

## Rules for the Public's Use of the County Office Buildings and Their Grounds

### 1. Purpose.

These rules are intended to ensure fair and equal access by the public to the County Office Buildings and their grounds without unreasonably impairing the public's need to conduct business with the County of Albemarle and Albemarle County Public Schools (the "School Division"), and for the County and the School Division, and their officers and employees, to conduct their business. To accomplish this, the Board of Supervisors establishes the following rules that balance the right of members of the public to exercise their First Amendment rights in a designated area in the front of the County Office Building on McIntire Road and during public meetings of public bodies.

Accordingly, these rules are intended to establish when and to what extent the members of the public are authorized to engage in conduct and activities that are not directly related to the conduct of County business, and to allow members of the public to exercise their First Amendment rights pursuant to content-neutral time, place, and manner rules.

These rules are balanced with the need to preserve the County Office Buildings for the uses to which they are dedicated, to maintain control over the County Office Buildings and their grounds, to minimize disruptions to members of the public and County officers and employees while they are conducting County business, to maintain the safety of the public, including County officers and employees, to conserve County resources, and to maintain the aesthetics of the County Office Buildings and their grounds.

### 2. Definitions.

The following terms apply to these Rules:

- A. **COB-McIntire** means the real property owned by the County on which the County Office Building is located at 401 McIntire Road, and includes both the interior of the buildings and the exterior of the buildings including parking areas, sidewalks, lawns and other landscaped areas, and other exterior spaces on the property.
- B. **COB-5<sup>th</sup>** means the real property owned by the County on which the County Office Building is located at 1600 5<sup>th</sup> Street and includes both the interior of the buildings and the exterior of the buildings including parking areas, sidewalks, lawns and other landscaped areas, and other exterior spaces on the property.
- D. **Commercial Activity** means any act involving buying, selling, trading, producing, or exchanging goods, products, or services, and includes offering goods, products, or services for sale, trade, or exchange, and engaging in, or soliciting, any business.
- E. **County** means the County of Albemarle, Virginia.
- F. **County Business** means County or School Division business being conducted at COB-McIntire or COB-5<sup>th</sup> during the County's or the School Division's regular business hours or during meetings of the Board of Supervisors, the Planning Commission, or the School Board.
- G. **County Business Day** means any time between 8:00 a.m. and 5:00 p.m., Monday through Friday, during which COB-McIntire is open for business by the County or the School Division.
- H. **County Executive** means the County Executive appointed by the Albemarle County Board of Supervisors or the County Executive's designee.

- I. **County Office Building** means COB-McIntire or COB-5<sup>th</sup>.
- J. **Designated Public Forum** means a public forum that is not a traditional public forum but is expressly designated by the County as a public forum.
- K. **Director** means the Director of the Department of Facilities and Environmental Services.
- L. **Event** means a meeting or other gathering held by an Organization in an authorized location within the County Office Building.
- M. **Expressive Activity** means a non-commercial activity in which a person intends to convey a lawful message through speech or conduct that is likely to be perceived by an observer of the speech or conduct, and includes any lawful public gathering, demonstration, procession, or parade in which the primary purpose is to exercise the rights of free speech or peaceable assembly.
- N. **General Access** means those areas of the County Office Building that are Public Forums where members of the public may be without any prior permission from the County.
- O. **Invitees** means persons expressly invited by the County or the School Division to conduct government- or education-related business or training and includes officials and agencies of the State or Federal government, a public university or college, members of programs of a State cooperative program, and State or regional organizations of which the County or the School Division are members such as the Virginia Association of Counties, the Virginia School Boards Association, and the Thomas Jefferson Planning District.
- P. **Limited Public Forum** means a subclass of a Designated Public Forum in which the government is not required to and does not allow persons to engage in every type of speech and by which the government may be justified in reserving the forum for certain groups or for discussing certain topics.
- Q. **Nonpublic Forum** means property which is not by tradition or designation a Public Forum.
- R. **Organization** means a youth, educational, recreational, cultural, political, civic, charitable, social, veterans, religious, or other organization that is reputable, will be reasonably expected to hold Events that neither disrupt County or School Division business, nor cause damage to the County Office Building, and whose membership is primarily from the County and abutting localities.
- S. **Photography** means creating photographic or video images.
- T. **Public Body** means a public body within the meaning of the Virginia Freedom of Information Act (Virginia Code § 2.2-3701).
- U. **Public Forum** means a place which by long tradition or by government fiat has been devoted to assembly, debate, and other Expressive Activity. Parks, public streets, public sidewalks, and the grounds of the seat of legislative and executive power are Public Forums.
- V. **School Division** means the Albemarle County Public Schools.
- W. **Selective Access** means those areas of either County Office Building that are Nonpublic Forums where the County reserves eligibility for access to a particular class of members of the public who must obtain permission from the County to use it, either expressly by these Rules or by a permit as provided in Section 7.

### 3. **Applicability.**

- A. **Properties to which these Rules apply.** These Rules apply only to COB-McIntire and COB-5<sup>th</sup>.

- B. **Persons to whom these Rules apply.** These Rules apply to any persons at COB-McIntire and COB-5<sup>th</sup> who are not elected officials, officers, employees, volunteers, contractors, or Invitees of the County or the School Division.
- C. **Maps.** Maps depicting COB-McIntire and COB-5<sup>th</sup> are Attachments A and B. Specific references in this Policy to various interior and exterior spaces are identified on the maps.
- D. **Prior Designated Public Forums.** Any previous policy, rule, or other act by the Board of Supervisors to designate any portion of COB-McIntire or COB-5<sup>th</sup> as a Public Forum is revoked and these Rules apply.
- E. **Prior Rules and Policies.** These Rules supersede any previous policies, rules, or acts pertaining to any person's or Organization's use of COB-McIntire or COB-5<sup>th</sup>, including the "Community Use of County Facilities Policy."

#### 4. **Authority of the County and the County Executive.**

The County regulates the use of COB-McIntire and COB-5<sup>th</sup> pursuant to Virginia Code § 15.2-1800(E). In relation to this authority:

- A. **County Executive is authorized to administer and enforce these Rules.** The County Executive is authorized and has the duty to administer and enforce these Rules. The County Executive may also delegate this authority and duty to a Deputy County Executive, an Assistant County Executive, the Director, any other County department head, and the Superintendent of Schools. The delegation must be in writing and the writing must be kept on file in the Clerk of the Board of Supervisors' Office. The County Executive may rescind any delegation at any time for any reason.
- B. **County Executive is the "person lawfully in charge of the property" in trespass situations.** As provided in County Code § 10-120(B), the County Executive is designated as the "person lawfully in charge of the property" for the purpose of forbidding another person to go or remain at COB-McIntire or COB-5<sup>th</sup> and for the purpose of enforcing a trespass pursuant to County Code § 10-120(B) or Virginia Code § 18.2-119. The County Executive may delegate this authority as provided in County Code § 10-120(B).
- C. **County Executive may designate the Albemarle County Police Department as the "person lawfully in charge of the property" in trespass situations.** The County Executive may designate the Albemarle County Police Department, or any officer thereof, as the "person lawfully in charge of the property" for the purpose of forbidding another person to go or remain at COB-McIntire or COB-5<sup>th</sup> and for the purpose of enforcing a trespass pursuant to County Code § 10-120(A) or Virginia Code § 18.2-119. The County Executive may designate the Albemarle County Police Department as provided in County Code § 10-120(B).
- D. **County Executive is the "person in charge" in disorderly conduct situations.** As provided in County Code § 10-103, the County Executive is designated as the "person in charge" for the purpose of ejecting any person from COB-McIntire or COB-5<sup>th</sup> who violates County Code § 10-103 or Virginia Code § 18.2-415. The County Executive may delegate this authority as provided in County Code § 10-103(B).
- E. **Request to leave.** The County Executive may ask any person to leave COB-McIntire or COB-5<sup>th</sup> if the person is not on the property for a purpose authorized by these Rules.

Copies of County Code §§ 10-103 and 10-120 are attached as Attachment C.

## **5. Rules Applicable to the Exterior and Interior Spaces at COB-McIntire.**

### **A. The Front Lawn.**

1. **Location.** The Front Lawn at COB-McIntire is the lawn abutting McIntire Road and Preston Avenue and identified as “Front Lawn” on Attachment A. For reference and classification purposes in these Rules, the Front Lawn is further divided into Areas 1, 2, and 3.
2. **Status.** The Front Lawn is open to the public and is open for General Access for lawful purposes as provided in this Section 5(A). For purposes of First Amendment analysis, the portions of the Front Lawn composed of Areas 1 and 2 are either a Traditional or Designated Public Forum (*Smith v. County of Albemarle*, 895 F.2d 953 (4<sup>th</sup> Cir. 1989)); the portion of the Front Lawn composed of Area 3 is a Designated Public Forum by these Rules. Area 1 as identified on Attachment A is the “place” on the Front Lawn that is available for Expressive Activity, subject to the “time” and “manner” Rules in Section 5(A)(3).
3. **Rules Applicable to Area 1.** The following rules apply to persons in Area 1:
  - a. **When Area 1 is open.** Area 1 is open for General Access and Expressive Activity each day between 7:00 a.m. and 9:00 p.m., except when County staff are maintaining and cleaning Area 1 as required and appropriate.
  - b. **Permit is not required.** Persons and groups may engage in Expressive Activity in Area 1 without obtaining a prior permit from the County.
  - c. **Reservations are not required.** Persons and groups may use Area 1 on a first-come first-used basis.
  - d. **Using sound amplification equipment is restricted.** Sound amplification equipment directed at the County Office Building is prohibited between the hours of 8:00 a.m. and 5:00 p.m. on County Business Days and between 5:00 p.m. and 9:00 p.m. on County Business Days while the Albemarle County Board of Supervisors, the Albemarle County Planning Commission, or the Albemarle County School Board are holding public meetings in Rooms 235 or 241. Sound levels from sound amplification equipment on these days and during these times must not disrupt any person from conducting County or School Division business.
  - e. **Multiple forms of communication are permitted.** Photography, audio recording, signs, placards, banners, leafletting, and other forms of communication are permitted.
  - f. **Prohibited acts.** The following acts are prohibited in Area 1:
    1. **Obstructing sidewalks.** Persons may not obstruct or impede any pedestrian on a public sidewalk abutting Area 1 or any sidewalk connecting the public sidewalk or any parking lot at COB-McIntire to the County Office Building.
    2. **Displays, monuments, and signs; staking.** Unattended displays, monuments and signs are prohibited and must be attended to at all times by one or more persons or a group. Staking or otherwise affixing displays, monuments, or signs in the ground is prohibited.
    3. **Driving or parking motor vehicles.** Persons may not drive or park motor vehicles.
    4. **Open flames.** Open flames, other than flames from lighters used to light cigarettes and other similar products, are prohibited.

5. **Alcoholic beverages.** Alcoholic beverages of any kind are prohibited.
  6. **Commercial Activity.** Commercial Activity is prohibited. Soliciting donations is not Commercial Activity.
  7. **Camping.** Camping, including erecting tents and other forms of temporary shelter, are prohibited.
  8. **Chalking, painting, or using other means to write and draw on sidewalks and other surfaces of Area 1.** Writing and drawing on sidewalks and other surfaces of Area 1 with chalk, paint, or other means, are prohibited.
- g. **Physical separation.** If two or more persons or groups use Area 1 simultaneously, the County may take reasonable steps, including erecting barriers, to separate persons or groups in a manner to ensure their safety while preserving their ability to engage in Expressive Activity in general and with one another.
4. **Rules Applicable to Areas 2 and 3.** The following rules apply to persons in Areas 2 and 3:
    - a. **When Areas 2 and 3 are open.** Areas 2 and 3 are open for General Access each day between 7:00 a.m. and 9:00 p.m.
    - b. **Photography and audio recording permitted.** Photography and audio recording are permitted.
    - c. **Expressive Activity in Area 1 only.** Area 1 is the portion of the Front Lawn where Expressive Activity is permitted, as provided in Section 5(A)(3).
    - d. **Prohibited acts.** The following acts are prohibited in Areas 2 and 3:
      1. **Obstructing sidewalks.** Persons may not obstruct or impede any pedestrian on any sidewalk.
      2. **Displays, monuments, and signs.** Displays, monuments, and signs are prohibited.
      3. **Driving or parking motor vehicles.** Persons may not drive or park motor vehicles.
      4. **Open flames.** Open flames, other than flames from lighters used to light cigarettes and other similar products, are prohibited.
      5. **Alcoholic beverages.** Alcoholic beverages of any kind are prohibited.
      6. **Commercial Activity.** Commercial Activity is prohibited.
      7. **Soliciting donations.** Soliciting donations is prohibited.
      8. **Using sound amplification equipment.** Sound amplification equipment is prohibited during County Business Days if the sound level is such that it disrupts any person from conducting County or School Division business.
      9. **Camping.** Camping, including erecting tents and other forms of temporary shelter, are prohibited.
      10. **Chalking, painting, or using other means to write and draw on sidewalks and other surfaces of Areas 2 and 3.** Writing and drawing on sidewalks and other surfaces of Areas 2 and 3 with chalk, paint, or other means, are prohibited.

**B. Front Steps and the Landing Plaza.**

1. **Location.** The Front Steps and the Landing Plaza at COB-McIntire are that portion of the County Office Building identified as the “Front Steps and Landing Plaza” on Attachment A.
2. **Status.** The Front Steps and the Landing Plaza are open for Selective Access. For purposes of First Amendment analysis, the Front Steps and Landing Plaza are Nonpublic Forums.
3. **Rules.** The Front Steps and Landing Plaza may be used by persons lawfully entering and leaving the County Office Building and by persons walking to lawfully enter or leave the Front Lawn.

**C. Parking Lots.**

1. **Location.** The parking areas at COB-McIntire are identified as the “Upper Parking Lot,” “Middle Parking Lot,” and “Lower Parking Lot” on Attachment B (collectively, the “Parking Lots”).
2. **Status.** The Parking Lots are open for Selective Access. For purposes of First Amendment analysis, the Parking Lots are Nonpublic Forums.
3. **Rules.** The following rules apply to persons using the Parking Lots:
  - a. **Permitted Uses of the Upper and Middle Parking Lots.** The Upper and Middle Parking Lots may be used only by persons parking vehicles to conduct County business, persons attending a meeting of a Public Body, Invitees, and persons parking their vehicles when it is related to an authorized Event of an Organization. In addition:
    1. **Civic events.** The County Executive may authorize the Upper and Middle Parking Lots to be open for parking for civic events sponsored, co-sponsored, or organized by the County, any locality, or an Organization.
    2. **Vehicle-oriented events.** The Director may authorize the Middle Parking Lot to be open for vehicle-oriented events sponsored, co-sponsored, or organized by an Organization. A vehicle-oriented event must be authorized by a written agreement between the County and the Organization. The agreement is in lieu of a permit.
  - b. **Permitted Uses of the Lower Parking Lot.** The Lower Parking Lot may be used by persons parking their vehicles to conduct County business, persons attending a meeting of a Public Body, Invitees, and persons parking their vehicles when it is related to an authorized Event of an Organization. In addition, the Lower Parking Lot may be used by persons parking their vehicles in order to dine, shop, or attend an entertainment event downtown, or to engage in Expressive Activity as provided in these Rules, subject to the following:
    1. **Vehicle parking on County Business Days.** Members of the public may park their vehicles in designated parking spaces in the Lower Parking Lot between 5:00 p.m. and 11:59 p.m. on each County Business Day, except during meetings of the Board of Supervisors, the Planning Commission, or the School Board. Before and during those meetings, the Lower Parking Lot is open only for persons attending the meeting or persons attending games and related activities at Lane Field.
    2. **Vehicle parking on weekdays that are not County Business Days.** Members of the public may park their vehicles in designated parking spaces in the Lower Parking Lot on any weekday that is not a County Business Day between 6:00 a.m. and 11:59 p.m. each day.

3. **Vehicle parking on weekends.** Members of the public may park their vehicles in designated parking spaces in the Lower Parking Lot on Saturday and Sunday between 6:00 a.m. and 11:59 p.m. each day.
  4. **Vehicle-oriented events.** The Director may authorize the Lower Parking Lot to be used for vehicle-oriented events sponsored or organized by an Organization. A vehicle-oriented event must be authorized by a written agreement between the County and the Organization. The agreement is in lieu of a permit.
- c. **Closing Any Parking Lot.** The County Executive may close any Parking Lot as follows:
1. **Reasons for closing.** The Parking Lot may be closed for any of the following reasons:
    - (a) **County or School Division business.** When the County Executive determines that the Parking Lot should be available or used only for County and School officers and employees and persons conducting County or School Division business, or when the Parking Lot must be closed for any other County or School Division purpose.
    - (b) **Events.** When the Parking Lot will be used for a County or School Division-sponsored event or for a vehicle-oriented event authorized by Section 5(C)(3)(b).
    - (c) **Public threat.** When a credible threat of violence is received that would adversely affect the safety or welfare of any person at the County Office Building or pertains to damaging or destroying the County Office Building.
    - (d) **Weather emergency.** When a weather emergency exists that warrants closing a Parking Lot.
    - (e) **Declared emergency.** When a local emergency is declared by the County pursuant to Virginia Code § 44-146.21 or a state of emergency is declared by the Governor.
    - (f) **Maintenance and repair.** When a Parking Lot must be closed for maintenance and repair.
  2. **Procedure.** The County Executive may close any Parking Lot either in writing or verbally. The closure should be communicated to the Albemarle County Police Department and the Director. The County Executive should state the reason for closing the Parking Lot but the failure to do so does not invalidate the decision.
  3. **Duration of a closure.** The County Executive may close the Parking Lot in the circumstances described in Section 5(C)(3)(c) for a reasonable period before and after the actual use or necessity for closure. In addition, the duration of the closure is not required to be conterminous with the local or State emergency.

#### D. **Internal Travelways and Sidewalks.**

1. **Location.** The internal travelways and sidewalks at COB-McIntire are identified as the “Travelways” and “Internal Sidewalks” on Attachment A. The Internal Sidewalks are distinguished from the “Public Sidewalks” abutting McIntire Road and Preston Avenue, which are not subject to these Rules.
2. **Status.** The Travelways and Internal Sidewalks are open for Selective Access. For purposes of First Amendment analysis, the Travelways and Internal Sidewalks are Nonpublic Forums.
3. **Rules.** The following rules apply to persons using the Travelways and Internal Sidewalks:

- a. **Permitted Uses of the Travelways and Internal Sidewalks.** The Travelways and Internal Sidewalks may be used by persons as means of ingress and egress to conduct County business, persons attending a meeting of a Public Body, Invitees, and persons parking their vehicles as authorized in Section 5(C)(3).
- b. **The County Executive may close Travelways and Internal Sidewalks.** The County Executive may close Travelways and Internal Sidewalks in the following circumstances:
  1. **Interference with County or School Division business.** When the County Executive determines that using any Travelway or Internal Sidewalk interferes, or may interfere, with County or School Division business.
  2. **Parking Lots closed.** When the Upper, Middle, or Lower Parking Lots are closed as provided in Section 5(C)(3)(c) and, as a result, any Travelway or Internal Sidewalk is not a required means of ingress and egress.
  3. **Declared emergency.** When a local emergency is declared by the County pursuant to Virginia Code § 44-146.21 or a state of emergency is declared by the Governor, regardless of whether any Parking Lot is closed.

#### E. **Other Exterior Spaces.**

1. **Locations.** Any exterior spaces not otherwise identified in Sections 5(A) through (D) are regulated by this section and are referred to as “Other Exterior Spaces.”
2. **Status.** The Other Exterior Spaces are open for Selective Access. For purposes of First Amendment analysis, the Other Exterior Spaces are Nonpublic Forums.
3. **Rule.** The Other Exterior Spaces may be used by persons as a means of ingress and egress to conduct County business, persons attending a meeting of a Public Body, Invitees, and persons parking their vehicles as authorized in Section 5(C)(3).

#### F. **Interior Spaces.**

1. **Location.** Any space within the County Office Building at COB-McIntire is regulated by this section and is referred to as the “Interior Spaces.”
2. **Status.** As further described in Section 5(F)(3), below, some parts of the Interior Spaces are open for General Access and some parts are open for Selective Access. For purposes of First Amendment Analysis, when a Public Body is holding a public meeting either in Lane Auditorium or any other room, those locations are Limited Public Forums. Any other Interior Space is a Nonpublic Forum.
3. **Rules.** The following rules apply to Interior Spaces:
  - a. **Lane Auditorium and other meeting rooms when a Public Body is conducting a public meeting.** Lane Auditorium and Rooms 235, 241, and 246, and any other rooms (collectively, “Lane Auditorium and the Rooms”) are open for General Access when a Public Body is conducting a public meeting in that room. Any person attending the meeting may engage in Expressive Activity within the location where the public meeting is held if it does not actually disrupt the public meeting. See Attachments D (The First Amendment Rights of Speakers at Public Meetings) and E (Guidance on Whether Particular Speech or Behavior at a Public Meeting is Disruptive). Photography and audio recording are permitted. For First Amendment analysis, when a Public Body is conducting a public meeting either in Lane Auditorium or any other room, the location is a Limited Public Forum. When a Public Body is conducting a closed meeting pursuant to the Virginia Freedom of Information Act



(Virginia Code § 2.2-3700 *et seq.*), the closed meeting location is a Nonpublic Forum and only those persons authorized to be in the closed meeting may attend.

- b. **Lane Auditorium and other meeting rooms when a Public Body is not conducting a public meeting.** Lane Auditorium and the Rooms are subject to the following:
1. **Between 7:00 a.m. and 5:00 p.m.** On County Business Days, Lane Auditorium and the Rooms are open for Selective Access between 7:00 a.m. and 5:00 p.m., which is limited to persons who are in the County Office Building to conduct County Business and Invitees. For First Amendment analysis, Lane Auditorium and the Rooms are Nonpublic Forums when they are not being used for a meeting by a Public Body pursuant to subsection (a).
  2. **Between 5:00 p.m. and 9:00 p.m., Tuesday through Thursday.** On Tuesdays through Thursdays on which the County (but not necessarily the School Division) is open for business, Lane Auditorium and the Rooms are open for Selective Access between 5:00 p.m. and 9:00 p.m. Selective Access is limited to persons in Lane Auditorium or the Rooms to conduct County or School Division business, Invitees, and persons attending an authorized Event of an Organization. For First Amendment analysis, Lane Auditorium and the Rooms are Nonpublic Forums when they are not being used for a meeting by a Public Body pursuant to Section 5(F)(3)(a).
- c. **Lane Auditorium lobby.** The Lane Auditorium lobby is open for Selective Access, which is limited to persons who are in the County Office Building to conduct County or School Division business, persons attending a meeting of a Public Body, Invitees, and persons attending an authorized Event of an Organization. The Lane Auditorium lobby may not be used by an Organization for an Event. Photography and audio recording are permitted. For First Amendment analysis, the Lane Auditorium lobby is a Nonpublic Forum.
- d. **Hallways.** Hallways identified are open for Selective Access, which is limited to persons who are in the County Office Building to conduct County or School Division business, persons attending a meeting of a Public Body, Invitees, and persons otherwise authorized to be in the County Office Building to attend an authorized Event of an Organization. Photography and audio recording are permitted. For First Amendment analysis, Hallways are Nonpublic Forums.
- e. **Department offices.** Department offices, including their lobbies, waiting areas, internal hallways, work spaces, and employee offices are open for Selective Access, which is limited to persons who are there to conduct County Business and Invitees of the department or its employees. Photography is not permitted without the express permission of an officer or employee of that department. Audio recording is permitted to the extent authorized by State law. For First Amendment analysis, department offices are Nonpublic Forums.
- f. **Stairwells, elevators, and bathrooms.** Stairwells, elevators, and bathrooms are open for Selective Access, which is limited to persons who are in the County Office Building to conduct County or School Division business, persons attending a meeting of a Public Body, Invitees, and persons attending an authorized Event of an Organization. Photography and audio recording are permitted in stairwells and elevators. Photography is not permitted in bathrooms. Audio recording is permitted in bathrooms to the extent authorized by State law. For First Amendment analysis, stairwells, elevators, and bathrooms are Nonpublic Forums.
- g. **Other interior spaces.** Any other interior spaces not described in this subsection, including any common area break rooms, closets, or other areas marked "Staff only" are not open to access by the public except as an Invitee of a County or School Division officer or employee. Photography is not permitted without the express permission of an officer or employee of that department. Audio

recording is permitted to the extent authorized by State law. For First Amendment analysis, the other interior spaces are Nonpublic Forums.

## 6. Rules Applicable to the Exterior and Interior Spaces at COB-5<sup>th</sup>.

### A. Parking Lots.

1. **Location.** The parking areas at COB-5<sup>th</sup> are referred to as the “Parking Lots.”
2. **Status.** The Parking Lots are open for Selective Access. For purposes of First Amendment analysis, the Parking Lots are Nonpublic Forums.
3. **Rules.** The following rules apply to persons using the Parking Lots:
  - a. **Permitted Uses.** The Parking Lots may be used only by persons parking vehicles to conduct County business, persons attending a meeting of a Public Body, Invitees, persons parking when it is related to an authorized Event of an Organization, and persons parking in conjunction with a “sale and exchange program” promoted by the Albemarle County Police Department.
  - b. **Closing Any Parking Lot.** The County Executive may close any Parking Lot as follows:
    1. **Reasons for closing.** The Parking Lot may be closed for any of the following reasons:
      - (a) **County or School Division business.** When the County Executive determines that the Parking Lot should be available or used only for County and School officers and employees and persons conducting County or School Division business, or when the Parking Lot must be closed for any other County or School Division purpose.
      - (b) **Public threat.** When a credible threat of violence is received that would adversely affect the safety or welfare of any person at the County Office Building or the threat pertains to damaging or destroying the County Office Building.
      - (c) **Weather emergency.** When a weather emergency exists that warrants closing the Parking Lot.
      - (d) **Declared emergency.** When a local emergency is declared by the County pursuant to Virginia Code § 44-146.21 or a state of emergency is declared by the Governor.
      - (e) **Maintenance and repair.** When the Parking Lot must be closed for maintenance and repair.
    2. **Procedure.** The County Executive may close any Parking Lot either in writing or verbally. The closure should be communicated to the Albemarle County Police Department and the Director. The County Executive should state the reason for closing the Parking Lot but the failure to do so does not invalidate the decision.
    3. **Duration of a closure.** The County Executive may close the Parking Lot in the circumstances described in Section 6(A)(3)(b)(1) for a reasonable period before and after the actual use or necessity for closure. In addition, the duration of the closure is not required to be coterminous with the local or State emergency.

**B. Internal Travelways and Sidewalks.**

1. **Location.** The internal travelways and sidewalks at COB-5th are referred to as the “Travelways” and “Internal Sidewalks.”
2. **Status.** The Travelways and Internal Sidewalks are open for Selective Access. For purposes of First Amendment analysis, the Travelways and Internal Sidewalks are Nonpublic Forums.
3. **Rules.** The following rules apply to persons using the Travelways and Internal Sidewalks:
  - a. **Permitted Uses of the Travelways and Internal Sidewalks.** The Travelways and Internal Sidewalks may be used by persons as a means of ingress and egress to conduct County business, persons attending a meeting of a Public Body, Invitees, and persons parking when it is related to an authorized Event of an Organization.
  - b. **The County Executive may close Travelways and Internal Sidewalks.** The County Executive may close Travelways and Internal Sidewalks in the following circumstances:
    1. **Interference with County or School Division business.** When the County Executive determines that using any Travelway or Internal Sidewalk interferes, or may interfere, with County or School Division business.
    2. **Parking Lots closed.** When the Parking Lots are closed as provided in Section 6(A)(3)(b) and, as a result, any Travelway or Internal Sidewalk is not a required means of ingress and egress.
    3. **Declared emergency.** When a local emergency is declared by the County pursuant to Virginia Code § 44-146.21 or a state of emergency is declared by the Governor, regardless of whether any Parking Lot is closed.

**C. Other Exterior Spaces.**

1. **Locations.** Any exterior spaces not otherwise identified in Sections 6(A) and 6(B) are regulated by this section and are referred to as “Other Exterior Spaces.”
2. **Status.** The Other Exterior Spaces are open for Selective Access. For purposes of First Amendment analysis, the Other Exterior Spaces are Nonpublic Forums.
3. **Rule.** The Other Exterior Spaces may be used by persons as a means of ingress and egress to conduct County business, Invitees, persons attending a meeting of a Public Body, and persons parking when it is related to an authorized Event of an Organization.

**D. Interior Spaces.**

1. **Location.** Any space within the County Office Building at COB-5<sup>th</sup> is regulated by this section and is referred to as the “Interior Spaces.”
2. **Status.** As further described in Section 6(D)(3), below, some parts of the Interior Spaces are open for General Access and some parts are open for Selective Access. For purposes of First Amendment Analysis, when a Public Body is holding a public meeting in Rooms A, B, or C, those locations are Limited Public Forums. Any other Interior Space is a Nonpublic Forum.
3. **Rules.** The following rules apply to Interior Spaces:

- a. **Rooms A, B, and C when a Public Body is conducting a public meeting.** Rooms A, B, and C are open to persons when a Public Body is conducting a public meeting in the room. Any person attending the meeting may engage in Expressive Activity within the location where the public meeting is held if it does not actually disrupt the public meeting. See Attachments D (The First Amendment Rights of Speakers at Public Meetings) and E (Guidance on Whether Particular Speech or Behavior at a Public Meeting is Disruptive). Photography and audio recording are permitted. For First Amendment analysis, when a Public Body is conducting a public meeting in Rooms A, B, or C, the location is a Limited Public Forum. When a Public Body is conducting a closed meeting pursuant to the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 *et seq.*), the closed meeting location is a Nonpublic Forum and only those persons authorized to be in the closed meeting may attend.
- b. **Rooms A, B, and C when a Public Body is not conducting a public meeting.** Rooms A, B, and C are subject to the following:
  - 1. **On County Business Days; between 7:00 a.m. and 5:00 p.m.** On County Business Days, Rooms A, B, and C are open for Selective Access between 7:00 a.m. and 5:00 p.m., which is limited to persons who are in the County Office Building to conduct County Business and Invitees. For First Amendment analysis, Rooms A, B, and C are Nonpublic Forums when they are not being used for a meeting by a Public Body pursuant to subsection (a).
  - 2. **On County Business Days; between 5:00 p.m. and 9:00 p.m.** On Mondays through Fridays on which the County (but not necessarily the School Division) is open for business, Rooms A, B, and C are open for Selective Access between 5:00 p.m. and 9:00 p.m. Selective Access is limited to persons who are in the County Office Building to conduct County Business, Invitees, and persons attending an authorized Event of an Organization. For First Amendment analysis, Rooms A, B, and C are Nonpublic Forums when they are not being used for a meeting by a Public Body pursuant to Section 6(D)(3)(a).
- c. **The Entrance Lobby and Hallways.** The Entrance Lobby and Hallways are open for Selective Access, which is limited to persons who are in the County Office Building to conduct County or School Division business, Invitees, persons attending a meeting of a Public Body, and persons attending an authorized Event of an Organization. Photography and audio recording are permitted. For First Amendment analysis, the Entrance Lobby and the Hallways are Nonpublic Forums.
- e. **Department offices.** Department offices, including their lobbies, waiting areas, internal hallways, work spaces, and employee offices are open for Selective Access, which is limited to persons who are there to conduct County Business and Invitees of the department or its employees. Photography is not permitted without the express permission of an officer or employee of that department. Audio recording is permitted to the extent authorized by State law. For First Amendment analysis, department offices are Nonpublic Forums.
- f. **Stairwells, elevators, and bathrooms.** Stairwells, elevators, and bathrooms are open for Selective Access, which is limited to persons who are in the County Office Building to conduct County or School Division business, Invitees, persons attending a meeting of a Public Body, and persons attending an authorized Event of an Organization. Photography and audio recording are permitted in stairwells and elevators. Photography is not permitted in bathrooms. Audio recording is permitted in bathrooms to the extent authorized by State law. For First Amendment analysis, stairwells, elevators, and bathrooms are Nonpublic Forums.
- g. **Other interior spaces.** Any other interior spaces not described in this subsection, including any common area break rooms, closets, or other areas marked “Staff only” are not open to access by the public except as an Invitee. Photography is not permitted without the express permission of an

officer or employee of that department. Audio recording is permitted to the extent authorized by State law. For First Amendment analysis, the other interior spaces are Nonpublic Forums.

## **7. Rules for Permitting Events at COB-McIntire and COB-5<sup>th</sup>.**

### **A. Purpose.**

These rules provide for the safe and peaceful enjoyment of, and the fair and equal access to, COB-McIntire and COB-5<sup>th</sup> by Organizations. To accomplish this, these rules are intended to ensure that Organizations' Events do not disrupt or otherwise interfere with the primary purposes of the County Office Buildings, which is to conduct County or School Division business.

These rules are not intended to exclude any activity or communication having particular content, but to coordinate multiple uses of limited spaces, and to ensure financial accountability for damage caused by any Event.

### **B. Where and when Organizations may hold Events.**

The Director may permit an Organization to hold an Event in Lane Auditorium and Rooms 235, 241, and 246 in COB-McIntire between 5:00 p.m. and 9:00 p.m., Tuesday through Thursday, and in Room A in COB-5<sup>th</sup> between 5:00 p.m. and 9:00 p.m., Monday through Friday, on any day on which the County, but not necessarily the School Division, is open for business.

The rooms are not available to Organizations if the room is scheduled to be used to conduct County Business or might otherwise conflict with, or adversely affect parking availability for a meeting of a Public Body.

### **C. Permit required; exemptions.**

Each Organization seeking to hold an Event in Lane Auditorium or Rooms 235, 241, or 246 in COB-McIntire, or in Rooms A, B, or C in COB-5<sup>th</sup>, must first obtain a permit issued by the Director. A single permit may be obtained for multiple or recurring Events.

Invitees are exempt from the permit requirement.

### **D. Application.**

An Organization may apply for a permit as follows:

1. **When to apply for a permit; waiving the application deadline.** Any Organization intending to conduct an Event must apply to the Department of Facilities and Environmental Services for a permit at least 15 calendar days before the date of the Event, but no more than six months before the date of the Event.

The Director is authorized to consider an application for a permit filed less than 15 days before the date of the proposed Event if the Director determines that waiving the application deadline will not pose a burden on, or a disruption to, the Department of Facilities and Environmental Services, and that good cause otherwise exists.

2. **Contents of the application.** The application must be on a form created and provided by the Department of Facilities and Environmental Services, and the applicant must provide the following information:
  - a. The name, address, email address, and telephone number of the person requesting the permit.

- b. The name and address of the Organization the applicant represents.
  - c. A description of the Organization demonstrating that it meets the definition of an eligible “Organization,” as defined in Section 2.
  - d. The name, address, email address, and telephone number of the person who will act as the Event leader who will be responsible for managing or conducting the Event.
  - e. The type of Event intended to be held (*e.g.*, a meeting), including a description of the activities planned for the Event.
  - f. The requested date and starting and ending times for the Event.
  - g. The requested room, if known, *i.e.*, Lane Auditorium or Rooms 235, 241, or 246 in COB-McIntire, or Rooms A, B, or C in COB-5<sup>th</sup>.
  - h. The approximate number of people expected to attend the Event.
  - i. Whether the applicant wants additional chairs, tables, or both, set up for the Event.
  - j. Whether food or beverages (other than water) will be served at the Event.
  - k. Verification of liability insurance coverage as provided in Section 7(D)(5)(d).
  - l. Other information the Director deems reasonably necessary to provide for administrative arrangements and County staff assistance and supervision.
3. **Fees and deposits.** The applicant must pay the applicable fees and deposit with the application. If the applicant has applied for a permit for multiple or recurring Events, the applicant must pay the fees and deposit for the first Event requested to be held with the application.
- a. **Base Fee.** The County Executive is authorized to establish a reasonable base fee to cover the County’s costs to use COB-McIntire Lane Auditorium or a room.
  - b. **Fee for additional chairs, tables, or both.** In addition to the base fee, the County Executive is authorized to establish an additional fee to cover the reasonable costs to the County to provide additional chairs, tables, or both, for the Event.
  - c. **Deposit if food or beverages will be served.** The County Executive is authorized to establish a reasonable deposit amount to be required if food or beverages (other than water) will be served at the Event. The deposit will be returned to the applicant in whole or in part depending on whether additional room cleaning is required because of the food or beverages served.
  - d. **Collection.** The Director may collect any unpaid or insufficient fee if food or beverages were served even though a deposit was not paid, and additional room cleaning was required because of the food or beverages served.

**E. Acting on a permit application.**

The Director will act on a permit application as follows:

- 1. **Approval deadline.** The Director will act on an application within seven days after receipt of a complete application; provided that the Director and the applicant may agree to change the date by

which the Director will act on the application. An applicant is without a remedy if the Director fails to timely act and the Organization is unable to hold the Event as requested in the application.

2. **Order of review.** The Director will review applications on a first come, first served basis.
3. **Approval criteria.** The Director will apply the following criteria to determine whether to approve an application and grant a permit:
  - a. The date, time, duration, and size of the Event will not disrupt or conflict with the primary purpose of the County Office Building, which is to conduct County and School Division business.
  - b. The conduct or nature of the Event will not disrupt the primary purpose the County Office Building, which is to conduct County and School Division business.
  - c. The conduct or nature of the Event will not require diversion of police and fire and rescue personnel to properly police or respond to the Event and the County Office Building in general.
  - d. The Event will not interfere with another Event for which a permit has been granted for a room on a particular date and time.
4. **Denial criteria.** The Director may deny an application for one or more of the following reasons:
  - a. The conduct or nature of the Event will disrupt the primary purpose of the County Office Building, which is to conduct County and School Division business.
  - b. The conduct or nature of the Event will require diversion of police and fire rescue personnel to properly police or respond to the Event and the County Office Building in general.
  - c. The Event will conflict or interfere with another Event for which a permit has been granted for a room on a particular date and time.
  - d. The Event would conflict with previously approved planned programs or activities organized, planned, or sponsored by the County or the School Division for the same date and time.
  - e. The application contains materially false or misleading information.
  - f. The applicant is legally incompetent to contract or to sue or be sued, or the Organization is unable to be sued.
  - g. The applicant or the person or Organization on whose behalf the application was made has: (i) on a prior occasion damaged any County-owned real property; (ii) has not paid in full for prior damage to any County-owned real property; or (iii) has any other unpaid debt owed to the County.
  - h. The Event is inconsistent with the customary uses of the County Office Building or cannot be accommodated in the requested room because it lacks the physical improvements required for the Event.
  - i. The Event, or any activity planned or promoted to occur during the Event, is prohibited by law.
  - j. The Event, or any activity planned or promoted to occur during the Event, would present an unreasonable danger to the health, safety, or welfare of the applicant, the participants, the attendees, or any person in the County Office Building not participating in the Event, or would present a risk of damage to the County Office Building.

The Director may not deny an application: (i) for political, social, or religious reasons; or (ii) because of the content of the views expressed in the application or intended to be expressed at the Event.

5. **Permit granted; notice and conditions.** If the Director approves the application and grants the permit, the Director will promptly notify the applicant. The Director may impose reasonable conditions to ensure that the Event does not disrupt County Business and to ensure that the County Office Building is not damaged. In addition, each permit is subject to the following standard conditions, copies of which must be provided to the permittee:
  - a. **Permit is a revocable license.** The permit is a revocable license to occupy the room or rooms applied for only during the dates and times approved, and for the Event's attendees to park in the appropriate Parking Lot, to drive on and walk on the Travelways and Internal Sidewalks, and to use the Hallways, stairwells, elevators, and bathrooms.
    1. **Revocation criteria.** The Director may revoke the license at any time, and any fees and deposits will be promptly returned to the applicant. The permit may be revoked either before or during the permitted Event if: (i) any information supplied by the permittee is discovered to be materially false or intentionally misleading; (ii) any material condition of the permit has been substantially violated; (iii) there is any continued violation of the conditions of the permit after the permittee or the permittee's agent or employee is notified of a violation of the permit by the Director; (iv) the permittee becomes unable to timely comply with the conditions of the permit; (v) the permit is for multiple or recurring Events and the permittee fails to timely pay any fees or deposits; (vi) the room becomes unavailable because it must be used to conduct County or School Division business or to conduct a meeting of a Public Body; (vii) the County Office Building is closed to the public because of weather conditions or a declared emergency; or (viii) unforeseen or emergency circumstances arise that would have warranted the Director to deny the application previously.
    2. **Notice of revocation.** The Director will notify the permittee that the permit has been revoked as soon as possible. The notice may be provided in person, by telephone, or by email. The notice of revocation must include the reasons the permit was revoked.
  - b. **Event attendees.** The permit entitles the permittee and its members and invitees to be in and at the County Office Building during the permitted period and for short periods before and after the permitted Event.
  - c. **Duty to indemnify, hold harmless, and defend.** The permittee is subject to the following:
    1. **Indemnification.** The permittee must defend, protect, indemnify fully, and hold the County of Albemarle and its boards, officers, employees, agents, and volunteers free and harmless from and against all claims, damages, expenses, loss, or liability of any kind resulting from any willful, reckless, or negligent acts or omissions of the permittee or the permittee's officers, agents, representatives, partners, employees, and invitees in connection with the permitted Event; and
    2. **Hold harmless.** At the permittee's own cost, risk, and expense, the permittee must defend any and all claims and all legal actions that may be commenced or filed against the County of Albemarle and its boards, officers, employees, agents, and volunteers, and to pay any settlement entered into and to satisfy any judgment that may be entered against the County or its officers, employees, agents, or volunteers as a result of the willful, reckless, or negligent acts or omissions of the permittee or the permittee's officers, agents, representatives, partners, employees, or invitees in connection with the uses, or activities occurring under the Event permit.
  - d. **Duty to maintain insurance.** The permittee must maintain in full force and effect on each day of the permitted Event a policy of insurance from a reliable insurance company authorized to do business in the State.



1. **The County as a named insured or additional insured.** The policy must include the “County of Albemarle, Virginia” and its boards, officers, employees, agents, and volunteers as named insureds or additional insureds.
  2. **Type and amount of insurance.** The policy must provide coverage that the Director, in consultation with the County’s Risk Manager, determines to be necessary based on: (i) the estimated number of persons that will be attending the Event; and (ii) the nature of the room that will be used during the Event.
  3. **Certificate of insurance.** The permittee must provide a certificate of insurance to the Director before the permit is granted.
- e. **The Director may waive the conditions to indemnify, hold harmless, and defend, and to maintain insurance.** The Director may waive the conditions requiring a permittee to indemnify, hold harmless, defend, and to maintain insurance if the permittee demonstrates in writing to the satisfaction of the Director that it is financially unable to perform the requirements.
1. **When an applicant is ineligible for a waiver.** A permittee is ineligible to obtain a waiver of the requirements to indemnify, hold harmless, defend, or hold harmless if there is a demonstrable history of personal injury or property damage claims attributable to the applicant, the applicant’s associates, or its assigns or successors in interest in the conduct of previous Events that were similar in nature to the proposed Event.
  2. **When the Director may reduce or waive the permittee’s requirement to maintain insurance.** The Director may reduce or waive the permittee’s requirement to maintain insurance if the permittee designs the Event in cooperation with the Director to limit specific risks and dangers to the Organization’s members and its invitees, and damage to the County Office Building.

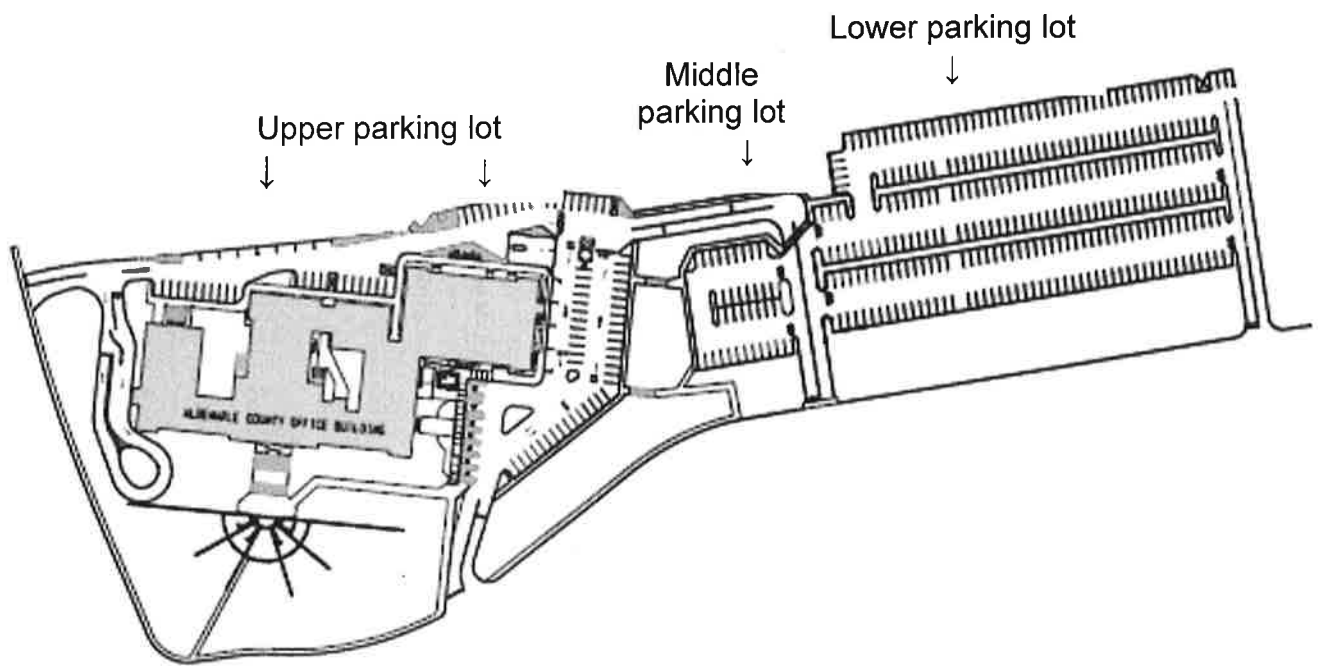
**F. Paying fees and deposits for multiple or recurring Events.**

If the permittee’s permit allows multiple or recurring Events, the permittee must pay the fees and deposits required for each Event at least seven days before the second and each subsequent Event.

**Appendices**

- A. Map of County Office Building (COB-McIntire)
- B. Map of County Office Building (COB-McIntire) Parking Lots
- C. County Code §§ 10-103 and 10-120
- D. The First Amendment and Speakers at Public Meetings
- E. Guidance on Whether Speech or Behavior at a Public Meeting is Disruptive





ORDINANCE NO. 19-10( )

AN ORDINANCE TO AMEND CHAPTER 10, OFFENSES -- MISCELLANEOUS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 10, Offenses -- Miscellaneous, is hereby amended and reordained as follows:

**By Amending:**

Sec. 10-103 Disorderly conduct in public places.  
Sec. 10-120 Trespass--After having been forbidden to do so.

**By Repealing:**

Sec. 10-120.1 Designation of police to enforce trespass violations

**Chapter 10**

**Offenses – Miscellaneous**

**Sec. 10-103 Disorderly conduct in public places.**

- A. Prohibited conduct. It shall be ~~is~~ unlawful for any person who, with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:
1. ~~in~~ any street, highway, public building, or while in or on a public conveyance, or public place, engages in conduct having a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct is directed; provided, however, ~~such the~~ conduct shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this chapter; or
  2. ~~willfully~~, or being intoxicated whether willfully or not, and whether ~~such the~~ intoxication results from self-administered alcohol or other drug of whatever nature, disrupts any funeral, memorial service, or meeting of the governing body of the county or a division or agency thereof, or of any school, literary society or place of religious worship, if the disruption: (i) prevents or interferes with the orderly conduct of the funeral, memorial service, or meeting; or (ii) has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed; provided, however, ~~such the~~ conduct shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this chapter; or
  3. ~~willfully~~, or while intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts the operation of any school or activity conducted or sponsored by a school, if the disruption: (i) prevents or interferes with the orderly conduct of the operation or activity; or (ii) has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed.
- B. Person in charge may eject persons violating this section. The person in charge of any ~~such~~ building, place, conveyance, meeting, operation or activity referred to in subsection (A) may eject therefrom any person who violates any provision of this section, with the aid, if necessary, of any person(s) who may be called upon for such purpose.

C. Designating the county executive as the person in charge of county property. The county executive is hereby designated as the “person in charge” for the purpose of ejecting any person from any county-owned or county-leased lands, buildings, or premises who violates this section or Virginia Code § 18.2-415.

1. Delegation to others; rescission. The county executive may delegate this authority to a deputy county executive, an assistant county executive, any county department head, and the superintendent of schools. The county executive may rescind any delegation of authority.
2. Delegation and rescission must be in writing; exception. Any delegation, and any rescission of a delegation, shall be in writing and the writing shall be kept on file in the office of the clerk of the board of supervisors. If the circumstances make it impracticable for the county executive to make a delegation in writing, he may do so orally and memorialize the delegation in writing and file it as soon as it is practicable to do so. The writing shall include the date and time that the oral delegation was made.

ED. Penalty. A person violating any provision of this section shall be guilty of a class 1 misdemeanor.

(4-21-76; Code 1988, § 13-7; Ord. 98-A(1), 8-5-98; Ord. 10-10(1), 11-3-10)

State law reference-Va. Code §§ 15.2-516, 15.2-1501, 18.2-415.

### **Sec. 10-120 Trespass--After having been forbidden to do so.**

If any person, without authority of law, goes upon or remains upon the lands, buildings or premises of another, or any portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted by such persons or by the holder of any easement or other right-of way authorized by the instrument creating such interest to post such signs on such lands, structures, premises or portion or area thereof at a place or places where it or they may be reasonably seen, or if any person, whether he is the owner, tenant or otherwise entitled to the use of such land, building or premises, goes upon, or remains upon such land, building or premises after having been prohibited from doing so by a court of competent jurisdiction by an order issued pursuant to Virginia Code §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.2 through 16.1-278.6, 16.1-278.8, 16.1-278.14, 16.1-278.15, 16.1-279.1, 19.2-152.8, 19.2-152.9 or 19.2-152.10 or an ex parte order issued pursuant to Virginia Code § 20-103, and after having been served with such order, he shall be guilty of a class 1 misdemeanor. This section shall not be construed to affect in any way the provisions of Virginia Code §§ 18.2-132 through 18.2-136.

A. Designating the police department as the person lawfully in charge of the property. Any owner, lessee, custodian, or person lawfully in charge of any real property may designate the Albemarle County Police Department as a “person lawfully in charge of the property” for the purpose of forbidding another to go upon or remain upon the lands, buildings, or premises as specified in the designation, for the purposes of enforcing a trespass pursuant to this section or Virginia Code § 18.2-119.

1. Form of designation. Any designation shall be in writing on forms provided by the chief of police and the county attorney and shall be kept on file with the police department.
2. Discretion of the chief of police to accept the designation. The decision whether to accept or rescind a designation is solely within the discretion of the chief of police or his designee, who

may base his decision on factors including, but not limited to, resource levels of the police department and the proper allocation of resources.

3. Authority to establish rules. The chief of police, in consultation with the Commonwealth's Attorney and the county attorney, may establish rules for accepting, using, and rescinding a designation.

B. Designating the county executive as the person lawfully in charge of county property. The county executive is hereby designated as the "person lawfully in charge of the property" for the purpose of forbidding another to go upon or remain upon county-owned or county-leased lands, buildings, or premises for the purposes of enforcing a trespass pursuant to this section or Virginia Code § 18.2-119.

1. Delegation to others; rescission. The county executive may delegate this authority to a deputy county executive, an assistant county executive, any county department head, and the superintendent of schools. The delegation shall be in writing and the writing shall be kept on file in the clerk of the board of supervisors' office. The county executive may rescind any delegation of authority.

2. Designating the police department. The county executive may designate sworn personnel of the Albemarle County Police Department as a "person lawfully in charge of the property" as provided in subsection (A). The designation shall be in writing and the writing shall be kept on file in the clerk of the board of supervisors' office. The county executive may rescind the designation.

3. When a written delegation or designation is not required. If the circumstances make it impracticable for the county executive to make a delegation or designation in writing, he may do so orally and memorialize the delegation in writing and file it as soon as it is practicable to do so. The writing shall include the date and time that the oral delegation or designation was made.

(Code 1967, § 13-23; 4-13-88; Code 1988, § 13-21; Ord. 98-A(1), 8-5-98; Ord. 10-10(1), 11-3-10)

State law references—Va. Code §§ 15.2-516, 15.2-1218, 15.2-1501, 15.2-1717.1, 18.2-119. For similar state law, Va. Code § 18.2-119; as to authority of county to prevent trespass, Va. Code § 15.2-1218.

#### ~~Sec. 10-120.1 Designation of police to enforce trespass violations.~~

~~An owner, lessee, custodian, or person lawfully in charge of any real property may designate the Albemarle County Police Department as a "person lawfully in charge of the property" for the purpose of forbidding another to go or remain upon the lands, buildings, or premises as specified in the designation. The decision whether to accept or rescind any such designation is solely within the discretion of the chief of police or his designee, who may base his decision on factors including, but not limited to, resource levels of the police department and the proper allocation of resources. Any such designation shall be in writing on forms promulgated by the chief of police and the county attorney and shall be kept on file with the police department. The chief of police, in consultation with the Commonwealth's Attorney and the county attorney, shall promulgate rules, regulations, and/or procedure for the acceptance, use, and rescission of such designation.~~

~~(Ord. 12-10(1), 5-2-12)~~

~~State law reference— Va. Code § 15.2-1717.1.~~

I, Claudette K. Borgersen, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of \_\_\_\_\_ to \_\_\_\_\_, as recorded below, at a regular meeting held on \_\_\_\_\_.

\_\_\_\_\_  
Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Dill	_____	_____
Mr. Gallaway	_____	_____
Ms. Mallek	_____	_____
Ms. McKeel	_____	_____
Ms. Palmer	_____	_____
Mr. Randolph	_____	_____

## The First Amendment and Speakers at Public Meetings

The First Amendment to the United States Constitution provides:

*Congress shall make no law . . . abridging the freedom of speech . . . ; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

First Amendment protections apply to public meetings. *See, Mesa v. White*, 197 F.3d 1041 (10<sup>th</sup> Cir. 1999) (county commissioners meeting); *City of Madison Joint School District No. 8 v. Wisconsin Employment Relations Commission*, 429 U.S. 167 (1976) (school board meetings).

The federal courts have identified two key functions of the First Amendment's Free Speech Clause: (1) to preserve an *uninhibited marketplace of ideas* in which truth will ultimately prevail; and (2) to ensure that the government has *not regulated speech based on hostility – or favoritism* – towards the underlying message expressed.

The United States Supreme Court has said that the First Amendment reflects “a profound national commitment to the principle that *debate on public issues should be uninhibited, robust, and wide-open*, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) (italics added). “[I]t is a prized American privilege to speak one’s mind, although not always with perfect good taste, on all public institutions, and this opportunity is to be afforded for vigorous advocacy no less than abstract discussion.” *Sullivan*.

Under the First Amendment's Free Speech Clause, a locality “has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Police Department of Chicago v. Mosley*, 408 U.S. 92 (1972). Any restriction in a public body's meeting rules designed to maintain decorum, as compared to merely prevent disruption, may run the danger of being content-based (and, therefore, being in violation of the First Amendment). *Griffin v. Bryant*, 30 F. Supp. 3d 1139 (D.N.M. 2014).

Reasonable and *content-neutral* time, place, and manner restrictions on speech are permissible under the First Amendment. The Board's Rules of Procedure impose restrictions that comply with this standard.



# Guidance on Whether Particular Speech or Behavior at a Public Meeting is Disruptive

The Chair has a legitimate interest in conducting a meeting in an orderly and efficient manner. This guidance reviews the types of speech and behavior of members of the public that are disruptive and may be prohibited without violating a person's First Amendment rights, as well as types of speech and behavior that may not be prohibited.

Determining whether particular speech or behavior is disruptive must be *based on the Chair's reasonable perception of disruption. There must be actual disruption or a specific and significant fear of disruption*, not merely undifferentiated fear or a remote apprehension of disruption. As one court has said, "government officials in America occasionally must tolerate offensive or irritating speech." When a speaker is disrupting a meeting, the Chair may take a series of steps to end the disruption, beginning with a warning and escalating all the way to asking the police to remove the speaker for disorderly conduct.

Following are 10 types of speech and behavior that may or may not be disruptive. These examples are from the case law collected from throughout the United States. Some types of permitted speech and behavior, such as complaining about public officers or employees (Board Rules of Procedure, Section 7), may nonetheless be disruptive if the complaints are, for example, yelled from the audience (Board Rules of Procedure, Section 2) or are irrelevant to the issue at hand (Board Rules of Procedure, Section 3).

## 1. Refusing to Stop Speaking After the Time Limit Expires

- A. A speaker who speaks beyond the established time limit is disrupting the meeting.

## 2. Speaking When Not at the Podium/ Yelling from the Audience

- A. A speaker who speaks when he or she is not at the podium or who yells from the audience is disrupting the meeting.
- B. A speaker who heckles the public body from the audience by cupping his hands and yelling when a member of the public body attempts to speak is disrupting the meeting.

## 3. Refusing to Speak to Issues Relevant to the Agenda Item

- A. A speaker who speaks during a public hearing for an extended period on issues that are irrelevant to the matter at issue is disrupting the meeting. *This rule applies only during public hearings pertaining to specific matters. It does not apply to persons speaking during "From the Public: Matters Not Listed on Agenda for Public Hearing" because speakers at that time may speak about anything.*

## 4. Being Unduly Repetitious

- A. A speaker who is unduly repetitive is disrupting the meeting.

## 5. Using Profanity

- A. Speakers may use profanity which does not cause an actual disruption (e.g., speaker said "God damn").
- B. A public body may prohibit speech that is *obscene* because a speaker has no First Amendment right to use obscene language. Profanity is not necessarily obscenity. In the First Amendment context, *obscenity* is speech that, taken as a whole, appeals to the prurient interest in sex; portrays, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and, taken as a whole, does not have serious literary, artistic, political, or scientific value. This is not a standard that is easily administered during a meeting.

## 6. Demonstrative Conduct

- A. Speakers may make silent gestures toward the public body, including the Nazi salute, that do not otherwise disrupt the meeting.

- B. A speaker who dumps trash on the floor at a public meeting to dramatize the failure of the government to keep its property clean is disrupting the meeting.

**7. Speaking About Public Officers or Employees**

- A. Speakers may question the fitness of public officers or employees.
- B. Speakers may discuss specific public officers or employees.
- C. Speakers may complain about public officers or employees.
- D. Speakers may make personal attacks on public officers or employees.
- E. Speakers may raise objections about how a public body conducts its business.

**8. Speaking About Groups or Members of the Public**

- A. Speakers may speak about groups or individuals even when the speech has racist or sexist overtones, involves overbroad caricatures of certain groups or citizens, or is sophomoric and offensive.
- B. Speakers may speak about groups or individuals even when the speech uses virulent ethnic and religious epithets or scurrilous caricatures.
- C. Speakers may make defamatory attacks on groups or individuals.

**9. Offending or Agitating Persons in the Audience**

- A. A speaker is not disruptive merely because members of the public body or the audience are offended by what the speaker is saying or doing.
- B. A speaker is not disruptive merely because of the listeners' reactions to what the speaker is saying or doing.
- C. A public body may not prohibit a person from speaking about a particular topic, even when it knows that the speech is assertedly or demonstrably offensive to some members of the public.

**10. Threatening Violence**

- A. A public body may prohibit speech that threatens illegal acts.
- B. A public body may prohibit *fighting words* because the First Amendment does not apply to that kind of speech. In the First Amendment and public meeting context, *fighting words* are words that, by their very utterance, tend to incite an immediate breach of the peace.
- C. A public body may prohibit *incitement to imminent violence* because the First Amendment does not apply to that kind of speech. An *incitement to imminent violence* must truly be imminent.