

## Chapter I

### GENERAL PROVISIONS

#### Article 1. Codification

##### Section 1-101. Citations

The ordinances included in the following Chapters shall constitute and be designated as the “Town of Kensington Code of Ordinances (1992 Edition),” and may be so cited. The Code may also be cited as the “Kensington Town Code.”

##### Section 1-102. Titles of Sections

The titles of the several Sections of this Code are intended as mere guide words to indicate the contents of the Sections and shall not be taken to be a part of such Sections.

##### Section 1-103. Numbering System

Every number assigned to identify a Section of this Code shall indicate the position of that Section within the Code and shall be consistent with the following system:

- (a) First digit indicates the Chapter.
- (b) Second digit indicates the Article within the Chapter.
- (c) Third and fourth digits indicate the sequence of the Section within the Article.

For example, Section 1-103 indicates the third Section of Article 1 in Chapter I.

##### Section 1-104. New Ordinances

(a) All ordinances passed subsequent to the adoption of this Code of Ordinances which amend, repeal or in any way affect said Code of Ordinances shall be numbered in accordance with the numbering system described in Section 1-103. Such ordinances shall be maintained in the permanent Town records, and shall from time to time be prepared for publication as supplementary pages for insertion into the Code of Ordinances.

(b) All ordinances passed subsequent to the adoption of this Code of Ordinances which do not amend, repeal or in any way affect said Code of Ordinances, or which are of less than general application and continuing force, shall be designated “Special Ordinances” and shall not be codified. An index and a copy of each such special ordinance shall be maintained in the Town offices for public inspection and a full index of such special ordinances shall be prepared for publication from time to time.

Section 1-105. Adding New Subject Matter to the Code

When the Town Council desires to enact an ordinance of a general and permanent nature on a subject not heretofore existing in the Code, a Section in substantially the following language should be made a part of the ordinance: “Section \_\_\_\_\_. It is the intention of the Council, and it is hereby ordained, that the provisions of this ordinance shall become and be made a part of the Code of Ordinances, and the Sections of this ordinance may be renumbered to accomplish such intention.” If necessary, new subject matter Sections may be organized into a new Article, and if necessary, a new Chapter may be created.

Section 1-106. Amending and Repealing Sections of this Code

All Sections of this Code that the Town Council desires to amend or repeal should be specifically amended or repealed by Section number. Amendments to any of the provisions with specific reference to a Section of this Code should be written in substantially the following language:

“That Section \_\_\_\_\_ of the Code of Ordinances is hereby amended to read as follows: \_\_\_\_\_” (insert new provisions).

Section 1-107. Repeal of Prior Ordinances

All ordinances or parts of ordinances adopted by the Kensington Town Council prior to March 15, 1993 are hereby repealed, except those that are temporary although general in effect or special although permanent in effect.

Section 1-108. Adoption

The Code of Ordinances of the Town of Kensington (1992 Edition) as compiled, codified, edited and published by the Institute for Governmental Service University of Maryland, in consultation with the Town Council, is adopted as the Code of laws of general application and continuing force in the Town, from and after March 15, 1993.

## Section 1-201.

## Definitions.

For the purpose of this Code the following words have the meanings indicated:

- (a) “Charter” shall mean the Charter of the Town of Kensington.
- (b) “Code” shall mean the Code of Ordinances of the Town of Kensington.
- (c) “Council” shall mean the Council of the Town of Kensington.
- (d) “County” shall mean Montgomery County, Maryland.
- (e) “May” is permissive.
- (f) “Mayor” shall mean the Mayor of the Town of Kensington.
- (g) “Month” shall mean a calendar month.
- (h) “Oath” shall mean an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words “swear” and “sworn” shall be equivalent to the words “affirm” and “affirmed”.
- (i) “Person” shall include a corporation, company, partnership, association or society as well as a natural person.
- (j) “Public right-of-way” shall mean any public street, road, alley, or other public way and the entire area between any public street, road, alley, or other public way and the private property line. This includes storm drains, curbs, sidewalks, any area between the curb and the sidewalk, and any area between the sidewalk and the private property line.
- (k) “Public way” shall mean all streets, avenues, roads, highways, public thoroughfares, lanes, and alleys.
- (l) “Shall” is mandatory.
- (m) “Signature” or “subscription” shall be construed to include a mark when the person cannot write, his or her name being written near it and witnessed by a person who writes their own name as witness.
- (n) “State” shall mean the State of Maryland.
- (o) “Town” shall mean the Town of Kensington, Maryland.

- (p) “Writing” shall include printing.
- (q) “Year” refers to the Town fiscal year.

Section 1-202

References to the Laws of Other Jurisdictions

(a) Pursuant to Article 23A of the Annotated Code of Maryland, the Town of Kensington, effective October 29, 1984, exempts itself from the provisions of all laws of Montgomery County enacted before or after that date and dealing with matters in which the Town is lawfully empowered by State law or its own Charter to act, except those laws of Montgomery County defined by Maryland law to apply and those which have been expressly adopted by reference by the Town in this Code of Ordinances.

(b) This exemption shall not prevent the Town from reaching mutual agreement with Montgomery County for the enforcement of specific laws of the County or Town by County officials or their agents.

(c) Whenever a provision of this Code refers to any portion of a State or County law, the reference includes any subsequent amendment to that law, unless the referring provision expressly provides otherwise.

(d) The Town hereby adopts and makes part of this Code by reference Chapter 1 of the Montgomery County Code (1984 Edition) entitled “General Provisions” as it relates to the enforcement of all County laws adopted by reference in this Code or otherwise applicable in the Town pursuant to Subsection (a) above. This Subsection is an exception to the general exemption enacted by this Section. Whenever Chapter 1 of the Montgomery County Code conflicts with the provisions of this Code, this Code shall take precedence and shall control. A copy of Chapter 1 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

(e) The Town hereby adopts and makes part of this Code by reference Chapter 19 of the Montgomery County Code entitled “Erosion, Sediment Control and Storm Water Management.” This Subsection is an exception to the general exemption enacted by this Section. A copy of Chapter 19 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 1-203.

Computation of Time

In computing any period of time prescribed or allowed by any applicable provision of this Code, the day of the act, event, or default, after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or a legal holiday. When the period of time allowed includes intermediate Saturdays, Sundays and legal holidays such days shall be counted in computing the period of time.

Section 1-204

Effective Date

This Code does not affect any of the following occurring before February 15, 1993: any offense or act committed or performed; any contract or right established; any penalty or forfeiture incurred; any prosecution, suit or proceeding pending; any judgment rendered; any budget adopted; any tax levied; any bonds authorized or issued; any special assessment or charge; any franchise granted by the Town; or any pension or honorarium paid to any individual.

Section 1-205.

Continuity of Offices

The continuity of every department, office, board, commission, committee, agency, or other unit of the Town affected by this Code is retained, notwithstanding any change in the name or designation of the unit. The personnel, records, files, furniture, fixtures and other properties and all appropriations, credits, assets, liabilities, and obligations of each retained unit are continued as the personnel, records, files, furniture, fixtures and other properties and all appropriations, credits, assets, liabilities, and obligations of the unit under the laws enacted by this Code.

Section 1-206.

Effect of Repeals

The repeal of an ordinance or Code Section shall not revive any ordinance or Code Section in force before or at the time such repeal took effect, nor shall such repeal affect any suit, prosecution or proceeding pending at the time thereof.

Section 1-207.

Continuous Provisions

Those provisions appearing in this Code, so far as they may be the same in substance as ordinances which existed at the effective date of said Code, shall be considered as continuations thereof and not as new enactments.

Section 1-208.

Severability

It is hereby declared to be the intention of the Council that the Sections, paragraphs, sentences, clauses, and words of this Code are severable and if any word, clause, sentence, paragraph or Section of said Code shall be declared unconstitutional or otherwise invalid by judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining words, clauses, sentences, paragraphs, and Sections of this Code, since the same would have been enacted by the Council without the incorporation into this Code of any such unconstitutional or invalid word, clause, sentence, paragraph or Section.

Chapter II

GOVERNMENT AND ADMINISTRATION

Article 1. Town Offices and Procedures

Section 2-101. Appointed Officials

When vacancies occur, the Mayor, with the approval of a majority of the Council, shall appoint the following officers, who shall not be members of the Council and who shall serve until their successors are appointed and qualified:

- Town Attorney
- Clerk-Treasurer
- Code Enforcement Officer
- Building Inspector
- Director of Operations

Section 2-102. Standing Committees

At the beginning of each fiscal year, and at such other times as may be required, the Mayor and Council shall agree upon and specify the duties of each member of the Council, and such duties shall not be changed without the consent of the Mayor and Council.

Section 2-103. Clerk-Treasurer

(a) The Clerk-Treasurer shall attend all meetings of the Council and shall accurately record all proceedings of such meetings in the order in which they occur and shall record the appearance and retirement of members, and record all ordinances in a book to be provided for that purpose.

(b) The Clerk-Treasurer shall deliver a copy of the minutes of each regular meeting of the Mayor and Council or “Town Meeting” to the Mayor and each member of the Council who attended such meeting. Said minutes shall be publicly distributed upon approval of a majority of the Mayor and Council Members who attended said meeting.

(c) The Clerk-Treasurer shall collect or receive all taxes and other moneys due the Town and shall keep and disburse the same in a manner prescribed by the Council.

(d) The Clerk-Treasurer shall preserve the records of the Town and shall not let them leave the Town’s possession except upon order of a court of competent jurisdiction or upon order of the Mayor.

(e) The Clerk-Treasurer shall keep the Town’s money accounts in such a manner that the balance on hand in any appropriation can be promptly determined.

(f) The Clerk-Treasurer shall, upon order of the Mayor, furnish photocopies of any records to any person applying therefore, for which service the Town shall collect fifty cents (\$.50) for each page.

(g) The Clerk-Treasurer shall issue, in writing, a call for the Mayor and Council to assemble whenever such meeting is requested by the Mayor or three (3) members of the Council.

(h) The Clerk-Treasurer shall perform any other duties described in Section 907 of the Town Charter, additional duties as prescribed in this Code of Ordinances, and duties as the Mayor and Council may prescribe.

(i) The Clerk-Treasurer may designate an agent or agents, who are employees of the Town under his or her direction, to carry out the duties of his or her office.

#### Section 2-105. Auditing Committee

(a) The Mayor shall, on or before the last Monday in July of each year, appoint an Auditing Committee to consist of three (3) members. Two (2) members shall be residents of the Town of Kensington. The third member shall be a certified public accountant.

(b) The duty of the Auditing Committee shall be to review the audit of the accounts of the Town required by Section 812 of the Town Charter and to conduct reviews of other financial matters of the Town that a majority of the Council may designate. The Auditing Committee shall report to the Town within ninety (90) days after the Town receives said audit. The Committee may make recommendations regarding the keeping of Town financial accounts and records as in its judgement would be in the best interests of the Town.

(c) None of the members of the Committee shall be members of the Council or otherwise be employed by the Town or be officers or staff of the Council.

#### Section 2-106. Disbursements

(a) All checks for disbursement of municipal funds issued by the Clerk-Treasurer shall be signed by him or her and countersigned by the Mayor or the Mayor's designee.

(b) No disbursement shall be made except upon a bill or invoice previously submitted to the Clerk-Treasurer for services actually performed or goods delivered, for which the Council shall have made an express appropriation by resolution or ordinance or for which an appropriation shall have been made in the annual budget.

#### Section 2-107. Permits and Licenses

All permits and licenses required by this Code shall be issued in writing in the name of the Town of Kensington by the Clerk-Treasurer in accordance with authority granted to the Clerk-Treasurer by the Council, except as otherwise provided by this Code.

Section 2-108. Town Attorney

(a) The Town Attorney shall be an attorney at law, licensed to practice in the State of Maryland. It shall be his or her duty to represent the Town in court, to advise the Mayor and Council and its members on legal matters concerning the Town, and at the request of the members to draft proposed ordinances or other documents.

(b) The Town Attorney shall perform any other duties described in Section 908 of the Town Charter and additional duties as prescribed in this Code of Ordinances.

Section 2-109. Code Enforcement Officer

It shall be the duty of the Code Enforcement Officer to enforce the Town's ordinances.

Section 2-110. Director of Public Works

The Director of Public Works, under the direction and supervision of the Mayor, shall plan, organize, coordinate, and direct the activities of the public works department. His or her duties shall include disposal of Town refuse, the construction, repair, and maintenance of Town buildings, facilities, streets, curbs, sidewalks, ditches, and equipment, upkeep of Town parks and grounds, regulation and upkeep of the Town's storm drainage system, and any other duties enumerated by resolution or ordinance of the Council or upon the order of the Mayor not inconsistent with the Town Charter or ordinances.

Section 2-111. Discharge of Appointed Officials

No official or employee appointed by the Mayor and Council may be discharged involuntarily, or influenced to resign, except after due notice and hearing, is adjudged to have been guilty of inefficiency, malfeasance, misfeasance, nonfeasance, misconduct in office, or insubordination by a majority of the Council.

Section 2-112. Mayor and Council to Act as Code Enforcement Officers

All Town of Kensington Council Members are hereby empowered to enforce Town ordinances as Code Enforcement Officers.

Section 2-113. Compensation of the Council

Each Member of Council shall be compensated at the rate of \$3,000 per annum effective July 1, 2016.

Section 2-114. Compensation of the Mayor



The Mayor shall be compensated at the rate of \$12,000 per annum.

Article 2. Elections

Section 2-201. General Voter Registration

(a) All persons residing within the corporate limits of the Town of Kensington who are now registered voters of the Town shall remain registered as long as they shall meet the qualifications for voters described in Section 701 of the Town Charter, unless such registration shall be withdrawn as hereinafter provided.

(b) Pursuant to Section 701 of the Town Charter, a resident who is a citizen of the United States, or who is not a citizen of the United States but is a permanent resident or is authorized to work in the United States, who is at least 17 years old and will be 18 years old or older on or before the next Town election may register at the Town office on any day in which the office is open for official business, and at regular meetings of the Mayor and Council, or at such other times and places as may be announced from time to time prior to 9:00 p.m. on the fifth Monday preceding any election.

(c) Pursuant to Section 707 of the Town Charter, any Town resident registered with the Montgomery County Board of Supervisors of Elections shall be deemed registered for Town elections, provided that the application for such registration is received by the Montgomery County Board of Supervisors of Elections no later than 9:00 p.m. on the fifth Monday prior to an election.

(d) The Board of Supervisors of Elections shall appoint as registrar the Clerk-Treasurer. Said registrar shall have all the power and duties, including that of administering oaths, to properly register any qualified resident.

(e) Qualified residents may also be registered to vote by the Board of Supervisors of Elections at such other times as may be announced from time to time by the Mayor.

(f) The Board of Supervisors of Elections shall review the books of registration prior to the second Monday in May preceding the next Town election for removal of any person who has died, who has moved out of Town, or who is otherwise legally disqualified. The Board of Supervisors of Elections shall report, in writing to the Town Council the names of all persons whose registrations are withdrawn and the reasons therefor. All questions arising in connection with the registration or withdrawal of registration of any person shall be determined and decided as provided in Section 707 of the Town Charter.

(g) The Board of Supervisors of Elections, appointed pursuant to Section 702 of the Town Charter shall remain in office until their successors are appointed and shall meet from time to time to carry out their duties.

(h) Even though a person may be on the registration rolls of the Town such person

may not vote unless he or she is a qualified voter. The Board of Supervisors of Elections may require any person who comes to the polls to vote at any election to furnish proof that such person is a resident of the Town under the provisions of Section 701 of the Town Charter.

Section 2-202

Distribution of Absentee Ballots

(a) Any qualified and registered voter may apply in writing or in person to the Clerk-Treasurer or Board of Supervisors of Elections for an absentee ballot.

(b) If an applicant appears to be eligible to vote as an absentee voter, the Clerk-Treasurer shall, as soon as practicable, deliver to him or her at the place so designated by the applicant, an absentee ballot and envelopes therefor, as hereinafter described in Subsection (f) below. If it appears that the applicant is not eligible to vote as an absentee voter, the Clerk-Treasurer shall, as soon as practicable, so notify the applicant.

(c) The Clerk-Treasurer shall deliver with each ballot and envelope instructions clearly explaining the manner in which the recipient may vote as an absentee voter under the provisions of this Article.

(d) The Clerk-Treasurer shall keep a record of applications for absentee ballots as they are received, showing the date received, the names and residences of the applicants, and places where such ballots were delivered, and, if any such applicants were rejected, the reasons for such rejections. Such applications and records shall be available for public examination for a period of six months after the election. The individual record of each voter to whom an absentee ballot was delivered shall be marked to indicate the fact that an absentee ballot was delivered to the applicant and the date of such delivery. Only those voters to whom absentee ballots have been delivered shall be permitted to use such ballots. No voter to whom an absentee ballot has been delivered shall be allowed to vote in person at the polls at the election, except as provided in Section 2-203 (c) of this Article.

(e) No more than one absentee ballot shall be delivered to any one applicant unless the Clerk-Treasurer has reasonable grounds to believe that the absentee ballot previously delivered has been lost, destroyed or spoiled.

(f) The form of ballots and envelopes for absentee voters shall be as follows:

(1) The ballots shall contain the words "absentee ballot" in large letters in a clear space at the top of each ballot and the signature of the Clerk-Treasurer.

(2) The following shall be delivered to the absentee voter:

(i) An envelope marked "Ballot Envelope" of sufficient size to contain the absentee ballot

- (ii) Another envelope, hereinafter referred to as the “Outer Envelope”, of sufficient size to contain the Ballot Envelope; and
- (iii) Oath of absentee voter as follows:

I, \_\_\_\_\_, do hereby swear (or affirm) that I am a voter legally qualified to vote in the Town of Kensington’s \_\_\_\_\_ Election to be held on \_\_\_\_\_; that I am legally registered to vote in the Town of Kensington; that the within ballot was marked secretly, folded, enclosed and sealed in the enclosed Ballot Envelope; that I am not presently disqualified from voting under the laws of the State of Maryland or the Town of Kensington.

Section 2-203. Procedures of Absentee Voting

(a) The procedure for absentee voting is as follows: The absentee voter shall mark the absentee ballot, insert it in the Ballot Envelope and then seal this envelope. The voter shall then insert this envelope, together with a completed and signed oath into the outer envelope, and then seal this envelope. The voter shall then deliver the foregoing to the Clerk-Treasurer or the Board of Supervisors of Elections on or before the close of the polls on Election Day.

(b) No absentee ballots actually received by the Clerk-Treasurer or the Board of Supervisors of Elections after the close of the polls shall be valid.

(c) Any person to whom an absentee ballot has been delivered who has not returned said ballot as provided in Subsection (a) above and who decides to vote in person at the polls on Election Day, may vote in such election if their unmarked absentee ballot, together with both the Ballot Envelope and the Outer Envelope, is returned to the Board of Supervisors of Elections prior to the close of the polls. The Board of Supervisors of Elections shall clearly mark each of such materials “void” and shall enter in the appropriate register the fact that such materials have been returned but not used.

Section 2-204 Canvassing of Absentee Ballots

The procedure for the canvassing of ballots shall be as follows:

(a) The Clerk-Treasurer shall deliver all sealed Outer Envelopes received to the Board of Supervisors of Elections. No sealed Outer Envelopes shall be opened at any time prior to the canvassing of the absentee ballots.

(b) When an Outer Envelope is opened, the Board of Supervisors of Elections shall conclusively determine whether or not the person who has submitted the absentee ballot is a qualified, registered voter in the Town to whom an absentee ballot was delivered under this

Article, has properly completed the oath specified in Section 2-202 (f) (2) (iii) above, and has not voted in person at the election. The Board of Supervisors of Elections shall then enter in the appropriate register the fact that the voter whose name appears on the oath has voted by absentee ballot. They shall thereafter separately open the Ballot Envelopes in such a manner that they are unable to match the name of the absentee voters with the particular absentee ballots that have been submitted. The Board of Supervisors of Elections shall then proceed to count and certify the absentee ballots.

(c) The Ballot Envelopes found to be invalid by the Board of Supervisors of Elections shall not be opened. The Board of Supervisors of Elections shall keep a record of all absentee ballots which have been rejected and the reason for each such rejection. Such record, and envelopes and oaths described in Section 2-202 of this Article shall be available for public inspection at the Town office for a period of six months after the election.

(d) Whenever the Board of Supervisors of Elections shall determine from proof or investigation that any person who has marked and delivered to the Clerk-Treasurer or Board of Supervisors of Elections an absentee ballot has died before Election Day, said Board of Supervisors of Elections shall not count the ballot of the deceased voter. If at or prior to the time of such counting and canvassing the Board of Supervisors of Elections shall not have determined that the absentee resident who marked a ballot had died before Election Day, said ballot shall be counted. The fact that said absentee resident may later be shown to have been actually dead on Election Day shall not invalidate said ballot or said election.

(e) For the purpose hereof the term “deliver” shall mean delivery by mail or by any other means.

#### Section 2-205. Nominations

Pursuant to Section 708 of the Town Charter, persons may be nominated for elective office in the Town by filing a certificate of nomination with the office of the Board of Supervisors of Elections on or before the second Monday in May preceding any Town election. No person shall file for nomination to more than one elective Town office nor may any person hold more than one elective Town office at any one time.

Article 3. Public Ethics

Section 2-301. Applicability

The provisions of this Chapter shall apply to the Mayor, Town Council, Town Attorney, Clerk-Treasurer, Building Inspector, Code Enforcement Officer, Director of Operations, members of the Board of Supervisors of Elections, members of the Ethics Commission, and all other employees or people hired or appointed directly by the Mayor or Council and any other employees which the Council may designate.

Section 2-302. Purpose and Policy

The Town of Kensington, recognizing that its system of representative government is dependent in part on people maintaining the highest trust in its public officials and employees, finds and declares that the public has a right to be assured that the impartiality and independent judgement of public officials and employees will be maintained. For the purpose of guarding against improper influence, the Town Council enacts this Article to require Town officials and employees to disclose their financial affairs and to set minimum standards for the conduct of Town business. This Article is intended to comply with the requirements of State law outlined in Maryland Public Ethics Law, Annotated Code of Maryland, Article 40A.

Section 2-303. Definitions

For the purpose of this Article, the following words have the meanings indicated:

- (a) “Business or Business Entity” shall include any corporation, partnership, sole proprietor (including private consultant), joint venture, trust, foundation or other organization whether or not operated for profit, or other business entity regardless of form.
- (b) “Direct Financial Interest” shall mean:
  - (1) An ownership interest of three percent (3%) or more in any business or business entity, including ownership of securities of any kind representing or convertible into ownership, of more than three percent (3%) of a business entity. For the purpose of establishing ownership pursuant to this Subsection, the interest(s) of immediate family members shall be included; or
  - (2) Ownership of any interest as a result of which the owner has received or will receive more than one thousand dollars (\$1,000) per year.

(c) “Doing Business with the Town” means:

- (1) Having or negotiating a contract with the Town that involves the commitment of \$500 or more on a cumulative basis during a calendar year, or
- (2) Being regulated by or under the authority of the Town, or
- (3) Being a lobbyist as defined by Subsection (f) of this Section or as registered with the Clerk-Treasurer as provided in Section 2-309 of this Article.

(d) “Gift” shall mean the transfer of anything of economic value regardless of the form without adequate and lawful consideration. Gift does not include solicitation, acceptance, or receipt of political campaign contributions regulated by State law.

(e) “Immediate Family” shall mean spouse and dependent children.

(f) “Lobbyist shall mean any person, who in the presence of any official of the Town, has communicated with such official for the purpose of influencing any legislative or executive action and who for that purpose either incurs expenses of one hundred dollars (\$100) or more or receives five hundred dollars (\$500) or more as compensation for such activity or any person who expends within any calendar year a cumulative total of one hundred dollars (\$100) or more on one (1) or more officials of the Town for meals, beverages, special events or gifts in connection with or with the purpose of influencing such officials in the performance of the Town’s business or the enactment of legislation.

(f) “Officials or Official” includes all elected Town officers and all other Town employees enumerated in Section 2-301 of this Article.

#### Section 2-304. Ethics Commission

(a) There is hereby established a Town Ethics Commission which shall consist of three (3) members who are not employed by the Town and who are appointed by the Mayor with the approval of a majority of the Council on or before the first Monday in April. The members of the Commission shall be appointed to staggered two-year terms. Initially, one (1) member shall be appointed to a one-year term, one (1) member to a two-year term and one (1) member to a three-year term. Vacancies on the Commission shall be filled by the Mayor with the approval of the Council for the remainder of the unexpired term.

(b) The qualifications of office for members of the Town Ethics Commission shall be the same as those enumerated in Section 702 of the Town Charter for the Board of Supervisors of Elections. The members of the Commission shall not hold any position with any other board or commission established by the Town.

(c) The Commission shall be advised and assisted by the Town Attorney and Clerk-

Treasurer and have the following responsibilities:

- (1) To devise, receive and maintain all forms generated by this Article;
- (2) To provide advisory opinions to persons subject to this Article as to the applicability of the provisions of this Article to them;
- (3) To process and make determinations as to complaints filed by any person alleging violation of this Article.

(d) In the event that a formal complaint is lodged against any member of the Commission, that member shall be disqualified from participating in any Commission proceedings regarding determination of the complaint against said member. A replacement member shall be appointed by the Mayor with the approval of a majority of the Council pending resolution of the complaint.

(e) The Commission may request an independent agency or individual, not connected with the Town, to investigate any complaint lodged against a Commission member, the Town Attorney, or Clerk-Treasurer.

#### Section 2-305. Conflicts of Interest

Officials and employees of the Town of Kensington who are subject to this Article shall not:

(a) Participate on behalf of the Town in any matter which would have a direct financial impact on them, their immediate family or a business entity with which they are employed or in which they have a direct financial interest, except in the exercise of routine administrative duties or as provided in Section 2-306 below.

(b) Represent any party, for a contingent fee, before any Town body.

(c) Intentionally use the prestige of their office for their own private gain or that of their immediate family or any other person or business entity; provided, however, that the performance of usual and customary constituent services, without additional compensation, and the proper performance of regular administrative or ministerial duties does not constitute the use of the prestige of office for an official's or employee's private gain.

(d) Use confidential information acquired in their official Town capacity for personal gain or that of their immediate family or any other person or business entity.

(e) Hold any outside employment relationship that would impair their impartiality or independence of judgement.

(f) Within one (1) year following termination of Town service, act as a compensated representative of another party in connection with any specific matter in which he or she participated substantially as a Town official.



Section 2-306. Exception

An official of the Town, a member of their immediate family or any business with which they are employed or in which they have a direct financial interest may provide services, sell goods, materials and supplies to the Town subject to the following conditions:

(a) The fee or charge therefor shall be on terms at least as favorable as terms offered to the general public.

(b) The substance of any such transaction shall be disclosed pursuant to the provisions of Section 2-308 (a) of this Article.

(c) All bills in connection therewith shall be filed with the Clerk-Treasurer and maintained for a period of not less than three (3) years and shall be open to public inspection and copying at the Town offices during regular business hours.

Section 2-307. Solicitation or Acceptance of Gifts

(a) Officials and employees of the Town of Kensington who are subject to this Article shall not solicit any gifts.

(b) No official of the Town of Kensington may knowingly accept any gift or gifts of greater than fifty dollars (\$50) in value from any person, firm, or corporation, who the official knows is doing or seeking to do business with the Town, is engaged in activities which are regulated or controlled by the Town, or has a financial interest which may be substantially and materially affected by the performance or nonperformance of said official's duties, except when said gift or gifts would not present a conflict interest as determined by the Town's Ethics Commission.

Section 2-308. Financial Disclosure

(a) All officials and employees shall disclose to the Ethics Commission, in writing, the substance of any transaction, anticipated transaction or other action which presents a potential conflict of interest as described in Sections 2-305 and 2-306 above. The disclosure shall include a description of the official's or employee's direct financial interest in the contemplated action and a detailed description of any economic interest or impact resulting from the contemplated action. Disclosure should be made, whenever possible, at least thirty (30) days prior to the contemplated action. The thirty (30) day disclosure requirement may be waived by resolution if the disinterested Council, Board or Commission members first determine that prompt action is warranted under the circumstances.

(b) Town officials enumerated in Section 2-301, shall file annually no later than

January 31 of each calendar year, beginning January 31, 1994, a statement with the Town's Clerk-Treasurer disclosing all gifts in excess of twenty-five dollars (\$25) in value or a series of gifts totaling one hundred dollars (\$100) or more in value, received in the preceding calendar year from any one person or entity or on behalf of, directly or indirectly, any person or business entity doing business with, seeking to do business with, or subject to the direct regulatory authority of the Town, except gifts received from the spouse, children, parents, or from other relatives living in the same household as the person making the statement. The statement shall identify the donor of the gift and its approximate retail value at the time of receipt. If no such gifts were received during the preceding calendar year, a statement to that effect shall be filed.

(c) Non-incumbent candidates for elective offices and proposed appointees for any boards or commissions enumerated in Section 2-301 of this Article shall file statements consistent with the requirements of this Section at the time they file their certificates of candidacy or upon their nominations for appointment from the most recent January to the date of filing.

(d) All statements filed under this Section shall be retained by the Clerk-Treasurer for a period of at least three (3) years and shall be open to inspection and copying at the Town offices during regular business hours.

#### Section 2-309. Lobbying Disclosure

(a) All lobbyists shall file a registration statement with the Clerk-Treasurer no later than January 31 of the calendar year in which the lobbyists intend to appear and/or communicate with the Town regarding any legislative or executive action or within twenty (20) days after first making such appearances or communications.

(b) The registration statement referred to in Subsection (a) above shall include complete identification of the registrant and any other person on whose behalf the registrant acts. It shall also identify the subject matter on which the registrant proposes to make such appearances.

(c) In addition to the registration statement set forth above, all lobbyists shall file an annual report within thirty (30) days after the end of any calendar year during which they were registered, disclosing the value, date and nature of any food, entertainment or other gift provided to a Town official(s). Where a gift or series of gifts to a single official exceed fifty dollars (\$50) in value, the official(s) shall also be identified.

(d) All registration statements and annual reports filed hereunder shall be retained by the Clerk-Treasurer for a period of at least three (3) years and shall be open for inspection and copying at the Town offices during regular business hours.

#### Section 2-310. Violations and Penalties

(a) The Ethics Commission may issue a cease and desist order against any person found to be in violation of this Article and may seek enforcement of such order in the Circuit Court of Montgomery County, Maryland pursuant to Article 40A of the Annotated Code of Maryland.

(b) Any official found to have violated the provisions of this Article may be subject to disciplinary or other appropriate personnel action, including termination or suspension of salary or other compensation.

(c) If the Ethics Commission finds a violation of this Article, the Commission will notify the person in writing to cease and desist. If that person does not comply within the time frame noted, the Commission will ask them for their immediate resignation.

#### Article 4. Purchasing and Contracts

##### Section 2-401. Purpose, Scope

It is the purpose of this chapter to provide uniform procedures for the purchase and acquisition of materials, supplies, equipment and services on the most equitable and beneficial basis to the Town. It is the intent to provide for all purchases and contracts which may be necessary to the operation of the Town in this Article. Items, materials or services obtained from utility companies having exclusive franchises in the area are excluded from the provisions of this Article. Items, materials or services supplied to the Town by a contractor or developer as part of a permit-approved improvement are not subject to the provisions of this Article.

##### Section 2-402. Bidding Requirements

All materials, supplies, services, and equipment of more than \$30,000 in value and not excluded in Section 2-403 of this Article shall be purchased by means of a competitive bid process, as follows:

(a) Notice shall be provided in at least one newspaper of general circulation in Montgomery County for a minimum of one week prior to the date set for the opening of bids. Said notice shall include a brief description of the item or items to be bid, the time and location where specifications may be obtained for the item or items to be bid, the time and date on which sealed bids are to be received, the location to which bids are to be returned and any special conditions to which the item or items may be subject. The notice shall contain the time, date and location of the bid opening, and all such openings are to be public.

(b) Written specifications shall be provided to all parties responding to the notice of bid, and said specifications shall contain sufficient information to reasonably proscribe the item or items, services, materials, equipment, etc., being sought for purchase. The use of exclusive specifications to the prohibition of equal items is prohibited. The specifications shall also contain any bond and/or other special conditions attached or made a part of the bid requirements. Bid forms may be provided. The Town reserves the right to reject any and all bids as is in its best interest.

(c) Tabulation of all bids and a recommendation shall be provided by Town Manager to the Mayor and Council. The Town Manager shall examine the qualifications of all bidders, and in the event that he/she shall determine that a bidder is not qualified by prior example, insufficient experience, insufficient financial capability or for any other reason, he/she shall so report to the Mayor and Town Council, who may declare the bid void.

Section 2-403. Exceptions

(a) Items, services or materials of not more than \$30,000 in value and authorized in the appropriation ordinance for the current year may be purchased on negotiation at the direction of the Town Manager in a manner approved by him/her.

(b) Whenever a Federal, State or Local Government, or any agency or unit thereof, whose purchasing policies are comparable to those of the Town of Kensington, has conducted a bid and awarded a contract, the Town Manager may purchase the bid item at the bid price from the successful bidder, subject, where required, to the approval of the Mayor and Council. Whenever the Town Manager elects to purchase an item, service or material from a successful bidder of another jurisdiction as provided for in this section, the Town Manager shall obtain a copy of the jurisdiction's purchasing policies. Further, the Town Manager shall enter into a contract with the successful bidder setting out the terms and conditions of the purchase.

(c) Nothing in this section shall be deemed to require the Town Manager to use another jurisdiction's bid process when purchasing items, services and materials. The Town Manager retains the right to issue a request for proposals for all items, services and materials purchased by the Town. Upon deciding to award a contract where the approval of the Mayor and Council is not required, the Town Manager shall immediately notify the Mayor and Council of the purchase. The notification shall contain:

- (1) A description of the item, service or material purchased;
- (2) The cost of the item, service or material;
- (3) Who is providing the item, service or material;
- (4) A description of the bid process used; and
- (5) A statement as to whether the successful bidder was the lowest most responsive and responsible bidder, and if not, why not.

Section 2-404. Awarding of Bids

The Mayor and Council shall approve all purchases in excess of \$10,000 by formal motion requiring a simple majority for approval. Such actions shall be taken at a regular meeting or at a duly called special meeting for that purpose. Except as provided in this Article, the Mayor and Council may, by an extra-majority vote, (defined as one more than a majority of those present and voting) authorize the bypassing of any or all bid procedure steps in cases which, in the Council's judgment, warrant such action. By the same extra-majority vote, it may allow the Town Manager to directly negotiate with any supplier if it is in the Town's best interest to do so. Nothing herein shall be construed as limiting the Town Manager to purchase by negotiation items, services or materials of not more than \$30,000 in value.

Section 2-405. Professional Services Contracts

The Council may decide by an extra-majority vote (defined as one more than a majority of those present and voting) to authorize the Town Manager to enter into negotiated procurement for professional services rather than advertise. In such cases where this informal procedure is followed, approval of the contract negotiated by the Town Manager may not be made by the Council any sooner than the next regularly scheduled Council meeting. If the Council finds that an emergency exists, this latter requirement may be set aside by an extra-majority vote.

## Chapter III

### STREETS, SIDEWALKS, MAINTENANCE AND USE OF THE PUBLIC RIGHTS OF WAY

#### Article 1. Excavations and Obstructions

##### Section 3-101. In General

(a) No person, except a public utility or a governmental agency acting pursuant to law, shall place an obstruction or cause any obstruction to be placed upon, or take up or cause to be taken up, any public right-of-way in the corporate limits of the Town of Kensington except as provided in this Code.

(b) No person shall cut into the surface, open, dig up, relay, or otherwise excavate any public right-of-way, except by authority and under the direction of the Mayor.

(c) Any person desiring to take up a part of the public right-of-way or to obstruct any public right-of-way may make application to the Clerk-Treasurer for a permit authorizing such action, in which application he or she shall state the purpose, mode and the character of the proposed obstruction or excavation and the length of time the same is expected to continue.

(d) At the direction of the Building Inspector, the Clerk-Treasurer shall issue a permit which shall state the length of time such obstruction or excavation may continue and shall require a deposit in an amount that, in the judgement of the Building Inspector, will guarantee the restoration of the public right-of-way to a condition as good as its original condition, except that no deposit shall be greater than five thousand dollars (\$5,000), except by resolution of the Council.

##### (e) Permit Fees

The Clerk-Treasurer shall charge those fees as determined by the Mayor and Council from time to time for issuance of a permit under this Chapter.

##### Section 3-102. Use of the Public Rights-of-Way

(a) Definitions. In this Article the following words have the meanings indicated:

- (1) Excavation – any work in the surface or subsurface of a Town owned right-of-way, including opening the right-of-way; installing, servicing, repairing, or modifying any facilities in or under the surface or subsurface of the right-of-way; and restoring the surface and subsurface of the right-of-way.

- (2) Facility – all appurtenances or tangible things owned, leased, operated, or licensed by a utility that are or are proposed to be located in the Town owned right-of-way, including cables, cabinets, ducts, conduits, converters, entrances, equipment, drains, handholds, manholes, pipes, pipelines, splice boxes, surface location markers, tracks, tunnels, utilities, and vaults.
- (3) Major Work – any reasonably foreseeable excavation that will affect the Town owned right-of-way for more than 15 consecutive calendar days.
- (4) Owner – a person who owns a facility that is or will be installed or maintained in the Town owned right-of way.
- (5) Right-of-Way – the area across, along, beneath, in, on, over, under, upon, or within the dedicated alleys, boulevards, lanes, roads, sidewalks, and streets within the Town that are owned by the Town and under the permitting jurisdiction of the Town.
- (6) Standard Specifications – The Montgomery County standard specifications and standard details for construction.
- (7) Utility – an owner whose facilities in the right-of-way are used to provide electricity, gas, information services, sewer service, steam, telecommunications, traffic controls, transit service, video, water, or other services to customers.

(b) Scope. This Section governs:

- (1) A utility’s use of or activity in the Town’s rights-of-way; and
- (2) Any use of or activity in the Town’s rights-of-way that is not covered by any other Town authorized franchise agreement, utility agreement, grading permit, building permit, or connection permit.

(c) Standard Specifications

All excavations, construction, maintenance, and other work in a right-of-way shall be performed in accordance with the Town’s standard specifications.

(d) Permit required.

- (1) Except as otherwise provided in this Section, a utility may not excavate, construct, or perform any maintenance or other work in a right-of-way without first obtaining from the Town a permit that authorizes the activity.

- (2) No permit is required for routine maintenance in the right-of-way, so long as the activity does not include an excavation and
  - (a) does not impede or alter traffic in the traveled portion of the right-of-way; or
  - (b) impedes or alters traffic in the traveled portion of the right-of-way for 30 minutes or less.
- (3) The issuance of a permit does not relieve the applicant from obtaining any other legal authority, including a building permit, that may be necessary to occupy or use the right-of-way.

(e) Applications.

An application for a permit shall be submitted in the format and manner specified by the Town.

(f) Approval or Denial; Contents;

- (1) The Town may approve or deny an application for a permit.
- (2) If an application is approved by the Mayor and the Director of Public Works, the Clerk-Treasurer shall issue a permit to the applicant.
- (3) If an application is denied, the Clerk-Treasurer shall advise the applicant by a written, electronic, or facsimile communication of the basis for the denial.
- (4) A permit shall specify the location, extent and method of the activity in the right-of-way, the start date and duration of the permit, the permittee to whom the permit is issued, and any conditions placed on the permit.
- (5) All permits shall incorporate by reference and require the permittee and owner to comply with the liability and indemnity provisions set forth in Section I of this Chapter.

(g) Duration and Validity; Non-transferability

- (1) A permit is void if the activity permitted by it has not begun within 60 calendar days of the start date specified in the permit, is not prosecuted diligently to its conclusion, or is not completed within the specified duration.
- (2) A permit is not transferable.



(h) Permit to be available at site.

A permit or a copy of the permit shall be available for review at the site for the duration of the activity allowed by the permit.

(i) Liability and indemnification.

- (1) In this Section, “claims” means all actions, costs, damages, demands, expenses, fines, injuries, judgements, liabilities, losses, penalties, suits, fees, attorneys’ fees, and costs.
- (2) An owner and permittee are wholly responsible for the quality of an excavation or other work performed in the right-of way, and both the owner and permittee are jointly and severally liable for all consequences of any condition of an excavation or other work and any facility installed, maintained or repaired in the right-of-way.
- (3) Each owner and permittee that causes damage in the right-of-way shall be responsible for maintaining, repairing, or reconstructing the site in a manner acceptable to the Town.
- (4) Each owner and permittee shall agree on its behalf and that of any successor or assign to indemnify, defend, protect and hold harmless the Town, including its officers, agents and employees from and against any and all claims of any kind allegedly arising directly or indirectly from any act, omission, or negligence of the owner, the permittee, or any of its subcontractors, or the officers, agents, or employees of them:
  - (a) while engaged in the performance of the activity authorized by the permit; or
  - (b) while in or about the right-of-way for any reason connected in any way with the performance of the activity authorized by the permit or allegedly resulting directly or indirectly from the maintenance or installation of any facility authorized by the permit.
- (5) At the request of the Town, the owner or permittee, at no cost or expense to the Town, shall indemnify, defend, protect, and hold harmless the Town against any claims, regardless of the alleged negligence of the Town or any other party, except only for claims resulting directly from the sole negligence or willful misconduct of the Town. The indemnification obligations assumed under the permit survive expiration of the permit and completion of the activity authorized by the permit.

(j) Stop Work Order; Permit Modification or Revocation.

- (1) The Town may issue a Stop Work Order, impose conditions upon a permit, or suspend or revoke a permit if it determines that:
  - (i) a person has violated this Chapter, the standard specifications, or any term, condition, or limitation of a permit;
  - (ii) activity in the right-of-way poses a hazardous situation or constitutes a public nuisance, public emergency, or other threat to the public health, safety, or welfare; or
  - (iii) there is a paramount public purpose.
- (2) The Town shall notify the permittee of action taken under Subsection (1) of this Section by a written, electronic, or facsimile communication.
- (3) A Stop Work Order shall state the conditions under which work may be resumed.
- (4) A Stop Work Order shall be posted at the site.

Section 3-103.           Obstruction and Excavations; Protection of Public

No person shall leave any obstruction or excavation on any public right-of-way after sunset without having such obstruction or excavation posted by flares or red or yellow lights and protected by barricades placed in such manner as to protect the public from injury therefrom and to give warning thereof and to show the extent of such obstruction or excavation.

Section 3-104.           Dirt, Sand, and Gravel Erosion

(a) No owner or occupant of property in the Town shall permit dirt, sand, gravel or other material to fall or be washed upon the public right-of-way abutting his or her property.

(b) Whenever a Code Enforcement Officer shall observe a violation of this Section, he or she shall immediately notify the owner or occupant of such property to remove such dirt, sand, gravel, or other material in conformance with the provisions of this Section.

(c) In the event that such owner or occupant shall fail within five (5) days to comply with such notice, the Code Enforcement Officer may order that such dirt, sand, gravel, or other material be removed in conformity with said notice, and, in addition to any other penalty prescribed by law, the Council may order that the cost of same be charged against the property and collected as delinquent taxes are collected.

Section 3-105           Maintenance of Public Right-of-Way

(a) The owners or occupants of properties abutting any public way shall be responsible for maintaining the public right-of-way in front of or adjacent to said property between the public way and the private property line in a clean and safe condition. This shall include but not be limited to the removal of snow and ice from the sidewalk.

(b) The owner or occupant of any property in the Town shall keep such property and the public right-of-way abutting the property free from rubbish or an unreasonable accumulation of growth or underbrush, weeds, briars or nuisances and will keep the grass mowed within the right-of-way.

(c) The owner or occupant of any property in the Town shall keep the property and the public right-of-way between the public way and the private property line free of any trees, bushes, hedges, vines, leaves, weeds, underbrush, loose earth, or any other materials which obstruct the vision of motorists traveling on any public street, alley, road, or other public way so as to constitute a traffic hazard.

(d) Whenever a Code Enforcement Officer shall observe a violation of this Section, he or she shall immediately notify such owner or occupant to remove said rubbish or underbrush, or other nuisance, or to cut or trim said weeds, trees, briars, or grass in conformance with the provisions of this Section.

(e) In the event that said owner or occupant shall fail within ten (10) days to comply with such notice, a Code Enforcement Officer may order that such rubbish or underbrush or other nuisance be removed or the weeds, briars, or grass be cut or trimmed in conformity with said notice and, in addition to any other penalties prescribed by law, the Council may order that the cost of same be charged against the property and collected as delinquent taxes are collected.

Section 3-105.5            Accumulation of Snow and Ice on Single Family Residential,  
Commercial, Multi-family and Industrial Property Prohibited

(a) Owners, tenants, and managers of single family, multi-family, commercial, industrial properties shall be jointly and severally responsible for removing snow and ice to the extent necessary to provide safe pedestrian pathways along public sidewalks, walkways and driveway aprons connecting sidewalks. Additionally, multi-family and commercial properties are further required to provide at least one safe pedestrian pathway between the public sidewalk(s) and the main entrance to the facility. Pathways shall be of sufficient width for safe pedestrian use.

(b) If an owner, tenant, or manager is unable to remove ice or hardpacked snow from sidewalks, walkways or pathways as described in Subsection (a) hereof, then the owner, tenant, or manager shall apply sand or salt or other abrasives so as to provide safe pedestrian use.

(c) Snow removal or sand, salt, or other abrasive applications shall be accomplished within twenty-four hours from the time the precipitation stops.

(d) The Town of Kensington shall be responsible for enforcing the provisions of this Section of the Town Code.

(e) A violation of this ordinance shall be a Class F municipal infraction for residential properties and a Class D municipal infraction for multi-family, commercial or industrial properties.

Section 3-106. Fences and Hedges

**RESERVED**

Section 3-107. Barbed Wire Fences

(a) No barbed-wire fencing shall be used along any street, alley, road, other public way, or property line, in or adjacent to any residential area.

(b) Barbed-wire fencing used along any street, alley, road, other public way, or property line in commercial areas shall be placed no lower than six (6) feet above ground level on any fence or similar structure, except that no barber-wire fencing shall be used on fences in or adjacent to residential areas in conformance with subsection (a) of this Section.

(c) No concertina wire fencing shall be used along any street, road, alley, other public way, or property line in the Town of Kensington.

(d) Whenever a Code Enforcement Officer observes a violation of this Section, he or she shall immediately notify the owner or occupant of such property to remove such fence so that the same shall conform to the provisions of this Section.

(e) In the event that such owner or occupant shall fail within ten (10) days to comply with such notice, a Code Enforcement Officer may order that such fence be removed in conformity with said notice, and, in addition to any other penalty prescribed by law, the council may order that the cost of same be charged against the property and collected as delinquent taxes are collected.

Section 3-108. Penalties

A violation of this Article shall be a Class C municipal infraction and shall be subject to penalties as provided in Chapter X of this Code of Ordinances. Each day a violation continues may be deemed a separate offense.

Article 2. Construction and Reconstruction of Sidewalks, Driveways and Streets

Section 3-201. Petition for Construction or Reconstruction of Sidewalks

(a) When a majority of the property owners on one (1) side of a block within the corporate limits of the Town of Kensington desire the construction or reconstruction of a side walk abutting their properties, they may file with the Clerk-Treasurer a petition for such construction or reconstruction.

(b) Said petition shall give the addresses of the persons whose signatures are affixed thereto, and shall assert that such persons are a majority of the property owners on one (1) side of a block in the Town of Kensington and shall describe the sidewalk project proposed and its location with substantial accuracy.

(c) When any petition meeting the requirements of this Section shall be filed with the Clerk-Treasurer, he or she shall forthwith transmit it or a copy thereof to the Mayor, certifying that the same conforms to the requirements of this Section.

(d) The Mayor shall place the same for public hearing upon the agenda of the Town Council at its next public meeting occurring not less than fifteen (15) days after receipt by the Clerk-Treasurer of said petition.

(e) The Clerk-Treasurer shall send written notice by mail to all owners of abutting property specifying the place, date and hour of the meeting at which the proposal will be considered by the Council; provided, however, that the date shall be at least the ten (10) days after the mailing of the notices. Notices shall be sent to the property owner's Town address or the address used by the Town and County for mailing real property tax bills.

(f) If the proposal will or may involve a front foot benefit assessment against the abutting property pursuant to Section 1004 of the Town Charter, the notice shall so state.

(g) At the meeting of the Mayor and Council at which the petition is presented and heard, the Mayor and Council shall give all abutting property owners present a reasonable opportunity to be heard. Within sixty (60) days after said meeting, the Council shall act to approve or deny the petition, or make other arrangements regarding the improvement or construction of sidewalks in question.

Section 3-202. Procedure for Construction, Reconstruction or Repair of Sidewalks

When the Council shall have approved a petition presented to it in accordance with this Article or when it shall have determined on its own motion to proceed with a project for construction, reconstruction or repair of a sidewalk within the corporate limits of the Town, it shall proceed as follows:

(a) The Mayor shall cause to be prepared adequate plans and specifications for the construction, reconstruction, or repair of said sidewalks, including grading or regarding, and engineering estimates as to the present costs of the project, and report such findings to the Council.

(b) When said plans, specifications and estimates are prepared, the Mayor and Council shall hold a public hearing on them.

(c) The Town may charge owners of abutting property up to two-thirds (2/3) of the costs of the construction, reconstruction or repair of sidewalks except as otherwise provided in this Subsection. In the case of dwellings or commercial facilities erected after May 28, 1991 the Town may order the owner to perform such work solely at the owner's expense, as provided in Section 1004 of the Town Charter. If a majority of the Council votes to charge owners of abutting property a fraction of the costs of construction, reconstruction or repair pursuant to this Section, all owners of abutting property shall be given due notice of the fraction of the costs to be charged.

(d) If front foot benefit assessments are levied against abutting property owners, the amount of such assessment shall be based on the actual costs of the project, including costs of plans, specifications, engineering supervision, inspections, legal fees and all other proper expenses and charges. Ordinances making the levies shall be passed as promptly after the work is completed as is practicable, and all abutting property owners whose property is assessed shall be given written notice, stating the amount of the assessment and the terms of payment.

### Section 3-203. Construction and Maintenance of Driveway Aprons

(a) For the purposes of this Section, "driveway apron" shall mean the portion of a driveway between the curb line and the sidewalk line and any other portion of driveway located in or that crosses the public right-of-way including any portion of a driveway that crosses a public sidewalk.

(b) No person, partnership or corporation shall construct, reconstruct or repave, or have any person construct, reconstruct or repave any driveway apron without having first obtained a written permit for such construction from the Town Manager or designee. The fee for such permit shall be determined by resolution of the Council from time to time.

(c) Construction, reconstruction or repair of driveway aprons shall meet the requirements of the Montgomery County Department of Transportation Design Standards for concrete aprons using material required therein.

(d) All driveway aprons shall be constructed, paved and maintained entirely at the expense of the property owner.

(e) It shall be the responsibility of the property owner to maintain the driveway

apron(s) in a proper state of repair and clear of all obstructions, deposits, or materials prohibited by this Chapter.

(f) If a driveway apron is out of repair or in such condition as to create a hazard to pedestrians or otherwise presents a hazard to the public, the driveway apron shall be condemned by the Town Manager or designee who shall notify the owner of the property to repair the driveway apron. In the event that such owner shall fail within twenty (20) days to comply with such notice to repair or replace a condemned driveway apron, the Town Manager or designee may order that such repairs or maintenance be completed in a suitable manner by the Town and, in addition to any other penalties prescribed by law, the Council may order that the cost of same be charged against the property and collected as delinquent taxes are collected.

#### Section 3-204. Construction of New Streets

Any new streets required to be constructed in the Town because of subdivision of undeveloped land shall be done at the expense of the developer and in accordance with the specifications as set forth in the Montgomery County Department of Transportation Design Standards, unless the Mayor and Council specifically approves in any instance departure from said specifications.

#### Section 3-205. Bonds Required

Whenever the Town issues permits for the construction of sidewalks, driveways, driveway aprons or when any new streets are constructed pursuant to the provisions of Section 3-205 above, the permittee, developer, or any other entity responsible for the construction, reconstruction, or maintenance of sidewalks, driveways, driveway aprons, or streets pursuant to this Article shall post a bond in an amount to be determined by the Building Inspector, with the approval of the Mayor and Council, to cover the costs of any uncompleted work or to improve work completed that does not meet the minimum standard specified in this Article.

#### Section 3-206. Penalties

A violation of this Article shall be a municipal infraction Class A prescribed in Chapter X of this Code of Ordinances. Each day a violation continues may be deemed a separate offense.

## Article III

### Wireless Telecommunications Facilities in Public Rights-of-Way

#### Section 3-301. Scope

##### (a) In General.

Unless exempted, every person who desires to place a small wireless telecommunications facility in Town rights-of-way to include deployment of personal wireless service infrastructure, or modify an existing wireless telecommunications facility, including without limitation for the:

- (1) Collocation of a small wireless facility;
- (2) Attachment of a small wireless facility to a pole owned by an authority;
- (3) Installation of a pole;
- (4) Modification of a small wireless facility or a pole.

Must obtain a wireless placement permit authorizing the placement or modification.

##### (b) Exemptions.

The following are exempted from the requirements of this Chapter:

- (1) The placement or modification of wireless telecommunications facilities on supporting structures owned, or under the control of, the Town, the use of which is subject to a contract for use of the facility between the Town and the entity or entities that own or control the wireless telecommunications facility;
- (2) The placement or modification of wireless facilities by the Town or by any other agency of the state solely for public safety purposes.
- (3) Modifications to an existing wireless telecommunications facility that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity does not disrupt or impede traffic in the traveled portion of a street, and if the work activity does not change the visual or audible characteristics of the wireless telecommunications facility. The Town by regulation, may also exempt wireless telecommunications facilities that otherwise are subject to the provisions of this section from the obligation to obtain a permit to install or modify a wireless telecommunications facility where it is determined that because of the physical characteristics of the



proposed facilities, and the work associated with them, such a permit is not required to protect the public health, welfare or safety to maintain the character of a neighborhood or corridor, or to otherwise serve the purposes of this ordinance.

- (4) Installation of a mobile cell facility or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement or removal of existing facilities, and that at least 30 days prior written notification is provided to the Town, and consent for placement is granted.
- (5) A micro wireless facility strung between two utility poles as defined in Section 301-26 and provided further that the installation does not require replacement of the strand, or excavation, modification or replacement of the utility poles.

(c) Other Applicable Requirements.

In addition to the wireless telecommunications permit required herein, the placement of a wireless telecommunications facility in the public-rights of way requires the persons who will own or control those facilities to obtain the franchises, license agreements and permits required by applicable law, and to comply with applicable law, including, but not limited to, applicable law governing radio frequency (rf) emissions. Nothing in this Chapter precludes the Town from applying its generally applicable health, safety, and welfare regulations when granting consent for a small cell facility or wireless support structure in the Town's right of way.

(d) Public Use.

Except as otherwise prohibited by Maryland law, any use of the right of way authorized pursuant to this Chapter will be subordinate to the Town's use and use by the public.

Section 3-302. Definitions

Terms used in this article shall have the following meanings:

- (a) Application: a formal request including all required and requested documentation and information submitted by an applicant to the Town for a wireless placement permit.
- (b) Applicant: a person filing an application for placement or modification of a wireless telecommunications facility in the rights-of way.
- (c) Antenna: an apparatus designed to emit radio frequency (rf) and operate from a fixed location to provide wireless services.

- (d) Antenna equipment: Equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.
- (e) Applicable laws/codes: Uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the Town, including any amendments adopted by the Town, or otherwise are applicable in the jurisdiction. The term includes the regulations of the Federal Communications Commission and the Occupational Safety and Health Administration as well as any local standards or regulations governing the use of rights-of-way.
- (f) Base Station: The term base station shall have the same meaning as in 47 C.F.R. Section 1.40001.
- (g) Certificate of completion: A document that is required from and issued by the Town confirming that all work described in the application, as approved: (i) was properly permitted, including, without limitation, all required permits for building, electrical work, street or curb cutting, and excavation; (ii) was done in compliance with and fulfillment of all conditions of all permits, including all stated deadlines; (iii) was fully constructed and/or placed as approved and permitted; and (iv) was finally inspected by the Town, and was approved by the Town after said final inspection.
- (h) Collocate: To install or mount a small wireless facility in the Public ROW on an existing support structure, an existing tower, or on an existing pole to which a small wireless facility is attached at the time of the application. “Collocation” has a corresponding meaning.
- (i) Make-ready work: Work that an authority reasonably determines to be required to accommodate a wireless infrastructure provider’s installation under this subtitle and to comply with all applicable standards. The work may include, but is not limited to, repair, rearrangement, replacement and construction of pole; inspections; engineering work and certification; permitting work; tree trimming (other than tree trimming performed for normal maintenance purposes); site preparation; and electrical power configuration. The term does not include a wireless infrastructure provider’s routine maintenance.
- (j) Rights-of-way: The term rights-of-way include any portion of any street, road or public way which the Town has the responsibility to maintain or manage.
- (k) Micro wireless facility: A small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

- (l) Small wireless facility: Consistent with Subpart U, Part 1 of Title 47, “State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities”, a facility that meets each of the following conditions:
- a. The structure on which antenna facilities are mounted
    - i. Is 50 feet or less in height, or
    - ii. Is no more than 10 percent taller than other adjacent structures, or
    - iii. Is not extended to a height of more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and
  - b. Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume; and
  - c. All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and
  - d. The facility does not require antenna structure registration;
  - e. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified by federal law
- (m) Support structure: Any structure capable of supporting a base station.
- (n) Tower: Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.
- (o) Utility pole: A structure in the rights of way designed to support electric, telephone and similar utility lines. A tower is not a utility pole.
- (p) Wireless permit: A permit issued pursuant to this chapter and authorizing the placement or modification of a wireless telecommunications facility of a design specified in the permit at a particular location within the rights of way; and the modification of any existing support structure to which the wireless telecommunications facility is proposed to be attached.
- (q) Wireless service provider. An entity that provides wireless services to end users.
- (r) Wireless infrastructure provider: A person that owns, controls, operates or manages a wireless telecommunication facility or portion thereof within the right-of-way.

(s) Wireless regulations: Those regulations adopted to implement the provisions of this article.

(t) Wireless telecommunications facility, or facility: Equipment at a fixed location that enables wireless communications between user equipment and a communications network including without limitation radio transceivers, antennas, base station, underground wiring, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

Section 3-303. General Standards for Wireless Telecommunications Facilities in the Rights-of-Way

(a) Generally.

Wireless telecommunications facilities shall meet the minimum requirements set forth in this Chapter and the wireless regulations approved by the Mayor and Council, in addition to the requirements of any other applicable law.

(b) Regulations.

The wireless regulations and administrative decisions on applications for placement of wireless telecommunications facilities in the rights of way shall, at a minimum, ensure that the requirements of this section are satisfied, unless it is determined that applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter and any Town wireless regulations may be waived, but only to the minimum extent required to avoid the prohibition.

(c) Standards.

Wireless telecommunications facilities shall be installed and modified in a manner that:

- (1) Minimizes risks to public safety, avoids placement of above ground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights of way, and maximizes use of existing structures and poles, avoids placement in residential areas when commercial areas are reasonably available, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located;
- (2) Ensures that installations are subject to periodic review to minimize the intrusion on the rights of way;
- (3) Unless approved by the Town, any telecommunications facility must be located no closer than: (i) two (2) feet from any curb, sidewalk, or other

improvement within the right-of-way; and (ii) five (5) feet from any driveway apron and be otherwise located to avoid interference with pedestrian and motorist sightlines and use.

- (4) Ensures that the Town bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the legal uses of the public rights of way or public assets by others, or hinder the ability of the Town or other government agencies to improve, modify, relocate, abandon or vacate the public rights of way or any portion thereof, or to cause the improvement, modification, relocation, vacation or abandonment of facilities in the rights of way.
- (5) Ensures that location of facilities on existing poles or structures is within the tolerance of those poles or structures.

(d) Concealment.

Permits for wireless telecommunications facilities shall incorporate specific concealment elements to minimize visual impacts, and design requirements ensuring compliance with all standards for noise emissions. Unless it is determined that another design is less intrusive, or placement is required under applicable law:

- (1) Antennas located at the top of support structures shall be incorporated into the structure or placed within shrouds of a size such that the antenna appears to be part of the support structure.
- (2) Antennas placed elsewhere on a support structure shall be integrated into the structure or be designed and placed to minimize visual impact.
- (3) Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on a support structure, located to avoid interfering with, or creating any hazard to, any other use of the public rights of way, and located on one side of the utility pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on utility poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the support structure on which they are placed;
- (4) Wiring and cabling shall be neat and concealed within or flush to the support structure, ensuring concealment of these components to the greatest extent possible.

- (5) Ground-mounted equipment associated with wireless telecommunications facility shall be permitted only where consistent with the portion of the corridor in which it is to be placed, and may be required to be underground, located in alleys or otherwise shielded. In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic.
- (6) No permit shall be issued or effective unless it is shown that the wireless telecommunications facility will comply with Federal Communication Commission ("FCC") regulations governing radio frequency ("rf") emissions. Every wireless facility shall at all times comply with applicable FCC regulations governing rf emissions, and failure to comply therewith shall be a treated as a material violation of the terms of any permit or lease.
- (7) No towers shall be permitted in the public rights of way, and no wireless telecommunications facilities shall be permitted above-ground in underground areas; provided that the Town may permit placements where all elements of the wireless telecommunications facility are concealed and the facility does not appear to a casual observer to be a wireless telecommunications facility.
- (8) No permit shall be issued except to wireless service providers with immediate plans for use of the proposed wireless telecommunications facility; or wireless infrastructure providers with contracts with wireless service providers which require the service provider immediate use of the proposed wireless telecommunications facility.
- (9) Unless appropriately placed and concealed so that the size of the facility cannot be increased except with the discretionary approval of the Town, no wireless telecommunications facility is permitted in rights-of-way in alleys.
- (10) No wireless telecommunications facility is permitted in any local historic district without the approval of the Montgomery County Historic Preservation Commission.

Section 3-304. Application Submission Requirements and Final Inspection.

(a) Submission.

Applicant shall submit a paper copy and an electronic copy of any application, amendments or supplements to an application, or responses to requests for information regarding an application, to the designated Town department.

(c) Content.

An application must contain:

- (1) The name of the applicant, its telephone number and contact information, and if the applicant is a wireless infrastructure

provider, the name and contact information for the wireless service provider that will be using the wireless telecommunications facility;

- (2) A complete description of the proposed wireless telecommunications facility and the work that will be required to install or modify it, including but not limited to detail regarding proposed excavations, if any; detailed site plans showing the location of the wireless telecommunications facility, a pre-construction survey; a proposed schedule for completion, certified by a licensed professional engineer; a certification by a radiofrequency engineer that the telecommunications facility will comply with the radiofrequency radiation emission standards adopted by the federal communications commission; and a description of the distance to the nearest residential dwelling unit and any contributing historical structure within 500 feet of the facility. Before and after 360 degrees photo simulations must be provided. The electronic version of an application must be in a standard format that can be easily uploaded on a web page for review by the public.
- (3) An application for modification of an eligible support structure must contain information sufficient to show that the application qualifies under of 47 C.F.R. Section 1.40001. The application must relate to an existing wireless telecommunications facility that has been approved by the Town pursuant to this article. Before and after 360 degrees photo simulations must be provided with detailed specifications demonstrating that the modification does not substantially change the physical dimensions of the existing approved structure.
- (4) An application for a permit shall be submitted in the format and manner specified by the designated department. Applications must contain all information required herein and by any wireless regulations to demonstrate that applicant is entitled to the permit requested.
- (5) Applicant must provide any information upon which it relies in support of a claim that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law. Applicants are not permitted to supplement this showing if doing so would prevent Town from complying with any deadline for action on an application.
- (6) Proof that notice has been mailed to owners of all property, and the resident manager for any multi-family dwelling unit that includes ten (10) or more units, within 300 feet of the proposed wireless telecommunications facility.

- (7) A copy of any pole or structure attachment agreement must be provided, as well as sufficient information to determine that the installation can be supported by and does not exceed the tolerances of the pole or structure and specifications for each element of the wireless telecommunications facility, clearly describing the site and all structures and facilities at the site before and after installation or modification; a structural report performed by a duly licensed engineer evidencing that the pole, tower or support structure can adequately support the collocation (or that the pole, tower, or support structure will be modified to meet structural requirements) in accordance with applicable codes;
- (8) Payment of any required fees.
- (9) Before a permit is issued, a concurrent agreement to any required franchise, access or license agreement must be provided.

(c) Fees.

Applicant must provide an application fee and shall be required to pay all costs reasonably incurred by Town in reviewing the application, including costs incurred in retaining outside consultants. Applicant shall also pay an access fee. Fees shall be reviewed periodically and raised or lowered based on costs the Town expects to incur.

(d) The Town may elect to provide public notice of an application and hold a public hearing prior to the approval of an application. If the Town elects to hold a public hearing on an application, the applicant shall be represented at the public hearing and be available to answer inquiries about the application.

(e) As part of the permit process, the Town may require a wireless facility to be fully operational within a specified period after the date the last or final permit is issued, unless the Town and the applicant agree to extend the period.

(f) Waivers.

Requests for waivers from any requirement of this Article shall be made in writing to the Town manager or designee. The same may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the Town will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the permit sought.

(g) Processing of Applications.

For small wireless facilities, personal wireless facilities, as those terms are defined under federal law, and eligible facilities requests, as that term is defined under federal law,



applications will be processed in conformity with state, local and federal law, as amended. Currently, the FCC has required that such applications be processed within 60 days of receipt of a completed application for facilities that will be collocated on preexisting structures, and 90 days for new construction.

(h) Rejection for incompleteness.

Notices of incompleteness shall be provided in conformity with state, and local and federal law. If such an application is incomplete, it may be rejected by a written order specifying the material omitted from the application, or the Town may notify the applicant of the material omitted and provide an opportunity to submit the missing material. The time imposed by federal, state or local law for the processing of an application does not begin to run until an application is complete.

(i) Final Inspection.

Upon completion of the approved work, the applicant must file a statement of the professional opinion by an independent, qualified engineer licensed in the State of Maryland that indicates that the installation, based upon their actual inspections, in their opinion and to the best of their knowledge, meets the requirements of the approved plan documents, this article and other applicable law. Certifications must be signed and sealed by the qualified engineer making the statement. Upon receipt of the statement, and any required Town inspection, the work may be accepted, and a certificate of completion may be issued by the Town.

Section 3-305. Termination of Permit/Breach.

(a) For Breach.

A wireless telecommunications permit may be revoked for failure to comply with the conditions of the permit, franchise, license or applicable law. Upon revocation, the wireless telecommunications facility must be removed within 30 days of written notice; provided that removal of support structure owned by Town, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the Town. All costs incurred by the Town in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless telecommunications facility.

(b) For Installation without a Permit.

A wireless telecommunications facility installed without a wireless permit (except for those exempted by this article) must be removed within 30 days of written notice; provided that removal of support structure owned by Town, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the Town. All costs incurred by the Town in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless telecommunications facility.

(c) Term.

A wireless permit, other than a permit issued pursuant to an eligible facilities request, shall be valid for a period of five (5) years. An eligible facilities permit shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. A person holding a wireless telecommunications permit must either remove the wireless telecommunications facility upon expiration (provided that removal of support structure owned by Town, a utility, or another entity authorized to maintain a support structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the Town); or, at least 90 days prior to expiration, must submit an application to renew the permit, which application must demonstrate that the impact of the wireless telecommunications facility cannot be reduced. The wireless telecommunications facility must remain in place until it is acted upon by the Town, and any appeals from the Town's decision are exhausted.

Section 3-306. Infrastructure Owned or Controlled by The Town.

The Town may negotiate agreements for use of Town owned or controlled light standards and traffic signals in the public rights of way for placement of wireless telecommunications facilities on those structures. The agreement shall specify the compensation to the Town for use of the structures. The person seeking the agreement shall additionally reimburse the Town for all costs the Town incurs in connection with its review of, and action upon the person's request for an agreement.

Section 3-307. Insurance.

(a) The Town shall require a wireless infrastructure provider to indemnify and hold harmless the Town and its officials, officers and employees against any loss, damage, or liability to the extent that it is caused by the negligent or willful act or omission of the wireless infrastructure provider who owns or operates small wireless facilities or poles in the right-of-way, its agents, officers, directors, representatives, employees, affiliates, or subcontractors, or their respective officers, agents, employees, directors, or representatives.

(b) During the period in which the facilities of a wireless infrastructure provider are located on or attached to the Town's assets or rights-of-way, the Town may require a wireless infrastructure provider to:

- (1) Carry, at the wireless infrastructure provider's sole cost and expense, the following types of third-party insurance
  - (i) Property insurance for its property's replacement cost against all risks;
  - (ii) Workers' compensation insurance, as required by law; and
  - (iii) Commercial general liability insurance with respect to its activities on Town improvements or rights-of-way to afford protection with limits not inconsistent with its requirements of other users of Town improvements or

rights-of-way, including coverage for bodily injury and property damage; and

- (2) Include the Town as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the Town in a commercial general liability policy as reasonably required by the Town.

Section 3-308.

Make-ready Work

(a) The Town may provide a wireless infrastructure provider the option of either having the wireless infrastructure provider perform any necessary make-ready work through the use of qualified contractors authorized by the Town, or having the Town perform any necessary make-ready work at the sole cost of the wireless infrastructure provider.

(b) Upon completion of the make-ready work performed by the Town at the request of a wireless infrastructure provider, the wireless infrastructure provider shall reimburse the Town for the Town's actual and documented cost of the make-ready work.

Section 3-309.

Right-of -Way Repair

A wireless infrastructure provider shall be required to promptly:

(a) Repair any damage to the public right-of-way or any damages to facilities in the right-of-way directly caused by the activities of the wireless infrastructure provider and return the right-of-way to the right-of-way's condition prior to the damages caused by the wireless infrastructure provider.

(b) Remove and relocate the permitted small cell facility and/or wireless support structure at the wireless infrastructure provider's sole expense to accommodate construction of a public improvement project by the Town. If the wireless infrastructure provider fails to remove or relocate the small cell facility and/or wireless support structure or portion thereof as requested by the Town within 120 days of the Town's notice, then the Town shall be entitled to remove the small cell facility and/or wireless support structure, or portion thereof at the wireless infrastructure provider's sole cost and expense, without further notice to the wireless infrastructure provider. The wireless infrastructure provider shall, within 30 days following issuance of invoice for the same, reimburse the Town for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the small cell facilities and/or wireless support structure, or portion thereof.

(c) At its sole cost and expense, promptly disconnect, remove, or relocate the applicable small cell facility and/or wireless support structure within the time frame and in the manner required by the Town if the Town reasonably determines that the disconnection, removal, or relocation of any part of a small cell facility and/or wireless support structure (a) is necessary to protect the public health, safety, welfare, or Town property, or (b) the wireless infrastructure provider fails to obtain all applicable licenses, permits, and certifications required by law for its small cell facility and/or wireless support structure. If the Town reasonably determines that there is

imminent danger to the public, then the Town may immediately disconnect, remove, or relocate the applicable small cell facility and/or wireless support structure at the wireless infrastructure provider's sole cost and expense.

3-310. Facilities No Longer Needed

(a) A wireless infrastructure provider shall promptly notify the Town of a decision to remove from service a wireless facility located on a public right-of-way.

(b) A wireless infrastructure provider shall remove a wireless facility that is no longer needed for service and located on a public right-of-way at the sole cost and expense of the wireless infrastructure provider.

(c) If the Town concludes that a wireless facility has been abandoned in place, the Town may remove the wireless facility and invoice the wireless infrastructure provider for the actual and documented cost incurred by the town for removal.

(d) Until a wireless facility that is located on public right-of-way is removed from the public right-of-way, a wireless infrastructure provider shall pay all fees and charges due the Town, regardless of whether a wireless facility is operational.

Section 3-311. Surety Bonds

(a) The Town may require a surety bonding for wireless infrastructure providers.

(b) The purpose of a surety bond required under subsection (a) of this section shall be to:

(1) Provide for the removal of abandoned or improperly maintained small wireless facilities, including those that the Town requires to be removed to protect public health, safety, or welfare, and restore the rights-of-way; and

(2) Recoup rates or fees that have not been paid by a wireless infrastructure provider, subject to thirty (30) days prior written notice to the wireless infrastructure provider and the opportunity to pay the rates or fees outstanding.

Section 3-312. Fees

The following enumerations are the current fees and charges under this article iii.

**Application fee**

Wireless communications facilities and related overhead and underground wiring, cable, hoses, pipes and similar facilities

- |   |            |
|---|------------|
| a. Up to five   | \$500.00   |
| b. Each additional  | \$100.00   |
| c. Each new pole  | \$1,000.00 |
| d. Actual cost to review applications, if in excess of set fees |            |

**Access fee** - \$270 per small wireless facility per year

Section 3-313.

Violations.

A violation of any provision of this Article III shall constitute a class \*\* municipal infraction as prescribed in Chapter X of this Code of Ordinances. Each day a violation continues may be deemed a separate offense.

## Chapter IV

### TRAFFIC AND VEHICLES

#### Article 1. General Provisions

##### Section 4-101. Purpose and Authority

(a) The provisions of this Chapter are intended to be in addition and supplementary to the provisions of the Annotated Code of Maryland, Transportation Article, and in accordance with authority specifically granted by said Article, Section 25-102.

(b) The provisions in this Chapter are adopted pursuant to the authority granted the Town in Article X of the Town Charter.

(c) The purpose of this Article is to provide for the public safety and convenience through control of vehicular and pedestrian traffic and for the regulation of the use of parking areas in the Town.

##### Section 4-102. Definitions - The following definitions apply in this Chapter.

- (a) “Abandoned vehicle” shall mean any vehicle that:
- (1) Is inoperable and left unattended on public property for more than forty-eight (48) hours.
  - (2) Has remained illegally on public property for more than forty-eight (48) hours.
  - (3) Has remained on private property for more than forty-eight (48) hours without the consent of the owner or person in control of the property.
  - (4) Has remained on public property for more than forty-eight (48) hours and:
    - (i) Is not displaying currently valid registration plates; or
    - (ii) Is displaying registration plates of another vehicle.
- (b) “Crosswalk” means that part of a roadway that is:
- (1) Within the prolongation or connection of the lateral lines of sidewalks at any place where 2 or more roadways of any type meet or join, measured from the curbs or, in the absence of curbs, from the edges of the roadway;
  - (2) Within the prolongation or connection of the lateral lines of a bicycle way where a bicycle way and a roadway of any type meet or join, measured

from the curbs or, in the absence of curbs, from the edges of the roadway;  
or

- (3) Distinctly indicated for pedestrian crossing by lines or other markings.

(c) “Intersection” shall mean the area embraced within the prolongation or connection of the lateral curblines or, if there are no curbs, the lateral boundary lines of the roadways of two (2) streets which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different streets joining at any other angle may come into conflict.

(d) “Motor vehicle” means any vehicle which is self-propelled as defined by the Annotated Code of Maryland, Transportation Article, §11-135. This definition shall not include bicycles.

(e) “Traffic control devices” means all signs, signals, markings and devices, not inconsistent with this Chapter, placed or erected by the Town for the purpose of regulating, warning or guiding traffic.

(f) “Park” or “parking” means to halt a vehicle, other than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers or when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or a traffic control device.

(c) “Pedestrian” shall mean any person on foot.

(d) “Public right-of-way” shall mean any public street, road, alley or other public way and the entire area between any public street, road, alley, or other public way and the private property line. This includes storm drains, curbs, sidewalks, any area between the curb and the sidewalk, and any area between the sidewalk and the private property line.

(e) “Public way” shall mean all streets, avenues, roads, highways, public thoroughfares, lanes, and alleys.

(f) “Roadway” shall mean the portion of a street or other public way between the regularly established curblines or that portion improved and intended to be used for vehicular traffic.

(g) “Safety zone” shall mean an area or space officially set apart within a roadway for

the exclusive use of pedestrians which is protected or so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

(h) “Speed bump” shall mean a raised section of asphalt or other material constructed on a roadway for the purpose of controlling speed and improving pedestrian and vehicular safety.

(i) “Speed bump installation” shall mean the placement of a series of speed bumps spaced periodically along a roadway within the Town and not under the supervision of the County or State.

(j) “Truck” shall mean a pole trailer, semitrailer, special mobile equipment, trailer, truck or truck tractor, as those terms are defined in the Transportation Article of the Annotated Code of Maryland, whether or not attached to or detached from another vehicle.

(k) “Vehicle” means any device in, on, or by which any individual or property is or might be transported or towed on a roadway and includes a low speed vehicle and an off-highway recreational vehicle.

#### Section 4-103. Traffic and Parking Control Devices

(a) The Council may, by resolution, have erected “stop,” “no parking,” “speed limit,” “one way,” “yield,” “no U-turn,” “no-thru traffic,” “no right turn,” and “do not enter” signs and other traffic control and parking restriction devices to control, regulate, warn, or guide traffic or limit parking on streets, other public ways, or other areas in the Town of Kensington.

(b) The Council may designate and have marked areas in which parking is prohibited altogether for the relief of traffic or congestion.

(c) The operator or person in control of any vehicle shall obey the instructions of any official traffic control device placed in accordance with the provisions of this chapter unless otherwise directed by a traffic or police officer. It shall be unlawful for any person to fail to observe all signs and other traffic control devices erected pursuant to this Chapter. Any person failing to observe any such sign shall be subject to the penalties enumerated herein.

(d) All traffic control and parking restriction signs, signals, and other devices in place on the adoption date of this Code are hereby ratified and confirmed.

(e) The Town Manager may erect traffic control devices or limit or prohibit parking as enumerated in Subsections (a) and (b) above, on a temporary or emergency basis if such action is immediately necessary to protect the health and safety of Town residents or for street plowing, sweeping, repairs, maintenance of utilities, and similar maintenance functions.



(f) Nothing contained in this Chapter shall be deemed to constitute a repeal of the authority granted by this Section to the Mayor and Council for the erection of any traffic control and parking restriction devices within the Town of Kensington.

Section 4-104. Crosswalk Designations

The Council may establish and designate, and thereafter shall maintain by appropriate devices, marks, or lines upon the surface of the roadway, crosswalks at intersections where there is particular danger to pedestrians crossing the roadway and at other places as may be deemed necessary.

Section 4-105. Safety Zones

The Council may establish safety zones of the kind and character and at places as may be deemed necessary for the protection of pedestrians. Such zones shall be clearly marked by appropriate devices, marks, or lines on the surface of the roadway.

Section 4-106. Operation of Vehicles on Streets, Sidewalks, Curbs, and Gutters

(a) No person shall operate upon any of the streets, alleys, or other public ways in the Town any vehicle constructed or equipped so as to cause any unusual amount of damage to roadways. No wagon, truck, road engine, traction engines, tractors, or other vehicle having metal tires or treads or any vehicle with wheels having any clamps, spikes, ribs, or other devices which may cut into or injure the surface of the roadway shall be operated over or upon any of the streets, alleys, or other public ways in the Town.

(b) No person shall drive or propel any vehicle across any sidewalk, curb, or gutter except at a regular driveway entrance constructed to prevent damage to such sidewalk, curb, or gutter; provided, however, that permits for temporary crossings may be issued by the Town Manager provided the curb, sidewalk or gutter is protected by planks or other suitable material and provided further that any resulting damage to the sidewalk, curb or gutter, shall be repaired within ten (10) days by the person or persons responsible.

Section 4-107. Bicycles

(a) Chapter 7 of the Montgomery County Code as amended, entitled "Bicycles", which provides for the regulation of same, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) The Town of Kensington reserves the right, along with Montgomery County, to enforce the provisions of this Section.

(e) A copy of Chapter 7 of the Montgomery County Code shall be kept in the Town of Kensington office and shall be made available during normal business hours.

#### Section 4-108. Enforcement

(a) In addition to any other enforcement authorized by law, it shall be the duty of the Enforcement Officer designated by the Town Manager to issue citations for violations of Article 1 and Article 2 of this Chapter.

(b) The Enforcement Officer upon discovering any vehicle parked or operated in violation of this Chapter, shall issue a citation to the owner or operator thereof or, if the vehicle is unattended, shall attach the citation to the vehicle in a conspicuous place, indicating that said vehicle has been parked or operated in violation of the provisions of this Chapter and is subject to the penalties enumerated in this Chapter.

(c) Citations issued pursuant to this Section shall contain a description of the location and nature of the violation, bearing the certification of the Enforcement Officer, under penalty of perjury, that said facts are true.

(d) The registered owner of any motor vehicle, as established by the records of the state in which the vehicle is registered, shall be presumed to be the recipient of any citation issued pursuant to Article 1 and 2 of this Chapter, and shall be liable prima facie for said violation.

(e) Any vehicle unlawfully parked pursuant to this Chapter, or which is the subject of three (3) or more outstanding violations of this Chapter, may be taken into possession by the Town and towed to a proper storage place as described in Subsection (f) of this Section.

(f) Whenever any vehicle is impounded by the Town pursuant to this Section, the Enforcement Officer shall immediately send written notice to the owner or owners as determined through the vehicle's registration record and the state motor vehicle administration, stating the facts of such impoundment and the reasons therefor, the location of the impounded vehicle, and the procedures through which the vehicle may be recovered by the owner. The owner of such vehicle shall pay to the Town all penalties, fines, and all towing, storage, and impounding charges before the owner may reclaim the vehicle.

Section 4-109. Penalties

The amount of the fine to be assessed for violations of this Chapter shall be set by the Council by resolution.

Article 2. Parking

Section 4-201. General Parking Restrictions

(a) It shall be unlawful for any person to park any motor vehicle, boat, trailer, camper or recreational vehicle on any roadway within the corporate limits of the Town of Kensington for a continuous period of more than forty-eight (48) hours at any one time.

(b) No person shall stop, stand or park a vehicle designed or used for carrying freight or merchandise, on any public way, except when actually loading or unloading merchandise, or when the operator or owner of such vehicle is actually engaged in rendering a service at or to a premises.

(c) It shall be unlawful to park any vehicle facing in a direction contrary to the flow of traffic on that side of the street. On streets with two-way traffic the wheels of the right side of a parked vehicle must be within six (6) inches of the curb side.

Section 4-202. Parking Spaces

(a) Spaces for the parking of motor vehicles shall be designated along the streets and within Town owned parking lots from time to time by resolution of the Council. Parking signs shall be installed adjacent to each such area. It shall be unlawful for any person to park any vehicle contrary to such signs.

(b) It shall be unlawful for any person to cause, allow, permit or suffer any vehicle registered in the name of or owned or operated by such person to be parked where an appropriate sign or signs or other designation indicates that parking is not allowed. It is hereby specifically provided that wherever a curb is painted red or yellow that there shall be no parking, standing or stopping parallel to said painted curb.

(c) It shall be unlawful for any person to cause, allow, permit or suffer any vehicle registered in the name of or owned or operated by such person to remain parked in any space for a longer period than the maximum time limit where a maximum time limit has been established for such areas as indicated by signs or ordinances.

Section 4-203. Parking Restrictions During Snow Emergencies

Whenever a substantial snowfall shall cause hazardous conditions on the streets of the Town of Kensington as determined by the Mayor, he or she may, by public announcement, impose snow emergency parking restrictions for so long a period as may be necessary.

Section 4-204. Prohibited Parking

No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer or traffic control device, in any of the following places:

- (a) Within twenty-five (25) feet of any intersection or within an intersection.
- (b) On any sidewalk or between a curb and sidewalk, or on any area between a roadway and a private property line.
- (c) In front of or within three (3) feet of a public or private driveway, except with the consent of the owner or occupant of the premises.
- (d) Within fifteen (15) feet of a fire hydrant.
- (e) On a cross walk, or within twenty (20) feet of a cross walk at an intersection, except for the purpose of receiving or discharging passengers or merchandise.
- (f) With thirty (30) feet of any stop sign or other traffic control device located at the side of a roadway.
- (g) Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, except for a period necessary to take on or discharge passengers, freight, or merchandise.
- (h) Within twenty (20) feet of the driveway entrance to any fire department station and on the side of a street opposite the entrance to any fire department station within seventy-five (75) feet of said entrance when sign-posted.
- (i) Alongside or opposite any street excavation or obstruction when such stopping, standing, or parking would obstruct traffic.
- (j) On the roadway side of any vehicle stopped or parked at the edge or curb of a street, except for the purpose or receiving or discharging passengers or merchandise.
- (k) Upon any bridge or other elevated structure.
- (l) On a catch basin cover or in any way that obstructs the service of a catch basin.

Section 4-205.            Parking On Public Or Private Property Without Consent of Owner  
Prohibited

- (a) It shall be unlawful to park, store, or leave any vehicle of any kind, whether

attended or not, or for the owner of any vehicle of any kind to allow, permit, or suffer the same to be parked, stored, or left, whether attended or not, upon any public or private property in the Town of Kensington, other than officially designated parking spaces or public ways where parking is not prohibited, without the consent of the owner of such public or private property.

(b) In addition to any other penalty provided in this Chapter, any Code Enforcement Officer is authorized to have such illegally parked vehicles impounded as provided for in Section 4-108 (f).

#### Section 4-206. Abandonment of Vehicles

(a) The provisions of Sections 31-31 and 31-63 of Chapter 31 of the Montgomery County Code (1984 Edition) entitled “Impounding Illegally Parked Vehicles” and “Sales of Abandoned, etc. Vehicles—Procedure Generally” which regulate the removal and sale of illegally parked or abandoned vehicles, including any future amendments or additions thereto, are hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Sections 31-31 and 31-63 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

#### Section 4-207. Residential Parking Area

(a) The Mayor and Council of the Town of Kensington finds that the health, safety and welfare of many residents of the Town are adversely affected by virtue of major public and private facilities located within the Town. Frequently, the use of streets within residential areas for the parking of vehicles by persons using adjacent commercial, industrial, recreational and transit areas results in hazardous traffic conditions, the overburdening of Town streets and the inability of residents of certain areas to obtain adequate parking adjacent to or close by their places of residence. To alleviate the aforementioned conditions, and promote the safety and welfare of the residents of the Town, the Council hereby enacts a residential permit-parking program to regulate parking within the Town.

(b) The Council is hereby authorized to designate by resolution roads, streets and other areas within the Town in which the parking of vehicles may be restricted, in whole or in part during certain specified times to holders of valid parking permits issued pursuant to this Section, and to withdraw any such designation by resolution. The authority granted herein shall

be in addition to, and may be exercised in conjunction with, any other authority the Mayor and Council may have to regulate the times and conditions of motor vehicle parking.

(c) The Council shall consider the institution or withdrawal of a residential permit parking system upon petition of at least two-thirds (2/3) of the households of a block. A household shall be deemed to have executed the petition if one (1) or more residents of such household, twenty-one (21) years or older, sign the petition. For the purposes of this Section a block shall be the area of any street between two (2) intersections.

(d) The designation or withdrawal of a permit parking area shall take into account, among other things:

- (1) The effect on the health, safety or welfare of residents of the area under consideration from intensive use by non-residents for parking of vehicles.
- (2) The need of residents of the area to obtain adequate on-street parking adjacent to or close by their places of residence and the availability of adequate off-street parking to those residents.
- (3) The difficulty or inability of residents of the area to secure adequate on-street parking adjacent to or close by their places of residence because of widespread use of available parking spaces in that area by non-resident, transient motorists.
- (4) The impact of major public facilities and programs, or other governmental actions on the health, safety and welfare of the residents of the area and any unreasonable or disproportion burdens placed on those residents in securing adequate on-street parking and gaining access to their places of residence by virtue of such facilities, programs and governmental actions.
- (5) The need for safe and convenient pedestrian access or the encouragement of alternative forms of transportation.
- (6) The likelihood of alleviating, by use of a permit parking system, any problem associated with or attributed to the non-availability of residential parking spaces.
- (7) The need for some parking spaces to be available in the area under consideration for use by visitors, service and delivery vehicles and the general public.
- (8) The desire of the residents in the area for the institution of a permit parking system or a determined public need for such a system in a given area.
- (9) Such other factors as may be deemed relevant by the Mayor and Council.

(e) At least thirty (30) days prior to the designation or withdrawal of designation of a permit parking area, the Council shall cause due notice to be given that such a designation is under consideration by posting a copy of the notice provided for in this Subsection at the Town office and mailing or delivering a written copy of such notice to each residence in the Town. The notice shall clearly state the exact location and boundaries of the permit parking area under consideration, and the reasons why such area is being proposed for designation or withdrawal of designation as a permit parking area.

(f) After giving the notice provided in Subsection (e) above, the Council shall decide, at its regular meeting or a special meeting scheduled by it, whether or not to designate the area under consideration as a permit parking area or to remove the designation in the case of an established permit parking area. The Council's decision shall set forth the terms and conditions applicable to any such designation, including whether any period of non-resident parking without a permit will be allowed.

(g) Following the designation of a permit parking area, the Council shall authorize the issuance of appropriate parking permits and shall cause parking signs to be posted in the area, indicating the times, locations and conditions under which parking shall be by permit only. Permits shall be issued only to persons residing on or owning property immediately adjacent to a street or other public way within the permit parking area, one per vehicle registered to the household address. Parking permits issued under this Section are non-assignable and non-transferable and shall remain the property of the Town.

(h) Upon approval of an area as a permit parking area, any person residing or owning property within the designated area who wishes to apply for a parking permit shall file an application with the Clerk-Treasurer on forms provided for this purpose. The applicant's motor vehicle registration and valid operator's license must be presented at the time of application. The Clerk-Treasurer may require other proof of residency or property ownership within a permit parking area. Permits will only be issued one per vehicle and are only valid on vehicles registered to the household address.

(i) Residents who have permits for their vehicles may request visitor passes (up to two per household) for guest use. Visitor passes must note the address to which they were issued and visitor passes are not transferable.

(j) The following vehicles are exempted from the provisions of this Section:

- (1) Emergency or government vehicles.
- (2) Delivery or service vehicles being used for those purposes in connection with deliveries or services rendered to residents.

(k) The parking permit shall be displayed through, or affixed to, the inside lower left hand corner (driver's side) of the rear window of the vehicle in plain view and legible from the exterior of the vehicle.



(l) Fees for resident parking permits as described in this Section shall be determined, from time to time, by resolution of the Council.

(m) It shall be unlawful for any person, without a valid parking permit as described in this Section, to park in a residential parking area from 9:00 a.m. to 5:00 p.m. on weekdays excluding holidays, unless otherwise indicated. Any person found in violation of this Section shall be subject to the penalties specified by Section 4-109 of this Chapter.

Section 4-209. Motor Vehicle Towing on Private Property

(a) Chapter 30-C of the Montgomery County Code, entitled “Motor Vehicle Towing and Immobilization on Private Property”, §§30C-1 through 30C-10, which contain various provisions to regulate the towing of vehicles from private property, including involvement of the Montgomery County Office of Consumer Protection, together with any future amendments, revisions, or changes thereto, are hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) The Town of Kensington reserves the right, along with Montgomery County, to enforce the provisions of Chapter 30C of the Montgomery County Code incorporated herein.

(e) A copy of Chapter 30C of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Article 3. Traffic Control

Section 4-301. Obedience to Traffic-Control Devices

The driver of any vehicle shall obey the instructions of any official traffic control device placed in accordance with the provisions of this Chapter unless otherwise directed by a traffic or police officer.

Section 4-302. Speed Limits in Town of Kensington

No motor vehicle shall be operated upon any street or other public way within the jurisdiction of the Town at a rate of speed exceeding twenty-five (25) miles per hour or fifteen (15) miles per hour in school zones.

Section 4-303. Truck Speed

(a) No truck of a gross weight of five thousand (5000) pounds or more shall be operated on any Town owned street that is not a designated as an alternate truck route.

(b) No truck of a gross weight of five thousand (5000) pounds or more shall be operated on any Town owned street at a rate of speed greater than fifteen (15) miles per hour.

Section 4-304. Speed Bumps

(a) The Town is hereby empowered to install speed bumps at various locations throughout the Town. The Council, upon recommendation of the Mayor, shall determine the exact number and location of the speed bumps after a petition request by residents pursuant to a set of guidelines developed by resolution of the Council. Nothing in the guidelines shall preempt the authority of the Town, at its own initiative, from installing, altering, maintaining, or removing a speed bump or speed bump installation.

(b) Each newly installed (effective 9/1/99) speed bump shall meet Montgomery County Dept. of Transportation standards.

(c) All speed bumps or speed bump installations shall be painted with distinctive markings that are brightly colored and reflective. Warning signs shall be placed at each speed bump, along with an advisory speed limit of 10 mph.

(d) The location of each speed bump or speed bump installation shall be designated and changeable by resolution of the Council. The document entitled, "Guidelines and

Procedures; Speed Bump Installation,” adopted by resolution of the Council pursuant to this Section, shall be the official policy of the Mayor and Council in decisions regarding the installation.

Section 4-305.            Enforcement

The Council for the Town hereby requests and authorizes Montgomery County to enforce the provisions of Article 3 of this Chapter, except Section 4-304.

Chapter V

HOUSING AND BUILDING REGULATIONS

Article 1. Building Code

Section 5-101. Montgomery County Building Code Adopted

(a) Chapter 8 of the Montgomery County Code (1984 Edition) entitled “Buildings” which regulates all matters concerning the construction, alteration, addition, repair, removal, demolition, use, location, occupancy, and maintenance of all buildings and structures, on-site access facilities to such buildings and structures, and their service equipment, for both existing and proposed buildings and structures, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 8 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 5-102. Town Building Permit Required

(a) It shall be unlawful to construct, enlarge, place, alter, remove, or demolish any building or structure or part thereof, to include without limitation driveways and all parking surfaces, and dumpsters or other storage receptacles, without first obtaining a building permit from the Town. Application therefor, together with a copy of the plans and specifications for the work to be done, shall be filed with the Town. A permit shall be issued at the discretion of the Town Manager or designee who shall be satisfied that all such work shall comply with all ordinances of the Town.

(b) Before any permit is issued, the applicant shall pay to the Town a permit fee, the amount of which shall be determined by resolution of the Council from time to time.

(c) The permitting requirements of this Chapter do not exempt any person, firm, corporation, or developer from obtaining proper permits from Montgomery County as required by County law.

(d) A violation of this Section shall be a municipal infraction Class A prescribed in Chapter X of this Code of Ordinances. Notification in writing will be sent allowing three (3) business days to comply.

Section 5-103. Deposit Required

(a) Before any permit is issued pursuant to the provisions of this Article, the applicant shall post a bond or make a cash deposit with the Clerk-Treasurer for each permit issued in an amount of not less than fifty dollars (\$50) and no greater than five thousand dollars (\$5,000) to be determined by the Mayor which shall be security for the payment of the cost of repairing any damage the permittee may do to the streets or sidewalks of the Town,. Such bond or deposit or any unexpended balance thereof shall be returned by the Clerk-Treasurer to the permittee after inspection and approval by the Building Inspector.

(b) A bond or deposit in excess of five thousand dollars (\$5000) may be required by the Mayor if, upon advice of the Building Inspector, the Mayor determines the interests of the Town so require.

Section 5-104. Building Lines

It is the purpose of this section to:

1) Preserve the unique setting of the low density 19<sup>th</sup> and 20<sup>th</sup> century suburb, maintain the prevailing pattern of houses and open spaces, and retain the maximum amount of green area surrounding new or expanded houses; and

2) Encourage a compatible relationship between new or expanded houses and neighboring structures in scale, siting, and orientation on the lot; and

3) Maintain housing diversity and choice by retaining existing housing stock yet allowing a reasonable amount of expansion in living space.

4) Address the concerns of owners of certain lots with improvements erected prior to the establishment of current set-backs, which lots may have unique character and narrowness, with the understanding that it would be an unnecessary hardship to prohibit certain expansions of those improvements.

(a) For all setbacks and building lines, the Town of Kensington shall follow the laws of Montgomery County, Maryland, except as set forth herein.

(b) Side Yards. Unless a variance is granted in accordance with this section, no dwelling or any part or projection thereof erected on land zoned for single-family residential use shall approach nearer than ten (10) feet to either of the side lines of the lot on which said

dwelling is located or is to be located, or nearer than fifteen (15) feet to any other dwelling, subject to the following Exceptions:

Exceptions: When building an addition with a footprint of 650 sq ft or less, one side of the addition is permitted to conform to no less than the existing dwelling setback on that side, or seven (7) feet, whichever is greater. The sum of the side yards of the completed structure must total at least twenty feet (20) feet, or the existing dwelling combined setback, whichever is less. All additions must still maintain fifteen (15) feet to any other building.

(c) Any dwelling legally erected with side building lines that do not comply with this section must, if rebuilt, conform to this section unless the dwelling is destroyed by fire, wind, earthquake or flood. In the event of destruction by fire, wind, earthquake or flood, said dwelling may be reconstructed in the footprint existing at the time of destruction.

(d) An applicant may file a written request for a variance. The Town Council may grant a petition for a variance upon proof by a preponderance of the evidence that:

- (1) There are specific situations or conditions that are peculiar to the property that makes it unique from neighboring properties, including, but not limited to: (i) shape (narrowness/shalowness); (ii) topography; (iii) historic significance; (iv) environmental features; or (v) other extraordinary conditions unique to that property. The conditions must result from the application of building or zoning standards and not from the action, inaction or the personal circumstances of the property owner or the owner's predecessor(s);
- (2) The requested variance is the minimum necessary to overcome the unique condition of the property; and
- (3) The requested variance is not detrimental to neighboring properties or the community as a whole.

#### Section 5-105. Gasoline Stations

(a) For the purposes of this Section "gasoline filling station" shall mean any place of business supplying consumers with gasoline, lubrication oil, and some automotive accessories and repairs for a retail price, or any other commercial establishment which, for its own use, dispenses motor or other fuel from underground storage tanks.

(b) No building appurtenant to any gasoline filling station, shall be erected or located nearer than one hundred (100) feet to the center line of any street on which the property abuts. Nor shall any such building or structure be located nearer than thirty-five (35) feet to a side line or rear line of the lot or lots on which the building is situated.

(c) No pumps, tanks, islands, or signs shall be located closer than seventy-five (75) feet to the center line of any street or thirty five (35) feet to either the side or rear lot lines. No gasoline or fuel storage tank shall be located within one-thousand (1000)feet of any residential dwelling.

(d) All gasoline filling stations existing within the Town as of September 28, 1992 are exempt from the provisions of this Section, except that no future buildings and appurtenant structures may violate the provisions of this Section.

(e) A violation of this Section shall be a municipal infraction Class A prescribed in Chapter X of this Code of Ordinances.

#### Section 5-106. Plumbing and Gas Fitting

(a) Chapter 34 of the Montgomery County Code (1984 Edition) entitled “Plumbing and Gas Fitting” which regulates certain matters concerning the installation, alteration, addition, repair, removal, use, location, and maintenance of plumbing and gas fittings, and licensing of persons or firms doing such work, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 34 of the Montgomery County Code shall be kept in the Town of Kensington office and shall be made available during normal business hours.

#### Section 5-107. Driveways and Parking Surfaces – Single Family Residential Zones

(a) In the single family residential zone, except as authorized in this Section, no driveway, parking space, parking area, surface used or intended for parking, or parking structure, may be constructed or reconstructed:

- (1) Between the lot line and the existing front building line, or required front building setback line, whichever is greater; or
- (2) On a corner property, between the lot line and the required side setback line.

(b) A driveway not exceeding eleven feet (11’) in width, and a driveway no wider than its associated garage, may be installed between the lot line and the existing front building line, or required front building setback line, whichever is greater, or on a corner property between the lot

line and the required side setback line. No driveway authorized by this subsection may exceed the surface parking area requirements of the Montgomery County Zoning Ordinance, including the limit of 35% or 320 square feet of surface area and maximum width of twenty (20) feet.

(c) No permit required by Section 5-102 shall be issued without approval of the Town Manager or designee.

(d) No permit shall be issued if the Town Manager or designee determines that the proposed driveway would:

- (1) Create a traffic hazard, result in unreasonably restricted use of the streets, or impede the free movement of vehicles upon the streets;
- (2) Unreasonably restrict the distribution of parking spaces at the curb of streets;
- (3) Negatively affect the free and safe travel of pedestrians;
- (4) Pass through or be located within four (4) feet of a regular street crosswalk;
- (5) Pass through or be within four (4) feet of any designated bus loading zone;
- (6) Cross the outer grass strip and the sidewalk at an angle of less than thirty degrees to the curb line; or
- (7) Place an undue burden on the storm drainage system of the area or involve a storm drainage problem, unless construction plans make adequate provisions for solving any storm drainage problem as determined by the Council.

(e) If a permit application for a driveway or other parking surface is denied by the Town, an applicant may seek a variance from this section within 15 days of the date of denial. A variance may be granted after a hearing when the council finds that:

- (1) Strict application of the Town regulations would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship, upon the owner of the property;
- (2) The variance is the minimum reasonably necessary to overcome any exceptional conditions; and
- (3) The variance can be granted without substantial impairment of the intent, purpose, and integrity of this article.

(f) Contiguous, confronting and abutting owners must receive notice of the variance application prior to consideration by the Council.

(g) The Council may not grant a variance that is not in compliance with the Montgomery



County Zoning Ordinance.

(h) This Section does not prohibit the reconstruction or replacement, with same dimensions and placement, of any driveway or parking surface legally existing before the effective date of this Section, or for which a variance has been granted.

Section 5-108.            Dumpsters and Other Storage Receptacles

No dumpster or other receptacle for the storage or transport of construction or other debris, or for the storage of household or other items, greater in size than two cubic yards or greater, shall be placed on residential property without a permit issued by the Town. Permits shall expire not later than 30 days after issuance, and shall be subject to such further conditions as the Town Manager or designee may require. A permit may be extended for up to an additional 120 days in any twelve-month period by the Town Manager or designee upon good cause shown. Any further extension within the same period, not to exceed one year in the aggregate, may be authorized only by the Mayor and Town Council upon a showing of exceptional circumstance. Minimum Montgomery County setback and location requirements apply. A violation of this section shall be a Class A municipal infraction and shall be subject to penalties as provided in Chapter X of this Code of Ordinances. Each day a violation continues may be deemed a separate offense.

Section 5-109.            Fences, Walls and Retaining Walls

(a) All fences, walls and retaining walls are required to be permitted in accordance with Sections 5-101 and 5-102 of this Code.

(b) The maximum height of a fence, wall or retaining wall within the front plane of a residential property is four (4') feet, except as follows:

(1) The height of a fence or retaining wall within the front plane of a house may have a maximum height of six (6') feet six (6") inches, if the residential property is abutting a commercial or mixed-use property.

(c) The finished side of a fence must face outward when constructed within the front plane of a residential property, or on a corner lot.

(d) A fence or retaining wall will be considered an accessory structure if it exceeds six (6') feet six (6") inches and setbacks will be applied to those structures as necessary.

(e) An application for construction of a fence or retaining wall to be installed on the property line must be accompanied by a letter of approval from the property owners(s) who share that property line.

(f) A fence or wall may not be located within the public right-of-way.

(g) A fence, wall other than a retaining wall, terrace, structure, shrubbery, hedge, planting or other visual obstruction on a corner lot in a residential zone may not exceed a maximum height of three (3) feet above the curb level for a distance of fifteen (15') from the intersection of the front and side street lines.

(h) A fence or wall must not be located within a utility or similar easement, or required drainage area, unless approved by the agency with jurisdiction over the easement.

(i) An applicant may seek a variance from this section within fifteen (15) days of the date of denial of an application. A variance may be granted after a hearing when the Council finds that:

(1) Strict application of the Town regulations would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property;

(2) The variance is the minimum reasonably necessary to overcome any exceptional conditions; and

(3) The variance can be granted without substantial impairment of the intent, purpose, and integrity of this article.

(j) Contiguous, confronting and abutting owners must receive notice of the variance application prior to consideration by the council.

(k) A violation of Section 5-109 (a) shall be a Class A municipal infraction and all other violations shall be a Class E municipal infraction. Any property owner cited with a notice of violation of Section 5-109 (a) shall have three (3) days to bring the property into compliance before a municipal infraction will issue and ten (10) days for all other violations.

## Article 2. Housing Code

### Section 5-201. Montgomery County Housing and Building Maintenance Standards Adopted

(a) Chapter 26 of the Montgomery County Code, entitled “Housing and Building Maintenance Standards”, which sets minimum requirements for dwellings and provides for the inspection and condemnation of buildings by County officials, including any future amendments, revisions, or changes thereto, are hereby adopted and made part of this Code by reference, except as otherwise provided herein.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) Montgomery County is hereby authorized to enforce the provisions of this Section within the corporate boundaries of the Town.

(d) The Town of Kensington reserves the right, along with Montgomery County, to enforce the provisions of Chapter 26 of the Montgomery County Code.

(e) A violation of this Section shall be a Class D municipal infraction for commercial properties and a Class E municipal infraction for residential properties, subject to the penalties prescribed in Chapter X of this Code of Ordinances. Any person cited with a notice of violation of this Section shall have 30 days to bring the property into compliance before a municipal infraction will issue.

(f) A copy of Chapter 26 of the Montgomery County Code shall be kept in the Town office and made available during normal business hours.

### Section 5-202. Maintenance of Structures and Fixtures

(a) All residential and non-residential structures and fixtures shall be maintained by the owner and occupant in good condition.

(b) All residential and non-residential structures must be maintained by the owner and occupant free of the following:

1. rust
2. graffiti
3. broken glass

(c) No residential or non-residential structure may exhibit flaking or peeling exterior paint, or unprotected wood, which covers more than ten (10) percent of the surface area of the structure.

(d) A violation of this Section shall be a Class D municipal infraction for commercial properties and a Class E municipal infraction for residential properties as subject to the penalties prescribed in Chapter X of this Code. Any person cited with a notice of violation of this Section shall have 30 days to bring the property into compliance before a municipal infraction will issue.

Section 5-203. New Home Warranty and Builder Licensing

(a) Chapter 31C of the Montgomery County Code (2017 edition, as amended) entitled “New Home Warranty and Builder Licensing” which sets minimum warranty requirements for new homes and requires builders of new homes to obtain licenses from the County, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 31C of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 5-204. Parking on Yards and Greenspace

(a) Parking on Yards and Greenspace Prohibited – Parking of vehicles, including trailers, chassis and other vehicles designed for use on the road, in the front and side yards of residential property shall be limited to surfaced parking areas, driveways, and designated parking structures such as garages and carports. Parking of vehicles on green space and yards in the front or side yards is prohibited. It is unlawful for any owner or occupant of the residence to allow any such vehicle to park on the front or side yard green spaces or yards. A violation of this section shall be a Class E municipal infraction subject to the penalties prescribed in Chapter X of this Code of Ordinances. Any person cited in violation of this Code shall have five days to remove any improperly parked vehicle after notification of violation.

(b) Exception – This section does not apply to parking of less than 24 hours duration that is related to a specific, not regularly occurring event, such as a social occasion or overflow parking for a religious service, or to temporary conditions, such as construction related parking.

Article 3. Electrical Code

Section 5-301. Montgomery County Electrical Code Adopted

(a) Chapter 17 of the Montgomery County Code (1984 edition) entitled “Electricity” which regulates the installation of certain electrical apparatus for light, heat or power, or power supply to radio and television transmitting and receiving stations in or on buildings, structures, and outdoor properties, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 17 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Article 4. Historic Preservation

The Town accomplished the inclusion of its historic district on the National Register of Historic Places in 1980. In 1986, the district was designated as a Montgomery County Historic District. The district is distinguished as a collection of late 19th and early 20th century houses exhibiting a variety of architectural styles popular during the Victorian period including Queen Anne, Shingle, Eastlake, and Colonial Revival. The houses share a uniformity of scale, set back, and construction materials that when coupled with the subdivision plan creates a Victorian garden suburb. The Vision of Kensington has been adopted as the Preservation Plan for the Town's Historic District.

Section 5-401. Montgomery County Historic Preservation Law

(a) Chapter 24A of the Montgomery County Code (1984 Edition) entitled "Historic Resources Preservation" which establishes guidelines for preservation of historic structures or sites and regulates work done on such structures and sites, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 24A of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 5-402. Montgomery County Historic Property Notification Law

(a) Chapter 40 (entitled "REAL PROPERTY"), Section 12A of the Montgomery County Code which requires sellers of real property to disclose to prospective buyers whether the property is designated as a historic site, located in a historic district, or listed on the locational atlas of historic sites, and if so, that special land use and physical change restrictions may apply, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of the Code by reference except as other wise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of the Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 40, Section 40-12A of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Article 5. Landlord-Tenant Relations

Section 5-501. Montgomery County Landlord-Tenant Relations Code

(a) Chapter 29 of the Montgomery County Code (1984 Edition) entitled “Landlord-Tenant Relations” establishing guidelines and regulations for the relationships and obligations between landlords and tenants, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 29 of the Montgomery County Code shall be kept in the Town of Kensington office and shall be made available during normal business hours.

Section 5-502. Tenant Displacement

(a) Chapters 53A and 11A of the Montgomery County Code (1984 Edition) entitled “Tenant Displacement” and “Condominiums” respectively, establishing guidelines and regulations for the displacement of any tenants in a rental unit(s) resulting from the sale of said rental unit(s) or its conversion into condominiums, including any future amendments, revisions, or changes thereto, are hereby adopted and made part of this Code by reference except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapters 53A and 11A of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Article 6. Moderately Priced Housing

Section 5-601. Moderately Priced Housing

- (a) Chapter 25A of the Montgomery County Code, entitled “Housing, Moderately Priced”, which provides for low-and moderate-income housing to meet existing and anticipated future employment needs, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code. The annually revised standards of eligibility for the moderately priced dwelling unit (“MPDU”) program set by regulation by the County Executive for Montgomery County are hereby adopted. These standards specify moderate-income levels for varying sizes of households which will qualify a person or household to buy or rent an MPDU. Regulations under Section 25A (10) of the Montgomery County Code, and as they are adopted or amended, are hereby adopted.
- (b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.
- (c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.
- (d) A copy of Chapter 25A of the Montgomery County Code shall be kept in the Town Office and shall be made available during normal business hours.



## Chapter VI

### SIGNS AND COMMERCIAL REGULATIONS

#### Article 1. Signs and Solicitors

##### Section 6-101. Signs

(a) The Town shall have the power to enforce, and incorporates by reference herein as if fully set forth, the provisions of Chapter 59, Article 59-6, Division 6.7 of the Montgomery County Code, as amended, entitled "Signs", except as otherwise provided herein. This Article is an exception to the general exemption from County law contained in Section 1-202 of this Code.

(b) The purpose of Sections 6-101 through 6-106 of this Article is to regulate the location, size, placement and certain features of signs placed in the public right of way, and in commercial and industrial zoned properties. These regulations do not apply to signs in a residential zone, unless specifically stated. These regulations are intended to protect the public health, safety, comfort and welfare, to enable the public to locate goods, services and facilities without difficulty, danger or confusion, to prevent hazards to life and property, and to preserve and strengthen the character of the town and to protect property values.

(c) The following sections contain additional requirements that supplement portions of Chapter 59, Article 59-6, Division 6.7, of the Montgomery County Code and, in cases of conflict, shall supersede and take precedence over Chapter 59, Article 59-6, Division 6.7, of the Montgomery County Code.

(d) Only signs defined as permanent or limited duration signs are authorized. Temporary signs are prohibited. Permanent signs are defined as a sign, requiring a permit from Montgomery County, that is constructed in a manner and of materials that will withstand long-term display and is intended to be displayed for an indefinite period of time. A limited duration sign is defined as a non-permanent sign that is:

- (1) Displayed on private property, and is constructed in a manner and of materials that will not withstand long-term display, and/or is not intended to be displayed for an indefinite period; or
- (2) within the public right-of-way.

##### Section 6-102. Town Sign Permit Required – CRT, CRN and Industrial Zones

(a) The permitting requirements of this Chapter do not exempt any applicant from obtaining proper permits from Montgomery County as required by County law.

(b) It shall be unlawful to erect, construct, post, mount, locate, place or alter any permanent sign or part thereof, and any limited duration sign or part thereof, without first obtaining a sign permit from the Town. A permit application, together with a copy of plans and specifications for the work and any required fee, shall be filed with the Town Manager or designee, who shall issue a permit in accordance with the provisions of the Town code. The permit shall include date of issuance. By application for a sign permit, the applicant and owner give consent to the Town Manager or designee to enter onto the property to inspect any activity encompassed in the permit as often and at such times as deemed necessary during the course of the activity to ensure compliance with this chapter and other applicable law. Applicants must provide the Town with any information deemed necessary to process the permit.

(c) Permit fees shall be set by resolution of the Council.

(d) The date of erection of any limited duration sign must be written in indelible ink on the lower right corner of the sign.

Section 6-103. Signs in the Public Right-of-Way.

(a) Except as otherwise provided herein, it shall be unlawful to display or post any sign in a public right of way under the Town's jurisdiction.

(b) It is unlawful to attach any otherwise lawful sign to utility poles, trees, fences or other signs in the public right of way.

(c) It shall be lawful to post or mount limited duration signs in the public right of way from 10:00 a.m. on Friday through 5:00 p.m. the following Sunday. Notwithstanding any other provision of this section, it is prohibited at all times to post or mount any sign in the median of a public right-of-way. Signs authorized by this Section may not be installed or removed in a manner that will cause damage to the right of way. Authorized signs may not block or obstruct any permanent signage, or pedestrian or vehicular traffic or sightlines.

(d) Any otherwise lawful sign required by law or regulation, and signs used by a government agency or utility company erected by, or on the order of, a public officer or utility official in the performance of official duties, such as controlling traffic, identifying streets, warning of danger, or providing information, is exempt from this section.

(e) All signs posted in violation of this section shall be considered a nuisance and are removable without notice by a public or governmental official at any time thereafter, unless said signs have been authorized to remain by the town government.

Section 6-104. Signs on Private Property – CRT, CRN and Industrial Zones

(a) Comprehensive Signage Plan Required – Before a permit may be issued under this Article for properties within the CRT, CRN and Industrial Zones, for properties occupied

by more than one (1) business/tenant, a signage plan must be filed demonstrating that each sign for which a permit is requested is consistent and harmonious in terms of location, design, color, shape, size, style, material, and mounting with all other such signs on the property. Signs for individual businesses/tenants in a multi-tenanted building shall be placed only on the building levels accessible on the exterior by pedestrians. A signage plan for the entire property shall be submitted by the owner prior to the issuance of the first sign permit for the property and shall be updated to include all existing and proposed signs when any sign is installed, altered or replaced.

(b) Prohibited Signs - The following sign types are prohibited:

(1) Internally illuminated box signs with flat graphics and/or translucent face material are prohibited.

(2) Pole (freestanding) signs, except when located in the Kensington Historic District, when the Historic Preservation Commission has made a determination that the sign is an integral part of the environmental setting or is important to the historic character of the neighborhood. One pole sign located at a grocery store that was lawfully existing immediately prior to February 1, 2020, but which does not conform to the requirements as now constituted or as they may hereafter be amended from the time to time, may remain but shall be removed or modified to come into compliance with this Article within five (5) years from February 1, 2020. One pole sign located at a shopping center with greater than one hundred (100) parking places that was lawfully existing immediately prior to February 1, 2020, but which does not conform to the requirements as now constituted or as they may hereafter be amended from time to time may remain, but shall be removed or modified to come into compliance with this Article within twenty (20) years from February 1, 2020 or such time as the property is redeveloped, whichever first occurs.

(3) Internally illuminated signs (except as provided herein);

(4) Portable signs or flashing or scrolling signs.

(5) Illuminated signs in the R-60 Zone.

(6) Vehicles that are primarily used as an apparatus or support for advertising, that are parked or located on private property in such a way as to be visible from beyond the property limits and serve as an advertisement of a business located at the property.

(c) Ground freestanding signs – Ground freestanding signs measuring less than six (6) feet in height and fifty (50) square feet in area, and including a landscaped area at the base of the sign measuring a minimum of one square foot for each square foot of sign area, are permitted. Only one ground freestanding sign shall be permitted per recorded lot. Once installed, landscaping must be properly maintained in accordance with approved plans.

(d) Illumination (External) - Exterior sign illumination shall be discrete, uniform, and compatible with the architecture of the structure. The light source shall only illuminate the sign and shall not glare, reflect, or shine onto public ways, streets, park areas, or residential properties. Sign illumination must use an enclosed lamp design or indirect lighting from a shielded source in a manner that prevents glare from beyond the property line. The light source shall be shielded or controlled in a manner so that it does not generally shine above or beyond the sign. Except in the CRT and CRN Zone, on properties abutting, contiguous or confronting, or within 150 feet of, a residential property or use, all signage illumination light sources (including neon) must be turned off when the business is not open for public access or before 10:00 p.m. daily, whichever occurs first.

(e) Illumination (Internal) – Only internal, halo, or backlit illumination signs composed of individually mounted channel letters, or in box signs with opaque face panels that utilize routed push-through or LED text or overlay translucent text material are permitted. Individual letters shall be mounted directly to the building or on raceways or tracks attached to the building are permitted. Internal sign illumination shall be discrete, uniform, and compatible with the architecture of the structure. The light source shall only illuminate the sign and shall not glare, reflect, or shine onto public ways, streets, park areas, or residential properties. Sign illumination must use an enclosed lamp design or indirect lighting from a shielded source in a manner that prevents glare from beyond the property line. The light source shall be shielded or controlled in a manner so that it does not generally shine above or beyond the sign. Except in the CRT and CRN zone, for properties abutting, contiguous or confronting, or within 150 feet of, a residential property or use, all signage illumination light sources (including neon) must be turned off when the business is not open for public access or before 10:00 p.m. daily, whichever occurs first.

(f) County regulations with respect to individual and total sign area apply to permanent and limited duration signs, except as otherwise set out herein. A limited duration sign or signs that measure or exceed a total of ten (10) square feet in size, or are placed more than five (5) feet from the face of the main building, may be placed on private property for not more than sixty (60) days in any calendar year. No time limit applies to limited duration signs that measure less than a total of ten (10) square feet and are less than five (5) feet from the face of the main building. One sign is allowed per permit, with a maximum of four permits at any one time. Multiple limited duration signs that are similar may not be used to enlarge this time limitation. Multiple signs that are similar may not receive a permit for the same location. The maximum sign area of each sign is fifty (50) square feet with a maximum total sign area of one hundred (100) square feet.

(g) Allowable Signage Calculations – Signage calculations shall include exterior signage of all types including permitted neon signs. Symbols, letters and logos count towards total signage. Properties abutting or confronting residential property shall be limited to one (1) square foot of signage for each lineal foot of building frontage.

(h) Applicability – This section applies only to signs in the CRT, CRN and Industrial zones, except where specifically noted. All new commercial signage, repairs to existing signage, changes to sign text, tenancy changes, property ownership changes, business name changes, or

use changes must comply with this Article. Whenever an existing sign is altered, it shall be modified to bring it into conformance with this chapter. Whenever any existing business/tenant/owner erects a new or additional sign, all signs on the premises pertaining to that business/tenant/owner shall be modified to bring them into conformance with this chapter. Any pole sign lawfully existing immediately prior to September 1, 2009 that did not conform to the requirements of this section on that date shall be removed or modified to come into compliance with this article. Signs installed by the Town of Kensington or signs at fire stations and public libraries and schools, any sign required by law or regulation by a governmental agency or utility company erected by, or on the order of, a public officer or utility official in the performance of official duties, such as signs controlling traffic, identifying streets, warning of danger, or providing information, are exempt from This section, but not from the application of Chapter 59, Article 59-6, Division 6.7 of the Montgomery County Code.

(i) Additional Restrictions for Signs within the Historic Commercial District (Howard Avenue, Armory Avenue, Fawcett Street, St. Paul Street, and Montgomery Avenue) - The following types of signs are not permitted in the historic commercial district unless a variance is granted by the Council:

- (1) Internally illuminated signs.
- (2) Neon signs or neon decorations.

(j) Interior Window Coverage - The maximum total area of interior window signs shall not exceed twenty percent (20%) of the glass area for that part of each side of the building occupied by the premises or unit, minus the area of any permanent window signs.

(k) Permitted pole signs – Permitted pole signs shall include a landscaped area at the base of the sign measuring a minimum of one square foot for each square foot of sign area. Once installed, landscaping must be properly maintained in accordance with approved plans.

(l) Variance Procedure - If a signage permit application is denied by the Town, an applicant may seek a Variance from this section within 15 days of the date of denial. A variance may not be granted for the erection, installation or maintenance of a sign prohibited by Section 6-104(b) or Montgomery County Chapter 59-6, Division 6.7. The Town may establish a detailed variance application, checklist and charge fees for the consideration of variances requests. A variance may be granted when the Council finds that:

(1) strict application of the Town regulations would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property or owner of such sign;

(2) the variance is the minimum reasonably necessary to overcome any exceptional conditions; and

(3) the variance can be granted without substantial impairment of the intent, purpose, and integrity of this Article. A variance decision must be based on consideration of:

(a) one or more of the following elements: size, shape, color, design elements, location or cost of the sign;

(b) the compatibility of the proposed sign with the surrounding property, the proximity of other signs, and the characteristics of the area;

(c) confirmation that the property and all other signs on the property are in conformance with the Article.

(d) recommendation of the HPC if located in the Historic District and if requested by the Council or offered by the HPC.

(4) Contiguous, confronting and abutting owners must receive notice of the variance application prior to consideration by the Council.

(m) Conditions and Revocation - The Council may impose conditions and terms on a sign variance, and may revoke any previously granted sign variance when it determines:

(1) the applicant supplied inaccurate information to the Council, or

(2) the terms of the variance set by the Council have not been met or have been violated.

#### Section 6-105. Solicitors

(a) Chapter 47 of the Montgomery County Code entitled "Solicitors, Hawkers and Peddlers" which provides for the licensing and regulation of persons who solicit from door to door for the purpose of obtaining orders for the sale of merchandise and persons who hawk, sell, peddle, vend, or offer for sale any merchandise whatsoever in or upon any street, or other public way, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in the Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce provisions of this Section.

(d) The Town of Kensington reserves the right, along with Montgomery County to enforce the provisions of this Section.

(e) A copy of Chapter 47 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 6-106. Enforcement and Penalties.

(a) A violation of Section 6-103 shall be a Class F municipal infraction punishable pursuant to Section 10-303 of this Code. Written notice of violation shall be mailed by certified mail to the property owner and tenant occupant (if applicable). Any costs incurred in the removal of prohibited signs by the Town or its designee shall be assessed to the owner of the sign and may be collected as an ordinary debt or in the manner of taxes and shall be a lien on any property belonging to the owner within the Town. For violation assessment and cost reimbursement purposes, the owner shall be considered the individual(s) benefiting from the sign to be determined by phone number, name or address indicated on the sign. In the event the tenant occupant has vacated, the property owner shall be the responsible party.

(b) A violation of Section 6-102 and 6-104 shall be a Class E municipal infraction punishable pursuant to Section 10-303 of this Code.

Article 2. Consumer Protection

Section 6-201. Montgomery County Consumer Protection Law Adopted

(a) Chapter 11 of the Montgomery County Code (1984 Edition) entitled “Consumer Protection” which provides for the protection of consumers from deceptive or unfair trade practices, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 11 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 6-202. Human Relations and Civil Liberties

(a) Chapter 27 of the Montgomery County Code (1984 edition) entitled “Human Relations and Civil Liberties” which provides for the protection of persons and groups from discrimination, prejudice, intolerance, and bigotry in public accommodations, housing, and employment, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 27 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.



Article 3. Institutions

Section 6-301. Private Schools and Recreational Camps

(a) Article III of Chapter 44 of the Montgomery County Code (1984 edition) entitled “Private Schools and Recreational Camps” which provides for the licensing and regulation of same, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 44, Article III of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 6-302. Group Day Care Centers

(a) Chapter 10 of the Montgomery County Code (1984 Edition) entitled “Group Day Care Centers” which provides for the licensing and regulation of same, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 10 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 6-303. Hospitals, Sanitariums, Nursing, and Care Homes

(a) Chapter 25 of the Montgomery County Code (1984 Edition) entitled “Hospitals, Sanitariums, Nursing and Care Homes” which provides for the licensing and regulation of same, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 25 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Article 4. Food Establishments

Section 6-401. Eating and Drinking Establishments

(a) Chapter 15 of the Montgomery County Code (1984 Edition) entitled “Eating and Drinking Establishments” which provides for the regulation and permitting of same, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 15 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 6-402. Slaughterhouses

(a) Chapter 46 of the Montgomery County Code (1984 edition) entitled “Slaughterhouses” which provides for the licensing and regulation of same, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 46 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Article 5. General Business Regulations

Section 6-501. Swimming Pools

(a) Chapter 51 of the Montgomery County Code (1984 Edition) entitled “Swimming Pools” which provides for the licensing and regulation of the construction, maintenance, and operation of swimming pools and fishing ponds, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 51 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 6-502 Secondhand Personal Property

(a) Chapter 44A of the Montgomery County Code (1984 Edition) entitled “Secondhand Personal Property” which provides for the licensing and regulation of the acquisition, sale or barter of secondhand personal property as a business interest, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 44A of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 6-503. Motor Vehicle Repair and Towing Registration

(a) Chapter 31A of the Montgomery County Code (1984 Edition) entitled “Motor Vehicle Repair and Towing Registration” which provides for the registration and regulation of establishments providing vehicle repair and towing services, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 31A of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 6-504.            Massage Establishments and Massage Technicians

(a) Chapter 30B of the Montgomery County Code (1984 Edition) entitled “Massage Establishments and Massage Technicians” which provides for the licensing and regulation of same, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 30B of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Article 6. Cable Communications

Section 6-601. Cable Communications

(a) Chapter 8A of the Montgomery County Code (1984 Edition) entitled “Cable Communications” which provides for the award of franchises for and regulation of said service, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 8A of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Article 7. Cellular Communication Franchises and  
Municipal Users' Tax

Section 6-701. Intent and Purposes.

It is the intent of the Town to promote the public health, safety and general welfare by providing for the grant of one or more franchises for the construction and operation of cellular communication systems; to provide for the regulation of each system by the Town; to provide for the payment of fees and other valuable consideration by a franchisee to the Town for the privilege of using the public rights-of-way for constructing and operating a system; to promote the widespread availability of service.

Section 6-702. Grant of Authority; Franchise Required.

The Town may grant one or more franchises in accordance with this Chapter.

Section 6-703. Franchise Characteristics

(a) A franchise authorizes use of the public rights-of-way for installing cables, wires, lines, and other facilities to operate a communication system, but does not expressly or implicitly authorize the franchisee to provide service to, or install cables, wires, lines, or any other equipment or facilities to private property without owner consent, or to use publicly or privately owned utility poles or conduits without a separate agreement with the owners.

(b) A franchise is subject to the paramount right to use the right-of-way by the Town and the public for public purposes. The Town reserves the right to authorize use of public rights-of-way to other persons as it determines appropriate.

(c) A franchise is nonexclusive and does not expressly or implicitly preclude the issuance of other franchises to communication systems within the Town.

(d) A franchise does not convey a property right to the franchisee or a right to renewal.

(e) A franchise agreement constitutes a contract between the franchisee and the Town once it is accepted by the franchisee. A franchisee contractually commits itself to comply with the terms, conditions and provisions of the franchise agreement and with all applicable laws, ordinances, codes, rules, regulations, and orders.

Section 6-704. Franchisee Subject To Other Laws, Police Power

(a) A franchisee is subject to and must comply with all applicable local, municipal, County, State and federal laws, ordinances, codes, rules, regulations, and orders including those pertaining to nondiscrimination.

(b) A franchisee is expressly subject to the Town's police power under Article 23A, Section 2 of the Annotated Code of Maryland.

(c) A franchisee or other person is not excused from complying with any of the terms and conditions of this Chapter or a franchise agreement or by failure of the Town, or other occasions, to require compliance or performance.

Section 6-705. Interpretation of Franchise Terms.

(a) This Chapter applies to a franchise agreement as if fully set forth in the franchise agreement. The express terms of this Chapter prevail over conflicting or inconsistent provisions in a franchise agreement.

(b) The provisions of a franchise agreement must be liberally construed in order to effectuate its objectives consistent with this Chapter and the public interest.

(c) A franchise agreement is governed by, and construed in accordance with, the laws of Maryland.

Section 6-706. Applications for Grant, Renewal, Modification or Transfer of Franchises.

An application must be filed with the Town for grant of a new franchise, renewal of a franchise, modification of a franchise agreement, transfer of a franchise, or, where approval is required, for a transfer of an interest in a franchise. An applicant has the burden to demonstrate compliance with all application requirements of this Chapter.

Section 6-707. Insurance; Bond; Indemnification.

(a) A franchisee must have the following insurance coverage in force at all times during the franchise period:

- (1) workmen's compensation insurance to meet all state requirements;



- (2) general comprehensive liability insurance in an amount of not less than one million dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage;
- (3) automobile liability insurance covering all vehicles as specified in the franchise but not less than \$250,000 per person, \$500,000 per occurrence, and \$100,000 for property damage; and
- (4) any additional types of insurance and coverage amounts as the Town may require.

All insurance policies must be with sureties qualified to do business in Maryland and in a form approved by the Town.

(b) To ensure the franchisee's performance of franchise obligations, a franchisee must have in force at all times during the franchise period a bond in a form approved by the Town, consisting of cash, an irrevocable letter of credit, or a performance bond. A performance bond must be provided by a surety qualified to do business in Maryland. The bond must be to the benefit of the Town or to other parties named in a franchise agreement. The bond must be of a type and in a sum specified in the franchise agreement as necessary to ensure the faithful performance and discharge of obligations imposed by law and the franchise agreement.

(c) A franchisee must, at its sole cost and expense, indemnify, hold harmless, and defend the Town, its officials, agents, and employees, against any claims, suits, causes of action, proceedings and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its system regardless of whether the act or omission complained of is authorized, allowed or prohibited by the franchise. This requirement includes claims arising out of copyright infringement or a failure by the franchisee to secure consent from the owner, authorized distributor, or licensee of a program to be delivered by the system.

#### Section 6-708. Grant of Franchise.

The Town may grant a franchise for a period not to exceed 15 years to serve all or any specified geographic areas of the Town.

#### Section 6-709. Fees.

- (a) Administrative Processing Fee.

The Town Council may establish an Administrative Processing Fee to cover the cost of reviewing and approving or disapproving a franchise application.

- (b) Annual Administrative Fee.

The Town Council may establish an Annual Administrative Fee to cover the annual costs associated with the administration of the Town's right-of-way.

(c) General Compensation.

A franchisee, in consideration of the privilege granted under a franchise for the use of public rights-of-way to construct and operate a communication system, must pay the Town five (5) percent of the franchisee's gross revenues from the operation of its system within the Town during the period of its franchise. A franchisee must pay the general compensation due to the Town within 30 days of the end of the accounting period determined in the franchise agreement.

Section 6-710. Municipal Tax.

A Municipal Users Tax of up to five (5) percent ("Municipal Tax"), as established by Resolution from time to time, may be imposed upon the monthly subscription fees owed by Town users of cellular communication services covered by this Article. The franchisee(s) shall collect the Municipal Tax from Town users of its services and remit such tax to the Town within 30 days of the end of the accounting period determined in the franchise agreement.

Section 6-711. Construction and Use of Rights-of-Way.

(a) A franchisee must use, with the owner's permission, existing poles, conduits or other facilities whenever possible. Copies of agreements for use of poles, conduits or other facilities must be filed with the Town as required by the franchise agreement.

(b) All transmission lines, equipment and structures must be installed and located to cause minimum interference with the rights and reasonable convenience of property owners.

(c) Suitable safety devices and practices as required by local, County, State and federal laws, regulations, and permits must be used during construction, maintenance, and repair of any system.

(d) A franchisee must remove, replace, or modify at its own expense any of its facilities in a public right-of-way when the Town requires it to do so, to allow the Town to change, maintain, repair or improve a public thoroughfare.

Section 6-712. Enforcement Remedies.

(a) If a franchisee violates any provision of law or its franchise agreement, the Town may take one or more of the following actions:

- (1) Reduce the duration of the franchise on any basis the Town determines is reasonable and affords the franchisee reasonable due process;
- (2) Revoke the franchise under this Chapter.

(b) In determining which remedy or remedies are appropriate under Subsection (a), the Town must consider the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and any other matters the Town determines are appropriate.

(c) In addition to or instead of these remedies, the Town may seek legal or equitable relief from any court of competent jurisdiction.

(d) Before initiating a remedy under this Section other than revocation of the franchise, the Town must give the franchisee written notice of the violations claimed and at least 10 working days to correct the violations.

#### Section 6-713. Transfers.

A transfer of the franchise must not occur without the prior approval of the Town.

#### Section 6-714. Revocation or Termination of Franchise.

A franchise may be revoked or terminated by the Town Council for failure to construct, operate or maintain the communication system as required by this Chapter or the franchise agreement or some other material breach of this Chapter or the franchise agreement.

The Town shall give a franchisee written notice that it is in material breach of this Chapter or franchise agreement. If the franchisee does not correct the breach within 30 days of notice, or correctional action is not being actively and expeditiously pursued, the Town shall give written notice to the franchisee of the revocation of the franchise.

Chapter VII

PUBLIC HEALTH, SAFETY, AND CONDUCT

Article 1. General Provisions

Section 7-101. Littering

(a) It is unlawful for any person or persons to throw, cast, deposit, scatter, drop or cause to be thrown, cast, deposited, scattered, dropped or left in or upon any sidewalk, street, or other public way or upon any vacant lot or upon any occupied or unoccupied property any dirt, ashes, sawdust, shavings, hay, straw, screening, vegetable matter, garbage, trees, brush, paper, or refuse matter of any kind whatsoever except that deposited for public collections.

(b) A violation of this Section shall be a Class E municipal infraction and shall be subject to penalties as provided in Chapter X of this Code of Ordinances.

Section 7-102. Loitering

(a) Chapter 32 Sections 32-13 through 32-17 of the Montgomery County Code (1984 Edition) entitled "Loitering" which prohibits same, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 32 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 7-103. Destruction of Town Property

(a) It shall be unlawful for any person to molest, destroy, remove, deface, or damage any Town signs, traffic control devices, or any other Town property.

(b) Violators of this Section shall be required to pay for damages.

Section 7-104. Regulations For and Permitting of Town Property

The Mayor and Council are authorized to adopt and amend, from time to time, regulations for the government and use of all land, buildings, and other recreational facilities required or constructed by or committed to the care or supervision of the Town. Such regulations may include provisions limiting the use of any such recreational facility for reasons of health, safety, comfort or morals, for the protection of Town property, for fees for the use of any such facility or service in connection therewith and for the issuance of permits by the Town for the use of any such facility, which permits may grant exclusive use thereof or limit the permittee to a particular area or facility.

Section 7-105. Regulations of Parks

(a) Unless reserved for a particular use under these rules and regulations or by permit, the Town parks are open to appropriate uses and activities, except as otherwise set out herein.

(b) The Town Manager is hereby authorized to schedule the use of the Town parks, including the sports field, and to prepare and disseminate a schedule for use.

(c) Reservations for use of the Town parks wherein reservations are permitted, shall be on a first-come, first served basis.

(d) A permit entitles the holder to exclusive or non-exclusive use of the Town facility, depending upon the terms of the permit, for the dates and times indicated. A copy of the permit shall be on-site during the permitted activity and must be shown to Town designees upon request. The permit holder is responsible for maintaining orderly conduct among all persons attending an activity, and minor children shall be appropriately supervised at all times. Any area permitted must be cleared of trash and debris by the end of the event or use, and park facilities must be used in an appropriate and safe manner.

(e) The Town shall post the reservation schedule, and any revisions thereof, on a periodic basis at the Town Hall. A copy of the schedule shall be available upon request. The accommodation of any conflict that may develop between users who have reserved a portion of the Town parks, such as a need to extend play beyond the usual time, shall be resolved by the permitted users without recourse to the Mayor or Council. Otherwise, the terms of any permit or reservation will govern.

(f) Routine or recurring use of the parks as part of a for-profit or not-for-profit business, educational or other activity that is being offered for a tuition or fee, wherein the use of the parks is a part of the program being offered or is included in the routine activities of the program, or when the use occurs while the participants are under the care, custody or control of the business, education or other activity, so that the use of the parks is an adjunct of the program, is prohibited without a permit. A permit for such use must be issued in conjunction with a memorandum of understanding between the Town and the applicant with respect to the use of the parks. The Town is authorized to charge a fee for such use of the parks, which shall be approved by Resolution of the Council, and shall be based on frequency and type of use proposed and the effects upon the park land.

(g) In addition to other available penalties, failure to comply with conditions of a reservation may cause revocation or suspension of a permit and/or denial of future use of the Town park facilities.

(h) At various times, weather, maintenance activities, or other circumstances may cause portions of the Town parks to be unsuitable for use. The Town Manager or other designated representative of the Town shall determine when any portion of the Town parks should be so designated and shall post such determination at Town Hall and at the recreation facility in question. No game, practice, scrimmage, special event or use of any type shall take place during any time when a Town park facility has been declared unsuitable for use.

(i) Applications for reservations of a Town park facility for a sports team, special event, program or other use must be made, in writing, to the Town Manager at Town Hall at least fifteen (15) days prior to the first proposed usage of a recreation facility. All applications shall specify the requested time(s), date(s), and recreation facility or facilities. Applications may be submitted for a period of up to one year, calculated from the date of the first proposed usage.

(j) The Town reserves the right at its sole discretion to impose restrictions, limit use, refuse the use of the Town parks, or any Town parks facility, and/or cancel or suspend any permit granted for usage of these facilities for among other things, violation of any provisions of the Town Code or applicable rules and regulations, misuse of any Town park facilities, improper recreation facility clean-up or supervision, or when inclement weather or other factors render the facility unsuitable for use. These remedies are in addition to any fines that may be issued for violation of Town law and/or financial liability for any damage caused to a park facility.

(k) The Town, its agents, servants and employees, shall not be liable for any physical injury or property damage incurred on or adjacent to any Town park facility when damage or injury has been caused by, or is a result of, any act or omission of others, whether officially permitted or not. All organizations or individuals requesting a use permit shall be required to agree as part of their application for Town park facility use to hold the Town harmless from any claims or losses resulting from the use of those facilities not caused by the act or omission of the Town, its agents, servants and employees.

(l) Each permitted organization, group, or person shall provide the name and contact information for at least one individual, twenty-one years of age or older, with whom the Town will communicate concerning park facility use. The Town will maintain a list of all such designated individuals and will distribute same upon request.

(m) Maintenance and/or conditioning of Town park property or facilities shall be the exclusive responsibility of the Town. No physical changes shall be made to any Town park facility except by the Town or with the prior written approval of the Town. Under no circumstances shall permit holder be permitted to do any type of work on any such facility, with the exception of refuse pickup in the area covered by the permit, unless such permit holder has first obtained the written approval of the Town.

(n) The Town Manager shall have authority to enforce the provisions of these rules and regulations. Permit fees for use of the parks may be adopted by the Council by Resolution.

(o) A violation of this Section shall constitute a Class A municipal infraction subject to the penalties specified in Section 10-303 of this Code.

Article 2. Noise

Section 7-201. Noise Control

(a) Chapter 31B of the Montgomery County Code (1984 Edition) entitled “Noise Control” which regulates noise, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the Provisions of this Section.

(d) The Town of Kensington reserves the right, along with Montgomery County, to Enforce the provisions of Chapter 31B of the Montgomery County Code.

(e) A copy of Chapter 31B of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.



Article 3.                   Obstruction of Public Ways

Section 7-301.            In General

(a)     No person shall obstruct, molest, interfere or hinder the free passage of persons or traffic passing along any sidewalk, street or other public way.

(b)     Pursuant to Section 3-101 (a) of this Code, no person shall place or cause to be placed any obstruction on any street, sidewalk or other portion of the public right-of-way.

Section 7-302.           Exemptions for Special Events

(a)     For special events, the Council reserves the right to issue an exemption to the requirements of Section 7-301 above prohibiting the obstruction of sidewalks, streets, or other public ways.

(b)     Any person or organization seeking an exemption to Section 7-301 above shall file an application for said exemption with the Clerk-Treasurer not less than thirty (30) days before the date on which the obstruction is to occur.

(c)     The contents of said application shall contain:

- (1)     The name, address, and telephone number of the person or organization seeking an exemption for an obstruction.
- (2)     A description of the nature and purpose of the obstruction.
- (3)     The specific dates and times of day the obstruction is to occur.
- (4)     The specific location(s) of the obstruction.
- (5)     Proof that said applicant is adequately covered by liability insurance as determined by the Council.
- (6)     Any additional information that the Mayor or Council Members may deem necessary.

(d)     Exemptions for obstructions granted by the Council shall be regulated in a manner prescribed by the Mayor and Council by a resolution granting the exemption.

(e)     The Council shall not issue any exemptions under this Section if it is determined that said obstruction may substantially interfere with the safe and orderly movement of traffic, is likely to cause injury to persons or property, or will provoke disorderly conduct or create a public disturbance or nuisance.

- (f) Said applicant shall hold the Town of Kensington and its public officers free and harmless for any damage or liability that may result from said obstruction.
- (g) Any exemption granted under this Section shall be strictly governed by resolution issued by the Council and any deviation from the requirements of said resolution shall be deemed a violation of this Code of Ordinances and shall be punishable as provided herein.

Section 7-303. Enforcement and Penalties

A violation of this Article shall be a Class B municipal infraction and shall be subject to penalties as provided in Chapter X of this Code of Ordinances.

Article 4. Firearms

Section 7-401. Discharge of Guns Unlawful

(a) It shall be unlawful for any person to discharge any gun within the Town of Kensington, whether said gun is loaded with blank or live cartridges or projectiles of any kind. The term “gun” shall include any firearm, rifle, shotgun, revolver, pistol, air gun, air rifle or any similar mechanism, by whatever name known, which is designed to expel a projectile through a gun barrel by the action of any explosive gas, compressed air, spring or elastic.

(b) A violation of this Section shall be enforced by Montgomery County pursuant to Section 1-202(d).

Section 7-402. Provisions of County Code Adopted

(a) Chapter 57 of the Montgomery County Code (1984 Edition) entitled “Weapons” which regulates the possession and handling of same, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Article.

(d) A copy of Chapter 57 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Article 5. Animals

Section 7-501. County Animal Control Law Adopted

(a) Chapter 5 of the Montgomery County Code (1984 Edition) entitled “Animal Control” which provides for the regulation, licensing, and control of animals, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) The Town of Kensington reserves the right, along with Montgomery County, to enforce the provisions of Chapter 5 of the Montgomery County Code.

(e) A copy of Chapter 5 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 7-502. Animal Defecation

(a) An owner must not allow an animal to defecate on property outside of the owner’s property, except that an animal may defecate on public property or the common area of property in which the owner shares an interest if the owner immediately removes and disposes of the feces by a sanitary method approved by the Town. This paragraph does not affect any right of a common ownership community to regulate or ban animals from the community’s property.

(b) Animal feces may be collected in a plastic bag and disposed of in a Town trash cart, if the bag is placed inside another plastic bag.

(c) A citation may be issued to the owner or custodian of the animal for a violation of this section as a Class G municipal infraction, subject to the penalty prescribed in Chapter X of this Code of Ordinances.

Section 7-503. Animals at Large

(a) Animals at large are prohibited.

(b) Any dog is at large if it is outside the owner’s premises and not leashed, unless it is a service dog, is in a dog exercise area designated by the Town or the Maryland National Capital Park and Planning Commission, or is participating in an activity approved by the Town.

(c) Any other animal (i.e. cat, livestock,) is at large if it is outside the owner's premises and not leashed or immediately responsive to verbal or nonverbal direction.

(d) The common area of a homeowner's association, condominium or cooperative is not the owner's premises.

(e) This section may be enforced by the Montgomery County Police.

(f) The Town of Kensington reserves the right to issue a citation to the owner or custodian of the animal for a violation of this section as a Class G municipal infraction, subject to the penalty prescribed in Chapter X of this Code of Ordinances.

#### Section 7-504. Unwanted Contact

(a) Unwelcome or unsolicited threatening physical contact or close proximity to a person or domestic animal, such as biting, chasing, tracking, inhibiting movement, or jumping, that occurs outside the owner's property and that may cause alarm in a reasonable person, is prohibited.

(b) This section may be enforced by the Montgomery County Police.

(c) The Town of Kensington reserves the right to issue a citation to the owner or custodian of the animal for violation of this section as a Class A municipal infraction subject to the penalty prescribed in Chapter X of this Code of Ordinances.

#### Section 7-505 Animal Noise

(a) An owner or custodian must not allow an animal to cause noise that is loud enough and persistent enough to disturb another person's quiet enjoyment.

(b) This section may be enforced by the Montgomery County Police.

#### Section 7-506 Dangerous Animals

(a) Animals which are deemed to be dangerous by the Montgomery County Animal Matters Board must be kept confined in a secure enclosure to prevent direct contact with humans or other animals, and must be leashed and muzzled, and under the control of a person at least 18 years who is physically able to restrain the animal, at any time it is removed from the owner's property.

(b) A violation of this section may be enforced by the Montgomery County Police.

(a) The Mayor and Town Council may establish a dog exercise area in the Town. The following requirements apply to any dog exercise area so established.

- (1) All dog owners/handlers must comply with these rules and regulations at all times when accessing the dog exercise area.
- (2) All dogs must be accompanied by responsible owners/handlers who are physically able to exercise effective restraint of the dog(s), and who will restrain their dogs if necessary.
- (3) Owners/handlers must remain in the dog exercise area with their dogs and must keep their dogs in sight and under their control at all times.
- (4) The dog exercise area hours of operation are dawn to dusk daily. No person shall use the facility other than during the designated hours of usage.
- (5) Individual owners/handlers may bring no more than two (2) dogs into the dog exercise area at any one time.
- (6) Owners/handlers must immediately leash and remove from the dog exercise area any dog showing aggression towards people or other dogs. Dogs with a known history of aggressive or dangerous behavior and /or dogs that have been deemed “potentially dangerous” or “dangerous” by any state, county or town are prohibited and are not permitted to enter the dog exercise area.
- (7) All dogs 6 months or older must be spayed/neutered.
- (8) Any dog with a transmissible, communicable disease may not enter the dog exercise area.
- (9) All dogs entering the dog exercise area must be currently licensed by an authorized jurisdiction and must be currently vaccinated against the rabies virus. All dogs are required to wear a current rabies vaccination tag when using the facility.
- (10) Puppies using the dog exercise area must be four (4) months of age or older.
- (11) Dogs must be immediately leashed and restrained when advised to do so by a town staff member/code enforcement officer, and any person and

their dog must leave the dog exercise area when ordered to do so by a town staff member/code officer.

- (12) Eating, smoking or vaping are not permitted inside the dog exercise area.
- (13) No dog food treats or toys, except tennis balls, are permitted in the dog exercise area.
- (14) No bare feet are permitted in the dog exercise area.
- (15) Owners/handlers shall carry a leash at all times, and dogs must be leashed when entering and leaving the dog exercise area. "Spiked" dog collars are not permitted inside the dog exercise area.
- (16) Owners/handlers are legally responsible for the behavior of their dogs and remain legally responsible for any injuries or damage caused by their dogs.
- (17) Owners/handlers are responsible for securely closing and latching all gates as they enter or exit the dog exercise area.
- (18) Owners/handlers must pick up and properly dispose of their dog's feces. Disposal bags are provided for this purpose.
- (19) Dogs must not be allowed to dig. Any holes created by a dog shall be immediately corrected and filled by the dog's owner/handler.
- (20) Children under the age of eleven (11) must be accompanied at all times by a responsible adult who will be accountable for the behavior and wellbeing of the child. Children should be discouraged from approaching or playing with unfamiliar dogs.
- (21) Owners/handlers are not permitted to groom or bathe their dogs inside the dog exercise area.
- (22) Professional dog services such as, but not limited to, training, behavior modification and grooming are prohibited inside the dog exercise area.
- (23) Upon a finding that a dog is dangerous, potentially dangerous or a public nuisance as defined in Chapter 5 of the Montgomery County Code, or that a dog has bitten a person or another dog without provocation, the Town may ban the dog from accessing the dog exercise area. Appeals from that finding will be made to the Town Manager.

(b) A citation to the owner or custodian of the animal may be issued for violation of this section as a Class A municipal infraction subject to the penalty prescribed in Chapter X of this Code of Ordinances.



## Chapter VIII

### HEALTH AND ENVIRONMENTAL REGULATIONS

#### Article 1. Health and Sanitation

##### Section 8-101. Health Officer

(a) Pursuant to Section 910 of the Town Charter and as provided in Section 2-101 of this Code, the Mayor, with the approval of the Council, may appoint a Health Officer, who shall be a licensed physician, who shall safeguard the health of the Town and who may make recommendations to the Mayor and Council on health issues.

(b) The Health Officer shall assist the Department of Health of Montgomery County in carrying out its data collection duties as described in Section 2-42 of the Montgomery County Code.

(c) The Health Officer shall report to the Mayor and Council any Code violations relating to health and sanitation, and recommend to the Mayor and Council the adoption of regulations or ordinances or other action for the preservation of the health of the residents of the Town.

(d) The Health Officer shall perform any additional duties prescribed in this Code of Ordinances.

##### Section 8-102. County Health and Sanitation Law Adopted

(a) Chapter 24 of the Montgomery County Code (1984 Edition) entitled "Health and Sanitation" which contains various provisions to protect the health of the public, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) The Town of Kensington reserves the right, along with Montgomery County, to enforce the provisions of Chapter 24 of the Montgomery County Code. It shall be the duty of the Health Officer to notify the proper County authorities when violations of this Section are observed.

(e) A copy of Chapter 24 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Article 2. Storm Water Management

Article 2, Section 8-201 through Section 8-227 was repealed and Section 1-202 was amended on January 6, 2003 to adopt and make part of the Code by reference Chapter 19 of the Montgomery County Code entitled “Erosion, Sediment Control and Storm Water Management.”

Article 3. Erosion and Sediment Control

Section 8-301. County Erosion and Sediment Control Regulations Adopted.

(a) Chapter 19, Article I of the Montgomery County Code (1984 Edition) entitled “Erosion and Sediment Control” which establishes provisions for the control of same through the regulation of land development, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) Issuance of permits required by the County under Chapter 19, Article I does not exempt any person, firm or corporation from obtaining other permits required by the Town or County pursuant to this Code or other applicable laws.

(e) A copy of Chapter 19, Article I of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Article 4. Property Maintenance

Section 8-401. Water Supply and Sewage Disposal Facilities

(a) There shall be no privy vault, cesspool, or reservoir into which a privy, water closet, cesspool, stable or sink is drained in the Town. Nor shall there be any wells, septic tanks, or any other individual water supply or sewage disposal facility in the Town. This Section does not apply to portable water closets of a temporary nature.

(b) All residential and commercial buildings or dwellings shall have water supply and sewage disposal facilities provided by the Washington Suburban Sanitary Commission and meet all the applicable building and hook-up requirements of the Washington Suburban Sanitary Commission and Montgomery County.

Section 8-402. Rodent Control

(a) Chapter 39 of the Montgomery County Code (1984 Edition) entitled “Rat Control” which provides for the regulation and control of rodents on both public and private properties, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) The Town of Kensington reserves the right, along with Montgomery County, to enforce the provisions of Chapter 39 of the Montgomery County Code. It shall be the duty of the Health Officer to notify the proper County authorities of suspected rat infestations subject to abatement under this Section

(e) A copy of Chapter 39 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Section 8-403. Chapters 26 and 58 of the Montgomery County Code Adopted.

(a) The provisions of Chapter 26 “Housing and Building Maintenance Standards” and Chapter 58 “Weeds” of the Montgomery County Code (and any amendments, revisions or changes thereto), including authorization for the County to enter onto a property to abate violations if an owner fails to comply with previous notice to do so, and to place a lien against the property for the costs of abatement if the owner fails to pay the bill issued by the County for

the clean-up or removal within a specified time are hereby adopted and made part of this Code by reference, except as otherwise provided.

(b) This Section is an exception to the general exemption enacted in § 1-202 of the Town of Kensington Code.

(c) Montgomery County is requested and authorized to enforce the provisions of this Section in accordance with § 2-96 of the Montgomery County Code.

(d) The Town is authorized to enforce the provisions of this section. The Town may enter onto the property to abate violations after proper notice and to place a lien against the property for the costs of abatement.

(e) A copy of Chapters 26 and 58 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

(f) A violation of this section is a Class A Municipal Infraction.

Article 5. Air Quality Control

Section 8-501. County Air Quality Control Law Adopted

(a) Chapter 3 of the Montgomery County Code (1984 Edition) entitled “Air Quality Control” which contains various provisions to protect the health and welfare of the public through controlling air pollution, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) The Town of Kensington reserves the right, along with Montgomery County, to enforce the provisions of Chapter 3 of the Montgomery County Code.

(e) A copy of Chapter 3 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

## Article 6. Solid Waste Collection

### Section 8-601. Definitions for Solid Waste Disposal

The following terms shall have the meaning indicated as used in this Chapter, subject to such extensions as may be given to any of these definitions in this Chapter:

- (a) “Ashes” shall include all residue resulting from the burning of coal or wood and other ash deposits from incinerators and/or outdoor fireplaces.
- (b) “Dead Animal” shall mean the dead body of any animal not killed for food.
- (c) “Glass” shall be defined as broken or unbroken glass in any form and/or bottles or jars.
- (d) “Household furniture” shall mean furniture designed and constructed specifically for use inside a house or office.
- (e) “Non-collectible Waste” shall include poisons, acids, caustics, explosives, toxic materials, automotive products such as motor oil, gasoline, and anti-freeze, household furniture, fixtures, or waste material resulting from the repair or alterations of any building or other structure and such other waste material as may cause damage to collection equipment or personal injury to collectors.
- (f) “Person responsible” shall mean the property owner, property manager or occupant.
- (g) “Recyclable materials” may include newspaper, glass bottles and jars, aluminum cans, tin plated steel food and beverage cans, corrugated cardboard, computer paper, plastic containers, appliances, scrap metals, phone books, magazines, junk mail, used oil and antifreeze, and other items designated by the Town.
- (h) “Refuse” shall include all putrescent and nonputrescent solid waste material, discarded from within a house or other structure.
- (i) “Refuse receptacle” shall mean any metal or plastic container for the disposal of refuse which shall be constructed to keep refuse from blowing or falling on the ground and keep animals from removing refuse from the container.
- (j) “Special collection materials” shall include heavy or bulky items such as furniture, rugs, doors, screens or similar household items not to be collected on regular household refuse collection days, excluding yard waste, scrap metals and appliances.
- (k) “Yard waste, collectable” shall include grass clippings, plant cuttings, Christmas trees, leaves, and brush and branches tied securely in bundles not exceeding four (4) feet in length and three (3) inches in diameter.

Section 8-602. County Solid Wastes Law Adopted

(a) Chapter 48 of the Montgomery County Code (1984 edition) entitled “Solid Wastes”, which provides for the regulation of the storage and disposal of solid wastes, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) The Town of Kensington reserves the right, along with Montgomery County, to enforce the provisions of this Section.

(e) Whenever Chapter 48 of the Montgomery County Code conflicts with other provisions of this Article, the Town’s provisions shall take precedence and shall control.

(f) A copy of Chapter 48 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

(g) The owner of any dumpster used in the Town must screen that dumpster from view at street level.

(h) The screening of the dumpster must be approved in advance by the Town.

(i) The Town shall inspect all dumpsters to ensure compliance with this Section.

(j) Failure to screen a dumpster at street level, to obtain approval of screening material or to use the approved screening materials are Class F municipal infractions subject to the penalties prescribed in Chapter X of this Code.

Section 8-603. Enforcement and Inspections by the Director of Public Works

(a) The Director of Public Works is authorized to make all inspections as are necessary to determine compliance with the terms of this Article.

(b) The Director of Public Works shall prepare such regulations and recommend such



policies as may be necessary to effect the collection and disposal of refuse and dead animals. These regulations and policies, when approved by the Council shall have the same effect as though set forth in this Article.

(c) The Director of Public Works or a representative of the Director shall determine if any provisions of this Article have been violated. In the event that any such violations exist, the Director of Public Works shall send a copy of the specific violations of this Article with a copy of the municipal infraction in accordance with Section 8-621 to the person responsible.

(d) This Article shall not prohibit the actual producers of refuse, or the owners of premises upon which refuse has accumulated, from personally collecting, conveying and disposing of such refuse by means of private or commercial refuse collectors, subject to the approval of the Director of Public Works.

(e) The Director of Public Works is specifically authorized, in addition to any other authority granted herein, to require the owner, agent, manager or occupants of any property in the Town to dispose of refuse by proper means for the protection of the public health, safety and welfare, even though the service may have been discontinued by the Town. If, after fifteen (15) days of such notice by the Director of Public Works, said owner, agent, manager, or occupant has not disposed of such refuse, the Director of Public Works may have the refuse removed and the Town may order that, in addition to other penalties prescribed by law, the cost of same be charged against the property and collected as delinquent taxes are collected.

(f) The Code Enforcement Officer shall have the same powers and duties to enforce the provisions of this Article as the Director of Public Works.

#### Section 8-604. Refuse Receptacles Required

(a) Where refuse is accumulated, the person responsible shall provide and maintain in good condition on that premises a receptacle for the deposit of refuse. Refuse receptacles shall not have rusted-through areas, tears or fractures, and lids shall fit properly so as to secure the refuse from blowing or falling to the ground and keep animals from removing refuse from the container.

(b) The occupants of all premises where refuse is accumulated shall, after placing such refuse in proper receptacles, cause the refuse to be placed for collection in a position easily accessible to the refuse collector or at a point designated by the Director of Public Works.

(c) Violation of this Section shall be a Class H municipal infraction subject to the penalties prescribed in Chapter X of this Code.

Section 8-605. Items Prohibited from Refuse Receptacles

(a) No person shall place or cause to be placed in any receptacle intended for the collection of refuse any:

- (1) Human or animal excreta or any article or substance soiled by human or animal excreta.
- (2) Non-collectable waste.
- (3) Yard waste
- (4) Special collection materials.

(b) A violation of this Section shall be a Class F municipal infraction subject to the penalties prescribed in Chapter X of this Code. In addition refuse shall not be collected.

Section 8-606. Premises to be Kept Free of Hazards on Collection Days

(a) The occupants of all premises where refuse is accumulated shall, in icy and snowy weather, keep the walks, paths, driveways and steps as may be used by the collector in the normal collection of refuse in a condition that will permit the collection to be made without hazard to the collectors.

(b) The occupants of all premises where refuse is accumulated for collection shall, on collection days, securely confine, in a manner that does not interfere with the collector's duties, any animal capable of inflicting bodily harm upon the collector.

(c) No person shall interfere in any manner with the collection and disposal of any refuse or dead animals by the Town, its contractors or its agents or employees.

(d) If the conditions required by this Section are not met refuse shall not be collected. A violation of this Section shall be a Class G municipal infraction subject to the penalties prescribed in Chapter X of this Code.

Section 8-607. Placement of Refuse Receptacles in Public Way

(a) No person shall place refuse receptacles for collection upon any public sidewalks, streets, avenues, alleys or other public ways without explicit authorization from the Director of Public Works or the Director's representative.

(b) Persons who obtain permission to place refuse receptacles for collection upon public sidewalks, streets, avenues, alleys or other public ways shall not place the refuse receptacle in the permitted location before 4:00 p.m. the day before the scheduled collection. After being emptied, the refuse receptacle shall be removed by 12:00 midnight after actual pickup of refuse.

(c) A violation of this Section shall be a Class H municipal infraction subject to the penalties prescribed in Chapter X of this Code.

Section 8-608. Commercial Establishments; Refuse Prohibited in Public Containers

(a) No vendor, employee, owner or occupant of any commercial establishment shall place for collection, in any refuse container provided by the Town or the Town's contractors or in any public right-of-way, any refuse resulting from the conduct of any business or occupation of the vendor, employee, owner or occupant of any commercial establishment.

(b) Pursuant to Section 8-603(e) of this Article, the Director of Public Works may order the owner, agent, or manager of a commercial establishment to dispose of refuse by proper means for the protection of the public health, safety, or welfare of the Town.

(c) A violation of this Section shall be a Class F municipal infraction subject to the penalties prescribed in Chapter X of this Code.

Section 8-609. Mandatory Recycling Collection

(a) All occupants of single-family homes and multi-family dwellings from which the Town collects refuse shall participate in the recycling collection procedures described in this Section.

(b) The Town or contractor of the Town shall collect recyclable material on days specified by the Mayor. Recyclable material will not be collected on that day if snow or ice has made roadways impassable or the day falls on a legal holiday.

(c) The Town or its contractor shall provide a recycling collection container to each residential unit required to participate in the recycling program. The Town shall replace containers that are lost or stolen. The Town may charge residents a fee for replacement of lost or stolen containers provided that the fee is no higher than the actual replacement costs.

(d) The recycling container is the property of the Town or its contractor. The recycling container is to remain at each residential unit to which it was given. Residents who move into the Town after the program has begun may receive use of another recycling container if the container was not left with the property.

(e) The person responsible shall follow the instructions of the Town or the Town's contractor in sorting and placing all recyclable materials out for collection.

(f) The person responsible shall place recyclable material on the public right-of-way next to the curb. The recyclable material shall not interfere with parking or traffic. A person shall not place the recyclable materials next to the curb before 4:00 p.m. the day before the

scheduled collection. After being emptied, the recycling container shall be removed from the curb by the person responsible before 12:00 midnight after collection of material.

(g) In cases where there is no public right-of-way next to the curb or where the public right-of-way is inadequate, the Director of Public Works shall designate an appropriate place near the curb for placement of the recyclable materials.

(h) The Mayor and Council shall designate material for residents to include in the recycling program.

(i) A person shall not use the recycling collection container for any other use except the storing of recyclable items prior to collection.

(j) Except for the Town, its contractor or the person who placed the recyclable material next to the curb, a person shall not collect recyclable materials that have been placed next to the curb.

(k) A violation of this Section shall be a Class H municipal infraction subject to the penalties prescribed in Chapter X of this Code.

#### Section 8-610. Enforcement of Mandatory Recycling Collection

Before issuing a citation for a municipal infraction for a violation of Section 8-609, the Director of Public Works or his or her representative shall issue warning notices to the person(s) responsible as follows:

(a) First Violation. The Director of Public Works or a representative of the Director shall issue a warning notice to the person responsible. The warning notice shall describe the violation, include instructions for the proper sorting of recyclable materials from refuse, state that all single-family houses and multi-family dwellings from which the Town collects refuse must participate in the recycling program, and inform the person responsible of the penalty for the first and subsequent violations, the warning notice shall be delivered directly to the person responsible for the violations, attached to the recycling container, or mailed to the address where the violation occurred.

(b) Second violation. The refuse shall not be collected on the date of the violation and the Director of Public Works shall issue a second warning notice to the person responsible.

(c) Third violation. The refuse shall not be collected on the date of the violation, and the Director of Public Works shall issue a citation for a municipal infraction to the person.

#### Section 8-611. Multiple Family Unit Refuse Collection Regulations

(a) The owner, agent, or manager of a multi-family unit may provide for the adequate

disposal of refuse by private means subject to the provisions of this Article and applicable County laws.

(b) It shall be the responsibility of the owner, agent or manager of a multiple-family dwelling to notify the Director of Public Works in writing of the intent to dispose of refuse by private means at least fifteen (15) days prior to the due date of fees specified in Section 8-612 and 8-613 of this Article.

(c) Acceptable private means of refuse disposal as permitted in Section 8-603 and Subsections (a) and (b) of this Section shall be subject to the approval of the Director of Public Works as related to the public health, safety and welfare.

(d) Refuse for collection at multi-family units shall be placed at ground level outside the dwelling in a position easily accessible to the refuse collector or at any point as may be designated by the Director of Public Works and not more than one hundred (100) feet distant from the side of the street or alley from which the collection is to be made.

(e) Separation of refuse, preparation of refuse and refuse containers provided by owners, tenants, lessees or occupants of the multi-family unit premises shall comply with all ordinances and regulations of the Town presently in effect and to become effective in the future.

#### Section 8-612. Multi-Family Unit Refuse Fee Schedule

(a) A fee schedule for multi-family units shall be proposed by the Mayor and approved by the Council.

(b) Any fees accrued for prior service shall be subject to delinquent account procedures as stipulated in Section 8-613 below.

#### Section 8-613. Multi-Family Unit Refuse Collection Fee Date; Delinquent Accounts

(a) All fees chargeable under Section 8-612 shall be due quarterly on July 1, October 1, January 1, and March 1 of each year.

(b) The Director of Public Works shall certify to the Clerk-Treasurer thirty (30) days in advance of the due date as specified in this Section the number of units to be charged at each specific location, furnishing the name and address of the person owning or operating the dwelling.

(c) All accounts shall be considered delinquent if not paid within thirty (30) days of the due date. All delinquent accounts are subject to a late penalty charge of ten percent (10%) of the amount due.

(d) If a delinquent account is not paid within the thirty (30) day grace period after the due date, the Clerk-Treasurer shall so certify to the Director of Public Works who shall cease all refuse collections for that dwelling unless otherwise directed by the Mayor.

(e) The stoppage of service as authorized under this Section for nonpayment of collection charges shall be in addition to the right of the Town to proceed for the collection of the unpaid charges in a manner provided by law for the collection of delinquent taxes.

#### Section 8-614. Special Collection Days

(a) Collection of special collection materials as defined in Section 8-601(j) will be made only as the schedule of the Department of Public Works permits and on a day designated by the Director of Public Works. Only buildings used solely for ordinary residential use shall be eligible for such special collections at places where the Town normally picks up refuse.

(b) Any person desiring collection of special collection materials must telephone the Department of Public Works for an appointment at least three (3) days prior to a scheduled special collection day.

(c) All items not specifically listed as special collection materials in Section 8-601(j) may not be picked up at the discretion of the representative of the Department of Public Works.

(d) No person shall place items for special collection on the public right-of-way prior to 4:00 p.m. the afternoon preceding the special collection.

(e) No person shall place items over fifty (50) pounds out for special collection without permission from the Director of Public Works.

(f) All small items for special collection must be placed in proper containers (boxes, cartons, cans, etc.) and no individual container, when filled, shall weigh over fifty (50) pounds.

(g) All items for special collection must be placed at the curb or at the property line. Under no circumstances will Town employees enter upon private property to make a special collection.

(h) At the discretion of the Director of Public Works the penalty for violating this Section may include the non-collection of items. A violation of this Section shall be a Class H municipal infraction subject to the penalties prescribed in Chapter X of this Code.

#### Section 8-615. Items Excluded From Special Collections

Items that may not be included in the special collection are as follows:

(a) Residue or leftover material from landscaping, tree stumps, logs, and branches

over three (3) inches in diameter or over four (4) feet in length.

(b) Major demolition salvaging, or construction debris including drywall, wood scraps, bricks, cinder blocks or rocks, and similar materials.

(c) Metal poles longer than four feet.

(d) All items, except special collection items, prohibited from regular refuse collection pursuant to Section 8-605.

#### Section 8-616. Collection of Yard Waste

(a) Collectable yard waste shall be collected from the curbside on a day designated by the Director of Public Works, and only in weeks when there is not a Town holiday. Yard waste shall not be mixed with regular household refuse. A person shall follow the instructions of the Town or the Town's contractor in sorting and placing all yard waste out for collection.

(b) Residents may use the Town's leaf collection program. Leaves gathered by residents before or after the fall and winter leaf collections may be collected by the Town on days designated by the Director of Public Works.

(c) The penalty for violating this Section may include the non-collection of the yard waste.

#### Section 8-617. Collection of Appliances and Scrap Metal

(a) Appliances and scrap metals shall be collected at the discretion of the Director of Public Works.

(b) Any person desiring collection of an appliance or scrap metal object must telephone the Department of Public Works to schedule a collection appointment. No person shall place an appliance or scrap metal object on the curb for collection without an appointment and permission from the Director of Public Works.

(c) No person shall place appliances or scrap metal objects on the curb prior to 4:00 p.m. the day before collection.

#### Section 8-618. Refuse Collection and Transportation Permit and Registration Requirements

(a) No person, firm, or corporation shall engage in the business of collecting or

transporting refuse within the Town without first obtaining a permit from the Director of Public Works. The forms, requirements, and fees for obtaining a permit shall be determined by the Council by resolution, pursuant to the provisions of this Article. Application for a permit shall be made to the Director of Public Works on or before July 1 of each year.

(b) No permit to engage in the business of collection or transportation of refuse shall be issued until the applicant complies with the following conditions:

- (1) Maintains an office within the area of the Washington Metropolitan Council of Governments where business may be conducted with the permittee and serviced by a business telephone listed in the telephone directory by trade name.
- (2) Pays to the Clerk-Treasurer an annual registration fee in an amount to be determined from time to time by resolution of the Council for each and every vehicle to be used in the collection or transportation of refuse within the Town.
- (3) Fulfills any other requirements of the Council pursuant to Subsection (a) of this Section.

(c) No vehicle for the collection and transportation of refuse shall be operated in the Town without first being inspected by and registered with the Town. No vehicle shall be registered unless:

- (1) The vehicle is licensed by the Maryland Motor Vehicle Administration as a commercial vehicle. Any vehicle that becomes no longer registered as a commercial vehicle with the Motor Vehicle Administration shall have its registration with the Town immediately revoked;
- (2) The vehicle has been inspected by the Director of Public Works or a duly authorized representative and found to be equipped with a suitable metal body, not to exceed nine (9) feet in height, designed for the collection of refuse, constructed so that fluid will not leak, drip or escape from the confines thereof, and shall have a suitable tightly fitting cover, which cover shall be kept in place except when loading or unloading;
- (3) The vehicle shall be lettered in letters plainly distinguishable and not less than three (3) inches in height indicating the name of the company or individual by whom the vehicle is owned or operated, that the vehicle is for collection of refuse, and the business telephone number; and
- (4) The registration fee has been paid to the Town.

(d) For each vehicle registered pursuant to this Section the Clerk-Treasurer shall



issue a registration record containing the name of the owner, the description and serial number of the vehicle, and the current number of the license plates. There shall be furnished by the Town a metal refuse collector's tag containing the registration number and date of expiration. The tag is to be attached by the registrant to the rear of the vehicle in a manner so as to be readily visible. The registration record and tag may not be transferred to another vehicle without prior approval of the Director of Public Works.

(e) A violation of this Section shall be a Class G municipal infraction subject to the penalties prescribed in Chapter X of this Code.

Section 8-619. Regulations Governing Refuse Collectors

(a) It shall be the responsibility of the permittee to operate in accordance with the following provisions:

- (1) Remove all rubbish in containers, bundles or otherwise packaged for disposal from every point of pickup, plus cleanup spillage by the collector at pickup point and along the route to the truck from the point of pickup.
- (2) Maintain regular service in accordance with a written or oral contract and provide prior notice for the discontinuance of service for any cause.
- (3) Furnish to each customer an identification card, showing the trade name, principal business address, telephone number and regular office hours of the collector.
- (4) Provide alternate service in the event of mishap or breakdown of regular equipment.
- (5) Maintain the vehicle body so as to prevent leakage of contents and use required covers to prevent refuse from blowing or otherwise escaping from the confines of the vehicle.
- (6) Comply with all Town and County laws not in conflict or inconsistent with this Article.
- (7) Comply with any additional regulations included in the permit issued by the Town for the collection of refuse.

(b) A violation of this Section may result in the revocation of the permit issued to collect refuse in the Town and shall be a Class B municipal infraction subject to the penalties prescribed in Chapter X of this Code.

Section 8-620. Cleansing of Grounds Following Circus or Exhibition

The owner of any ground in the Town, who shall let the ground for any circus or other exhibition, shall, within twenty-four (24) hours after the exhibition has left, clear and remove from the ground, to the satisfaction of the Director of Public Works, all refuse and deposits of all kinds. A violation of this Section shall be a Class G municipal infraction subject to the penalties prescribed in Chapter X of this Code.

Section 8-621. Violation and Penalties

(a) One (1) warning of twenty-four (24) hours shall be issued to any person responsible for violations of Sections 8-604, 8-607, 8-614, and 8-617. No additional warnings shall be issued to the person responsible for subsequent violations for which a warning was received except where Section 8-610 applies.

(b) No person shall interfere in any manner with any inspections required by Section 8-603 or the collection of refuse. A violation of this Subsection shall be a Class F municipal infraction subject to the penalties prescribed in Chapter X of this Code.

(c) Failure to abate any cited violations at the time of paying the fine shall cause the violation to be treated as a repeat violation.

(d) Any individual who receives a municipal infraction citation and wishes to stand trial by signing the citation and returning it as specified shall not receive additional citations for the same violation until the court rules on the citation for which the defendant is standing trial.

(e) In cases where the Director of Public Works has determined that extreme danger exists to persons or property or extreme unsanitary conditions exist, the warning notice shall be dispensed with and the Director of Public Works shall have the refuse removed pursuant to Section 8-603 (e).

Article 7. Prohibited Solid Waste Disposal Methods

Section 8-701 Transportation of Rubbish and Refuse

(a) No person shall remove or transport any earth, sand, gravel, broken stone, dirt, ashes, paper and other rubbish, or any manure or other loose fluid or offensive matter, except in an enclosed vehicle effectively covered as to prevent the material from being dropped, let fall, blown or spilled therefrom and, to the extent practicable, prevent the escape of odors.

(b) A violation of this Section shall be a Class F municipal infraction subject to the penalties prescribed in Chapter X of this Code.

Section 8-702. Abandonment of Refuse on Public or Private Property

(a) No person shall maintain or abandon on any public or private property any garbage, debris, paper of any type, foil of any type, tin cans, glass containers, broken glass, plastic containers, vegetable matter, putrescent matter, crockery, appliances, carpeting, automotive or truck parts, tires, wood, construction material and filth, except as otherwise provided in this Section.

(b) No person shall maintain or abandon on any private property unless they be contained within or inside a permanent structure any household furniture, appliances, carpeting, automotive or truck parts, tires, bathtubs, sinks, wood or construction material.

(c) Whenever any readily movable property of any kind, such as but not limited to furniture, appliances, personal effects and so forth, shall be abandoned or left in violation of any law, ordinance or order on public or private premises, it may be removed by order of the Mayor.

(d) A violation of this Section shall be a Class A municipal infraction subject to the penalties prescribed in Chapter X of this Code.

(e) Whenever the owner of such abandoned property can be ascertained, the Town of Kensington may charge said owner for such removal in addition to any penalties for violations of this Section.

Section 8-703. Depositing Refuse or Interference with Public Sewer

(a) No person shall throw or deposit in or upon any public sewer or in any trap, basin, inlet, grating, manhole or other appurtenances of any public sewer, any sticks, stones, brick, earth, gravel, dirt, mud, hay, straw, manure, rubbish, litter, offal, vegetables, garbage, trees, shrubs, branches, twigs, leaves, papers, cinders or refuse matter of any kind.

(b) No person shall deposit, or cause to be deposited, or place, or cause to be placed,

any leaves, soil, rocks, refuse matter or any other materials, matter or item whatsoever in or upon any lot or lots adjacent to any drain, sewer, watercourse, waterway, branch or stream in the Town in a manner so as to obstruct or cause to be obstructed, or prevent or cause to be prevented, or impede or cause to be impeded, the flow of any drain, sewer, watercourse, waterway, branch or stream.

(c) No person shall obstruct, impede or cause to be impeded or obstructed the flow of any public sewer, or interfere with the free discharge or ventilation thereof, or clog any appurtenance thereof.

(d) The provisions of this Section shall not apply to matter discharged through a house sewer into a public sewer.

(e) No unauthorized person shall enter into any manhole, enclosed sewer or enclosure used for the purpose of drainage of storm water or sewage.

(f) A violation of this Section shall be a Class B municipal infraction subject to the penalties prescribed in Chapter X of this Code.

#### Section 8-704. Drainage or Discharge of Offensive Matter

(a) No person shall cast or throw, discharge or cause to flow, or permit such action, on or from premises under his or her control, on or into any street, road, alley, ditch, gutter or public place within the Town any house refuse, human or animal excreta, offal, garbage, dead animals or fowl, decaying vegetable matter or organic waste substance of any kind, nor any slops, greasy or soapy water or other liquids of offensive matter liable to become a source of nuisance after exposure to the atmosphere.

(b) A violation of this Section shall be a Class F municipal infraction subject to the penalties prescribed in Chapter X of this Code.

#### Section 8-705. Noxious Matter Prohibited

(a) No person shall keep, collect, use or suffer to be kept, collected, or used in his or her house, cellar or premises any putrid or decaying animal or vegetable matter, noxious liquids, stagnant water or other offensive matter.

(b) No person shall keep any poultry or any bird or any animals of any description in such manner that the filth and stench therefrom shall become offensive to or annoy any neighbor or other person.

(c) A violation of this Section shall be a Class F municipal infraction subject to the penalties prescribed in Chapter X of this Code.

Section 8-706. Scattering of Dust Prohibited

(a) No person shall shake, beat or otherwise treat carpets, rugs, floor coverings, garments, clothes linings, covers, furniture or other articles in a manner so as to cause dust to settle upon other premises or upon any street or other public way in the Town or within thirty (30) feet of any premises used for human habitation, occupation, or assembly.

(b) No person shall deposit, place, sift, shake or otherwise treat ashes or other rubbish in a manner so as to cause dust to settle on other premises.

(c) A violation of this Section shall be a Class H municipal infraction subject to the penalties prescribed in Chapter X of this Code.

Section 8-707. Refuse Burial Prohibited

No person shall bury or deposit any refuse or other waste on any public or private property within the Town without a special permit from the Council. A violation of this Section shall be a Class F municipal infraction subject to the penalties prescribed in Chapter X of this Code.

Section 8-708. Burning of Refuse

(a) No person shall burn any trash, garbage or refuse of any description upon any public park, public sidewalk, public right-of-way, public street or other public spaces except upon permission of the Council and under the direction of the Director of Public Works or the Director's authorized agent.

(b) No trash or rubbish of any description, including leaves, paper or like material, shall be burned in the open yard of any premises

(c) A violation of this Section shall be a Class F municipal infraction subject to the penalties prescribed in Chapter X of this Code.

Section 8-709. Importation and Disposal of Spoiled Food

(a) No person shall bring, or cause to be brought, any diseased, spoiled or decayed meat, fish, vegetables or provisions of any kind intended for food into the Town. A violation of this Subsection shall be a Class F municipal infraction subject to the penalties prescribed in Chapter X of this Code.

(b) Any person having possession, custody or care of any organic animal or vegetable

substances or provisions of any kind intended for sale as food but which have become unfit for this use shall forthwith remove the animal or vegetable substance or provisions to a place as may be designated by the Director of Public Works. A violation of this Subsection shall be a Class F municipal infraction subject to the penalties prescribed in Chapter X of this Code.

Section 8-710. Storage of Motor Vehicles

(a) In this Section, “unused motor vehicle” means a vehicle, including a trailer, that is:

- (1) Not registered by a government agency
- (2) Not subject to Section 48-24 of the Montgomery County Code
- (3) Inoperable
- (4) Has not moved under its own power for 2 years

(b) A person must not store an unused motor vehicle on residential or commercial property for more than 90 days unless the unused motor vehicle:

- (1) Is completely shielded from the view of individuals on adjoining properties; for example, hedge. The building of a fence alone may not by itself be sufficient to satisfy the requirements of this Section; and
- (2) Is stored within the building setback lines of the property; or
- (3) Has a permit issued under this Section

(c) A person living in the household may apply to the Town for a permit to store an unused motor vehicle on residential property for more than ninety (90) days in cases of serious hardship.

(d) Upon noticing, or being notified, that an unused vehicle has existed for more than 90 days, the Code Enforcement Officer shall give written notice to owner, occupant, lessee or agent at his/her last known address. If the vehicle is not removed within thirty days from notice the owner shall be held in violation of this Section.

(e) A violation of this Section shall be a Class G municipal infraction subject to the penalties prescribed in Chapter X of this Code.

(f) Whenever an abandoned vehicle is left in violation of this Section, it shall be removed by the order of the Mayor or his/her designee;

(g) Whenever the owner of such abandoned vehicle can be ascertained, the Town of Kensington may charge said owner for such removal in addition to any penalties for violations of this Section.

Article 8. Trees

Section 8-801. Purpose; Applicability.

- (a) The provisions of this Article apply to trees, shrubs, and plants presently or thereafter planted and established within the Town limits.
- (b) The provisions of this Article create positions and a Board whose purposes are to:
  - (1) Enhance the beauty of the Town.
  - (2) Protect trees and shrubs located on public property from undesirable or unsafe maintenance practices and spread of disease or pests.
  - (3) Encourage Town citizens to adopt practices that promote and protect healthy trees and shrubs.
- (c) Tree Board Membership and Operation.
  - (1) By this Article the Tree Board of the Town of Kensington, hereafter referred to as the “Board,” is established.
  - (2) The Board shall have the following five (5) members:
    - One Council Member in charge of Parks and Trees
    - Two Town staff members – Public Works and Code Enforcement
    - Two citizen members appointed by the Mayor and shall serve staggered, two-year terms, except in the year the Board is established. In the year the Board is established, one (1) appointment shall be for one (1) year and one (1) shall be for two (2) years. Thereafter, all appointments shall be made for two year terms.
  - (3) Members of the Board shall serve with no compensation.
  - (4) The Board shall adopt its own rules of procedure, subject to approval of the Mayor and Council, and keep an official record of its meetings and proceedings. A record of minutes will be included in the Town Journal. A majority of its members shall constitute a quorum for the purpose of transacting business.



(d) Duties and Responsibilities of the Board.

(1) On a quarterly basis, the Board shall:

(i) Study the landscape within the Town of Kensington and review Town landscape plans.

(ii) Make recommendations to the Mayor and Town Council regarding the selection, installation, removal, maintenance and relocation of trees and shrubs.

(2) With the advice of the State Forest Service the Board shall establish, maintain an official list of trees and shrubs suited for urban planting in the region's climatic zone. No trees other than those on the official list may be planted upon public ways or public areas within the Town without the approval of the Board.

(3) The Board has the authority to establish, maintain, and disseminate guidelines regarding:

(i) Proper installation, removal, and maintenance practices.

(ii) Safe and proper spacing of trees and shrubs.

(iii) Preservation of wildlife habitats.

(4) The Board has the authority to sponsor educational activities to:

(i) Increase public appreciation of trees of aesthetic, historical, or ecological value on public and private lands within the Town limits.

(ii) Encourage residents to include in their landscape plans the varieties of trees and shrubs on the official Town list.

(5) The Board has the authority to propose, present, and recommend to the Mayor and Town Council any resolution, ordinance or Charter change that advances the purposes set forth in this Article.

Section 8-802. Installation, Maintenance, and Removal of Trees.

The Public Works Director shall be responsible for the installation, maintenance, and removal of trees and shrubs within the specifications and standards established by the State Forest Service and Tree Board in accordance with the annual community forestry work plan.

Section 8-803. Conflict with State Law

Whenever possible, this Chapter shall be read to be consistent with the provision of the Natural Resources Article of the Annotated Code of Maryland. Any provision of this Chapter, which in any manner conflicts, with any provision of State law shall be declared invalid and void to the extent of such conflict.

Section 8-804. General Provisions

(a) It shall be unlawful for any person to damage, cut, destroy, or injure any tree, shrub, or plant planted in the public right-of-way including public areas. This provision shall not apply to ordinary care and maintenance by any person authorized by the Mayor to exercise such care. A violation of Section 8-804(a) shall be a municipal infraction Class E prescribed in Chapter X of this Code of Ordinances.

(b) It shall be unlawful for any person to attach a sign, notice, or advertisement to a tree or shrub in the public right-of-way and public areas. A violation of Section 8-804(b) shall be a municipal infraction Class G prescribed in Chapter X of this Code of Ordinances.

(c) It shall be unlawful for any person to place or store cement, asphalt, or any other substance in the public right-of-way and public areas which might impede access to the roots of trees for air or water. A violation of Section 8-804(c) shall be a municipal infraction Class A prescribed in Chapter X of this Code of Ordinances.

Section 8-805. Care of Trees, Shrubs, and Plants

(a) It shall be unlawful for any person to plant, trim, spray, or remove or perform any other treatment to a tree, shrub, or plant in the public right-of-way or public areas without first obtaining permission from the Town except that:

- (1) If a tree is uprooted or its branches broken so as to contact telephone, telegraph or electric power or other wires carrying electric current or if a tree or the tree's branches endanger persons or property, said tree may be trimmed on an emergency basis with permission from the Town.
- (2) Ordinary care such as watering may be performed without permit or other permission.

A violation of Section 8-805(a) shall be a municipal infraction Class E prescribed in Chapter X of this Code of Ordinances.

(b) Utility companies shall apply directly to the Town before performing any of the above actions on any tree, shrub, or plant in the public right-of-way and public areas in the Town.

(c) During erection, alteration or repair of any building or structure, the owner or contractor shall place guards or barriers as close as possible to the drip line of all nearby trees in the public right-of-way and public areas. A violation of Section 8-805(c) shall be a municipal infraction Class A prescribed in Chapter X of this Code of Ordinances.

Section 8-806. Penalties

A violation of this Article shall be a municipal infraction subject to the penalties prescribed in Chapter X of this Code of Ordinances.

Article 9. Pesticides

Section 8-901. County Pesticides Law Adopted

(a) Chapter 33B of the Montgomery County Code entitled “Pesticides”, which contains various provisions to protect the health of the public, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 33B of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

## Chapter IX

### FIRE SAFETY AND EMERGENCY SERVICES

#### Article 1. Fire and Rescue Services

##### Section 9-101. Adoption of County Fire and Rescue Service Provisions

(a) Chapter 21 of the Montgomery County Code (1984 edition) entitled “Fire and Rescue Services” which establishes regulations and procedures for the provision of fire and rescue services in Montgomery County, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 21 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Article 2. Fire Safety

Section 9-201. Adoption of County Fire Safety Code

(a) Chapter 22 of the Montgomery County Code (1984 Edition) entitled “Fire Safety Code” which establishes regulations and procedures for the protection of life and property from the hazards of fire and explosion arising from the improper storage and handling or use of substances, material or devices and from the use or occupancy of buildings, structures, sheds, tents, lots or premises, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code. In addition, where no specific standards are specified in Chapter 22 of the Montgomery County Code, the standards of the National Fire Protection Association (NFPA), Building Officials and Code Administrators (BOCA), and the American Insurance Association (AIA) or other nationally recognized fire safety standards approved by the Director of Fire and Rescue Services of Montgomery County shall apply.

(b) This Section is an exception to the general exemption enacted by the Town in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 22 of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

Article 3. Alarms

Section 9-301. Adoption of County Alarm Regulation

(a) Chapter 3A of the Montgomery County Code (1984) entitled “Alarms” which regulates the use of alarm signals which require a response by the police independent of cause, including any future amendments, revisions, or changes thereto, is hereby adopted and made part of this Code by reference, except as otherwise provided in this Code.

(b) This Section is an exception to the general exemption enacted by the Town of Kensington in Section 1-202 of this Code.

(c) The Town hereby requests and authorizes Montgomery County to enforce the provisions of this Section.

(d) A copy of Chapter 3A of the Montgomery County Code shall be kept in the Town office and shall be made available during normal business hours.

## Chapter X

### CODE VIOLATIONS

#### Article 1. General Provisions

##### Section 10-101. Definitions

(a) “Misdemeanor” means the violation of any ordinance, code or state statute provision which has been deemed to be a criminal offense not amounting to a felony and which has not been specifically declared to be a municipal infraction.

(b) “Municipal infraction” means a civil offense which results from the violation of any ordinance or Code provision specifically declared to be punishable as a municipal infraction by this Code and not otherwise deemed to be a criminal offense under State or County law.

##### Section 10-102. Notice of Violation

(a) The violation of any Town of Kensington Code provision constituting a misdemeanor may be evidenced by the issuance of a notice of violation as an alternative to arrest or the obtaining of a warrant for such violation. An authorized agent of the Town witnessing a violation shall be authorized to issue such notice of violation to any person when that alternative would best meet the needs of justice and expediency under the circumstances; provided that the person consents voluntarily in writing to accept such notice and to appear in court as provided herein.

(b) The notice of violation shall contain and specify:

- (1) The violation with which such person is charged;
- (2) The hour, date, location of the court for the county in which such person will be summoned to appear; and
- (3) A place in which the person may endorse the notice by signing his or her name and address, indicating receipt thereof and willingness to appear.

(c) If a person does not willingly consent to the issuance of the notice of violation, the Town or its agent may proceed to request an arrest warrant in the manner provided by law.

(d) The person serving the notice of violation shall make proof of his or her service to the court promptly and, in any event, within the time during which the person served must respond to the notice. Failure to make proof of service to the court, however, shall not affect the validity of the notice.



Section 10-103. Abatement of Illegal Conditions

(a) If any person shall fail to abate any illegal condition after receipt of the Town's notice to abate and within a reasonable time as may be specified in such notice, the condition may be abated by the Town at the expense of the person named in such notice. Abatement by the Town shall not bar the prosecution of the person responsible for the condition abated.

(b) In addition to any other provisions of this Code, the Town may institute injunctive, mandamus, or other appropriate action for the enforcement of this Code or to correct violations of this Code, and any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent, injunctions, or mandamus or other appropriate forms of remedy or relief.

Article 2. Municipal Infraction Procedure

Section 10-201. Declaration of Municipal Infractions

The Council shall declare the Code or ordinance provisions which shall be municipal infractions if violated.

Section 10-202. Issuance of Citations for Municipal Infractions

(a) Those representatives authorized by the Mayor and Council to enforce Town of Kensington ordinances may deliver a citation to any person alleged to be committing a municipal infraction. The issuing representative shall file copies of any such citation in the office of the Town Clerk-Treasurer.

(b) Citations issued under this Article shall contain the following information:

- (1) The representative's certification attesting to the truth of the matter set forth in the citation.
- (2) Name and address of the person charged.
- (3) The nature of the infraction.
- (4) The location and time that the infraction occurred.
- (5) The amount of the infraction fine assessed and the amount which shall be due upon failure to make timely payment.
- (6) The manner, location and time in which the fine may be paid to the municipality.
- (7) The right of the accused to elect to stand trial for the municipal infraction.
- (8) The effect of failing to pay the assessed fine or demand a trial within the prescribed time.

Section 10-203. Payment of Fine

The fine is payable by the recipient of the citation to the Town Clerk-Treasurer or an authorized agent of the Town within twenty (20) calendar days of receipt of the citation.

Section 10-204. No Formal Hearing

The Town shall not conduct any formal hearing for those persons in receipt of a citation for a municipal infraction. Any offender so cited may pay the fine as indicated in the citation or elect to stand trial for the offense. This provision shall not prevent an offender from requesting, either personally or through an attorney additional information concerning the municipal infraction.

Section 10-205. Election to Stand Trial

A person who receives a citation for a municipal infraction may elect to stand trial for the offense by giving notice to the Town Clerk-Treasurer at least five (5) days prior to the date by which payment shall be required under the citation. Upon receipt of such notice the Town Clerk-Treasurer shall forward to the district court of Maryland for Montgomery County a copy of the citation indicating the recipient's intention to stand trial.

Section 10-206. Failure to Pay Fine

Upon failure of an individual to pay the fine noted on the citation when required, the Town Clerk-Treasurer shall give written notice of the infraction to the recipient and the recipient's failure to pay the required fine on time. Failure to pay the fine or give notice of intent to stand trial may result in an additional fine or adjudication by the court.

Article 3. Penalties

Section 10-301. General Municipal Infraction Penalties

The general penalty for commission of a municipal infraction shall be four hundred dollars (\$400.00), unless another fine has been enumerated.

Section 10-302. Continuing Violations

Unless otherwise provided, a separate or repeat offense may be charged or cited for each day a violation of this Code or any Town ordinance continues.

Section 10-303. Schedule of Fines for Municipal Infractions

The following schedule of fines shall be set for each municipal infraction.

CLASS	1 <sup>ST</sup> OFFENSE	REPEAT
A	520	520
B	325	520
C	260	520
D	195	400
E	130	260
F	65	130
G	45	90
H	40	80

01/01/2015