

STEPHENS CITY CODE

Chapter 1

GENERAL PROVISIONS*

*** State law reference-Town Charter, Virginia Code §15.2-900, et. seq.; 15.2-1100, et. seq.**

Revised: Ord 5-6-08; Ord 6-3-08; Ord 8-4-09; Ord 9-1-09

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Sec. 1-1. How Code is designated and cited.

The ordinances embraced in this and the following chapters and sections shall constitute and be designated as the Code of the Town of Stephens City, Virginia, and may be so cited. Such Code may also be cited as the Stephens City Town code.

State law references – Judicial notice of laws, Code of Virginia, § 8.01-386; authority of town to codify and recodify its ordinances, code of Virginia, § 15.2-1433.

Sec. 1-2. Rules and definitions of construction.

In the construction of this Code and all other ordinances resolutions of the town, the following definitions and rules of construction shall be observed, unless it shall be otherwise expressly provided in any section, or ordinance or resolution, or unless inconsistent with the manifest intent of the town council, or unless the context clearly requires otherwise.

Rules of Construction

General rule. All general provisions, terms, phrases and expressions shall be literally constructed in order that the true intent and meaning of the town council may be fully carried out. Words and phrases shall be taken in their plain or ordinary and usual sense, but technical words having particular and appropriate meaning in law shall be understood according to their technical import.

Agents. Wherever any provision of this Code or other ordinance or resolution of the town council requires an act to be done which, by law, an agent or deputy as well may do as the principal; such requirement shall be satisfied by the performance of such act by an authorized agent or deputy.

Definitions

A-weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

Applicant. Any person submitting plans for approval or requesting the issuance of a permit, when required, authorizing land disturbing activities to commence.

Background noise level shall mean the aggregate of all sound sources impacting at the place where a specific sound generation is measured or evaluated, excluding the specific sound generation itself.

Base Flood. The flood having a one percent chance of being equaled or exceeded in any given year. (8/4/09)

Base Flood/One-Hundred Year Flood. A flood that, on average, is likely to occur once every 100 years (i.e. that has one (1) percent chance of occurring each year, although the flood may occur in any year.) (5/6/08)

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Base Flood Elevation. The Federal Emergency Management Agency designated one hundred (100)-year water surface elevation.

Basement. Any area of the building having its floor sub-grade (below ground level) on all sides.

Board of Zoning Appeals. The board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of the zoning ordinance.

Cave. A hollow in the earth, especially one opening more or less horizontally into a hill, mountain, etc.

Cigarette. Means and includes any roll of any size or shape of tobacco or other plant or substitute for tobacco.

Cigarette Pack. Means and includes any container, in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Packs are those containers of cigarettes from which they are consumed by their ultimate user. Ordinarily a pack contains twenty cigarettes.

Cigarette Tax Stamp. Means a small gunned piece of paper or decal used to evidence provision for payment of the tax as required to be affixed to every package of cigarettes, distributed or used within the town.

Council, town council. Wherever the term “council” or “town council” is used, it shall be construed to mean the town council of the town of Stephens City, Virginia.

County. The words “county” and “the county” shall be constructed to mean the County of Frederick, in the Commonwealth of Virginia.

Decibel (dB) means a unit for measuring the volume of a sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals (twenty (20) micronewtons per square meter).

Developer. A person who invests in and develops the urban or suburban potentialities of real estate, esp. by subdividing the land for development.

Development. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, the placement of manufactured homes, street, and other paving, utilities, filling, grading, excavation, mining, dredging, drilling operations, or storage of equipment or materials. (5/6/08)

Development. Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. (8/4/09)

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Elevated building. A non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and piers).

Emergency means any occurrence or set of circumstances involving actual or imminent physical injury or illness or property damage that requires immediate action.

Emergency work means any work performed for the purpose of preventing or alleviating the physical injury or illness or property damage threatened or caused by an emergency.

Encroachment. The advance or infringement of uses, plant growth, fill excavation, buildings, permanent structure or development into a flood plain, which may impede or alter the flow capacity of a floodplain.

Existing manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or flooding.

- 1) A general or temporary condition of partial or complete inundation of normally dry land areas from:
 - a. the overflow of inland or tidal waters; or
 - b. the unusual and rapid accumulation or runoff of surface waters from any source.
- 2) The collapse or subsistence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph 1(a) of this definition.
- 3) Mudflows which are proximately caused by flooding as defined in paragraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

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Flood Insurance Rate Map (FIRM). An official map of a community on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study (FIS). An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood related erosion hazards.

Floodplain or Prone Area. Any land area susceptible to being inundated by water from any source.

Floodplain. (a) A relatively flat or low land area adjoining a river, stream or watercourse which is subject to partial or complete inundation, or (b) an area subject to the unusual and rapid accumulation or runoff of surface water from any source.

Floodproofing. Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Freeboard. A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the water shed.

Geotechnical Engineer. A Virginia Registered Professional Engineer engaged in the practice of geotechnical engineering who is engaged in the practice of engineering geology.

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

Highest Adjacent Grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure. Any structure that is:

- 1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

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- 2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.
- 3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior, or
- 4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approval state program as determined by the Secretary of the Interior or
 - b. Directly by the Secretary of the Interior in states without approved programs.

Instrument, machine or device means and refers to any musical instrument, radio, phonograph, compact disc player, cassette tape player, amplifier or any other machine or device for producing, reproducing or amplification of sound.

Karst Feature. Karst topography is a landscape created by dissolving sedimentary rock such as limestone. Karst features include sinkholes, fissures enlarged by dissolution and caves.

Lowest Floor. The lowest floor of the lowest area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.

Manufactured Home. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured Home Park or Subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Motor carrier vehicle engaged in interstate commerce means any vehicle for which regulations apply pursuant to section 18 of the Federal Noise Control Act of 1972 (P.L. 92-574), as amended, pertaining to motor carriers engaged in interstate commerce.

Motorcycle means any motor vehicle designed to travel on not more than three (3) wheels in contact with the ground and any four-wheeled vehicle weighing less than five hundred (500) pounds and equipped with an engine of less than six (6) horsepower, excepting farm tractors.

Motor vehicle means any self-propelled device or device designed for self propulsion, upon or by which any person or property is or may be drawn or transported upon a street or highway, except devices moved by human power or used exclusively upon stationary wheels or tracks.

New Construction. For the purposes of determining insurance rates, structures for which the "start of construction" commenced on after the effective date of an initial FIRM or after December

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31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which the “start of construction” commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New Manufactured Home Park or Subdivision. A manufactured home parlor subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

Noise means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

Oath. The word “oath” shall be construed to include an affirmation 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.”

Officers, etc. References to officers, departments, boards or commissions shall be construed to be followed by the words “of the Town of Stephens City, Virginia.”

Owner. The word “owner,” applied to any property, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety, of the whole or of a part of such property.

Owner of Land or Landowner. Any person who holds title to or is in possession of any land, whether as owner, lessee or otherwise.

Person. The word “person” shall extend and be applied to associations, firms, partnerships and bodies politic and corporate as well as to individuals.

Pollutants. Anything which, when introduced into water, alters the chemical, physical, biological or radiological properties of water.

Public area means any real property owned by the government, including, but not limited to, public rights-of-way, sidewalks, parks and buildings.

Recreational Vehicle. A vehicle which is

- 1) Built on a single chassis
- 2) 400 square feet or less
- 3) designed to be self-propelled or permanently towable by a light duty truck; and,
- 4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel or seasonal use.

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Residential dwelling means any building or other structure in which one or more persons resides on a permanent or temporary basis, including, but not limited to, houses, apartments, condominiums, hotels, and motels.

Restaurant means any building or structure where in the normal course of business food or drink is available for eating on the premises, in consideration for payment. For purposes of Chapter 12, the term restaurant includes, but is not limited to, bars, lounges, taverns, coffee shops and cafes.

Retail Cigarette Dealer. Means every person who purchases or receives cigarettes from any source whatsoever for the purpose of sale within the town to the ultimate consumer; or any person who owns, leases, or otherwise operates within his own place of business, one or more cigarette vending machines for the purposes of sale within the town of cigarettes to the ultimate consumer.

Sinkholes. Any depression in the surface of the ground with or without collapse of adjacent rock which provides means through which surface water can enter the ground and thereby come into contact with subsurface water. Definitions includes blind valleys, intermittent streams and subsurface streams.

Sound generation means any conduct, activity or operation, whether human, mechanical, electronic or other, and whether continuous, intermittent or sporadic, and whether stationary or ambulatory in nature, which produces or results in an audible sound.

Sound level means the weighted sound pressure level obtained by the use of a sound level meter and the A-frequency weighting network, as specified in American National Standards Institute specifications for sound level meters.

Sound level meter means an instrument which includes a microphone, amplified, RMS detector, integrator or time average, output meter and weighting networks used to measure sound pressure levels.

Special Flood Hazard Area. The land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Article 3, Section 3.2 of this ordinance.

Start of Construction. The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filing; nor does it include the installation of streets and /or walkways; nor does it include the excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not

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part of the main structure. For a substantial improvement, the actual start of construction means the first alteration on any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

Structure for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, this is principally above ground, as well as a manufactured home.

Structure for insurance rating purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alternation or repair, but does not include building materials or supplies intended for use in such construction, alternation or repair, unless such materials or supplies are within an enclosed building on the premises.

Substances and Objects. All substances and objects, whether or not man-made and whether in liquid, solid or gaseous form.

Substantial Damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage" regardless of the actual repair work performed. The term does not, however, include either:

- 1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
- 2) any alteration of a "historic structure," provided that the alteration will not preclude the structures continued designation as a "historic structure."

Subsurface Water. Any water below the surface of the ground including, but no limited to, water in the saturated and unsaturated zones.

Town. The words "town," "the town" shall mean the Town of Stephens City, in the County of Frederick, in the Commonwealth of Virginia.

Watercourse. A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Violation. Means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without

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the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

Sec. 1-3. Catchline of sections.

The catchlines of the several sections of this Code are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections, nor any part of such sections, nor unless expressly so provided, shall they be so deemed when any such sections, including the catchlines, are amended or reenacted.

Sec. 1-4. Provisions considered as continuations of existing ordinances.

The provisions appearing in this Code, so far as they are in substance the same or substantially the same as the provisions of ordinances existing at the time of the effective date of this Code, shall be considered as continuations thereof and not as new enactments.

Sec. 1-5. Severability of parts of Code.

It is hereby declared to be the intention of the town council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code, or its application to any persons or circumstances, shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, sections, or applications of this Code.

Sec. 1-6. Certain ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall be construed to repel or otherwise affect the validity of any of the following:

1. Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code;
2. Any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this Code;
3. Any ordinance or resolution promising or guaranteeing the payment of money for the town or authorizing the issue of any bonds of the town or any evidence of the town's indebtedness or any contract or obligation assumed by the town;
4. Any annual tax levy;
5. Any right or franchise conferred by ordinance or resolution of the town council on any person or corporation;
6. Any ordinance adopted for purposes which have been consummated;
7. Any ordinance which is temporary, although general in effect, or special, although permanent in effect;
8. Any ordinance relating to the compensation of the town officers or employees or serve to reduce the compensation of any present town officer or employee; nor shall it serve to

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deprive any person of any lawful retirement, disability, death or other benefit accrued or accruing;

9. Any ordinance annexing territory to the town;
10. Any ordinance naming, renaming, opening, accepting or vacating streets, alleys, easements or rights-of-way in the town;
11. Any ordinance relating to zoning;
12. Any ordinance consistent with this Code which directs or authorizes the emplacement or maintenance at any location within the town of any traffic control sign, signal, marking or other traffic control device, or which, for the enforcement thereof, a traffic control sign, signal, marking or other device is by law required to be in place at the location or area affected;
13. Any ordinance consistent with this Code which levies, assesses, imposes or defines any license or privilege tax upon persons engaged in any business, trade, occupation, calling, vocation or activity within the town or which requires a town license so to do;

and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length herein.

Sec. 1-7. Classification of and penalties for violations; continuing violations.

a) Whenever in this Code or any other ordinances of the town or any rule or regulation promulgated, by any officer, official or agency of the town under the authority duly vested in such officer, official or agency it is provided that a violation of any provision thereof shall constitute a class 1, 2, 3 or 4 misdemeanor, such violation shall be punishable as follows:

- 1) *Class 1 misdemeanor.* By a fine of not more than \$2,500.00, or by confinement in jail for not more than 12 months, or by both such fine and confinement.
- 2) *Class 2 misdemeanor.* By a fine of not more than \$1,000.00, or by confinement in jail for not more than six months, or by both such fine and confinement.
- 3) *Class 3 misdemeanor.* By a fine of not more than \$500.00.
- 4) *Class 4 misdemeanor.* By a fine not more than \$250.00.

b) Whenever in any provision of this Code or in any other ordinance of the town or any rule or regulation promulgated by an officer, official or agency of the town, under authority duly vested in such officer, official or agency, any act is prohibited or is made or declared to be unlawful or an offense or misdemeanor, or the doing of any act is required, or the failure to do any act is declared to be unlawful or an offense or a misdemeanor, where no specific penalty is provided for the violation of such provision and such violation is not described as being of a particular class of misdemeanor, such violation shall constitute a class 1 misdemeanor and be punishable as prescribed in subsection (a)(1).

c) Each day any violation of this Code or any other ordinance, rule or regulation referred to in this section shall constitute a separate offense, except where otherwise provided.

d) Any provision of this Code or other ordinance of the town or rule or regulation to the contrary notwithstanding, no penalty, whether by fine or imprisonment, imposed for the violation

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of any provision of this Code or other ordinance of the town or rule or regulation shall be in excess of the penalty established by the state for a similar offense under state law.

e) In this section “this Code” shall also mean all provisions incorporated by reference in this Code.

f) No misdemeanor penalty shall be deemed to restrict in any way the right of the town to injunctive relief.

State law references – Precedence of charter provisions, Code of Virginia, §15.2-1103; penalties for violations of municipal ordinances Code of Virginia, §15.2-1429; bond of persons convicted to prevent additional violations, Code of Virginia, §15.2-1430; injunctive relief against continuing violation of ordinance, Code of Virginia, §15.2-1432; classification of criminal offenses, Code of Virginia, §18.2-9; punishment for conviction of misdemeanor, Code of Virginia, §18.2-11; punishment for misdemeanor where no penalty prescribed, Code of Virginia, §18.2-12, 18.2-13.

Sec. 1-8. Repeal of ordinance not to revive former ordinance, or affect liabilities, etc.

(a) When an ordinance which has repealed another ordinance shall itself be repealed, the previous ordinance shall not be revived without express words to that effect.

(b) No new ordinance shall be construed to repeal a former ordinance as to any offense committed against the former ordinance or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued or claim arising under the former ordinance, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before the new ordinance takes effect, save only that the proceedings thereafter shall conform, so far as practicable, to the ordinance in force at the time of such proceedings.

Sec. 1-9. Town seal adopted; use and custody of town seal.

a) The town seal shall be a corded circle within which shall be a dotted circle, and between these circles and conforming to the upper half of the arcs thereof shall be the words “CORPORATION OF STEPHENS CITY”; and between these circles and conforming to the lower half of the arcs thereof shall be the words “STEPHENS CITY, VA.”; and within the inner circle and at the top of such inner circle shall be the word “VIRGINIA,” under which and in the center of the circle shall be depicted Virginia standing upright with one foot upon a fallen tyrant, under which, in small letters, shall be the words “Sic Semper Tyrannis,” as in the Flag of the Commonwealth of Virginia.

b) No other seal shall be used for the Town of Stephens City, and no paper issued by municipal authority which requires the seal of the town shall be valid unless such seal shall be duly affixed thereto.

c) The town clerk shall be the custodian of the town seal.

State law reference – “Seal” defined, Code of Virginia, §1-241.

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Sec. 1-10. Fees for passing bad checks.

The Town shall hereby impose a fee of \$35.00 to cover administrative cost, in addition to the amounts due, for the uttering, publishing or passing of any check or draft for payment, either by paper or electronic, of taxes or any other sums due, which is subsequently returned for insufficient funds or because there is no account or the account has been closed; this shall include a charge-back on credit cards and an electronic bounce on electronic funds transfers, or as a result of any stop payment order placed on the instrument.

(Ord 11/2/2010)

State law reference – Code of Virginia § 15.2-106.