

ORDINANCE NO. 66A-11

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 11, MOTOR VEHICLES AND TRAFFIC, OF THE CODE OF THE COUNTY OF JAMES CITY, BY AMENDING THE FOLLOWING SECTIONS, SECTIONS 11-4, BICYCLE RIDERS, AND RIDERS AND DRIVERS OF ANIMALS; SECTION 11-7, ADOPTION OF STATE LAW; SECTION 11-22, DUTY OF DRIVER TO STOP, ETC., IN EVENT OF ACCIDENT; DUTY OF OCCUPANT; REPORTS ADDITIONAL TO OTHER ACCIDENT REPORTS REQUIRED BY STATE LAW; SECTION 11-28, DRIVING MOTOR VEHICLES WHILE INTOXICATED OR UNDER INFLUENCE OF DRUGS; SECTION 11-29, SAME--BREATH ANALYSIS TO DETERMINE PROBABLE ALCOHOLIC CONTENT OF BLOOD; SECTION 11-30, SAME--USE OF CHEMICAL TEST TO DETERMINE ALCOHOL IN BLOOD; PROCEDURE; QUALIFICATION AND LIABILITY OF PERSON WITHDRAWING BLOOD; COSTS; EVIDENCE; SUSPENSION OF LICENSE FOR REFUSAL TO SUBMIT TO TEST; SECTION 11-31, SAME--PRESUMPTIONS FROM ALCOHOLIC CONTENT OF BLOOD; SECTION 11-32, SAME--PENALTY--GENERALLY; SUBSEQUENT OFFENSE; PRIOR CONVICTION; SECTION 11-33; SAME--SAME--FORFEITURE OF RIGHT TO DRIVE; SUSPENSION OF SENTENCE; SECTION 11-35, SAME--REPORT OF CONVICTION TO DIVISION OF MOTOR VEHICLES; SECTION 11-36, EXECUTIVE SECRETARY AUTHORIZED TO REGULATE PARKING AND TO ERECT SIGNS, ETC.; SECTION 11-40.1, PARKING; SPACES RESERVED FOR HANDICAPPED; SUMMONS FOR UNAUTHORIZED USE; PENALTY; SECTION 11-41, STOPPING ON TRAVELED PORTION OF HIGHWAY; SCHOOL BUS DISCHARGING CHILDREN; SECTION 11-42, STOPPED VEHICLE NOT TO ENDANGER OTHERS OR IMPEDE TRAFFIC; REMOVAL OF VEHICLES IN VIOLATION; SECTION 11-47, REMOVAL AND DISPOSITION OF UNATTENDED VEHICLES GENERALLY.

BE IT ORDAINED by the Board of Supervisors of James City County that Chapter 11, Motor Vehicles and Traffic, of the Code of the County of James City be and the same is, hereby, amended and reordained by adding the following sections: Section 11-4, Bicycle Riders, Riders and Drivers of Animals; Section 11-7, Adoption of State Law; Section 11-22, Duty of Driver to Stop, Etc., in Event of Accident; Duty of Occupant; Reports Additional to Other Accident Reports Required by State Law; Section 11-28, Driving Motor Vehicle While Intoxicated or Under Influence of Drugs; Section 11-29, Same--Breath Analysis to Determine Probable Alcoholic Content of Blood; Section 11-30, Same--Use of Chemical Test to Determine Alcohol In Blood. Procedure; Qualification and Liability of Person Withdrawing Blood; Costs; Evidence; Suspension of License for Refusal to Submit to Test; Section 11-31, Same--Presumptions From Alcoholic Content of Blood; Section 11-32, Same--Penalty--Generally; Subsequent Offense; Prior Conviction; Section 11-33; Same--Same--Forfeiture of Right to Drive; Suspension of Sentence; Section 11-35, Same--Report of Conviction to Division of Motor Vehicles; Section 11-40.1, Parking; Spaces Reserved for Handicapped; Summons for Unauthorized Use; Penalty; Section 11-41, Stopping On Traveled Portion of Highway; School Bus Discharging Children; Section 11-42, Stopped Vehicle Not to Endanger Others or Impede Traffic; Removal of Vehicles in Violation.

Section 11-4. Bicycle riders: riders and drivers of animals.

Every person riding a bicycle, a moped or an animal upon a highway and every person driving any animal shall be subject to the provisions of this Chapter applicable to the driver of a vehicle, except those provisions which by this very nature can have no application.

Section 11-7. Adoption of state law.

Pursuant to the authority of section 46.1-188 of the Code of Virginia, as amended, all of the provisions and requirements of the laws of the state contained in Title 46.1 of the Code of Virginia, as amended, and in force on August 8, 1983, except those provisions and requirements the violation of which constitutes a felony, and except those provisions and requirements which by their very nature can have no application to or within the county, are hereby adopted and incorporated in this chapter by reference and made applicable within the county. References to "highways of the state" contained in such provisions and requirements hereby adopted shall be deemed to refer to the highways and other public ways within the county. Such provisions and requirements are hereby adopted, mutatis mutandis, and made a part of this chapter as fully as though set forth at length herein, and it shall be unlawful for any person, within the county, to violate or fail, neglect or refuse to comply with any provision of Title 46.1 of the Code of Virginia which is adopted by this section; provided, that in no event shall the penalty imposed for the violation of any provision or requirement hereby adopted exceed the penalty imposed for a similar offense under Title 46.1 of the Code of Virginia. (11-25-74).

Section 11-22 Duty of driver to stop, etc., in event of accident; duty of occupant; reports additional to other accident reports required by state law.

(a) The driver of any vehicle involved in an accident in which a person is killed or injured or in which an attended vehicle or other attended property is damaged shall immediately stop as close to the scene of the accident as possible without obstructing traffic and report forthwith to either the County Police department or the state police authority, and, in addition, to the person struck and injured if such person appears to be capable of understanding and retaining the information, or to the driver or some other occupant of the vehicle collided with or to the custodian of other damaged property, his name, address, operator's or chauffeur's license number and the

registration number of his vehicle. The driver shall also render reasonable assistance to any person injured in such accident, including the carrying of such injured person to a physician, surgeon or hospital for medical treatment if it is apparent that such treatment is necessary or is requested by the injured person.

Where, as a result of the injuries sustained in the accident, the driver is prevented from complying with the above provision, the driver shall, as soon as reasonably possible, make the required report to either the County Police department or the state police authority and make a reasonable effort to locate the person struck, or the driver or some other occupant of the vehicle collided with, or the custodian of the damaged property and report to such person or persons his name, address, operator's or chauffeur's license number and the registration number of his vehicle.

(b) If the driver fails to stop and make the report required by subsection (a) of this section, any person sixteen (16) years of age or older in the vehicle with the driver at the time of the accident who has knowledge of the accident shall report within twenty-four (24) hours from the time of the accident to the County Police department, giving his name, address and such other information within his knowledge as the driver must report pursuant to subsection (a) of this section.

(c) The driver of any vehicle involved in an accident in which no person is killed or injured but in which an unattended vehicle or other unattended property is damaged shall make a reasonable effort to find the owner or custodian of such property and shall report to the owner or pursuant to subsection (a) of this section if such owner or custodian is found. If the owner or custodian of such damaged vehicle or property cannot be found, the driver shall leave a note in a conspicuous place at the scene of the accident and shall report the accident in writing within twenty-four (24) hours to either the County Police department or state police. Such note and written report shall contain the information which the driver must report pursuant to subsection (a) of this section and such written report shall state in addition to the date, time and place of the accident and the driver's estimate of the property damage.

Where, as a result of the injuries sustained in the accident, the driver is prevented from complying with the above provisions, the driver shall, as soon as reasonably possible, make the required report to either the County Police department or state police and make a reasonable effort to find the owner or custodian of the unattended vehicle or property and report to such person or persons such information as is required to be reported pursuant to paragraph (c) of this section.

(d) If the driver fails to stop and make a reasonable search for the owner or custodian of an unattended vehicle or property or to leave a note for such owner or custodian as required by subsection (c) of this section, any person, sixteen (16) years of age or older, in the vehicle with the driver at the time of the accident who has knowledge of the accident shall report within twenty-four (24) hours from the time of the accident to the County Police department or state police, his name, address and other such facts within his knowledge as are required by subsection (c) of this section to be reported by the driver.

(e) The reports required by this section are in addition to other accident reports required by state law and shall be made irrespective of the amount of property damage involved.

(f) The provisions of this section shall apply irrespective of whether such accident occurs on the public streets or highways or on private property.

Section 11-28. Driving motor vehicle while intoxicated or under influence of drugs.

It shall be unlawful for any person to drive or operate any motor vehicle while under the influence of alcohol, or while under the influence of any narcotic drug or any other self-administered intoxicant or drug of a similar nature. For purpose of this section, the term "motor vehicle" shall include automobiles, trucks, engines, trains, motorcycles, mopeds, and pedal bicycles with helper motors, while operated on the public highways.

Section 11-29. Same—Breath analysis to determine probable alcoholic content of blood.

(a) Any person who is suspected of a violation of Section 11-28 shall be entitled, if such equipment be available, to have his breath analyzed to determine the probable alcoholic content of his blood. Such breath may be analyzed by any member of the County Police in the normal discharge of his duties.

(b) The State Board of Health shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the police department thereof.

(c) Any person who has been stopped by a police officer of the County and is suspected by such officer to be guilty of a violation of Section 11-28 shall have the right to refuse to permit his breath to be so analyzed, and his failure to permit such analysis shall not be evidence in any prosecution under Section 11-28; provided, however, that nothing in this Section shall be construed as limiting in any manner the provisions of Section 11-30.

(d) Whenever the breath sample so taken and analyzed indicates that there is alcohol present in the blood of the person from whom the breath was taken, the officer may charge such person for the violation of Section 11-28. Any person so charged shall then be subject to the provisions of Section 11-30.

(e) The results of such breath analysis shall not be admitted into evidence in any prosecution under Section 11-28, the purpose of this Section being to permit a preliminary analysis of the alcoholic content of the blood of a person suspected of having violated the provisions of Section 11-28.

(f) Police officers shall, upon stopping any person suspected of having violated the provisions of Section 11-28, advise such person of his rights under the provisions of this section.

Section 11-30. Same—Use of chemical test to determine alcohol in blood; procedure; qualifications and liability of person withdrawing blood; costs; evidence; suspension of license for refusal to submit to test.

(a) As used in this section, "license" means any operator's, chauffeur's or learner's permit or license authorizing the operation of a motor vehicle upon the highways.

(b) Any person, whether licensed by Virginia or not, who operates a motor vehicle upon a public highway in this County shall be deemed thereby, as a condition of such operation, to have consented to have a sample of his blood or breath taken for a chemical test to determine the alcoholic content of his blood, if such person is arrested for a violation of Section 11-28 or of a similar ordinance within two hours of the alleged offense, and any person so arrested shall elect to have either the breath or blood sample taken, but not both, and it shall not be a matter of defense that either test is not available.

(c) If a person after being arrested for a violation of Section 11-28 and after having been advised by the arresting officer that a person who operates a motor vehicle upon a public highway in this County shall be deemed thereby, as a condition of such operation, to have consented to have a sample of his blood or breath taken for a chemical test to determine the alcoholic content of his blood, and that the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways of this state, then refuses to permit the taking of a sample of his blood or breath for such tests, the arresting officer shall take the person arrested before a committing magistrate and if he does again so refuse after having been further advised by such magistrate of the law requiring a blood or breath test to be taken and the penalty for refusal, and so declares again his refusal in writing upon a form provided by the chief medical examiner of Virginia (hereinafter referred to as chief medical examiner), or refuses or fails to so declare in writing and

such fact is certified as prescribed in subsection (j), then no blood or breath sample shall be taken even though he may thereafter request same.

(d) Only a physician, registered professional nurse, graduate laboratory technician or nurse designated by order of the Circuit Court acting upon the recommendation of a licensed physician, using soap and water to cleanse the part of the body from which the blood is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which will not affect the accuracy of the test, or using chemically clean sterile disposable syringes, shall withdraw blood for the purpose of determining the alcoholic content thereof. No civil liability shall attach to any person authorized to withdraw blood as provided herein as a result of the act of withdrawing blood from any person submitting thereto; provided, the blood was withdrawn according to recognized medical procedures; and provided further, that the foregoing shall not relieve any such person from liability for negligence in the withdrawing of any blood sample.

(d1) Portions of the blood sample so withdrawn shall be placed in each of two vials provided by the chief medical examiner which vials shall be sealed and labeled by the person taking the sample or at his direction, showing on each the name of the accused, the name of the person taking the blood sample, and the date and time the blood sample was taken. The vials shall be placed in two containers provided by the chief medical examiner, which containers shall be sealed so as not to allow tampering with the contents. The arresting or accompanying officer shall take possession of the two containers holding the vials as soon as the vials are placed in such containers and sealed, and shall transport or mail one of the vials forthwith to the chief medical examiner. The officer taking possession of the other container (hereinafter referred to as second container) shall, immediately after taking possession of said second container give to the accused a form provided by the chief medical examiner which shall set forth the procedure to obtain an independent analysis of the blood in the

second container, and a list of those laboratories and their addresses, approved by the state health commissioner; such form shall contain a space for the accused or his counsel to direct the officer possessing such second container to forward that container to such approved laboratory for analysis, if desired. The officer having the second container, after delivery of the form referred to in the preceding sentence (unless at that time directed by the accused in writing on such form to forward the second container to an approved laboratory of the accused's choice, in which event the officer shall do so) shall deliver said second container to the Chief of Police of the county police department, and the Chief of Police shall keep it in his possession for a period of seventy-two hours, during which time the accused or his counsel may, in writing, on the form provided hereinabove, direct the Chief of Police to mail it to the laboratory of the accused's choice chosen from the approved list.

(d2) The testing of the contents of the second container shall be made in the same manner as hereafter set forth concerning the procedure to be followed by the chief medical examiner, and all procedures established herein for transmittal, testing and admission of the result in the trial of the case shall be the same as for the sample sent to the chief medical examiner.

(d3) A fee not to exceed fifteen dollars shall be allowed the approved laboratory for making the analysis of the second blood sample which fee shall be paid for by the county. If the person whose blood sample was withdrawn is subsequently convicted for violation of Section 11-28, the fee charged by the laboratory for testing the blood sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the county.

(d4) If the Chief of Police, having possession of the second container, is not directed as herein provided to mail it within seventy-two hours after receiving said container then said officer shall destroy such second container.

(e) Upon receipt of the blood sample forwarded to his office for analysis, the chief medical examiner shall cause it to be examined for alcoholic content and he or an assistant chief medical examiner shall execute a certificate which shall indicate the name of the accused, the date, time and by whom the blood sample was received and examined, a statement that the container seal had not been broken or otherwise tampered with, a statement that the container was one provided by the chief medical examiner and a statement of the alcoholic content of the sample. The certificate attached to the vial from which the blood sample examined was taken shall be returned to the clerk of the court in which the charge will be heard. The certificate attached to the container forwarded on behalf of the accused shall also be returned to the clerk of the court in which the charge will be heard, and on motion of the accused such certificate shall be admissible in evidence when attested by the pathologist or by the supervisor of the laboratory approved by the state health commissioner.

(f) When any blood sample taken in accordance with the provisions of this section is forwarded for analysis to the office of the chief medical examiner, a report of the results of such analysis shall be made and filed in that office. Upon proper identification of the vial into which the blood sample was placed, the certificate as provided for in this section shall, when duly attested by the chief medical examiner, or any assistant chief medical examiner, be admissible in any court, in any criminal proceeding, as evidence of the facts therein stated and of the results of such analysis.

(g) Upon the request of the person whose blood or breath sample was taken for a chemical test to determine the alcoholic content of his blood, the results of such test or tests shall be made available to him.

(h) A fee not exceeding ten dollars shall be allowed the person withdrawing a blood sample in accordance with this section, which fee shall be paid for by the county. If the person whose blood sample was withdrawn is subsequently convicted for violation of Section 11-28, the amount charged by the person withdrawing the sample

shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the county.

(i) In any trial for a violation of Section 11-28, this section shall not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court, and the court shall regardless of the result of the blood or breath test or tests, if any, consider such other relevant evidence of the condition of the accused as shall be admissible in evidence. The failure of an accused to permit a sample of his blood or breath to be taken for chemical test to determine the alcoholic content of his blood is not evidence and shall not be subject to comment at the trial of the case; nor shall the fact that a blood or breath test had been offered the accused be evidence or the subject of comment.

(j) The form referred to in subsection (c) shall contain a brief statement of the law requiring the taking of a blood or breath sample and the penalty for refusal, a declaration of refusal and lines for the signature of the person from whom the blood or breath sample is sought, the date and the signature of a witness to the signing. If such person refuses or fails to execute such declaration, the committing justice, clerk or assistant clerk shall certify such fact, and that the committing justice, clerk or assistant clerk advised the person arrested that such refusal or failure, if found to be unreasonable, constitutes grounds for the revocation of such person's license to drive. The committing or issuing justice, clerk or assistant clerk shall forthwith issue a warrant charging the person refusing to take the test to determine the alcoholic content of his blood, with violation of this section. The warrant shall be executed in the same manner as criminal warrant.

(k) The executed declaration of refusal or the certificate of the committing justice, as the case may be, shall be attached to the warrant and shall be forwarded by the committing justice, clerk or assistant clerk to the court in which the offense of driving under the influence of intoxicants shall be tried.

(l) When the court receives the declaration of refusal or certificate referred to in subsection (k) together with the warrant charging the defendant with refusing to submit to having a sample of his blood or breath taken for the determination of the alcoholic content of his blood, the court shall fix a date for the trial of said warrant, at such time as the court shall designate, but subsequent to the defendant's criminal trial for driving under the influence of intoxicants.

(m) The declaration of refusal or certificate under subsection (k), as the case may be, shall be prima facie evidence that the defendant refused to submit to the taking of a sample of his blood or breath to determine the alcoholic content of his blood as provided hereinabove. However, this shall not be deemed to prohibit the defendant from introducing on his behalf evidence of the basis for his refusal to submit to the taking of a sample of his blood or breath to determine the alcoholic content of his blood. The court shall determine the reasonableness of such refusal.

(n) If the court shall find the defendant guilty as charged in the warrant, the court shall suspend the defendant's license for a period of ninety days for a first offense and for six months for a second or subsequent offense or refusal within one year of the first or other such refusals; the time shall be computed as follows: the date of the first offense and the date of the second or subsequent offense; provided, that if the defendant shall plead guilty to a violation of Section 11-28, the court may dismiss the warrant.

(o) The court shall forward the defendant's license to the commissioner of the division of motor vehicles of Virginia as in other cases of similar nature for suspension of license unless, however, the defendant shall appeal his conviction in which case the court shall return the license to the defendant upon his appeal being perfected.

(p) The procedure for appeal and trial shall be the same as provided by law for misdemeanors. If requested by either party, trial by jury shall be as provided in Article 4 (Section 19.2-260, et seq.) of Chapter 15 of Title 19.2 of the Code of Virginia, and the County shall be required to prove its case beyond a reasonable doubt.

(q) No person arrested for a violation of Section 11-28 shall be required to execute in favor of any person or corporation a waiver or release of liability in connection with the withdrawal of blood and as a condition precedent to the withdrawal of blood as provided for herein.

(r) The court or the jury trying the case shall determine the innocence or the guilt of the defendant from all the evidence concerning his condition at the time of the alleged offense.

(rl) Chemical analysis of a person's breath, to be considered valid under the provisions of this section, shall be performed by an individual possessing a valid license to conduct such tests, with a type of equipment and in accordance with the methods approved by the state health commissioner. Such breath testing equipment shall be tested for its accuracy by the state health commissioner's officer at least once every six months.

Any individual conducting a breath test under the provisions of this Section and as authorized by the state health commissioner shall issue a certificate which will indicate that the test was conducted in accordance with the manufacturer's specifications, the equipment on which the breath test was conducted has been tested within the past six (6) months, the name of the accused, the date, the time the sample was taken from the accused, the alcoholic content of the sample, and by whom the sample was examined. The certificate, as provided for in this section, when duly attested by the authorized individual conducting the breath test, shall be admissible in any court in any criminal proceeding as evidence of the alcoholic content of the blood of the accused. In no case may the officer making the arrest, or anyone with him at the time of the arrest, or anyone participating in the arrest of the accused, make the breath test or analyze the results thereof. A copy of such certificate shall be forthwith delivered to the accused.

(s) The steps herein set forth relating to the taking, handling, identification, and disposition of blood or breath samples are procedural in nature and not substantive. Substantial compliance therewith shall be deemed to be sufficient. Failure to comply with any one or more of such steps or portions thereof, or a variance in the results of the two (2) blood tests shall not of itself be grounds for finding the defendant not guilty, but shall go to the weight of the evidence and shall be considered as set forth above with all the evidence in the case, provided that the defendant shall have the right to introduce evidence on his own behalf to show noncompliance with the aforesaid procedure or any part thereof, and that as a result his rights were prejudiced.

Section 11-31. Same--Presumptions from alcoholic content of blood.

In any prosecution for a violation of Section 11-28, the amount of alcohol in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the accused's blood in accordance with the provisions of Section 11-30 shall give rise to the following presumptions:

- (a) If there was at that time 0.05 percent or less by weight by volume of alcohol in the accused's blood, it shall be presumed that the accused was not under the influence of alcoholic intoxicants.
- (b) If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight by volume of alcohol in the accused's blood, such facts shall not give rise to any presumption that the accused was or was not under the influence of alcoholic intoxicants, but such facts may be considered with other competent evidence in determining the guilt or innocence of the accused.
- (c) If there was at the time 0.10 percent or more by weight by volume of alcohol in the accused's blood, it shall be presumed that the accused was under the influence of alcoholic intoxicants.

Section 11-32. Penalty for driving while intoxicated; subsequent offense; prior conviction.

Any person violating any provision of Section 11-28 of this Code or Section 18.2-266 of the Code of Virginia shall be guilty of a Class 1 misdemeanor.

Any person convicted of a second offense within less than five years after a first offense under Section 11-28 of this Code or Section 18.2-266 of the Code of Virginia, shall be punished by a fine of not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000.00) and by confinement in jail for not less than one month nor more than one year. Forty-eight hours of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court. Any person convicted of a second offense within a period of five to ten years of a first offense under Section 11-28 of the Code or Section 18.2-266 of the Code of Virginia shall be punished by a fine of not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000.00) and by confinement in jail for not less than one month nor more than one year. Any person convicted of a third offense or subsequent offense within ten years of an offense under Section 11-28 of this Code or Section 18.2-266 of the Code of Virginia shall be punished by a fine of not less than five hundred dollars (\$500.00) nor more than one thousand (\$1,000.00) and by confinement in jail for not less than two months nor more than one year. Thirty days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the Court if the third or subsequent offense occurs within less than five years. Ten days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within a period of five to ten years of a first offense.

For the purpose of this Section a conviction or finding of not innocent in the case of a juvenile under the provisions of Section 11-28 of this Code and Section 18.2-266 of the Code of Virginia, former Section 18.1-54 (formerly Section 18.75), the ordinance of

any county, city or town in this State or the laws of any other state substantially similar to the provisions of Section 18.2-266 through 18.2-269 of this Code, shall be considered a prior conviction.

Section 11-33. Same, forfeiture of driver's license; suspension of sentence.

Except as provided in Section 18.2-271.1 of the Code of Virginia, the judgment of conviction if for a first offense under Section 11-28 of this Code or Section 18.2-266 of the Code of Virginia, or for a similar offense under any county, city or town ordinance, shall of itself operate to deprive the person so convicted of the privilege to drive or operate any motor vehicle, engine or train in the Commonwealth for a period of six (6) months from the date of such judgment. If such conviction is for a second or other subsequent offense (i) within five years of a first offense conviction under Section 11-28 of this Code or Section 18.2-266 of the Code of Virginia such person's license to operate a motor vehicle, engine or train shall be suspended for a period of three years or, (ii) within five to ten years of a first offense conviction under Section 11-28 of this Code or Section 18.2-266 of the Code of Virginia such person's license to operate a motor vehicle, engine or train shall be suspended for a period of two years from the date of the judgment or conviction. Any such period of license suspension, in any case shall run consecutively with any period of suspension, for failure to permit a blood or breath sample to be taken as required by Section 11-30 of this Code or Section 18.2-266 of the Code of Virginia. If any person has heretofore been convicted or found not innocent in the case of a juvenile of violating any similar act in the Commonwealth or any other state and thereafter is convicted of violating the provisions of Section 11-28 of this Code or Section 11-32 of this Code or Section 18.2-270 of the Code of Virginia, such conviction of finding shall be, for the purposes of this section, a subsequent offense and shall be punished accordingly. Six months of any license suspension or revocation imposed pursuant to this Section for a first offense conviction may be suspended, in whole or in part by the court upon the entry of such

person convicted into and the successful completion of a program pursuant to Section 18.2-271.1 of the Code of Virginia. Upon a second conviction, the court may not suspend more than two years of such license suspension or revocation if such second conviction occurred less than five years after a previous conviction under Section 11-32 of this Code or Section 18.2-270 of the Code of Virginia, not more than one year if such second conviction occurred five to ten years after a previous conviction. Upon a third conviction of a violation of Section 11.28 of this Code or Section 18.2-266 of the Code of Virginia, such person shall not be eligible for participation in a program pursuant to Section 18.2-271 of the Code of Virginia.

Section 11-35. Same—Report of conviction to division of motor vehicles.

The clerk or the judge of every court of the County shall, within thirty (30) days after final conviction of any person in his court under the provision of sections 11-28 to 11-34, report the fact thereof and the name, post office address and street address of such person, together with the license plate number on the vehicle operated by such person to the commissioner or the division of motor vehicles who shall preserve a record thereof in his office.

Section 11-36. County Administrator authorized to regulate parking and to erect signs, etc.

The County Administrator may classify vehicles with reference to parking upon county-owned property and county-maintained roads and streets and may designate the time, place and manner such vehicles may be allowed to park thereon; and he may make and enforce such additional rules and regulations as parking conditions may require. When any parking regulation is established, pursuant to this section, the County Administrator shall cause to be erected appropriate signs or markers so that an ordinarily observant person, who may be affected by such regulation, will be aware of such regulation.

When any regulation is made pursuant to this Section and when appropriate signs or markers have been erected as required by this Section, it shall be unlawful for any person to violate any such regulation.

Section 11-40.1. Parking; spaces reserved for handicapped; summons for unauthorized use; penalty.

(a) It shall be unlawful for any operator of a motor vehicle to park in a parking space reserved for the handicapped except:

1. A person possessing a special handicapped vehicle parking permit issued by the Commission of Motor Vehicles pursuant to Section 46.1-254.2 of the Code of Virginia or a person transporting by passenger car, van or pickup truck the holder of any such permit, which permit shall be displayed in the window of the vehicle transporting the holder of the permit in order to permit the vehicle to park lawfully in a parking space reserved for the handicapped;

2. A handicapped person driving a motor vehicle displaying state license plates designated for handicapped persons or a state decal issued to handicapped persons and issued pursuant to Section 46.1-104.1 of the Code of Virginia, or a person transporting a handicapped person in a motor vehicle displaying such license plates or decals; or

3. A disabled veteran driving a motor vehicle displaying special license plates issued pursuant to Section 46.1-149.1 of the Code of Virginia or a person transporting a disabled veteran in a motor vehicle displaying such special license plates.

(b) Any police officer of James City County may issue a summons charging a person parking in violation of subsection (a) of this Section, or, if such person is not known, then the registered owner of the motor vehicle parked in violation of subsection (a).

(c) Violation of the provision of paragraph (a) of this section shall be a Class 4 misdemeanor punishable by a fine of not more than one hundred dollars (\$100.00).

(d) The owner or duly authorized agent of a private parking space, or an agent of a public authority having control of a public space, which space is properly designated and marked for handicapped parking, shall have authority to have any vehicle not displaying handicapped parking permits or plates as described in subsection (a) removed and stored. Possession may be regained by payment to the person who removed the vehicle of all reasonable costs for the removal and storage. The vehicle owner may contest the removal in the manner provided by Section 46.1-254 (E) of the Code of Virginia.

Section 11-41. Stopping on traveled portion of highway; school bus discharging children.

No vehicle or part thereof, other than a school bus when discharging children who must cross the highway, shall be stopped on the traveled portion of any highway for the purpose of taking on or discharging cargo or passengers unless the operator cannot leave the traveled portion of the highway with safety. A school bus stopping on the highway shall be stopped at a point where it can be clearly seen from a safe distance from both directions.

Section 11-42. Stopped vehicle not to endanger others or impede traffic; removal of vehicles in violation.

No vehicle shall be stopped in such a manner as to impede or render dangerous the use of the highway by others, except in the case of an emergency as the result of an accident or mechanical breakdown, in which case the emergency flashing lights of such vehicle should be turned on if the vehicle is equipped with such lights and such lights are operating, and a report shall be made to the nearest police officer as soon as practicable and the vehicle shall be removed from the highway as soon as possible; and such removal may be ordered by a police officer at the expense of the owner if the disabled vehicle creates a traffic hazard.

Section 11-46. Keeping of inoperative automobiles in residential or commercial zone.

It shall be unlawful for any person to keep, except within a fully enclosed building or structure, on any property zoned for residential or commercial purposes any automobile or automobiles whose condition is such that it is economically impractical to make them operative; provided, that the provisions of this Section shall not apply to a licensed business which on June 26, 1970, was regularly engaged in business as an automobile dealer, salvage dealer or scrap processor.

Section 11-47. Removal and disposition of unattended vehicles generally.

(a) It shall be unlawful for any person to leave any motor vehicle, trailer or semitrailer, or part thereof, on the paved or improved surface of any highway or adjacent thereto or on public grounds, unaccompanied by the owner or operator thereof, if such motor vehicle, trailer or semitrailer constitutes a hazard in the use of the highway by reason of its position thereon, or has been unattended longer than twenty-four (24) hours. Additionally, it shall be unlawful for any person to abandon any motor vehicle, trailer or semitrailer, or part thereof on such highway, surfaces or public grounds. The Chief of Police discovering or having a report of same shall remove it or have it removed to the nearest storage garage for safekeeping, and that fact shall be immediately reported to the division of motor vehicles (division) or some officer or agent of the division and to the owner of such motor vehicle, trailer or semitrailer, as promptly as possible, and such owner, before obtaining the possession of such motor vehicle, trailer or semitrailer shall pay to the parties entitled thereto all reasonable, necessary costs incidental to the removal or storage of such motor vehicle, trailer or semitrailer. In any case of a violation of the provisions of this section the owner of such motor vehicle, trailer or semitrailer, or part thereof, shall be presumed to be the person committing the violation; provided that such presumption shall be rebuttable by competent evidence; provided further that where it is shown to the satisfaction of the court that such vehicle was stolen or illegally used by a person other than the owner without authorization of the owner thereof, expressed or implied,

such vehicle shall be forthwith returned to its innocent owner who shall be relieved of any payment of costs under the requirements of this section. In any case in which the identity of the person violating this section cannot be determined, or where it is found by the court of competent jurisdiction that this section was not violated, the costs incidental to the removal and storage of such vehicle shall be paid out of the county treasury. Should any owner found guilty of violating this section fail or refuse to apply such costs or should the identity or whereabouts of such owner be unknown and unascertainable after a diligent search has been made or after notice to such owner at his address as indicated by the records of the division (and to the holder of any lien of record in the principal office of the division) against such motor vehicle, trailer or semitrailer, the Chief of Police or other officer designated by the governing body of the county may, after forty (40) days and after due notice of sale dispose of the same at public sale and the proceeds from the sale shall be forwarded by the selling officer to the county treasurer, provided, that if the value of such motor vehicle, trailer or semitrailer be determined by three (3) disinterested dealers or garage men to be less than one hundred fifty dollars (\$150.00) it may be disposed of by private sale or junked. The treasurer shall pay from the proceeds of the sale the cost of removal, storage, investigation as to ownership and liens and notice of sale, and the balance of such funds shall be held by him for the owner and paid to the owner upon satisfactory proof of ownership.

(b) If no claim has been made by the owner for the proceeds of such sale, after the payment of the above mentioned costs, the funds may be deposited to the general fund or any special fund of the county. Any such owner shall be entitled to apply to the county within three (3) years from the date of such sale and if timely application is made therefor, the county shall pay the same to the owner without interest or other charges. No claim shall be made nor shall any suit action or proceeding be instituted for the recovery of such funds after three (3) years from the date of such sale.


(c) It shall be presumed that any such motor vehicle, trailer or semitrailer, or part thereof, is abandoned if:

(1) It does not bear a current license plate or a current county sticker or a valid state inspection certificate or sticker, and


(2) It has been in a specific location for ten (10) days without being moved.

(d) Whenever any motor vehicle, trailer, semitrailer or part thereof is stalled or rendered immobile as the result of adverse weather conditions or other emergency situations, on the paved or improved surface of any highway or right-of-way, the Chief of Police upon discovering or having a report of same may move or have such vehicle removed to some reasonably accessible portion of the adjacent right-of-way; handling or disposition thereafter shall be affected by the authorities, and pursuant to the conditions provided by the provisions of subsection (a) of this section.

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Perry M. DePue, Chairman
Board of Supervisors

ATTEST:


James B. Oliver, Jr.
Clerk to the Board

Adopted by the Board of Supervisors, James City County, Virginia this 8th
day of August, 1983.