.
- € D.   Commercial Driver's License – special certification to drive vehicles with a gross weight rating of 26,001 pounds or more; a combination of vehicles with gross combination weight rating of 26,001 pounds or

more if the vehicle(s) being towed has a gross weight rating of more than 10,000 pounds; vehicles that carry 16 or more passengers, including the driver; or, any size vehicle that transports hazardous materials and that requires federal placarding.

- Ⓓ E. County Safety Sensitive Position – positions identified by James City County as having significant safety responsibilities for James City County property, staff, and citizens. All County Safety Sensitive Positions are identified in the County Compensation Plan.
- Ⓔ F. Department of Health and Human Services - agency of the Federal government that advises the President on health, welfare, and income security plans, policies, and programs of the Federal government.
- Ⓕ G. Department of Transportation - agency of the Federal government that oversees the formulation of national transportation policy and promotes intermodal transportation. Other responsibilities range from negotiation and implementation of international transportation agreements, assuring the fitness of US airlines, enforcing airline consumer protection regulations, issuance of regulations to prevent alcohol and illegal drug misuse in transportation systems, and preparing transportation legislation.
- Ⓖ H. Evidential Breath Testing Device – device approved by the National Highway Traffic Safety Administration for the evidential testing of breath at the .02 and above alcohol concentrations. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an Evidential Breath Testing Device.
- Ⓗ I. Federal Safety Sensitive Position – position defined by the Federal government as having a level of safety importance requiring drug and alcohol testing. These positions perform any duty related to the safe operation of mass transit service including the operation of a revenue service vehicle, dispatch or maintenance of a revenue service vehicle or equipment used in revenue service, and any other position that requires a Commercial Driver’s License. Performance is any period of time in which a driver is actually performing, ready to perform, or immediately after performing safety sensitive duties. All Federal Safety Sensitive Positions are identified in the County Compensation Plan.
- Ⓘ J. Federal Transit Administration – an agency of the Department of Transportation that assists in developing an improved mass transportation system for cities and communities nationwide. The

Federal Transit Administration maintains the National Transit Images, a repository of reports, documents, and data generated by professionals and others from around the country.

J K. Legally Prescribed Drug – a drug for which an individual has a prescription or other written approval from a licensed physician for its use in the course of medical treatment. The prescription or written approval must include the patient's name, the name of the substance, the quantity/amount to be taken, and the period of authorization.

K L. Medical Review Officer - a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has detailed knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test results, together with his or her medical history and any other relevant biomedical information.

L M. National Highway Traffic Safety Administration – an agency of the Department Of Transportation responsible for reducing deaths, injuries and economic losses resulting from motor vehicle crashes. National Highway Traffic Safety Administration sets and enforces safety performance standards for motor vehicles and equipment and effective means of bringing about safety improvements.

M N. Reasonable Suspicion - specific contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor or other company official who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.

N O. Refusal to Test - ~~can include the following. This list is not all-inclusive and incorporates all circumstances of refusal listed in Department of Transportation 49 Code of Federal Regulations Part 40 by reference.~~ *Examples of refusals to test are listed in USDOT 49 CFR Part 40 as amended or USDOT 49 CFR 40.161 as amended for urine collections and USDOT 49 CFR 40.261 as amended for breath tests. A copy of USDOT 49 CFR Part 40 is available upon request.*

1. ~~Refusal to provide a specimen.~~
2. ~~An inability to provide a sufficient urine specimen or breath sample without a valid medical explanation.~~
3. ~~Tampering with the collection container~~

- ~~4. — Adulteration or substitution of the specimen~~
- ~~5. — Not reporting to the test site in the allotted time~~
- ~~6. — Refusal to sign Step 2 of the breath alcohol form~~
- ~~7. — Leaving the scene of an accident without a valid reason before testing is done.~~
- ~~8. — Failure to remain once testing has started.~~
- ~~9. — Failure to undergo a medical evaluation when required.~~
- ~~10. — Failure to cooperate with any part of the testing process.~~
- ~~11. — Failure/refusal to permit monitoring or observation where required.~~
- ~~12. — Refusal to take a second test.~~

Θ **P.** Reportable Accident - any accident:

1. With a fatality; or,
2. Where an individual suffers a bodily injury and immediately receives medical treatment away from the scene of an accident; or,
3. Where one or more vehicles involved incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle.

Ρ **Q.** Safety-sensitive function - any function related to the safe operation of mass transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), and the dispatch or maintenance of a revenue service vehicle or equipment used in revenue service. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment.

Θ **R.** Substance Abuse Professional - a licensed physician or certified psychologist, social worker, employee assistance professional, or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission, or by the International Certification Reciprocity Consortium/Alcohol

and Other Drug Abuse. The Substance Abuse Professional must also have clinical experience in the diagnosis and treatment of drug and alcohol related diseases.

- R.S. Screening Test Technician – An individual who meets the requirements to be a Breath Alcohol Technician, provided that the individual has demonstrated proficiency in the operation of the non-evidential screening device he or she is using, or an individual who has successfully completed a course concerning the procedures required for conducting alcohol screening tests.

### Section 3.5 Coverage

- A. This policy applies to:
1. All employees;
  2. Individuals offered employment in positions identified as Federal Safety Sensitive Positions and County Safety Sensitive Position;
  3. Off-site lunch periods or breaks when an employee is scheduled to return to work; and,
  4. ~~In addition, v~~ Visitors, vendors, and contract employees while on James City County or James City Service Authority premises. *These individuals* will not be permitted to conduct James City County or James City Service Authority business if found to be in violation of the terms and conditions of this policy.
- B. All contractors performing Federal safety-sensitive functions must have a drug and alcohol testing program that meets the same requirements as the County's.
- C. Employees are subject to different levels of drug and alcohol testing based on the level of safety required of their positions. The following is a listing of these groups and the testing levels required.

Reason for Test	Federal Safety Sensitive	County Safety Sensitive	All Positions
Post Offer	Drug	Drug	
Post Accident	Drug and Alcohol		
Random	Drug and/or Alcohol		
Transfer to Safety Sensitive	Drug	Drug	Drug
Reasonable Suspicion	Drug and/or Alcohol	Drug and/or Alcohol	Drug and/or Alcohol
Return to Work	Alcohol	Alcohol	Alcohol

- D. Participation in the drug and alcohol testing program is a requirement of each safety sensitive employee and, therefore, is a condition of employment.

### Section 3.6 Prohibited Substances

- A. Any illegal drug or any substance identified in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), as further defined by 21 Code of Federal Regulations 1300.11 through 1300.15 is prohibited at all times unless a legal prescription has been written for the substance. This includes, but is not limited to:

- Marijuana
- Cocaine
- Amphetamines
- Opiates,
- Phencyclidine (PCP)

- B. Any beverage, mixture, preparation, medication, or other substance containing alcohol.

### Section 3.7 Prohibited Conduct

- A. Employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of any substance identified in Section 3.6 while on James City County or James City Service Authority premises, in James City County or

James City Service Authority vehicles or uniform, or while on James City County or James City Service Authority business.

- B. Employees are prohibited from misusing any prescription or over-the-counter (OTC) medication in any manner including, but not limited to, the situations described below *while on James City County or James City Service Authority premises, in James City County or James City Service Authority vehicles or uniform, or while on James City County or James City Service Authority business*:
1. Use of any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration.
  2. Misuse of legally prescribed drugs.
  3. Use of illegally obtained prescription drugs.
  4. Use of any substance that carries a warning label that indicates that mental function, motor skills, or judgment may be adversely affected, without reporting it to an employee's supervisor.
  5. Use of any performance altering drug without written authorization from his/her attending physician releasing the employee to perform his/her job duties.
- C. Employees are prohibited from being intoxicated, impaired, or under the influence of any substance identified in Section 3.6 while on James City County or James City Service Authority premises, in James City County or James City Service Authority vehicles, or uniform, or while on James City County or James City Service Authority business.
- D. Employees are prohibited from reporting for duty or remaining on duty when their ability to perform assigned functions is adversely affected by alcohol or when their breath alcohol concentration is 0.02 or greater.
- E. Employees are prohibited from using alcohol when on duty, in uniform, while performing safety-sensitive functions, or just before or just after performing safety-sensitive functions.

- F. Employees in Federal Safety Sensitive Positions or County Safety Sensitive Positions are prohibited from using alcohol within four hours of reporting for duty.
- G. Employees in Federal Safety Sensitive positions are prohibited from using alcohol for eight (8) hours after an accident.
- H. All employees are prohibited from using alcohol during the hours that they are on-call or on standby status.

Section 3.8    Exceptions

The Police Chief may allow police officers assigned to undercover duty to consume alcoholic beverages while on duty when the integrity of the operation warrants. The officer must report consumption to his/her supervisor within 24 hours.

Section 3.9    Required Compliance

- A. All individuals offered employment in a Federal Safety Sensitive Position or a County Safety Sensitive Position will be subject to urine drug testing.
- B. Any employee promoted, demoted, or transferred to a Federal Safety Sensitive Position or County Safety Sensitive Position will be subject to urine drug testing.
- C. All employees in Federal Safety Sensitive Positions will be subject to random testing for drugs and alcohol.
  - 1. Drug tests can be performed any time an employee in a Federal Safety Sensitive Position is on duty.
  - 2. Alcohol tests can be performed when an employee in a Federal Safety Sensitive Position is actually performing a safety sensitive function, or just before or just after the performance of a safety sensitive function.
- D. All employees will be subject to drug and alcohol testing whenever there is reasonable suspicion that they are under the influence of drugs and/or alcohol.
- E. All employees in a Federal Safety Sensitive Position will be subject to post-accident testing for drugs and alcohol when involved in a reportable accident and it is determined that their performance could

have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

1. Drug tests must be performed as soon as possible but no more than 32 hours after the reportable accident. Exceptions must be documented.
  2. Alcohol tests shall be conducted within two hours but no later than eight hours after the reportable accident. Exceptions must be documented.
- F. All employees suspended for an alcohol test *registering results* between .02 and .039 *blood alcohol concentration (BAC)* will be subject to a retest before returning to duty. In order for such an employee to return to duty he/she must:
1. Meet with the Substance Abuse Professional to whom James City County refers him/her and comply with the treatment plan and education prescribed by the Substance Abuse Professional;
  2. Upon recommendation of the Substance Abuse Professional, during the first year after ~~testing~~ *registering results* between .02 and .039 *BAC* on an alcohol test, the employee will undergo a minimum of six non-Department of Transportation random tests. The Substance Abuse Professional will determine the frequency of the tests. Follow up testing may extend beyond a year but will not exceed 60 months; and,
  3. Have a *BAC* result of less than .02 on the retest.

#### Section 3.10 Non-Compliance with Testing Requirements

- A. Any individual offered employment with James City County who refuses to submit to a drug test will have the offer of employment withdrawn.
- B. Any employee who refuses to submit to a drug or alcohol test shall be suspended without pay pending termination.
- C. Any employee who is suspected of providing false information in connection with a test, or who is suspected of falsifying test results through tampering, contamination, adulteration, ~~or~~ substitution, *or any other means* will be required to undergo an observed collection before leaving the testing site.

- D. Verification of falsified test results will result in the employee's suspension without pay pending termination.

### Section 3.11 Treatment

- A. All employees are encouraged to voluntarily make use of the available resources for treatment of alcohol ~~misuse and illegal drug use problems~~ and/or substance abuse and under certain circumstance, may be required to undergo treatment. Under certain circumstances, employees may be required to undergo treatment for alcohol ~~misuse~~ and/or drug abuse.
- B. Any employee who refuses or fails to comply with James City County requirements for treatment, after care, or return to duty shall be suspended pending termination.
- C. Treatment may be covered under James City County's Employee Assistance Program or the employee's health insurance plan. The cost of any treatment or rehabilitation services not covered will be paid for by the employee.
- D. Employees will be allowed to use accumulated sick leave and vacation leave to participate in the prescribed treatment or rehabilitation program.

### Section 3.12 Required Notification of Criminal Drug Conviction

- A. All employees are required to notify their supervisor ~~and the HR Manager~~ of any criminal drug statute conviction within five days after such conviction.
- B. Failure to comply with this provision shall result in suspension without pay pending termination.

### Section 3.13 Drug Testing Procedures

- A. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities that have been approved by the Department of Health And Human Services.
- B. All testing will be conducted consistent with the procedures put forth in ~~USDOT 49 Code of Federal Regulations~~ CFR Part 40, as amended.

- C. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the testing procedure, and the validity of the test result.
- D. The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine and others that may be added under ~~49 Code of Federal Regulations~~ *USDOT 49 CFR Part 40*, as amended.
- E. Urine specimens will be collected using the split specimen collection method described in ~~49 Code of Federal Regulations~~ *USDOT 49 CFR Part 40*, as amended.
- F. Each specimen will be accompanied by a Department of Transportation or non-Department of Transportation Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual.
- G. An initial drug screen will be conducted on the primary urine specimen. For those specimens that ~~are not negative~~ *require additional testing*, a confirmatory Gas Chromatography/Mass Spectrometry test will be performed.
- H. The test will be considered positive if the amounts present are above the minimum thresholds established in ~~49 Code of Federal Regulations~~ *USDOT 49 CFR Part 40*, as amended. The minimum thresholds are listed in ~~Attachment B~~ *supplemental materials*.
- I. The test results from the laboratory will be reported to a Medical Review Officer. The Medical Review Officer will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive test result.
- J. In the event of a positive laboratory result, the Medical Review Officer will contact the employee or the individual offered employment and provide opportunity for the employee or individual offered employment to explain the confirmed *positive* test result. The Medical Review Officer will subsequently review the employee's medical history/medical records to determine whether there is a legitimate medical explanation for a positive laboratory *test* result.
- K. If no legitimate medical explanation is found, the test will be verified positive and reported to James City County's designated contact. If a

legitimate explanation is found, the Medical Review Officer will report the test result as negative.

- L. Test results reported by the laboratory to be “dilute” will be repeated as follows:
  - 1. Dilute-Positive - are considered positive results.
  - 2. Dilute-Negative - requires a second test at the County’s expense. If the second test is also reported as dilute, the second test becomes the test of record.
- M. The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed.
  - 1. If the primary specimen is negative, the split specimen will be discarded.
  - 2. If the primary specimen is positive, the split sample will be retained for testing if so requested of the Medical Review Officer by the employee or individual offered employment.
- N. In instances where there is reason to believe an employee or individual offered employment is abusing a substance other than the five drugs listed above, James City County *and James City Service Authority* reserves the right to test for additional drugs under James City County *or James City Service Authority*’s own authority using standard laboratory testing protocols.

#### Section 3.14 Alcohol Testing Procedures

- A. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities that have been approved by the Department of Health and Human Services.
- B. All testing will be conducted consistent with the procedures put forth in ~~49 Code of Federal Regulations~~ *USDOT 49 CFR* Part 40, as amended.
- C. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the testing procedure, and the validity of the test result.

- D. All initial and confirmatory tests for breath alcohol concentration will be conducted using a National Highway Traffic Safety Administration approved Evidential Breath Testing Device or Alcohol Screening Device operated by a trained Breath Alcohol Technician or Screening Test Technician.
- E. A drug or alcohol test is considered positive if the individual is found to have a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in ~~49 Code of Federal Regulations~~ **USDOT 49 CFR** Part 40, as amended.
- F. If the initial test indicates an alcohol concentration of 0.02 or greater, a second confirmation test will be performed to ensure that no residual mouth alcohol may have affected the test results.
- G. The Evidential Breath Testing Device will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each Evidential Breath Testing Device printout. If the screening test is performed with an alcohol screening device, a number assigned by the Screening Test Technician will be used and recorded on the form.
- H. The Evidential Breath Testing Device printout along with an approved alcohol testing form will be used to document the test, the subsequent results, and to attribute the test to the correct employee. If the screening test is performed with an alcohol screening device, the result along with the lot number and expiration date of the alcohol screening device will be recorded on the form.
- I. An employee in a Federal Safety Sensitive Position or County Safety Sensitive Position who has a confirmed alcohol concentration of greater than 0.02 but less than 0.04 will be removed from his/her position for eight hours unless a retest results in a concentration measure of less than 0.02.
- J. The inability to perform safety-sensitive duties due to an alcohol test result of greater than 0.02 but less than 0.04 will be considered an unexcused absence subject to James City County disciplinary procedures.
- K. An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy and a violation of the requirements set forth in 49 Code of Federal Regulations Part 655 for safety-sensitive employees.

- L. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be cancelled.

#### Section 3.15 Employee Requested Testing

- A. Any employee or individual offered employment in a Federal Safety Sensitive Position or County Safety Sensitive Position who questions the results of a required drug test under Section 3.13.A through Section 3.13.L of this policy may request that the split sample be tested.
- B. This test must be conducted at a different Department of Health and Human Services-certified laboratory.
- C. The test must be conducted on the split sample that was provided by the employee or individual offered employment at the same time as the original sample.
- D. The employee or individual offered employment will pay all costs for such testing unless the result of the split sample test invalidates the result of the original test.
- E. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in ~~49 Code of Federal Regulations~~ *USDOT 49 CFR* Part 40, as amended.
- F. The employee's or individual offered employment's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted if the delay was due to documentable facts that were beyond the control of the employee or individual offered employment.

#### Section 3.16 Post-Offer Testing

- A. All individuals offered employment in Federal Safety Sensitive Position or County Safety Sensitive Position covered by this Policy shall undergo urine drug testing prior to hire. This also includes employees transferring from a non-safety sensitive to a Federal Safety Sensitive Position or County Safety Sensitive Position or employees who have been removed from the random pool for a period of 90 days or more.
- B. Receipt by James City County *or James City Service Authority* of a negative drug test result is required prior to employment.

- C. A positive post-offer drug test will disqualify an individual offered employment from applying for a position with James City County or James City Service Authority for a period of 90 days.
  - 1. After the 90 day waiting period, evidence of the absence of drug dependency from a Substance Abuse Professional that meets with the approval of James City County *or James City Service Authority* and a negative drug test will be required prior to further consideration for employment.
  - 2. The cost for the assessment and any subsequent treatment will be the sole responsibility of the individual.
- D. Individuals offered employment who have a positive drug test will be provided the names of Substance Abuse Professionals.
- E. In instances where an individual is on temporary leave, (i.e. vacation, sick, jury duty,) no drug test is required before an individual can resume his/her safety-sensitive duties provided the individual has not been out of the random pool for more than 90 days. If selected for a random test while on temporary leave of 90 days or less, the individual will be tested if he/she returns to duty prior to the next random testing.
- F. ~~In instances where the individual's status within the organization changes or is reclassified for more than 90 days (i.e., seasonal layoff, leave of absence, out of work or reassigned for worker's compensation), a drug test is required prior to reassignment to a safety sensitive job function.~~ *In instances where an employee in a safety sensitive position in the random pool is on leave without pay or is temporarily assigned to a non safety sensitive position for more than 90 days (e.g. leave of absence or assigned alternate duty while on workers' compensation), and is taken out of the random pool, a drug test is required prior to reassignment to a safety-sensitive job function that is in the random pool.*

### Section 3.17 Reasonable Suspicion Testing

- A. All employees may be subject to urine and/or breath testing when there are specific contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee that may indicate drug use or alcohol abuse.

- B. A reasonable suspicion referral for testing will be made on the basis of documented objective facts and circumstances that are consistent with the short-term effects of substance abuse or alcohol misuse.
- C. Reasonable suspicion referrals must be made by a supervisor who is trained to detect the signs and symptoms of drug and alcohol use and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse.
- D. Employees referred for reasonable suspicion testing will immediately be removed from any safety sensitive job function.

Section 3.18 Post-Accident Testing

- A. All employees in Federal Safety Sensitive Positions are required to undergo urine and breath testing if they are involved in a reportable accident with a James City County or James City Service Authority vehicle regardless of whether or not the vehicle is in revenue service and whether or not their performance could have contributed to the accident.
- B. This includes all surviving safety-sensitive employees that are operating the vehicle and any other whose performance could have contributed to the accident.
- C. Employees involved in reportable accidents will immediately be removed from duty.
- D. Following an accident, employees in Federal Safety Sensitive Position shall be tested as soon as possible, but not to exceed eight hours for alcohol testing and 32 hours for drug testing.
- E. Any employee in a Federal Safety Sensitive Position involved in a reportable accident must refrain from alcohol use for eight hours following the accident.
- F. Any employee in a Federal Safety Sensitive Position who leaves the scene of the accident without justifiable explanation prior to submission to drug and alcohol testing will be considered to have refused the test and will be placed on suspension without pay pending termination.

- G. Employees tested under this provision will include not only the operations personnel, but also any other covered employee whose performance could have contributed to the accident.
- H. If James City County *or James City Service Authority* is unable to perform a Federal Transit Administration drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), James City County *or James City Service Authority* may use drug and alcohol post-accident test results administered by State and local law enforcement officials provided the tests are performed in accordance with Federal Transit Administration/ Department of Transportation requirements. The State and local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with State and local law.

#### Section 3.19 Random Testing

- A. Employees in Federal Safety Sensitive Position will be subjected to random, unannounced testing.
- B. The selection of safety-sensitive employees for random alcohol testing will be made using a scientifically valid method that ensures each covered employee that they will have an equal chance of being selected each time selections are made.
- C. The random tests will be unannounced and spread throughout the year. Tests can be conducted at any time during an employee's shift (i.e. beginning, middle, end).
- D. Employees are required to proceed immediately to the collection site upon notification of their random selection.

#### Section 3.20 Return-To-Duty Testing

- A. All employees who previously tested between .02 and .04 on an alcohol test must test below 0.02 on a return-to-duty test and be evaluated and released to duty by a Substance Abuse Professional before returning to work.
- B. Before scheduling the return to duty test, the Substance Abuse Professional must assess the employee and determine if the required treatment has been completed.

### Section 3.21 Consequences

- A. Any employee who has a confirmed positive drug test or ~~breath alcohol~~ **BAC** test greater than .04 will be:
  - 1. Immediately removed from safety sensitive or other job function;
  - 2. Suspended without pay pending termination;
  - 3. Informed of educational and rehabilitation programs available; and,
  - 4. Provided the names of Substance Abuse Professionals.
- B. Assessment by a Substance Abuse Professional or participation in James City County's Employee Assistance Program does not shield an employee from disciplinary action.

### Section 3.22 Information Disclosure

- A. All drug and alcohol testing records will be maintained in a secure manner so that disclosure of information to unauthorized persons does not occur. Information will only be released in the following circumstances:
  - 1. To a third party only as directed by specific, written instruction by the employee;
  - 2. To the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on the behalf of the employee tested;
  - 3. To a subsequent employer upon receipt of a written request from the employee;
  - 4. To the National Transportation Safety Board during an accident investigation;
  - 5. To the Department of Transportation or any Department of Transportation agency with regulatory authority over the employer or any of its employees, or to a State oversight agency authorized to oversee rail fixed-guideway systems; or
  - 6. To the employee, upon written request.

### Section 3.23 Records Retention and Disposition

Drug and alcohol screening or testing records that document the administration and results of screening or testing of job applicants or employees for illegal drug or alcohol use will be retained for five years after administration of tests and then destroyed.

### Section 3.24 Employee and Supervisor Training

- A. All employees in Federal Safety Sensitive Position will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training must also include manifestations and behavioral cues that may indicate prohibited drug use.
- B. Employees in supervisory positions will also receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.
- C. Information on the signs, symptoms, health effects and consequences of alcohol misuse is ~~presented in Attachment A of this policy~~ *included in supplemental materials*.

### Section 3.25 Prior Substance Abuse Violations

- A. Employees or individuals offered employment who have a prior record of substance abuse must furnish the following to be considered for employment.
  - 1. A release to work statement from a Substance Abuse Professional.
  - 2. A negative test for drugs and/or alcohol.
  - 3. An agreement to submit to random testing.
  - 4. An agreement to follow specified after care requirements with the understanding that violation of the agreement is grounds for termination.

Section 3.26   System Contacts

Any questions regarding this policy or any other aspect of the drug free workplace policy should be referred to the Drug and Alcohol Program Manager, Medical Review Officer or Substance Abuse Professional ~~listed in Attachment C of this policy.~~

## SUPPLEMENTAL MATERIALS

### Alcohol Fact Sheet

Alcohol is a socially acceptable drug that has been consumed throughout the world for centuries. It is considered a recreational beverage when consumed in moderation for enjoyment and relaxation during social gatherings. However, when consumed primarily for its physical and mood-altering effects, it is a substance of abuse. As a depressant, it slows down physical responses and progressively impairs mental functions.

#### Signs and Symptoms of Use

- Dulled mental process
- Lack of coordination
- Odor of alcohol on breath
- Possible constricted pupils
- Sleepy or stuporous condition
- Slowed reaction rate
- Slurred speech

(Note: Except for the odor, these are general signs and symptoms of any depressant substance.)

#### Health Effects

The chronic consumption of alcohol (average of three servings per day of beer [12 ounces], whiskey [1 ounce], or wine [6 ounce glass]) over time may result in the following health hazards:

- Decreased sexual functioning
- Dependency (up to 10 percent of all people who drink alcohol become physically and/or mentally dependent on alcohol and can be termed alcoholic)
- Fatal liver diseases
- Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
- Kidney disease
- Pancreatitis
- Spontaneous abortion and neonatal mortality
- Ulcers
- Birth defects (up to 54 percent of all birth defects are alcohol related).

## Social Issues

- Two-thirds of all homicides are committed by people who drink prior to the crime.
- Two to three percent of the driving population is legally drunk at any one time. This rate is doubled at night and on weekends.
- Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.
- The rate of separation and divorce in families with alcohol dependency problems is 7 times the average.
- Forty percent of family court cases are alcohol problem related.
- Alcoholics are 15 times more likely to commit suicide than are other segments of the population.
- More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.

## The Annual Toll

- 24,000 people will die on the highway due to the impaired driver.
- 12,000 more will die on the highway due to the alcohol-affected driver.
- 15,800 will die in non-highway accidents.
- 30,000 will die due to alcohol-caused liver disease.
- 10,000 will die due to alcohol-induced brain disease or suicide.
- Up to another 125,000 will die due to alcohol-related conditions or accidents.

## Workplace Issues

- It takes one hour for the average person (150 pounds) to eliminate one serving of an alcoholic beverage from the body.
- Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
- A person who is legally intoxicated is 6 times more likely to have an accident than a sober person is.

## Minimum Thresholds for Tested Drugs

Drug	Initial Levels ng/mL	Confirmation Levels ng/mL
Marijuana	50	15
Cocaine	<del>300</del> 150	<del>150</del> 100
Opiates	2,000	2,000
1. Codeine	2,000	2,000
2. Morphine	2,000	2,000
3. 6-AM (heroin)	10	10
Phencyclidine (PCP)	25	25
Amphetamines	<del>1,000</del> 500	<del>500</del> 250
1. Amphetamine	500	250
2. Methamphetamine		250
3. MDMA	500	250
4. MDA		250
5. MDEA		250

**System Contacts****Drug and Alcohol Program Manager:**

Name: Sandra P. Hale  
Title: Human Resource Specialist Senior  
Address: James City County  
P. O. Box 8784  
Williamsburg, VA 23187-8784  
Telephone Number: (757) 253-6681  
FAX Number: (757) 253-6878

**Medical Review Officer:**

Name: Dr. Michael Williams  
Address: Safety Management, Inc.  
5129 Stannart Street  
Norfolk, VA 23503  
Telephone Number: (757) 461-1430  
FAX Number: (757) 461-1352

**Substance Abuse Professional:**

Name: Optima Employee Assistance Program  
Address: Bayside Medical Plaza  
816 Independence Boulevard, Suite 1A  
Virginia Beach, VA 23455  
Telephone Number: (800) 899-8174  
FAX Number: (757) 363-6778



## MEMORANDUM COVER

**Subject:** Acceptance of Property for a Veterans Tribute Tower

**Action Requested:** Shall the Board approve a resolution authorizing the County Administrator to execute all documents necessary to accept the parcel for the Veterans Tribute Tower?

**Summary:** Last year, Mr. Harry Walters made a presentation to the Board of Supervisors and requested the County's support for the placement of a Veterans Tribute Tower in the County. The Board expressed its support and since that time, staff has been working with Mr. Walters to find an appropriate location.

The New Town area was identified as an ideal area, and New Town Associates, LLC has been helpful in finding a suitable parcel. After evaluation, a parcel at 5380 Discovery Park Boulevard was agreed upon by all parties as the best location. The parcel, located between two office buildings, is known as Patriots Park and it across the street from a green area.

New Town Associates, LLC has agreed to donate a 30 foot by 40 foot part of this parcel to the County for the Tower, as shown on the attached subdivision plat. This is sufficient space for the footprint of the Tower and surrounding landscaping. The County will assume responsibility for maintaining this 1,200-square-foot area and the Tower.

Staff recommends approval of the attached resolution.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Resolution
3. Subdivision Plat

**Agenda Item No.:** G-4

**Date:** August 9, 2011

## M E M O R A N D U M

DATE: August 9, 2011

TO: The Board of Supervisors

FROM: Doug Powell, Assistant County Administrator

SUBJECT: Acceptance of Property for a Veterans Tribute Tower

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Last year, Mr. Harry Walters made a presentation to the Board of Supervisors and requested the County's support for the placement of a Veterans Tribute Tower in the County. The Board expressed its support and since that time, staff has been working with Mr. Walters to find an appropriate location.

The New Town area was identified as an ideal area, and New Town Associates, LLC has been helpful in finding a suitable parcel. After evaluation, a parcel at 5380 Discovery Park Boulevard was agreed upon by all parties as the best location. The parcel, located between two office buildings, is known as Patriots Park and is across the street from a green area.

New Town Associates, LLC has agreed to donate a 30 foot by 40 foot part of this parcel to the County for the Tower, as shown on the attached subdivision plat. This is sufficient space for the footprint of the Tower and surrounding landscaping. The County will assume responsibility for maintaining this 1,200-square-foot area and the Tower.

It should be noted that Mr. Walters has begun a fund-raising campaign to pay for the Tower, which will be dedicated on November 11, 2011. In addition, a parade is planned for November 12 and a program will be established to assist the National Guard and Reserve service members who tolerate multiple combat tours with reintegration.

It should also be noted that AES Consulting Engineers has donated all of the engineering services for this project, and Busch Gardens has agreed to donate all of the landscaping.

Staff recommends approval of the resolution authorizing the County Administrator to execute all documents necessary to accept the parcel for the Veterans Tribute Tower.

  
Doug Powell

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DP/nb  
VetTower\_mem

Attachment

## **RESOLUTION**

### **ACCEPTANCE OF PROPERTY FOR A VETERANS TRIBUTE TOWER**

WHEREAS, the Board of Supervisors has expressed its support for locating a Veterans Tribute Tower in the County; and

WHEREAS, a suitable location has been identified in New Town.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute all documents necessary to accept a part of the parcel at 5380 Discovery Park Boulevard from New Town Associates, LLC for the purpose of locating a Veterans Tribute Tower.

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

---

Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of August, 2011.

VetTower\_res

NOTE:  
COA - COMMERCIAL OWNERS ASSOCIATION EASEMENT  
(NEW YORK COMMERCIAL ASSOCIATION)

N/F  
PATRIOT PARK  
BUSINESS CENTER  
CONDOMINIUM ASSOCIATION  
BLOCK 15, PARCEL D  
5388 DISCOVERY PARK BLVD.  
TAX MAP 3823700001A  
LR# 070035273  
ZONED MIXED USE

-- EX 10'  
VERIZON  
EASEMENT  
LR# 080073321

EX. 5' COA —  
(UTILITY)  
LRA 080024786

EXISTING  
DECKERT PARK BOULEVARD  
(74' PUBLIC R/W)  
LR #06004140

10' x 30' EASEMENT  
— FOR THE BENEFIT  
OF PARCEL A-1

BLOCK 15  
PARCEL A-1  
AREA=1,200 S.F.±  
OR 0.028 Ac.±.

**NEW  
PLS**

JAMES CITY COUNTY  
Z  
GEODETIC CONTROL

GRAPHIC SCALE  
20' 0' 20' 40'  
SCALE: 1" = 20'

BLOCK 15  
PARCEL A  
AREA=28,284 S.F.±  
OR 0.649 Ac.±

53742'08"E  
11.64'

N/F  
MSB REAL ESTATE HOLDINGS, LLC  
BLOCK 15, PARCEL C  
5372 DISCOVERY PARK BLVD.  
TAX MAP 3822400021  
LR# 080025212  
ZONED MIXED USE

EX 24' COA  
(INGRESS/EGRESS)  
LR# DE0024786

EX. 20' COA —  
(DRAINAGE)  
LR# 080024788

NEW TOWN  
ASSOCIATES LLC  
SECTION 6  
4201 HARBORVIEW ROAD  
TAX MAP (39-1)(1-157)  
LR#030027289 (PLAT)  
LR#050009867 (PLAT)  
LR# 030005089

— LIMIT OF WETLAND  
RESTRICTED AREA  
(TYP.) (SEE NOTE)

NOTE:  
THE LIMIT OF THE WETLAND RESTRICTED AREA IS  
SHOWN PER PLAT BY AES CONSULTING ENGINEERS  
TITLED "EXHIBIT "A" PLAT SHOWING WETLAND  
RESTRICTED AREAS PREPARED FOR NEW TOWN  
ASSOCIATES" DATED SEPTEMBER 12, 2005.

STATE OF VIRGINIA

CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY CIRCUIT COURT. THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 201\_\_.

THE PLAT SHOWN HEREON WAS PRESENTED AND ADMITTED TO THE RECORD AS THE  
LAW DIRECTS. @ \_\_\_\_\_AM/PM

INSTRUMENT # \_\_\_\_\_

TESTE: \_\_\_\_\_

TESTE: BETSY B. WOOLFIDGE, CLERK

[illegible]

3248 Old Towne Road, Suite 1  
Winchester, Virginia 23186  
Phone: (703) 263-0040  
Fax: (703) 230-8984  
[www.haflab.com](http://www.haflab.com)

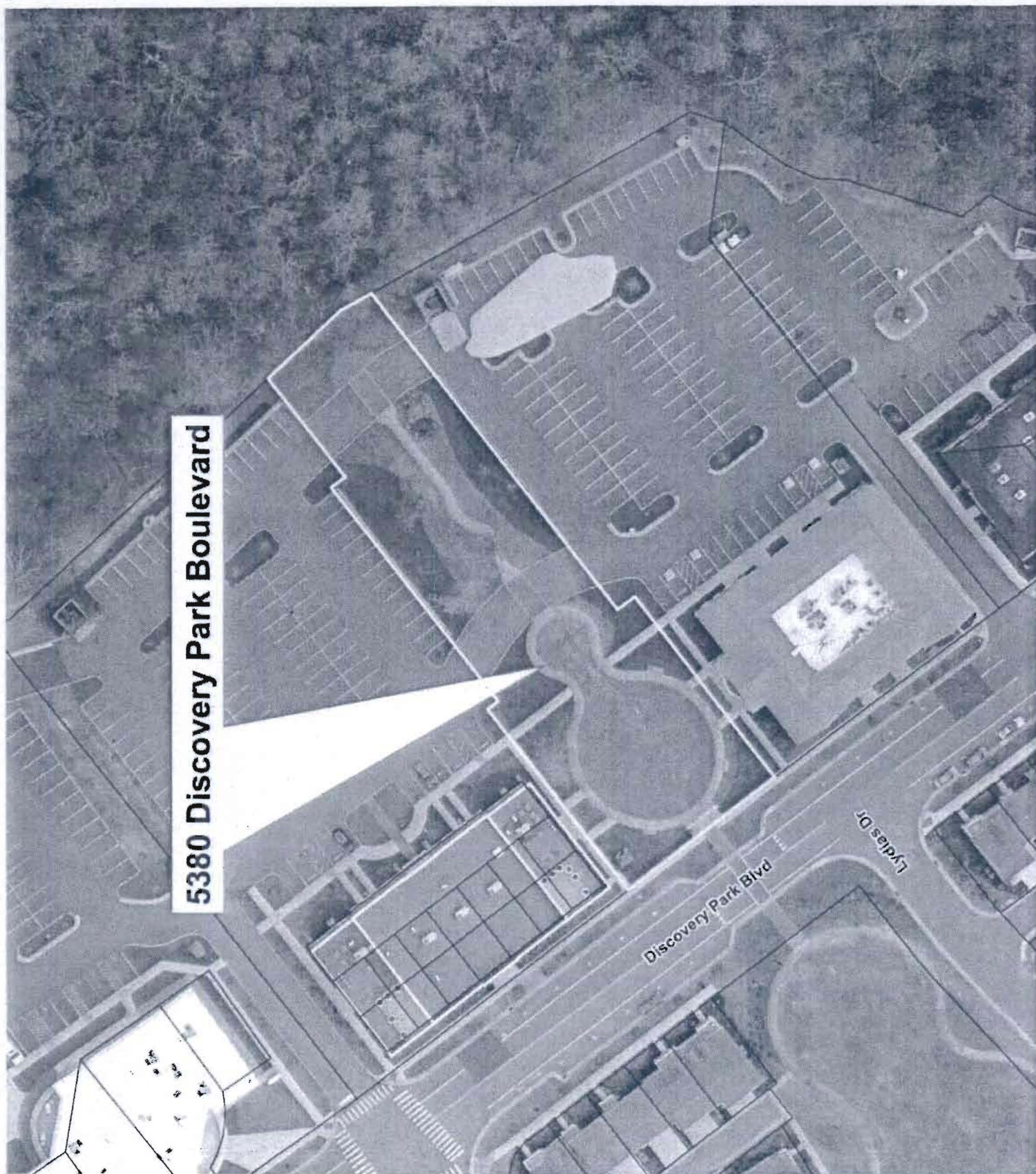
**Hampton Roads** | **Central Virginia** | **Middle Peninsula**

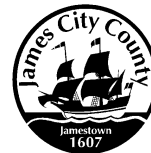
PLAT OF SUBDIVISION  
BLOCK 15 PARCEL A  
NEW TOWN  
OWNED BY NEW TOWN ASSOCIATES, LLC

BERKELEY DISTRICT                      COUNTY OF JAMES CITY                      VIRGINIA

Project Controls:	REG-100
Project Number:	0032-6-0
Book:	1-20
Date:	7/7/2011
Sheet Number	
2 OF 2	

U.S. National Archives - Veterans Memorial Survey/Panel/Plots 106.12.E.26.NE.MORAL.P02.dwg, 7/18/2011 8:25:51 AM, b0b.ccmby





## MEMORANDUM COVER

**Subject:** Grant Award - Virginia Circuit Court Records Preservation Program - \$4,400

**Action Requested:** Shall the Board approve the resolution that accepts the Virginia Circuit Court Records Preservation Program Grant?

**Summary:** The Clerk of Circuit Court of Williamsburg-James City County has been awarded a \$4,400 grant from the Virginia Circuit Court Records Preservation Program. The grant has been awarded to fund the preservation of permanent records of the Williamsburg-James City County Circuit Court.

The grant requires no match.

Staff recommends approval of the attached resolution authorizing a budget appropriation of \$4,400 to the Special Projects/Grants Fund.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Resolution

**Agenda Item No.:** G-5

**Date:** August 9, 2011

**M E M O R A N D U M**

DATE: August 9, 2011

TO: The Board of Supervisors

FROM: Suzanne R. Mellen, Assistant Manager of Financial and Management Services

SUBJECT: Grant Award - Virginia Circuit Court Records Preservation Program - \$4,400

---

The Clerk of Circuit Court for Williamsburg-James City County has been awarded a \$4,400 grant from the Virginia Circuit Court Records Preservation Program. The grant has been awarded to fund the preservation of permanent records of the Williamsburg-James City County Circuit Court.

The grant requires no match.

Staff recommends approval of the attached resolution authorizing a budget appropriation of \$4,400 to the Special Projects/Grants Fund.

---

Suzanne R. Mellen

SRM/gb  
GA-RecPrevPro\_mem

## RESOLUTION

### GRANT AWARD - VIRGINIA CIRCUIT COURT

### RECORDS PRESERVATION PROGRAM - \$4,400

WHEREAS, the Clerk of the Circuit Court of Williamsburg-James City County has been awarded a \$4,400 grant from the Virginia Circuit Court Records Preservation Program; and

WHEREAS, the grant has been awarded to fund the preservation of permanent records of the Circuit Court; and

WHEREAS, there is no match required for this grant.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following budget appropriation to the Special Projects/Grants Fund:

#### Revenue:

FY 12 - Circuit Court Records Preservation	<u>\$4,400</u>
--	----------------

#### Expenditure:

FY 12 - Circuit Court Records Preservation	<u>\$4,400</u>
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Mary K. Jones  
Chairman, Board of Supervisors

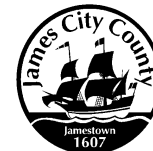
ATTEST:

---

Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of August, 2011.

GA-RecPrevPro\_res



## MEMORANDUM COVER

**Subject:** Chesapeake Bay Preservation Ordinance Violations - Civil Charge - Linda Schaller, 2509 Sanctuary Drive, Governor's Land - \$29,000

**Action Requested:** Shall the Board accept a civil charge to settle a Chesapeake Bay Preservation Ordinance violation at 2509 Sanctuary Drive, 2505 Sanctuary Drive, and a parcel behind 2509 Sanctuary Drive in the Governor's Land subdivision?

**Summary:** A report of unauthorized activity was investigated by the County for vegetation removal at 2509 Sanctuary Drive within defined Chesapeake Bay Preservation Area (CBPA). Upon further investigation, it was determined that vegetation was not only removed at 2509 Sanctuary Drive (PIN 4420100016), but also at 2505 Sanctuary Drive and a parcel behind 2509 Sanctuary Drive owned by the Governor's Land Foundation (GLF), in the CBPA. Further, the County is the holder of a conservation easement on the property behind 2509 Sanctuary Drive. Subsequently, Notices of Violations (NOV) were sent to the property owners of record. The property owner of 2505 Sanctuary Drive and the GLF both submitted written claims that they had not authorized any vegetation removal on either of their properties. Linda Schaller admitted verbally to staff and in writing to the Governor's Land Foundation that she had caused the vegetation removal on the properties. Linda Schaller did not want to appeal the NOV to the Chesapeake Bay Board and agreed to a civil charge and replanting. As a result, the violation is being settled, with the consent of the owner, through the County's civil charge violation process consistent with Section 23-18(a) of the County's Chesapeake Bay Preservation ordinance and previously established Chesapeake Bay Preservation ordinance civil penalty procedures.

Staff recommends adoption of the attached resolution.

**Fiscal Impact:** None.

**FMS Approval, if Applicable:** Yes ☐ No ☒

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Resolution
3. Location Map

**Agenda Item No.:** G-6

**Date:** August 9, 2011

**MEMORANDUM**

DATE: August 9, 2011

TO: The Board of Supervisors

FROM: Scott J. Thomas, Director, Engineering and Resource Protection Division

SUBJECT: Chesapeake Bay Preservation Ordinance Violations - Civil Charge - Linda Schaller, 2509 Sanctuary Drive, Governor's Land - \$29,000

---

Attached is a resolution for consideration by the Board of Supervisors involving a violation of the County's Chesapeake Bay Preservation Ordinance. The case involved the unauthorized removal of vegetation from the Chesapeake Bay Preservation Area (CBPA) on three separate properties and a County Conservation Easement. The affected properties are 2509 Sanctuary Drive (Parcel ID No. (PIN) 4420100016), 2505 Sanctuary Drive (PIN 4420300017), the common area behind 2509 Sanctuary Drive (PIN 4420100016A) and a County NOS easement behind 2509 Sanctuary Drive (PIN 4420100016A). The impact area was approximately 7,250 square feet within a defined Resource Protection Area (RPA) and approximately 5,000 square feet within a defined county conservation easement.

In February 2011, staff responded to a complaint of vegetation removal at 2509 Sanctuary Drive. Staff investigated and verbally told Ms. Schaller that there was a procedure that had to be followed because the area in question was within an RPA. In April 2011, staff responded to another complaint of vegetation removal at 2509 Sanctuary Drive. Staff took pictures and further investigated the situation. It was determined that vegetation removal had occurred on three separate properties, one of which the County holds a conservation easement.

Notices of Violations (NOV) were sent out to the property owners of record in May 2011. These property owners are: Ms. Linda Schaller, 2509 Sanctuary Drive; Ms. Mish Kara, 2505 Sanctuary Drive; and Governor's Land Foundation (GLF), c/o Mrs. Lisa Smith, for PIN 4420100016A. Ms. Kara responded that she did not authorize any vegetation removal on her property. Mrs. Smith responded that GLF did not authorize any vegetation removal on their property. The County did not authorize any vegetation removal on any of the properties. Ms. Schaller responded in a telephone conversation to the senior watershed planner that she was taking full responsibility for the vegetation removal. She expressed the same to the Engineering and Resource Protection Director in meetings in May and June 2011. She also provided GLF a written statement of the same.

In accordance with the provisions of the ordinance, replanting of native vegetation and a civil charge are proposed to remedy the violation. Ms. Schaller has voluntarily entered into a Chesapeake Bay Preservation/Conservation Easement Civil Charge Consent Agreement and has submitted and received approval on a restoration plan. Surety was also provided to guarantee the implementation of the approved restoration plan to restore impacted RPA on her property and RPA and conservation easement on the adjacent properties.

The resolution and attachments present specific details of the four violations and recommended civil charges. Under the provision of the ordinance, the Board may accept civil charges for each individual violation of up to \$10,000. Staff and the owner have agreed to the recommended total civil charge amount of \$29,000 for the four violations of Sections 23-7, 23-9, and 23-10 of the County's Chesapeake Bay Preservation Ordinance.

The Chesapeake Bay Ordinance Civil Penalty Procedures Policy endorsed by the Board in August 1999 was used by staff as guidance in determining the civil charge amount. The Policy considers the water quality impact and the degree of noncompliance involved in the case. For the RPA violation that occurred at 2509 Sanctuary Drive, the water quality impact has been assessed as moderate and the degree of noncompliance as major, for a determination of \$4,500 for this violation. For the RPA violation that occurred at 2505 Sanctuary Drive, the water quality impact has been assessed as moderate and the degree of noncompliance as major, for a determination of \$4,500 for this violation. For the RPA violation that occurred on GLF property (PIN 4420100016A), the water quality impact has been assessed as significant and the degree of noncompliance as major, for a determination of \$10,000. For the conservation easement violation that occurred on GLF property (PIN 4420100016A), the water quality impact has been assessed as significant and the degree of noncompliance as major, for a determination of \$10,000.

Staff recommends adoption of the attached resolution establishing the civil charges for the Chesapeake Bay Preservation ordinance violations presented.



Scott J. Thomas

CONCUR:



Steven W. Hicks

SJT/gb  
CBOrdVio\_mem

Attachments

## **RESOLUTION**

### **CHESAPEAKE BAY PRESERVATION ORDINANCE VIOLATIONS - CIVIL CHARGE -**

#### **LINDA SCHALLER, 2509 SANCTUARY DRIVE, GOVERNOR'S LAND - \$29,000**

- WHEREAS, Linda Schaller of 2509 Sanctuary Drive, Governor's Land, is the owner of a certain parcel of land commonly known as 2509 Sanctuary Drive, Williamsburg, Virginia, designated as Parcel No. 4420100016, within James City County's Real Estate system, herein referred to as the ("Property"); and
- WHEREAS, Mish Kara and Jay Cone of 2505 Sanctuary Drive, Governor's Land, are the owners of a certain parcel of land commonly known as 2505 Sanctuary Drive, Williamsburg, Virginia, designated as Parcel No. 4420300017, within the James City County's Real Estate system, herein referred to as the ("Property"); and
- WHEREAS, the Governor's Land Foundation is the owner of a certain parcel of land commonly known as Open Space 13 within the Whittaker Island subdivision, Williamsburg, Virginia, designated as Parcel No. 4420100016A, within James City County's Real Estate system, herein referred to as the ("Property"); and
- WHEREAS, James City County is the holder of a conservation easement on a certain parcel of land commonly known as Open Space 13 within the Whittaker Island subdivision, Williamsburg, Virginia, designated as Parcel No. 4420100016A, within the James City County's Real Estate system, herein referred to as the ("Property"); and
- WHEREAS, on or about April 27, 2011, Linda Schaller caused the removal of vegetation from within the Chesapeake Bay Preservation Area and conservation easement on the Property; and
- WHEREAS, Linda Schaller will execute a Chesapeake Bay Restoration Agreement with the County agreeing to install native canopy trees, native understory trees, and native shrubs within the Resource Protection Area (RPA) on the Property in order to remedy a violation of the County's Chesapeake Bay Preservation Ordinance and will post sufficient surety guaranteeing the installation of the aforementioned improvements and the restoration of the RPA and conservation easement on the Property; and
- WHEREAS, Linda Schaller has agreed to pay a total of \$29,000 to the County as a civil charge under the County's Chesapeake Bay Preservation Ordinance; and
- WHEREAS, the James City County Board of Supervisors is willing to accept the restoration of the impacted area and the civil charge in full settlement of the Chesapeake Bay Preservation Ordinance violation, in accordance with Section 23-18 of the Code of the County of James City.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby hereby authorizes and directs the County Administrator to accept the \$29,000 civil charge from Linda Schaller as full settlement of the Chesapeake Bay Preservation Ordinance Violations on the Property.

---

Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

---

Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of August, 2011.

CBOrdVio\_res



## Chesapeake Bay Preservation Ordinance Violations - Civil Charges

### Linda Schaller, 2509 Sanctuary Drive, Governor's Land

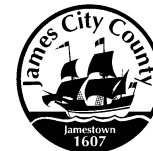


This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and James City County is not responsible for its accuracy or how current it may be. If discrepancies are found, please contact the Real Estate Assessment Division of James City County, Mapping/GIS Section.

Aerial Imagery Copyright 2005 James City County.

0 0.01 0.02 Miles





## MEMORANDUM COVER

**Subject:** Contingency Transfer - Virginia Peninsula Regional Jail

**Action Requested:** Shall the Board adopt the resolution to transfer \$110,000 from the County's FY 11 contingency account to the Virginia Peninsula Regional Jail for the County's share of these increased costs?

**Summary:** Staff recommends transferring funds from the County's Contingency account to the Virginia Peninsula Regional Jail to cover increased costs and reduced Federal revenues for FY 11.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes ☒ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Resolution

**Agenda Item No.:** G-7

**Date:** August 9, 2011

**MEMORANDUM**

DATE: August 9, 2011

TO: The Board of Supervisors

FROM: Suzanne R. Mellen, Assistant Manager of Financial and Management Services

SUBJECT: Contingency Transfer - Virginia Peninsula Regional Jail

---

In FY 11, the Virginia Peninsula Regional Jail (VPRJ) experienced a very large, unplanned increase in inmate medical costs including increased outside medical care expenses and 24-hour nursing care. In addition, Federal inmate bed days were substantially lower than anticipated. These two factors are the primary reasons for additional increased costs that the four-member jurisdictions are required to cover. Attached is a resolution to transfer \$110,000 from the County's FY 11 Contingency account to the Virginia Peninsula Regional Jail for the County's share of these increased costs. The County's actual assessment was \$191,456.02, but the remainder is offset by under spending at the Merrimac Juvenile Detention Center.

Staff recommends adoption of the attached resolution.

---

Suzanne R. Mellen

SRM/nb  
JailCostTrans\_mem

Attachment

## RESOLUTION

### CONTINGENCY TRANSFER - VIRGINIA PENINSULA REGIONAL JAIL

WHEREAS, in FY 11, the Virginia Peninsula Regional Jail (VPRJ) experienced a very large, unplanned increase in inmate medical costs including increased outside medical care expenses and 24-hour nursing care; and

WHEREAS, Federal inmate bed days were substantially lower than anticipated; and

WHEREAS, additional funding is needed to cover these increased costs through June 30, 2011.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby amends the previously adopted budget for FY 2011 as follows:

Expenditures:

Contingency	\$ (110,000)
Contribution to VPRJ	110,000

---

Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

---

Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of August, 2011.

JailCostTrans\_res



## MEMORANDUM COVER

**Subject:** Ordinance Amendment to Chapter 20, Taxation, Section 20-9. Definitions; and Section 20-10, Qualifications for Exemption

**Action Requested:** Shall the Board approve amendments to Chapter 20, Taxation, Section 20-9; and Section 20-10, Qualification for exemption?

**Summary:** The Virginia General Assembly recently amended certain sections of the Code of Virginia that relate to real property tax exemptions for the elderly and disabled. The County Code must be brought into conformance with the corresponding sections of the Code of Virginia. The mandatory changes include adjustments to what sources of income may be included in the calculation of gross income, changes to the definition of "income," the first \$6,500 must now be included when calculating an individual's income, and the County Code must now specify that December 31 is the date upon which an individual's net worth and annual income is to be calculated.

Staff has also recommended the adoption of one optional change to the County Code, which would include the income of certain non-relatives living in a household when calculating the "total combined household income."

Staff recommends adoption of the attached resolution.

### Fiscal Impact:

**FMS Approval, if Applicable:** Yes ☐ No ☐

### Assistant County Administrator

Doug Powell \_\_\_\_\_

### County Administrator

Robert C. Middaugh \_\_\_\_\_

### Attachments:

1. Memorandum
2. Ordinance

**Agenda Item No.:** H-1

**Date:** August 9, 2011

**MEMORANDUM**

DATE: August 9, 2011

TO: The Board of Supervisors

FROM: Erin Waugh, Intern - County Attorney's Office

SUBJECT: Ordinance Amendment to Chapter 20, Taxation, Section 20-9. Definitions; and Section 20-10, Qualifications for Exemption

---

During its 2011 session, the Virginia General Assembly amended the Code of Virginia (the "Virginia Code") as it relates to real property tax exemptions for the elderly and disabled. If a locality exercises its option to provide real estate tax exemptions for the elderly and disabled, it must do so in conformance with the Virginia Code. Because the County has chosen to provide these exemptions, the County Code must be amended to include the recent changes adopted by the General Assembly. These amendments will have minimal impact on the individuals who qualified for exemption under the "old" regulations and there should not be a significant change in the number of people who qualify.

The following proposed changes to the County Code are mandatory:

1. The County Code currently includes various sources of income in its calculation of gross income. This must be amended to include only those sources of income that are subject to Federal income tax laws.
2. The definition of "income" is now more limited.
3. December 31 of the immediately preceding calendar year is the date upon which net worth valuation and annual income is to be calculated.
4. The County Code currently excludes the first \$6,500 when calculating an individual's total income. This amount may no longer be excluded.

The following proposed change is optional:

1. When calculating the "total combined household income," the County Code currently includes only income from owners and their relatives living in a house. The Virginia Code now authorizes the County to also include income from non-relatives living in the house (excluding tenants and paid caregivers). In staff's opinion, individuals living in the same household typically contribute to the total household income whether or not they are related; accordingly, staff has proposed that the County Code be changed to include non-relatives in the calculation of "total combined household income."

These amendments to the Virginia Code were passed as emergency legislation and became effective on March 24, 2011. Accordingly, the changes to the County Code must be made effective for tax years beginning on or after January 1, 2011.

The Commissioner of the Revenue notified staff of these changes to the Virginia Code. The Commissioner has opined that, on balance, these amendments should not change the current number of applicants who qualify for this exemption. These amendments bring the County Code into compliance with the Virginia Code.

Ordinance Amendment to Chapter 20, Taxation, Section 20-9. Definitions; and Section 20-10,  
Qualifications for Exemption  
August 9, 2011  
Page 2

Staff recommends adoption of the attached ordinance

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Erin Waugh

CONCUR:

---

Leo P. Rogers

EW/nb  
Chp20TaxExempt\_mem

Attachment

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 20, TAXATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE II, EXEMPTION OF CERTAIN PERSONS FROM REAL ESTATE TAXES, SECTION 20-9, DEFINITIONS, AND SECTION 20-10, QUALIFICATIONS FOR EXEMPTION.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 20, Taxation, is hereby amended and reordained by amending Section 20-9, Definitions, and Section 20-10, Qualifications for exemption.

Chapter 20. Taxation

Article II. Exemption of Certain Persons from Real Estate Taxes.

**Section 20-9. Definitions.**

The following words and phrases when used in this article shall, for the purposes of this article, have the following respective meanings, except where the context clearly indicates a different meaning:

*Income.* The term "income" as used herein ~~means income from whatever source derived, including, but not limited to, Social Security payments, inheritance, gifts, gains from the sale or exchange of assets, proceeds of insurance, welfare receipts and benefits under the state supplemental retirement system.~~ *shall include only those sources of gross income that are subject to tax under federal income tax laws, regulations, rules, or policies.*

*Net combined financial worth.* The term "net combined financial worth" means the fair market value of all assets, tangible or intangible, legal or equitable, *as of December 31 of the immediately preceding calendar year,* for the owner or owners, and the spouse of any owner, less the liabilities of such person or persons, but excluding the value of the dwelling and the land, as provided in section 20-10 hereof. Such term includes, but is not limited to, the cash surrender value of any life insurance owned by such person or persons.

**Section 20-10. Qualifications for exemption.**

Such exemption may be granted for any year following the date that the head of the household and/or his or her spouse occupying such dwelling, to include permanently sited mobile or manufactured homes, as defined in section 36-85.3, Code of Virginia, 1950, *as amended*, and owning title or partial title thereto, becomes permanently and totally disabled or reaches the age of 65 and in addition:

- (a) The total combined income ~~during the~~ *as of December 31 of the* immediately preceding calendar year, *without regard to whether a tax return is actually filed*, from all sources of the owners of the dwelling living therein and of the owners' relatives *and non-relatives* living in the dwelling *except for bona fide tenants or bona fide paid care givers of the owners* does not exceed \$45,000.00; ~~provided, that the first \$6,500.00 of income of each relative, other than spouse, of the owner or owners who is living in the dwelling shall not be included in such total;~~ and
- (b) The net combined financial worth, including equitable interests, as of the thirty-first day of December of the immediately preceding calendar year, of the owners, and of the spouse of any owner, excluding the value of the dwelling and the land, not exceeding ten acres, upon which it is situated does not exceed \$200,000.00.

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Mary K. Jones  
Chairman, Board of Supervisors

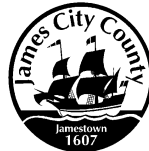
ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of August, 2011.

Chp20TaxExempt\_ord



## MEMORANDUM COVER

**Subject:** Ordinance Amendments - Fee Waivers

**Action Requested:** Shall the Board adopt ordinances to allow for the waiver of fees where the owner of the premises is the United States of America, the Commonwealth, the County or instrumentalities thereof, the James City Service Authority, the Williamsburg Area Transit Authority, the Williamsburg Regional Library, or the Williamsburg-James City County Public Schools?

**Summary:** Under consideration are ordinances amending Chapter 4, Building Regulations; Chapter 8, Erosion and Sediment Control; Chapter 19, Subdivisions; Chapter 22, Wetlands; Chapter 23, Chesapeake Bay Preservation; and Chapter 24, Zoning, to allow fees to be waived when the owner of the subject premises is the United States of America, the Commonwealth, the County, the James City Service Authority, the Williamsburg Area Transit Authority, the Williamsburg Regional Library, or the Williamsburg-James City County Public Schools.

As the result of recent discussion regarding fee waivers to assist with disaster recovery, staff realized that it had been customary to waive fees for such entities; however, it was determined that the authority to waive fees set forth by ordinance lies only with the Board of Supervisors. These are essentially housekeeping ordinances that allow staff to handle these waivers administratively rather than returning to the Board on a case-by-case basis.

Staff recommends adoption of the attached ordinances.

**Fiscal Impact:** Since 2007, the total amount of fees waived for the entities listed has been approximately \$200,000. Of that amount, approximately \$110,000 has been related to projects for the Williamsburg-James City County Public Schools.

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Ordinances (6)

**Agenda Item No.:** H-2

**Date:** August 9, 2011

**MEMORANDUM**

DATE: August 9, 2011

TO: The Board of Supervisors

FROM: Steven W. Hicks, Manager of Development Management

SUBJECT: Ordinance Amendments – Fee Waivers

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Attached for your consideration are ordinances amending Chapter 4, Building Regulations; Chapter 8, Erosion and Sediment Control; Chapter 19, Subdivisions; Chapter 22, Wetlands; Chapter 23, Chesapeake Bay Preservation; and Chapter 24, Zoning. In accordance with Virginia Code § 15.2-2204 et seq., the amendments to Chapter 19, Subdivisions, and Chapter 24, Zoning, have been reviewed by the Planning Commission following advertised public hearings.

Amendments to these chapters authorize the waiver of required application, plan review, permit and inspection, and other fees when the owner of the subject premises is the United States of America, the Commonwealth, the County, the James City Service Authority, the Williamsburg Area Transit Authority, the Williamsburg Regional Library, or the Williamsburg-James City County Public Schools. As the result of recent discussion regarding fee waivers to assist with disaster recovery, staff realized that it had been customary to waive fees for such entities; however, it was determined that the authority to waive fees set forth by ordinance lies only with the Board of Supervisors. Staff continues to support waiving these fees to avoid the unnecessary exercise of budgeting and paying plan review and inspection fees for County facilities or County funded facilities where the review function has already been accounted for in the County Budget. Moreover, we do not have review purview over State or Federal government facilities. These are essentially housekeeping ordinances that allow staff to handle these waivers administratively rather than returning to the Board on a case-by-case basis.

While the fiscal impact of these fee waivers has not been fully determined, it is estimated that since 2007, the total amount of fees waived for the entities listed has been \$200,000. Of that amount, approximately \$110,000 has been related to projects for the Williamsburg-James City County Public Schools.

Staff recommends adoption of the attached ordinances.

  
Steven W. Hicks

SWH/nb  
OrdAFeeWaiv\_mem

Attachments

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 4, BUILDING REGULATIONS, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, VIRGINIA UNIFORM STATEWIDE BUILDING CODE, DIVISION 2, PERMIT AND INSPECTION FEES, SECTION 4-10, EXEMPTIONS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 4, Building Regulations, Article I, Virginia Uniform Statewide Building Code, Division 2. Permit and Inspection Fees is hereby amended and reordained by amending Section 4-10, Exemptions.

Chapter 4. Building Regulations

Article I. Virginia Uniform Statewide Building Code

Division 2. Permit and Inspection Fees

**Sec. 4-10. Exemptions.**

~~Where the owner of any premises is the United States of America, the commonwealth, the county or instrumentalities thereof, the payment of any permit fee established in section 4-8 is hereby waived.~~

*Payment of any permit fees established in section 4-8 shall be waived for the County, any entity created solely by the County and those regional entities to which the County is a party provided that: (1) The other parties to the regional entity similarly waive fees; and (2) The regional entity has locations in more than one locality.* When the housing and community development administrator certifies that the work for which application has been made is funded through his office or a related program and requests that fees be waived, then the request shall be granted.

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of August,  
2011.

Chp4FeeWaiv\_ord2

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 8, EROSION AND SEDIMENT CONTROL, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 8-5, PERMITS, FEES, BONDING, ETC.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 8, Erosion and Sediment Control, is hereby amended and reordained by amending Section 8-5, Permits, fees, bonding, etc.

#### Chapter 8. Erosion and Sediment Control

##### **Sec. 8-5. Permits, fees, bonding, etc.**

(c) Fees. The following administrative fee shall be paid to the county.

- (1) Residential subdivisions shall pay \$70.00 per lot at the time of submission of the erosion and sediment control plan;
- (2) Nonresidential site plans and other land-disturbing activities shall pay \$600.00 per acre of disturbance for the first 15 acres plus \$400.00 per acre for each additional acre over 15 at the time of submission of the erosion and sediment control plan;
- (3) Residential site plans shall pay \$840.00 per acre of disturbance for the first 15 acres plus \$560.00 per acre for each additional acre over 15 at the time of submission of the erosion and sediment control plan;

- (4) A \$100.00 fee shall be required for each single-family residential structure at the time of submission of the building permit application.

- (5) *Payment of any permit fees established in section 8-5 shall be waived for the County, any entity created solely by the County and those regional entities to which the County is a party provided that: (1) The other parties to the regional entity similarly waive fees; and (2) The regional entity has locations in more than one locality.*

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of August, 2011.

Chp8FeeWaiv\_ord2

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 19, SUBDIVISIONS, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, GENERAL PROVISIONS, SECTION 19-15, FEES.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 19, Subdivisions, is hereby amended and reordained by amending Article I, General Provisions, Section 19-15, Fees.

Chapter 19. Subdivisions

Article I. General Provisions

**Sec. 19-15. Fees.**

Fees shall be charged to offset the cost of reviewing plats and plans, making inspections and other expenses incident to the administration of this chapter. The following fees shall be charged and collected as provided below:

- (1) *General plan review.* There shall be a fee for the examination of every plan reviewed by the agent or commission. For all subdivisions that do not require public improvements, the fee for a major or minor subdivision shall be \$200.00 per plan plus \$70.00 per lot for each lot over two lots in the subdivision plat. For all subdivisions that require public improvements, the fee for a major or minor subdivision shall be \$250.00 per plan plus \$70.00 per lot for each lot over two lots in the subdivision plat. The fee for townhouse or condominium subdivisions which have undergone site plan review shall be \$50.00. The fee shall be submitted to the agent at the time of filing the plat for review. Any check shall be payable to the James City County treasurer. An additional fee of \$250.00 shall be collected for any review after the second re-submission not to

include resubmittals that are the result of substantial redesign due to additional agency comments.

- (2) *Inspection fee for water and sewer lines.* There shall be a fee for the inspection by the service authority of public water and sewer system installations. Such fee shall be \$1.43 per foot for every foot of sewer main or water main constructed and shall be submitted as specified by the service authority regulations.
- (3) *Inspection fee for stormwater installations.* There shall be a fee for the inspection by the stormwater division of public stormwater installations and private stormwater installations required in accordance with section 23-10(4). Such fee shall be \$900 per practice for each best management practice constructed and \$.90 per foot for every foot of stormwater drain or channel constructed and shall be submitted at the time of filing an application for a land disturbance permit.
- (4) *Fees waived. Payment of any permit fees established in section 19-15 shall be waived for the County, any entity created solely by the County and those regional entities to which the County is a party provided that: (1) The other parties to the regional entity similarly waive fees; and (2) The regional entity has locations in more than one locality.*

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of August, 2011.

Chp19FeeWaiv\_ord2

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 22, WETLANDS, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE II, USE PERMITS, SECTION 22-4, REQUIRED FOR CERTAIN ACTIVITIES; APPLICATION GENERALLY; FEE.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 22, Wetlands, Article II, Use Permits, is hereby amended and reordained by amending Section 22-4, Required for certain activities; application generally; fee.

Chapter 22. Wetlands

Article II. Use Permits

**Sec. 22-4. Required for certain activities; application generally; fee.**

(c) A nonrefundable processing fee shall accompany each permit application to cover the cost of processing as follows:

- (1) For permits affecting 20,000 square feet or less of wetlands - \$100.00.
- (2) For permits affecting more than 20,000 but not more than 40,000 square feet of wetlands - \$200.00.
- (3) For permits affecting more than 40,000 square feet of wetlands - \$200.00 plus \$100.00 for each acre in excess of one acre of affected wetlands.
- (4) *Payment of any permit fees established in section 22-4 shall be waived for the County, any entity created solely by the County and those regional entities to which the County is a party provided that: (1) The other parties to the regional entity similarly waive fees; and (2) The regional entity has locations in more than one locality.*

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of August,  
2011.

Chp22FeeWaiv\_ord2

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 23, CHESAPEAKE BAY PRESERVATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 23-15, APPLICATIONS FOR EXCEPTIONS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 23, Chesapeake Bay Preservation, is hereby amended and reordained by amending Section 23-15, Applications for exceptions.

Chapter 23. Chesapeake Bay Preservation

**Sec. 23-15. Applications for exceptions.**

Applications for exceptions shall be made in writing to the board or the manager as appropriate in accordance with sections 23-14(a) and (e), and shall include the following:

- (1) Name and address of applicant and property owner;
- (2) Legal description of the property and type of proposed use and development;
- (3) A sketch of the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, the RPA, slopes greater than 25 percent and all wetlands;
- (4) Location and description of any existing private water supply or sewage system;

- (5) A water quality impact assessment completed in accordance with section 23-11 of this chapter and guidelines established by the manager;
- (6) For exceptions that must be granted by the Chesapeake Bay Board, a nonrefundable processing fee of \$125 shall accompany each application to cover the cost of processing; and
- (7) For exceptions that must be granted by the manager, a nonrefundable processing fee of \$25 shall accompany each application to cover the cost of processing. This fee shall be collected for any administrative approval, waiver, exception, exemption, variance and buffer modification which may be necessary through the plan of development process as outlined in sections 23-5, 23-7(a), 23-7(c), 23-9, 23-10, 23-12, 23-13, and 23-14(e).
- (8) *Payment of any permit fees established in section 23-15 shall be waived for the County, any entity created solely by the County and those regional entities to which the County is a party provided that: (1) The other parties to the regional entity similarly waive fees; and (2) The regional entity has locations in more than one locality.*

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of August, 2011.

Chp23FeeWaiv\_ord2

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 24-7, ADMINISTRATIVE FEES.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Article I, In General, Section 24-7, Administrative fees.

Chapter 24. Zoning

Article I. In General

**Sec. 24-7. Administrative fees.**

(a) Fees shall be charged at the time of application to offset the cost of making inspections, issuing permits, advertising notices and other expenses incident to the administration of this chapter or to the filing or processing of any appeal or amendment thereto. The following fees shall be charged and collected at the time of application:

Procedure

Fee

- |     |   |       |                                    |
|-----|---|-------|------------------------------------|
| (1) | Rezoning  | ..... | \$1,200.00 plus \$75.00 per        |
|     |   | ..... | acre, not to exceed \$15,000.00    |
| (2) | Applications for special use permits:                 |       |                                    |
| a.  | Generally (General special use permits processed with | ..... | \$1,000.00 plus \$30.00            |
|     | a rezoning shall pay a rezoning fee only).....        |       | per acre, not to exceed \$5,000.00 |
| b.  | Manufactured home on an individual lot.               | ..... | 100.00                             |
| c.  | Family subdivision under section 24-214.              | ..... | 100.00                             |
| d.  | Amendment to a special use permit.                    | ..... | 400.00                             |

- e. Wireless communications facilities under division 6 .....1,500.00
- (3) Master plan review:
  - a. Initial review of any Residential Cluster, Mixed Use or a PUD  
with less than 400 acres (PUD's with 400 acres or more shall  
pay a rezoning fee only) ..... 200.00
  - b. Revision of approved plan:
    - 1. Residential Cluster ..... 75.00
    - 2. R-4, PUD, Mixed Use ..... 150.00
- (4) Site Plan Review:
  - a. Administrative review:
    - 1. Residential structures or improvements, \$600.00, plus \$60.00 per residential unit.
    - 2. Nonresidential structures or improvements, \$600.00, plus \$0.024 per sq. ft. of building  
area.
    - 3. Mixed Use structures or improvements, \$600.00, plus \$60.00 per residential unit plus  
\$0.024 per sq. ft. of nonresidential building area.
  - b. Planning commission review:
    - 1. Residential structures or improvements, \$1,800.00, plus \$60.00 per residential unit.
    - 2. Nonresidential structures or improvements, \$1,800.00, plus \$0.024 per sq. ft. of building  
area.
    - 3. Mixed Use structures or improvements, \$1,800.00, plus \$60.00 per residential unit plus  
\$0.024 per sq. ft. of nonresidential building area.
  - c. Amendment to an approved plan:
    - 1. Residential structures or improvements, \$100.00, plus \$10.00 per residential unit.
    - 2. Nonresidential structures or improvements, \$100.00, plus \$0.004 per sq. ft. of building  
area.
    - 3. Mixed Use structures or improvements, \$100.00, plus \$10.00 per residential unit plus  
\$0.004 per sq. ft. of nonresidential building area.

4. Residential or nonresidential structures or improvements where the number of dwelling units or area of building area, pavement, or open space is not changed more than 15 percent, \$100.00.
- d. Zoning administrator and fire department review only, \$20.00.
- e. Each additional review after second resubmission, \$250.00 not to include resubmissions that are the result of substantial redesign due to other agency comments.
- (5) Sign permits, \$5.00 per square foot of gross sign area.
- (6) Appeals to the board of zoning appeals, \$500.00.
- (7) Application for a height limitation waiver to the board of supervisors, \$200.00
- (8) Application for administrative variance, \$250.00
- (9) Public hearing applicant deferral request when the applicant fails to meet a staff imposed deadline for additional information relevant to the application except where deferral is the result of a commission or board action, \$350.00 per request.
- (10) Conceptual plan review, \$25.00.
- (11) Zoning verification request, \$100.00.
- (12) Stormwater inspection fees: There shall be a fee for the inspection of public stormwater installations and private stormwater installations required in accordance with section 23-10(4). Such fee shall be \$900 per practice for each best management practice constructed and \$.90 per foot for every foot of stormwater drain or channel constructed and shall be submitted at the time of filing an application for a land disturbance permit.

*(b) Payment of any permit fees established in section 24-7 shall be waived for the County, any entity created solely by the County and those regional entities to which the County is a party provided that: (1) The other parties to the regional entity similarly waive fees; and (2) The regional entity has locations in more than one locality.*

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of August, 2011.

Chp24FeeWaiv\_ord2



## MEMORANDUM COVER

**Subject:** Ordinance to Amend Chapter 16, Public Parks and Recreation Facilities, Section 16-2, Alcoholic Beverages and Controlled Substances Prohibited

**Action Requested:** Shall the Board adopt the attached ordinance to allow the Director of the Parks and Recreation Division to promulgate rules and regulations permitting the use of alcohol at certain locations?

**Summary:** The Director of the Parks and Recreation Division has requested the ability to permit alcohol use at some of their facilities under certain circumstances. This ordinance gives the Director the authority to promulgate rules and regulations allowing alcohol use where his Division deems it appropriate.

Staff recommends adoption of the resolution.

**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes ☐ No ☐

**Assistant County Administrator**

Doug Powell \_\_\_\_\_

**County Administrator**

Robert C. Middaugh \_\_\_\_\_

**Attachments:**

1. Memorandum
2. Ordinance

**Agenda Item No.:** H-3

**Date:** August 9, 2011

**MEMORANDUM**

DATE: August 9, 2011

TO: The Board of Supervisors

FROM: Max Hlavin, Intern, County Attorney's Office

SUBJECT: Ordinance to Amend Chapter 16, Public Parks and Recreation Facilities, Section 16-2, Alcoholic Beverages and Controlled Substances Prohibited

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Currently, the County Code prohibits the consumption of alcohol at any public park or recreational facility. This general prohibition has been in place since 1984; since that time, the County has acquired a number of non-traditional parks, including a yacht basin, two campgrounds (one of which is open and one of which is not), a beach front, and Legacy Hall, among others. As the County's portfolio of parks has expanded, so, too, have the variety of events and the number of users. The Division of Parks and Recreation (the "Division") has received a number of requests to allow the consumption of alcohol during certain, limited-time events. In response, the Division has reviewed the existing policy and believes that the responsible use of alcohol may be accommodated in certain parks under limited conditions.

The Director of Parks and Recreation (the "Director") proposes to amend the County Code to leave the general prohibition on alcohol in place, but to permit him to develop regulations which would allow alcohol to be consumed during a particular event or in a particular area of a park. Based upon a study of the County's parks and past requests, the Director intends at this time to permit alcohol in three situations/areas:

1. Legacy Hall. The use of Legacy Hall is administered by the Division and alcohol is often served at the myriad of events held at Legacy Hall. The regulations would codify the current policy, which is to allow the consumption of alcohol as long as the renter provides proof of adequate insurance.
2. Chickahominy Riverfront Park. Currently, the consumption of alcohol in the camping area of the park is tolerated as long as the consumption is neither open nor obvious. The Director intends to mirror the Virginia Department of Conservation and Recreation's regulations for camping areas, which allows the responsible consumption of alcohol in unmarked containers.
3. Specific events. The Director intends to permit the consumption of alcohol for a small number of special events which the County would typically sponsor or co-sponsor. The applicable regulations will be specific enough to rule out the use of alcohol for most events and would place strict limits upon the physical area of the park in which alcohol may be consumed.

In order to accommodate a request from the James City County Fair Committee to serve alcohol at the 2011 County Fair, the Director will adopt temporary regulations to allow for the consumption of alcohol on a limited basis on the fairgrounds at Chickahominy Riverfront Park.

Staff recommends adoption of the attached ordinance, which will allow the Director to draft regulations permitting the consumption of alcohol under limited conditions and in limited areas.

Ordinance to Amend Chapter 16, Public Parks and Recreation Facilities, Section 16-2, Alcoholic Beverages  
and Controlled Substances Prohibited

August 9, 2011

Page 2

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Max Hlavin

CONCUR:

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Leo P. Rogers

MH/nb

Chp16AlcBev\_mem

Attachment

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 16, PUBLIC PARKS AND RECREATION FACILITIES, OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING, ARTICLE II, REGULATIONS GOVERNING PUBLIC PARKS AND RECREATION FACILITIES, SECTION 16-2, ALCOHOLIC BEVERAGES AND CONTROLLED SUBSTANCES PROHIBITED.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 16, Public Parks and Recreation Facilities, is hereby amended and reordained by amending Section 16-2, Alcoholic beverages and controlled substances prohibited.

Chapter 16. Public Parks and Recreation Facilities

Article II. Regulations Governing Public Parks and Recreation Facilities

**Sec. 16-2. Alcoholic beverages and controlled substances prohibited.**

(a) No person shall consume or possess an open or previously opened container containing any alcoholic beverage, or be under the influence of an alcoholic beverage while in public park and recreational facilities, *except as otherwise provided for in the rules and regulations promulgated by the director.*

(b) No person shall consume, possess or be under the influence of any controlled substance, as defined by the Code of Virginia, while in public park and recreational facilities.

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Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:

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Robert C. Middaugh  
Clerk to the Board

Adopted by the Board of Supervisors of James City County on this 9th day of August,  
2011.

Chp16AlcBev\_ord

**MEMORANDUM**

DATE: August 9, 2011

TO: The Board of Supervisors

FROM: Robert C. Middaugh, County Administrator

SUBJECT: Alternative to Acquisition and Sale of Real Property – 4346 Ironbound Road, Ironbound Square Redevelopment

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The acquisition of 4346 Ironbound Road was part of the original redevelopment plan for the Ironbound Square neighborhood. However, the owners and the County were not able to reach an agreement at the time that the County was attempting to acquire property prior to construction. Recent discussions between the property owners and the County staff led to a new proposal to purchase the property.

This item was on the Board of Supervisors agenda at its June 28 meeting, but deferred until the August 9 meeting. Due to concerns raised by the Board, staff has considered alternative options for acquiring 4346 Ironbound Road and approached Habitat for Humanity (Habitat) about its interest in participating in the project. Habitat has agreed to purchase the house and land known as 4346 Ironbound Road.

Habitat will purchase the property from the owners for the balance of the contract price of \$123,000. The Office of Housing and Community Development will arrange for the demolition of the house and Habitat will pay the costs of the demolition. In exchange for Habitat's cooperation, the Williamsburg Redevelopment and Housing Authority (WRHA) will sell Habitat six lots in the Ironbound Square subdivision. The six lots are noted on the attached map. WRHA is acting as the County's agent in the purchase and sale of land for the Ironbound Square Redevelopment Project.

The average price of the Ironbound Square lots is \$35,000 each. Habitat will pay a total of \$245,000 for seven lots (\$35,000 x 7) as follows:

- \$123,000 to the owners of 4346 Ironbound Road; and
- \$122,000 to the County for the remaining six lots (\$13,000 for four lots and \$35,000 for the remaining two lots).

Under this scenario, Habitat acquires seven lots at their typical cost and they are responsible for developing the seven lots. This relieves the County from the expense of developing these lots and demolishing the house on 4346 Ironbound Road. The attached map shows the parcels that Habitat will acquire.

Staff recommends that the Board close the public hearing on this item. No formal action is necessary to implement the plan described above.

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Robert C. Middaugh

RCM/nb  
4346IronbdRd\_mem

Attachment

### PLANT SCHEDULE

[illegible]

## GENERAL NOTES

- [illegible]

