

DEPARTMENT OF COMMUNITY
DEVELOPMENT



**EXCESSIVE OCCUPANCY
ENFORCEMENT**

**POLICY & PROCEDURE
MANUAL**

2005 Edition

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FOREWARD

This document is intended to serve as a manual for the daily operations of the Community Inspections Team. Officially adopted policies and procedures are identified specifically and are included within this guide under the authority of the Town Manager, by delegation to the Director of Community Development.

It shall be the responsibility of each staff member within the Community Inspections Team, including Assistants, to familiarize themselves with this manual. Each member of the Community Inspections Team shall maintain an up-to-date copy of this document as a reference tool. Employees within the Community Inspections Team shall also realize that violations of this manual may be grounds for disciplinary action.

If there is any contradiction or matter subject to interpretation within this document, the concern shall be brought to the attention of the Senior Community Inspector for review and final interpretation, in consultation with the Zoning Administrator.

Although specific procedures are identified to which adherence is expected, this manual is not intended to address all situations encountered by members of the Community Inspections Team. The judicious exercise of discretion is often required, with this in mind, the manual serves as a supplement to individual training and experience.

Vincent P. Diem
Senior Community Inspector

Elizabeth M. Gilleran, AICP
Zoning Administrator

Henry G. Bibber, AICP
Director of Community Development

TOWN OF HERNDON CORE VALUES

The Town of Herndon has adopted the following core values, which serve as timeless, guiding principles for all Town employees and elected or appointed officials:

- Commitment to serve the community
- Honesty and Integrity
- Fairness
- Respect
- Communication

STANDARDS OF CONDUCT

Town of Herndon – Administrative Regulations (§1-28)

Effective Date: September 14, 1993

Revision Date: August 1, 2004

Approved by: Stephen F. Owen

I. Purpose

The Town of Herndon promotes a working environment that encourages mutual respect, civil and congenial relationships among employees, and that is free from all forms of harassment and violence. Standards of conduct are designed to protect the well-being and rights of all employees; to ensure a safe, efficient government, compliance with law, and accomplishment of the Town's objectives. The following general provisions of conduct shall apply.

II. General Provisions

Each employee is expected to:

- A. Be at work on scheduled working days at the designated starting time, and remain at the assigned work place during designated work hours unless permission to leave has been granted by the supervisor.
- B. Observe department breaks and lunch periods without abuse.

- C. Report to work in appropriate clothing with required tools and equipment and in a condition which will permit satisfactory performance of assigned duties.
- D. Maintain a clean and neat personal appearance to the maximum practicable extent during working hours.
- E. Comply with proper orders of an authorized supervisor.
- F. Refrain from any disorderly conduct.
- G. Exercise courtesy and tact in dealing with fellow workers and the public.
- H. Safeguard public information.
- I. Follow established safety practices and immediately report accidents to the supervisor or his/her designee. Exercise watchfulness in the performance of duties to eliminate potential hazards and protect co-workers.
- J. Render full and efficient service in good faith.
- K. Comply with rules and regulations governing hours of work, absences, and use of annual and sick leave.
- L. Obtain department head's permission before soliciting funds, selling tickets, passing petitions or distributing literature on Town property or during business hours.

III. Unacceptable Acts of Conduct

Employees are subject to additional provisions and prohibitions contained in Town administrative regulations, ordinances, codes and laws. Acts for which disciplinary action may be taken include but are not limited to:

- A. Dispensing special favors or privileges to anyone or accepting favors which might be construed by reasonable persons as influencing the performance of Town duties.
- B. Making any private and/or unauthorized promises of any kind binding upon the duties of the position to which assigned.
- C. Using any information received confidentially in the performance of Town duties as a means of making private profit.
- D. Engaging in criminal, dishonest, immoral, or disgraceful conduct prejudicial to the Town; conviction of a crime.
- E. Using Town facilities, property or manpower for other than officially approved activities.
- F. Carelessly or willfully causing destruction of Town property.

- G. Accepting outside employment or entering into a business venture or occupation without first having received approval of the Town Manager.
- H. Soliciting or accepting anything of value in return for performing an official act.
- I. Directly or indirectly, using or seeking to use his official position, authority or influence to control or modify the political action of any other person, or, during duty hours, engaging in any form of political activity. With respect to Town elections, taking part in any political movement of actively supporting any candidates, or supporting any group of candidates in any manner other than by casting his or her own ballot.
- J. Receiving or in any manner be concerned with receiving any money or things of value from any other Town employee for any political purpose.

IV. Responsibility of Supervisors, Managers and Department Heads

The immediate supervisor, manager or department head must approach corrective measures in an objective manner. If misconduct is the issue, the supervisor, manager or department head should take steps to make sure that the employee has been made aware of the Town's policies and regulations regarding the infraction. If appropriate information was not communicated, a plan for such communication should be immediately developed and reviewed with the employee.

V. Disciplinary Action

The Town of Herndon supports the use of progressive discipline to address conduct issues such as poor work performance or misconduct and to encourage employees to become more productive workers and modify their behavior to meet Town standards and expectations.

The Town of Herndon reserves the right to administer appropriate disciplinary action for all forms of disruptive and/or inappropriate behavior. Each situation will be dealt with on an individual basis.

Stephen F. Owen
Town Manager

OATH OF OFFICE

I, _____, do solemnly swear or affirm that I will support the Constitution of the United States, the Constitution of the Commonwealth of Virginia, and the provisions of the Charter of the Town of Herndon, Virginia, and that I will faithfully and impartially discharge all the duties incumbent upon me as *DEPUTY ZONING ADMINISTRATOR/PROPERTY MAINTENANCE INSPECTOR* of the Town of Herndon, Virginia, according to the best of my ability, so help me God.

DEPARTMENT OF COMMUNITY DEVELOPMENT

MISSION STATEMENT

Your Community Development Staff is committed to professional service and provides Comprehensive visions for Herndon's future; Creative alternatives for plans and policies; Methods for sound community decision making; and, Responsive enforcement of current land-use regulations in order to maintain and improve the social, economic and physical well-being of the community.

NEIGHBORHOOD ENFORCEMENT TEAM (N.E.T.)

MISSION STATEMENT

The Neighborhood Enhancement Team (NET) is a front-line action group working to combat excessive occupancy and its effects on the surrounding community. The group will focus on enforcement, education, and prevention of occupancy violations of the Town of Herndon Code of Ordinances. To help with education prevention, the NET will continue to develop an understanding of the causes of excessive occupancy. The NET will utilize information in the Complaint Database to track the effects of the group's efforts.

COMMUNITY INSPECTIONS TEAM

ROLES, RESPONSIBILITIES AND RELATIONSHIPS

The role of the zoning enforcement staff, more commonly referred to as the Community Inspections Team, is to provide responsive enforcement to current land-use regulations as identified within the Zoning Ordinance, of the Herndon Town Code. Authority for the enforcement of zoning regulations is delegated by the Town Manager, through the Zoning Administrator, to the sworn and deputized Community Inspectors. Community Inspectors are also sworn and deputized to serve as Property Maintenance Inspectors, with the delegated authority to identify and enforce against violations of the Property Maintenance Code, as established within the Virginia Uniform Statewide Building Code. This authority is granted by the Commonwealth of Virginia and the Town of Herndon, as delegated by the Certified Building Official. No person shall serve as a Community Inspector, without first having been sworn and deputized with an Oath of Office.

Community Inspectors are responsible for investigating and determining compliance with the Zoning Ordinance and Property Maintenance Code of the Town of Herndon, in response to complaints and as part of routine monitoring of the Town. Community Inspectors shall achieve compliance with zoning regulations and property maintenance code provisions through written and verbal correspondence with property owners, tenants, property managers, and business owners. Community Inspector Assistants shall provide administrative and translation assistance to the Community Inspectors, as well as staff members within the Office of the Building Official, and the Office of the Town Attorney. The position of Community Inspector Assistant shall not serve as an Inspector; and therefore, does not require that the person be sworn and deputized under Oath of Office.

Community Inspectors shall maintain positive working relationships with members of other departments within the Town of Herndon. Several situations encountered by Community Inspectors will extend beyond the delegated authority of the Community Inspections Team and will require coordinated efforts with other departments and agencies. Every effort shall be made to provide as much assistance to other departments and agencies, as required. Community Inspectors shall also provide assistance to persons encountered during the investigation and enforcement of reported or discovered violations. Attempts to provide prevention through education and public awareness shall be employed whenever possible.

POLICIES

CHAPTER 1 EXCESSIVE OCCUPANCY COMPLAINTS

§1.1. Initiating excessive occupancy investigations

Excessive occupancy investigations shall be initiated upon receipt of a complaint from a citizen, a Town employee (including a member of the Police Department), or other agency; as the result of discovery during an unrelated inspection; and through room rental advertisement research.

§1.2. Complainant's information

The complainant's information shall be documented with as much detail as possible, while receiving a complaint. The complainant has the right to remain anonymous at the time of making a complaint. Specifically, the name, address, and telephone number of any complainant furnished in confidence shall be protected as confidential, within the guidelines established by the Code of Virginia, Freedom of Information Act. (§ 2.2-3705.3.10)

§1.3. Background information for complaints

Information to be collected by staff when receiving a complaint shall include that which would support the allegation of excessive occupancy. The number of vehicles, an unusual amount of water consumption, a consistently large volume of trash or other similar exterior violations that may be indicative of excessive occupancy may be considered in support of the complaint.

CHAPTER 2 PUBLIC INTERACTION AND RESIDENTIAL INSPECTIONS

§2.1. Required number of staff for inspections or interviews

Two Community Inspectors; or one Community Inspector and one Community Inspector Assistant, shall always be present during an excessive occupancy residential inspection or interview.

§2.2. Spanish language assistance

There shall be at least one Town employee, who is recognized as being fluent in Spanish, who accompanies any non-Spanish speaking Community Inspector on any inspections or interviews where there is no English-speaking adult present during the inspection or interview, when requested in advance or when the occasion reveals that there is no English-speaking adult present, and it is apparent that Spanish is the spoken language of the persons addressed.

§2.3. Notification in Spanish regarding right to request language assistance

Prior to any inspection or interview being conducted, Spanish-speaking property owners will be notified in Spanish, of their right to request Spanish-speaking Town staff present during the inspection or interview.

§2.4. Additional persons who may accompany inspectors

The following personnel are permitted to accompany the Community Inspectors, only as follows:

- A. The Building Official, Building Inspector, or Neighborhood Building Inspector may accompany a Community Inspector when there is reason to believe that a violation of the Virginia Uniform Statewide Building Code exists on the interior of the structure. Furthermore, if there is information suggesting that the residence has been altered, converted, is occupied beyond what is permitted within the requirements of the International Property Maintenance Code, or where there exists a hazardous situation or that poses imminent danger to the public or occupants, the Building Official shall be immediately notified by the Community Inspector with a request for assistance during any inspections performed.
- B. A Police Officer shall accompany a Community Inspector when there is reason to believe that the personal safety of the Community Inspectors may be compromised during the inspection. Police Officers shall also accompany a Community Inspector when an Administrative Inspection Warrant is served and executed.
- C. The Fire Marshal, Deputy Fire Marshal, or County Health Official may accompany a Community Inspector when there is reason to believe that the violation is of a serious threat to public health and safety, and would ultimately be investigated by the County agencies. Fire Marshals are also permitted to assist when the structure being inspected is considered to be a commercial, multiple-family dwelling.
- D. Any other official or representative of a governmental agency, shall accompany the Community Inspectors, as deemed necessary by the Senior Community Inspector or Building Official during the course of an investigation.

§2.5. Permitted hours of residential inspections

The Community Inspectors will attempt to schedule residential inspections between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, and between the hours of 9:00 a.m. and 4:00 p.m. on Saturday, prior to applying for an Administrative Inspection Warrant.

§2.6. Inspections attempted before warrant application

An attempt at an inspection shall have occurred within 30 days prior to applying for an Administrative Inspection Warrant. When there is imminent danger to the public or other actual threat of human life believed to exist within the structure, coordination shall be made with the Building Official to identify and resolve the situation.

§2.7. Scope of inspections

When an inspection is conducted, it shall extend only to those parts of the dwelling necessary to investigate the allegations.

§2.8. Inspections staff required to be identified

Community Inspections staff shall wear official Town of Herndon photo-identification badges, at all times, while performing their assigned duties both in and outside of the office.

CHAPTER 3 LEGAL ENFORCEMENT ACTIONS – CIVIL PENALTIES, WARRANTS, AND CRIMINAL SUMMONSES

§3.1. Written notification of violation to property owner

If, as the result of a complaint, investigation, or inspection, violations are identified, the property owner and occupants shall be notified in writing that they have 30 days in which to comply with the applicable occupancy limitation and schedule a re-inspection. If there is compliance upon re-inspection, the case shall be closed. If a re-inspection is not scheduled or the re-inspection finds that the situation remains in noncompliance, a citation with civil penalty will be issued or the criminal prosecution process will begin.

§3.2. Compliance time period

If excessive occupancy is discovered, a maximum of 30 days shall be given for compliance. If a hardship exists, up to an additional 30 days may be granted with supervisory approval.

§3.3. Issuing subsequent civil penalties

If the violation remains unabated after a civil penalty has been issued, subsequent fines and penalties shall be issued every eleven days, if ordered by the Town Attorney.

§3.4. Exceptions made for infants less than 18 months of age

When a dwelling unit is excessively occupied solely because of the presence of an infant less than 18 months of age, the Community Inspector shall advise the occupants that they have an extended period for compliance. The extension provided, shall continue to at least the date when the infant becomes 18 months of age. If, during the extension period an occupant leaves the residence, their vacancy cannot be filled by another.

§3.5. Limited prosecution of violations

Citations or violations issued as a result of a complaint-based inspection shall be limited to violations related to the allegation, violations that are in plain view and observed by the Community Inspector, and potential conditions that are volunteered by the owner or occupant to the Community Inspector.

§3.6. Insufficient evidence for Administrative Inspection Warrants

Individual examples of insufficient evidence for seeking an Administrative Inspection Warrant include anonymous complaints; and, exterior property maintenance violations or concerns. In such cases, additional information and evidence shall be collected by the Community Inspector to demonstrate a totality of the circumstances.

§3.7. Probable cause necessary for warrants

Warrant complaints shall include factual information demonstrating the belief that the interior of the residence is not being used and/or occupied in accordance with the Herndon Town Code.

§3.8. Review of warrant application by Town Attorney

The Town Attorney, or his designee, shall review all complaints for which an Administrative Inspection Warrant is being sought.

§3.9. Scope of warrant

Warrant complaints shall describe, in detail, the areas to be searched and items to be seized, photocopied, photographed, or filmed. No inspection shall exceed the scope of the Court's order.

§3.10. Assistance by Police Officers during Administrative Inspection Warrant

If Police Officers are used for the purpose of serving the Administrative Inspection Warrant, they may not assist in the search or interrogation of the property owner or occupants, but may ascertain the identity of the occupants and assist in language translation.

§3.11. Supervisory responsibility during warrant service

The Senior Community Inspector and/or Building Official shall be present and responsible on-site for ensuring the scope of the Administrative Inspection Warrant is not being exceeded.

§3.12. Filing a criminal summons

For cases that involve criminal penalties, a 30-day compliance period shall first be provided to the property owner. If, after the 30-day period no abatement has occurred, the Community Inspector shall review the investigative findings with the Town Attorney. Provided that the Town Attorney determines that there is sufficient probable cause to proceed, the Community Inspector shall file a request for a Criminal Summons with the Fairfax County Judicial Magistrate's office for the matter to be heard before the General District Court.

PROCEDURES

CHAPTER 4 RECEIVING THE COMPLAINT

§4.1. Document complaints on EOE FM 101

Complaints regarding any classification of excessive occupancy shall be documented on **EOE FM 101**, by the individual receiving the complaint. Any additional information (i.e., photographs) shall be attached to the complaint form.

§4.2. Entering complaints into the database

The completed complaint form shall then be forwarded to the Community Inspector Assistant, for entry into the violation database.

§4.3. Creating the case file

The Community Inspector Assistant creates an investigative file, including a complete printout providing property details, as found within the Fairfax County Department of Tax Administration website.

§4.4. Assignment of investigation

After entry into the database, the investigative file with attached complaint form is assigned and delivered to the Community Inspector responsible for the area of the alleged violation. Areas of responsibility are determined by the Senior Community Inspector.

CHAPTER 5 CONTACTING THE COMPLAINANT

§5.1. Requirements for contacting the complainant

Within two business days, the Community Inspector shall contact the complainant by telephone to acknowledge receipt of the complaint and to gather further information. Exceptions to this procedure would be if the complainant's identity and/or telephone number are unknown; and, if the Community Inspector is on a leave of absence.

§5.2. Documenting the conversation on EOE FM 101-A

Specific details regarding the allegation of excessive occupancy shall be documented using the Excessive Occupancy Questionnaire form, **EOE FM 101-A**.

§5.3. Updating database and case file information

The completed EOE FM 101-A form shall then be attached to the investigative file and notes of the conversation added to the violation database.

CHAPTER 6 PRIORITIZING INVESTIGATIONS

§6.1. Community Inspectors to assign priority level

Following initial contact with the complainant, the Community Inspector assigned to the complaint shall establish an investigative priority level. The prioritization system shall be designed to address violations that present the most severe hazards or concerns. Community Inspectors shall pursue enforcement of Class A investigations first, followed by Class B, and then Class C cases.

- A. *Class A* represents situations that present immediate hazards to public health and safety. The existence of fire hazards or other serious violations resulting from excessive occupancy of the residence shall be inspected immediately upon receipt of a complaint. If necessary, coordination shall be made with the Building Official, Fire Marshal, or Fairfax County Health Department.
- B. *Class B* represents cases in which a complete and thorough description of an alleged violation with credible information was reported by the complainant. This type of report should provide a reasonable suspicion of excessive occupancy, and shall be investigated as soon as possible.
- C. *Class C* represents a general complaint of excessive occupancy. A general complaint is one that merely suggests that a violation may exist. A lack of documentation or other supporting information will prevent any immediate investigation of the concern. Investigation shall occur in the order received.

CHAPTER 7 INITIATING AN EXCESSIVE OCCUPANCY INVESTIGATIVE CHECKLIST

§7.1. Documenting the case information on EOE FM 201

The Community Inspector shall insert case information on form **EOE FM 201**. Information to be completed shall include the case file number, the name of the inspector that the case has been assigned to, the date the case was assigned, and the priority classification (A, B, or C).

§7.2. Updating the case file

The Community Inspector shall update the case file by attaching EOE FM 201 to the investigative case file.

§7.3. Identifying progress of investigation on checklist

The Community Inspector shall enter a checkmark in each blank space provided, as each step of the investigation is completed.

- A. Document previous contact with the complainant (*§V.a. above*)
- B. Research violation database to identify previous case history, including previous cases at the same address
- C. Review water consumption history through the AS400 database system

- D. Obtain licensed vehicle information from the Department of Finance, Tax Procurement Specialist
- E. Research Virginia Department of Motor Vehicles database for registrations provided or discovered during investigation
- F. Conduct stationary residential observation
- G. Schedule an interview and/or in-home inspection with the property owner or occupant

CHAPTER 8 PRELIMINARY SURVEILLANCE OF RESIDENCE

§8.1. Vehicle information

The Community Inspector shall count vehicles parked at the residence once a week, for three weeks. The count shall be conducted at different times of the day and on different days of the week. This is not intended to be a stationary surveillance detail.

§8.2. Updating the database and case file information

The Community Inspector shall document the number of vehicles observed in the violation database notes and attach any written or otherwise printed notes to the case file.

§8.3. Research through DMV database

The Community Inspector shall research vehicle registrations of vehicles observed through Virginia Department of Motor Vehicles (DMV) database. Access to the DMV database is solely intended to be used for official investigations of alleged violations. Any other use of the DMV database for personal reasons may be grounds for disciplinary action.

CHAPTER 9 COORDINATION WITH THE POLICE DEPARTMENT

§9.1. Request prior history information

The Community Inspector shall attempt to identify prior history information or existence of District Concerns related to the occupancy of the residence through the Police Department. Coordination can be made through the Records Division or the Police Lieutenant assigned to the Neighborhood Enforcement Team.

§9.2. Identify hazardous concerns

Attempts shall also be made by the Community Inspector to identify potentially hazardous concerns through the Police Department. Without knowing any specific information related to particular offenses or acts committed, Community Inspectors shall ascertain as to whether a residential inspection could present concerns for personal safety.

§9.3. Request vehicle identification between hours of 12:00a.m. and 6:00a.m.

In an effort to identify the vehicles that are routinely or frequently associated with a particular residence, the Community Inspector shall coordinate with the Police Department for officers to document vehicles parked in the driveway and directly in front of the residence.

CHAPTER 10 REVIEW OF INVESTIGATIVE FINDINGS

§10.1. Review of investigative results after three weeks

After three weeks of investigation by the Community Inspector, a review of the investigative results shall occur. The Community Inspector is responsible for his/her assigned cases and shall review each case after it has been open for three weeks.

§10.2. Deciding to continue investigation or close the case

Provided that each of the investigative steps has occurred to this point, a decision shall be made by the Community Inspector to recommend closure or continuance of investigation.

§10.3. Senior Community Inspector to review cases recommended for closure

The Community Inspector shall review cases recommended for closure with the Senior Community Inspector. The Senior Community Inspector shall provide further instruction regarding necessary course of action, in the event that the case is to remain open and active with little or no evidence having been developed during the initial investigation.

CHAPTER 11 CLOSING THE CASE DUE TO INSUFFICIENT EVIDENCE

§11.1. Providing outcome of investigation to complainant on EOE FM 301

If there is a determination that insufficient evidence exists to continue with further investigation or enforcement, the Community Inspector shall send **EOE FM 301** to the original complainant.

§11.2. Updating the information within the case file and database

The Community Inspector shall update the violation database and attach a copy of the letter sent to the complainant (EOE FM 301) to the case file.

CHAPTER 12 IF FURTHER INVESTIGATION OR ENFORCEMENT ACTION IS NECESSARY

§12.1. Sending a letter to the homeowner to request an in-home inspection

The Community Inspector shall send a letter to the property owner, along with a bilingual request for response slip (**EOE FM 401** and **EOE FM 401A**), requesting an in-home inspection of their home with a seven-day deadline to respond to the letter.

§12.2. Updating the information within the case file and database

The Community Inspector shall update the information within the violation database to reflect that a letter has been sent, along with the seven-day deadline date. A copy of the letter(s) sent shall be attached to the case file.

§12.3. Response from the property owner required

The Community Inspector shall then wait for a response from the property owner to schedule an inspection of the residence.

CHAPTER 13 IF THE PROPERTY OWNER FAILS TO RESPOND TO EOE FM 401/401A WITHIN SEVEN DAYS

§13.1. Sending the second letter to the homeowner

The Community Inspector shall send a second letter to the property owner along with the bi-lingual request for response slip (**EOE FM 402** and **EOE FM 401A**), requesting a discussion to be held at the Herndon Municipal Center with a seven-day deadline for response.

§13.2. Updating the information within the case file and database

The Community Inspector shall update the information within the violation database to reflect that a letter has been sent, along with the seven-day deadline date. A copy of the letter(s) sent shall be attached to the case file.

§13.3. Response from the property owner required

The Community Inspector shall then wait for a response from the property owner to schedule an inspection of the residence.

§13.4. If no response, Administrative Inspection Warrant procedures are followed

If the property owner fails to respond or schedule an inspection, further investigation and the procedures for an Administrative Inspection Warrant shall be followed.

CHAPTER 14 REFUSAL OF HOMEOWNER TO RESPOND OR CONSENT TO INSPECTION

§14.1. If homeowner fails to respond or has refused inspection, further investigative research shall be conducted

If the homeowner refuses to respond to the written request, or refuses consent for an in-home inspection, the Community Inspector shall implement further investigative research.

- A. *Garbage pulls.* Trash is collected from curbside. Trash shall not be collected from private property. Residents' identities are collected from discarded mail, documents, letters, and account statements.
- B. *Residential observation.* The Community Inspector conducts a residential observation of the property and documents his/her findings on **EOE FM 500**.
- C. *Depositions from neighbors or witnesses.*
- D. *Location of Room Rental advertisements.*
- E. *Assistance from the Police Department.* Requests can be made to the Police Department for random visits through the neighborhood to observe number of vehicles, people, and other indicators. Coordination can also be made to conduct research through Incident Report system to identify evidence of excessive occupancy noted within Police report.

CHAPTER 15 RESIDENTIAL OBSERVATION REPORT – EOE FM 500

§15.1. Review of investigative information

Based on the information reported by the complainant on EOE FM 101 and EOE FM 101-A, along with any other information obtained during the investigation, the Community Inspector shall schedule a residential observation that would allow him/her to observe potential indicators of excessive occupancy. The Community Inspector shall review complaint information contained within the investigative case file and violation database. Any additional information that would enhance the observation shall also be reviewed prior to conducting any surveillance. Such information would include address location, including a description of the single-family dwelling; a site map of the neighborhood, indicating the exact location of the residence; any comments reported by witnesses or neighbors regarding the alleged excessive occupancy; and the list of vehicles identified through DMV or Department of Finance records.

§15.2. Coordinating observation with the Police Department

Community Inspectors shall contact the Herndon Police Department by telephone regarding the observation at the Communications Center (703)435-6846. During the notification, the Community Inspector shall advise the Communications officer of the location and duration of the observation. The Community Inspector shall also provide a description of vehicle being used. The Community Inspector shall also notify the Communications officer during the telephone call if he/she is parked in a No Parking zone. A “call-back” telephone number shall also be provided.

§15.3. Purpose of the observation

The purpose of the observation is to identify the number of persons believed to be residing in the residence, based on their arrival or departure to the address. When conducting an observation, Community Inspectors shall first locate an appropriate parking space. All attempts shall be made to avoid parking in fire lanes or reserved parking spaces. The vehicle shall be parked in a location that would enable optimum observation of the residence and other than directly in front of the residence being observed. Effort shall be made to avoid counting the same person multiple times. If uncertain about a particular individual having been seen exiting from the residence, Community Inspectors shall not count that person – “guessing” is not recommended and may hinder the investigation. Inspectors shall be aware of other possible entrance/exit ways associated with the residence including garage doors; front doors, side doors, rear doors, and walk-out basements. Vehicle information shall be collected for only those vehicles that are parked on the property or are later determined to be associated with the residence as occupants leave. Carpool vehicles that arrive to pick up individuals shall not be included. Community Inspectors shall document any other possible violations found including, but not limited to, the appearance of a Home-Based Business, exterior Property Maintenance violations, and inoperable vehicles.

§15.4. Appropriate staffing for observation

If the residence has been identified as having more than one means of entrance/exit, the Community Inspector assigned to the investigation shall ensure that the number of inspectors assisting with the observation will have the ability to observe each of entrances/exits used.

§15.5. Documenting the observation

Community Inspectors shall accurately complete form EOE FM 500, while conducting the observation. An exception to this procedure is when the Community Inspector documents his/her observations on audio cassette, during the observation, and then transfers the notes onto

the Residential Observation Report form upon returning to the office. The form shall be completed as thoroughly as possible, with special attention given to completing the following information:

- A. Start Time – a.m. or p.m. hour – upon arrival to address
- B. End Time – a.m. or p.m. hour – upon completion of observation
- C. Date – mm/dd/yyyy
- D. Address – street number, street name, unit/apt. number
- E. Inspector Assigned – First name, MI, Last name of Community Inspector
- F. Vehicle Information – make, model, color, state/license plate#
- G. Persons Observed – place checkmark under corresponding heading (adult male, adult female, juvenile male, juvenile female, infant). This information is intended only to document number of occupants. Age, race, and physical description information is unnecessary.

§15.6. Contact with the public during observations

If the Community Inspector is questioned or approached during the observation, the inspector shall provide his/her full name, along with the purpose of the observation. The Community Inspector shall provide a Town of Herndon business card, identifying him/her as a Community Inspector. They shall indicate that he/she is responsible for investigating and enforcing residential excessive occupancy violations and suggest to the citizen that they can call the office during normal business hours, Monday through Friday, for further discussion, if necessary. If the individual questioning the Community Inspector is not a resident of the dwelling that is the subject of observation, there is no requirement to reveal the address that is being observed.

§15.7. Personal breaks

Cease of observation for a personal break is permitted; however, the Community Inspector shall indicate the time that he/she was away from the observation and shall return as quickly as possible. Personal breaks shall be kept to a minimum. Community Inspectors shall avoid drinking large quantities of fluids or caffeine shortly before and during the observation.

§15.8. Emergency situations

Community Inspectors shall immediately contact the Herndon Police Department (703)435-6846 or Dial “911” if any emergency situations or criminal acts occur or are observed.

CHAPTER 16 SCHEDULED IN-HOME INSPECTIONS

§16.1. Arriving at the residence for inspection

The Community Inspector shall arrive at the residence scheduled for in-home inspection at the designated time and date of the inspection. Every effort shall be made by the Community Inspector to arrive on time, if not early. If there is an unexpected delay or other circumstance that would prevent punctuality, the Community Inspector shall attempt to notify the homeowner/occupant, with whom the inspection was scheduled to advise him/her of the delay.

§16.2. Necessary forms and equipment

Community Inspectors shall have the necessary forms and equipment available prior to arriving for the in-home inspection. The necessary forms shall include EOE FM 510/510S and EOE FM 520, and shall be completed with as much information in advance. Equipment necessary for the in-home inspection shall include a digital camera with charged battery, blank diskettes, measuring tape, flashlight, informational brochures, and a notepad.

CHAPTER 17 UTILIZING CONSENT FORMS - EOE FM 510

§17.1. Reviewing the consent form with the homeowner/occupant

Upon initial contact with the homeowner or occupant, on the date of the inspection, the Community Inspector shall properly identify himself/herself and provide an explanation for the visit. The Community Inspector shall then ask the homeowner or occupant to read **EOE FM 510 and 510S**. If the individual answering the door is a juvenile, less than 18 years of age, and is home alone, no further investigation or inquiry shall be made. Under the aforementioned circumstances, the Community Inspectors shall each provide a business card, state the purpose of their visit, and request a telephone call from an adult homeowner or occupant

§17.2. Completing the information on the form

The Community Inspector shall complete the information on the form by filling in the following blanks; Owner's name, Address, Date, and Time.

§17.3. Requesting signatures on the form

The Community Inspector shall request the homeowner or occupant to sign the form, **ONLY IF** consent is provided for an inspection. No threats, coercion, or promises of any kind shall be made by the Community Inspectors when requesting the signature of the homeowner or occupant.

§17.4. Town staff signatures as witnesses

After the homeowner or occupant signs the form, the signatures of at least two Town staff members shall be entered into the Witness spaces.

§17.5. If consent is refused by homeowner/occupant

If consent is not provided or the homeowner or occupant refuses to sign the form, the Community Inspector shall immediately **STOP** the process, leave the property, and report the situation to the Senior Community Inspector.

§17.6. Completing and signing form before inspection

The consent form, EOE FM 510, SHALL be completed and signed before the inspection is started.

CHAPTER 18 EXCESSIVE OCCUPANCY INVESTIGATIVE REPORT – EOE FM 520

§18.1. Obtaining consent before inspection

After the homeowner or occupant has provided written consent on EOE FM 510, the Community Inspector shall begin completing the information on the Excessive Occupancy Investigative Report form, **EOE FM 520**.

§18.2. Completing each section of the report form

Community Inspectors shall attempt to complete each section as thoroughly as possible, with special attention given to completing the following information:

- A. Case #: (six digit case number, XX-XXXX)
- B. Date/Time of Investigation (mm/dd/yyyy, a.m./p.m.)
- C. Address of Investigation (street number, name, unit/apt. number)
- D. Type of Residence – (i.e., single-family detached, townhouse, condominium)
- E. Zoning District
- F. Primary Inspector (First & Last Name)
- G. Assisting Inspector (First & Last Name)
- H. Other Town Staff (First & Last Name)
- I. Number of Adult Occupants – total number, as stated by homeowner
- J. Number of Children (less than 18 years of age) – total number, as stated by homeowner
- K. Owner-Occupied – does the owner reside there? circle Yes or No
- L. Names and descriptions of occupants – as stated by homeowner, or occupants, with as much detail as possible. Substitute Date of Birth in the absence of State/ID#. *Pursuant to the requirements of the Herndon Town Code §78-2; definition of “family” and “second degree of consanguinity.”*
- M. Number of floors located in the dwelling
- N. Number of bedrooms and/or sleeping areas
- O. Descriptions of bedrooms - location (i.e., first floor, second floor), dimensions (length X width, measured in feet), means of egress – circle Yes or No, and number of occupants – as evident, or as stated by homeowner.
- P. Kitchen – circle Yes or No; enter number of kitchens
- Q. Location of Kitchen (i.e., first floor, second floor) - specify, if multiple
- R. Size of Kitchen (length X width, measured in feet) – specify, if multiple
- S. Property Maintenance Code Violations - item (i.e., 1, 2, 3), QTY (how many of this type of violation exist?), description – brief description of violation, location – (i.e., kitchen, bedroom #2, living room), photographed – circle Yes or No. Photographs require homeowner or occupant consent.
- T. Narrative of Inspection – provide an overall synopsis of the inspection

- U. Schematic Diagrams of Floor Plans – sketch the floor plans of the residence to assist in detailing the results of the inspection. Sketches are not required to be to scale. Label First Floor, Second Floor, Basement, and individual rooms.
- V. Enter page number information at the bottom of each page
- W. Enter Primary Inspector’s initials at the bottom of each page

§18.3. Updating the information in the case file and database

The Community Inspector shall document the results of the inspection in the violation database notes and attach any completed forms or otherwise printed notes to the case file.

CHAPTER 19 REQUIRED ACTIONS AFTER THE INSPECTION

§19.1. Community Inspectors to acknowledge homeowner’s/occupant’s cooperation

The Community Inspector shall thank the homeowner or occupant for their cooperation and advise them that he/she will receive a notice in writing concerning the results of the investigation.

§19.2. Determination to be made by Community Inspector

Following the inspection, the Community Inspector shall make a determination as to proceed with further investigation or enforcement of any discovered violations.

CHAPTER 20 IF THE RESIDENCE IS NOT EXCESSIVELY OCCUPIED

§20.1. Actions required if residence is not excessively occupied and other violations were not found

If the residence is determined not to be excessively occupied following the in-home inspection, and other violations WERE NOT found (i.e., IPMC/VUSBC), the Community Inspector shall send a letter of apology to the homeowner in Spanish and English using **EOE FM 610** and **EOE FM 610S**.

§20.2. Actions required if residence is not excessively occupied and other violations were found

If the residence is determined not to be excessively occupied following the in-home inspection, and other violations WERE found (i.e., IPMC/VUSBC), the Community Inspector shall send a letter identifying the results of the inspection to the homeowner in Spanish and English using **EOE FM 710** and **EOE FM 710S**, along with **EOE FM 401A**. Information regarding the IPMC/VUSBC violations that were found will then be forwarded to the attention of the Building Official, using EOE FM 101, along with any photographs or other documentation regarding the violations. Additionally, a copy of EOE FM 710 and EOE FM 710S shall be attached to the documents forwarded to the Building Official’s attention. Following the issuance of the initial violation letter, further investigation or enforcement shall be at the direction of the Building Official.

§20.3. Copies of correspondence to be attached to case file

The Community Inspector shall attach copies of any letters sent to the homeowner in the investigative case file.

§20.4. Community Inspector to contact the complainant

The Community Inspector shall contact the original complainant, identified on EOE FM 101, and advise him/her of the status of the investigation.

§20.5. Updating the information in the case file and database

The Community Inspector shall update the information in the violation database to reflect the type(s) of letters sent, along with any established deadlines for compliance.

CHAPTER 21 IF THE RESIDENCE IS EXCESSIVELY OCCUPIED

§21.1. Actions required if residence is excessively occupied and other violations were not found

If the residence is determined to be excessively occupied following the in-home inspection, and other violations WERE NOT found (i.e., IPMC/VUSBC), the Community Inspector shall send a Violation Notice to the homeowner in Spanish and English using **EOE FM 620** and **EOE FM 620S**, along with **EOE FM 401A**, providing a 30-day period for willful compliance. The letter shall include the necessary appeal language as required by the Code of Virginia. The letter shall include the requirement for the homeowner to schedule a re-inspection after 30 days to demonstrate that the violation has been abated. If the homeowner fails to schedule a re-inspection or successfully resolve the violations, either the CIVIL PROCESS or CRIMINAL PROSECUTION shall be initiated, depending on the type of occupancy violation found. If the homeowner schedules a re-inspection, the process shall be conducted as previously described in Chapter 16 – Scheduled In-Home Inspections. If the homeowner schedules a re-inspection and demonstrates that the violations have been abated, the case shall be closed.

§21.2. Actions required if residence is excessively occupied and other violations were found

If the residence is determined to be excessively occupied following the in-home inspection, and other violations WERE found (i.e., IPMC/VUSBC), the Community Inspector shall send a Violation Notice to the homeowner in Spanish and English using **EOE FM 620** and **EOE FM 620S**, along with **EOE FM 401A**, providing a 30-day period for willful compliance. Information regarding the IPMC/VUSBC violations that were found will then be forwarded to the attention of the Building Official, using EOE FM 101, along with any photographs or other documentation regarding the violations. Additionally, a copy of EOE FM 620 and EOE FM 620S shall be attached to the documents forwarded to the Building Official's attention. Following the issuance of the initial violation letter, further investigation or enforcement shall be at the direction of the Building Official.

§21.3. Copies of correspondence to be attached to the case file

The Community Inspector shall attach copies of any letters sent to the homeowner in the investigative case file.

§21.4. Community Inspector to contact the complainant

The Community Inspector shall contact the original complainant, identified on EOE FM 101, and advise him/her of the status of the investigation.

§21.5. Updating the information in the case file and database

The Community Inspector shall update the information in the violation database to reflect the type(s) of letters sent, along with any established deadlines for compliance.

CHAPTER 22 CIVIL PROCESS AND CRIMINAL PROSECUTION

§22.1. Initiating further legal action based on type of violation

Depending on the type of violation(s) found during the investigation, the Community Inspector may be required to initiate further legal action through CIVIL PROCESS or CRIMINAL PROSECUTION through the General District Court, Fairfax County, Virginia.

§22.2. Coordination with Town Attorney

All prosecution efforts shall be coordinated through the Office of the Town Attorney, Town of Herndon, Fairfax County, Virginia.

§22.3. Community Inspectors required to appear at hearing or other proceedings

Community Inspectors shall appear in any scheduled court hearings, Board of Zoning Appeals hearings, and other forums as required by subpoena or court order.

§22.4. Community Inspectors responsible for court preparation

Community Inspectors shall be responsible for preparing and presenting evidence and testimony pertinent to the case, before any court or venue designated to hear the matter.

§22.5. Appropriate attire for court appearances

Community Inspectors shall wear professional business attire for all court appearances. No jeans, sneakers, work boots, or t-shirts shall be worn. Clothing shall be clean and reasonably pressed.

EXCESSIVE OCCUPANCY ENFORCEMENT

APPENDIX A FORMS

POLICY & PROCEDURE MANUAL

DEPARTMENT OF COMMUNITY DEVELOPMENT
TOWN OF HERNDON

Ordinance Violation Complaint

Town of Herndon
Phone: (703) 787-7380 Fax: (703) 481-5280

Property address: _____ Apt. / Space # _____

Occupant, if known: _____

Date / Time violation was observed: ____/____/____ (a.m.)
(p.m.)

Type of suspected violation: _____

NOTE - If suspected violation is excessive occupancy, please complete the *Excessive Occupancy Questionnaire*.

Comments: _____

Reporting citizen: _____ *Anonymous (yes)
(no)

Address: _____ Telephone () _____
() _____

*Please provide your name, telephone number and address when reporting a violation. This is particularly important if the need arises for additional information and allows the Town staff to contact you regarding the status of the investigation. The Town of Herndon maintains confidentiality of the complainant's identity, within the laws mandated by the Commonwealth of Virginia.

Office Use Only

Complaint received by: _____ Department: _____

Date: ____/____/____ Time: _____ (a.m.) (p.m.)

Department assigned: _____ Case No. ____ - _____

Excessive Occupancy Questionnaire

Town of Herndon

Phone: (703) 787-7380 Fax: (703) 481-5280

Deleted: Overcrowding

The following questionnaire offers a recommended guideline for reporting an excessive occupancy complaint. Providing accurate and detailed responses to these questions will assist inspectors and town staff to more effectively target their investigative efforts and will expedite the Town's ability to determine whether a violation exists related to your specific concern. If you have any additional questions or comments, please feel free to contact the Dept. of Community Development at (703)787-7380.

Deleted: The following

Deleted: is

Deleted: a

Deleted: of overcrowding. By utilizing this guideline, you will assist inspectors and town staff by providing accurate and detailed information about a specific concern.

1. How many permanent residents would you estimate are living at the residence?

2. Specify the number of adults (males and females) and children, if possible.

3. Does the number of persons fluctuate? _____

4. If yes, please explain: _____

5. During what times of the day is the problem most noticeable? _____

6. How many entrances/exits are used at the residence? _____

7. How long has the overcrowding problem been occurring at the residence?

8. Briefly describe the makes, models, colors and license plate numbers of vehicles associated with the residence.

9. Do you notice an unusually large amount of trash placed in front of the residence on trash collection days?

10. Are there other associated problems, such as parking or excessive noise?

Excessive Occupancy Investigative Checklist

Town of Herndon

Case File Number: _____ - _____

Case assigned to: _____

Date assigned: ____/____/____

Priority classification: (A) (B) (C)

____ Review excessive occupancy questionnaire form with the complainant, if possible

____ Check the violation database for previous complaint information

____ Check the water utility consumption reports through Department of Finance records

____ Check the vehicles associated with the address, through the Tax Procurement specialist

____ If vehicle registrations are provided by the complainant, conduct DMV inquiry for owner's information

____ Conduct early morning observation or other appropriately timed observation to identify:

- ✓ Number of persons departing from the residence for work or school
- ✓ Number of vehicles parked at or near the residence
- ✓ Accumulation of trash and debris around or in front of residence
- ✓ Exterior property maintenance code violations
- ✓ Indications of any other possible zoning ordinance violations, such as an unlicensed, un-inspected home-based business

____ In-home visits, inspections, interviews or other on-site activity related to investigation

Residential Observation Report

Town of Herndon

Start Time: _____ (a.m.) (p.m.)

End Time: _____ (a.m.) (p.m.)

Date: ____/____/____

Address: _____ **Suite/Apt. #** _____
street number street name

Inspector/Person Assigned: _____
first name middle initial last name

Vehicle Information:

Describe only those vehicles that are either parked on the property being observed, or are otherwise operated by individuals associated with the residence.

Make	Model	Color	State/License Plate

Persons Observed:

Document persons observed entering or exiting the residence. It is not necessary to provide a physical description. Indicate persons observed, by placing a “√” in the space directly below description of person observed.

Adult Male	Adult Female	Juvenile Male	Juvenile Female	Infant (unknown)

Total Number of Persons Observed: _____

Signature: _____

Date: ____/____/____

WAIVER TO INSPECT PROPERTY

Town of Herndon

I, _____, hereby grant my consent to the following people:

_____ to inspect for excessive occupancy, the property located at _____.

(Initials) _____ In addition, I hereby grant my consent to the above listed people to inspect the above named property for Property Maintenance Code/safety violations other than excessive occupancy.

I understand that I have a right to refuse to consent to either inspection described above and to refuse to sign this form. I further state that no promises, threats, force, physical or mental coercion of any kind have ever been used against me to obtain my consent to either inspection or to sign this form.

WITNESSES

DATE: ___ / ___ / ___ TIME: _____ (AM) (PM)

(Signature)

PERMISO PARA INSPECCIONAR

Alcadía Municipal de Herndon

Yo, _____, con este formulario doy mi consentimiento a las siguientes personas:

_____ para inspeccionar,
por exceso de ocupantes, la propiedad localizada en _____.

(Iniciales)_____ Así también, doy mi consentimiento a las personas indicas arriba para inspeccionar la propiedad, por violaciones al “Codigo de Mantimiento de Propriedad,” además de la inspección sobre exceso de ocupantes.

Yo entiendo que tengo el derecho de rehusar cualquiera de las does inspecciones descritas arriba y de rehusa la firma de este formulario. En adicion yo declaro que ninguna promesa, amenaza, fuerza, coercion fisica o mental han sido usadas en contra mia para obtener el consentimiento, para cualquiera de las dos inspecciones descritas arriba o para firmar este formulario.

TESTIGOS

LA FECHA: ___/___/___ LA HORA: _____(AM)(PM)

(Firma)

EXCESSIVE OCCUPANCY INVESTIGATIVE REPORT
TOWN OF HERNDON, VIRGINIA

Case#:		Date/Time of Investigation:		
Address of Investigation:		Type of Residence:	Zoning District:	
Primary Inspector:		Assisting Inspector:	Other Town Staff:	
Number of Adult Occupants:		Number of Children:	Owner-Occupied: (YES) (NO)	
#1.	Name (Last, First, Middle)	Owner/Occupant:	State/ID# or DOB:	Sex:
Work Address:		Home Phone #:		
Work Phone #:		Cell Phone #:		
#2.	Name (Last, First, Middle)	Owner/Occupant:	State/ID# or DOB:	Sex:
Work Address:		Home Phone #:		
Work Phone #:		Cell Phone #:		
#3.	Name (Last, First, Middle)	Owner/Occupant:	State/ID# or DOB:	Sex:
Work Address:		Home Phone #:		
Work Phone #:		Cell Phone #:		
#4.	Name (Last, First, Middle)	Owner/Occupant:	State/ID# or DOB:	Sex:
Work Address:		Home Phone #:		
Work Phone #:		Cell Phone #:		
#5.	Name (Last, First, Middle)	Owner/Occupant:	State/ID# or DOB:	Sex:
Work Address:		Home Phone #:		
Work Phone #:		Cell Phone #:		
#6.	Name (Last, First, Middle)	Owner/Occupant:	State/ID# or DOB:	Sex:
Work Address:		Home Phone #:		
Work Phone #:		Cell Phone #:		
#7.	Name (Last, First, Middle)	Owner/Occupant:	State/ID# or DOB:	Sex:
Work Address:		Home Phone #:		
Work Phone #:		Cell Phone #:		

EXCESSIVE OCCUPANCY INVESTIGATIVE REPORT

TOWN OF HERNDON, VIRGINIA

Number of Floors:			Number of Bedrooms:	
Bedroom #1	Location:	Dimensions:	Means of Egress: (YES) (NO)	Number of Occupants:
Bedroom #2	Location:	Dimensions:	Means of Egress: (YES) (NO)	Number of Occupants:
Bedroom #3	Location:	Dimensions:	Means of Egress: (YES) (NO)	Number of Occupants:
Bedroom #4	Location:	Dimensions:	Means of Egress: (YES) (NO)	Number of Occupants:
Bedroom #5	Location:	Dimensions:	Means of Egress: (YES) (NO)	Number of Occupants:
Bedroom #6	Location:	Dimensions:	Means of Egress: (YES) (NO)	Number of Occupants:
Bedroom #7	Location:	Dimensions:	Means of Egress: (YES) (NO)	Number of Occupants:
Kitchen: (YES) (NO)		Location of Kitchen:		Size of Kitchen:
Number of Kitchens:				

PROPERTY MAINTENANCE CODE VIOLATIONS

Item	QTY	Description:	Location:	Photographed: (YES) (NO)

NARRATIVE OF INSPECTION

EXCESSIVE OCCUPANCY INVESTIGATIVE REPORT
TOWN OF HERNDON, VIRGINIA

SCHEMATIC DIAGRAMS OF FLOOR PLANS

**EXCESSIVE OCCUPANCY
ENFORCEMENT**

**APPENDIX B
LETTERS**

**POLICY & PROCEDURE
MANUAL**

DEPARTMENT OF COMMUNITY DEVELOPMENT
TOWN OF HERNDON

March 8, 2005

Concerned Neighbor
123 Anywhere Street
Herndon, Virginia 20170

RE: **Report of Excessive Occupancy at 125 Anywhere Street**

Dear Ms. Neighbor;

On February 14, 2005, you filed a complaint with the Department of Community Development concerning excessive occupancy at 125 Anywhere Street.

After investigating, the Department has determined that there is insufficient probable cause to continue with an excessive occupancy investigation at this time; therefore, the investigation is being closed. In the event that you become aware of any additional evidence of excessive occupancy, please call me at 703-435-6800 ext. 2012.

The Town of Herndon thanks you for your effort in striving to make our community a better place to live.

Respectfully,

Vincent P. Diem
Senior Community Inspector

EOE FM 301

March 8, 2005

Juan Perez
125 Anywhere Street
Herndon, Virginia 20170

RE: **INVESTIGATION OF EXCESSIVE OCCUPANCY, FILE #05-1234**

Dear Mr. Perez;

The Department of Community Development has received information that your house may be excessively occupied. After reviewing the complaint and looking into the matter, we have determined that there may be a legitimate concern.

I am sure that you agree it is essential to the public health, safety and welfare of the citizens of the Town of Herndon that residences be maintained in a safe and hazard free manner. In an effort to ensure public safety, the Town has adopted occupancy limitations within the Zoning Ordinance and the Virginia Uniform Statewide Building Code. These codes deal with excessive occupancy in the residences. Measurements of living spaces are used to determine the allowable number of people that can live in each residence.

In order to resolve this matter as quickly as possible, please contact us at (703)787-7380 and schedule an inspection of your home. We can provide a Spanish speaking inspector or assistance, if so requested when you call. At the time of the inspection, we will measure your living space to determine the occupancy load and we will ask you to assist in filling out a form, listing the number of people living there.

If it is determined that there is no excessive occupancy, we will apologize for the inconvenience and drop the matter. On the other hand, if there is an excessive occupancy problem, you will be asked to correct the situation by reducing the total number of occupants to the determined load. If you do not correct the problem, further legal actions including fines and court will follow.

Please contact the Town within seven (7) days of the date of this letter. Thank you for your anticipated cooperation.

Sincerely,

Vincent P. Diem
Sr. Community Inspector

EOE FM 401

PLEASE RESPOND TO THIS NOTICE

If you have difficulties with the English language, and it is easier for you to communicate in Spanish, please call Maria Ramos or Susana Di Dieco at 703-707-2672. This subject is important and is for your benefit to understand. Please call us as soon as possible to begin resolving this matter.

POR FAVOR RESPONDA A ESTE AVISO

Si tiene dificultades con ingles, y le es mas facil comunicarse en espanol llame a Maria Ramos o Susana Di Dieco al telefono 703-707-2672. Este asunto es importante para su beneficio. Por favor llame lo antes posible.

EOE FM 401A

March 16, 2005

Juan Perez
125 Anywhere Street
Herndon, Virginia 20170

RE: INVESTIGATION OF EXCESSIVE OCCUPANCY, FILE #05-1234

Dear Mr. Perez;

You have been identified as the owner and/or person responsible for 125 Anywhere Street in the Town of Herndon, Virginia.

The Town has reason to believe that this residence is excessively occupied. We have previously notified you that excessive occupancy is a violation of the Herndon Town Code, but you have failed to contact the Department of Community Development to schedule an inspection.

This is your final notice to schedule an inspection at (703)787-7380. If you prefer, we can arrange for a meeting at the Herndon Municipal Center, located at 777 Lynn Street, Herndon, Virginia to discuss the concern personally. To resolve this matter quickly, we ask that you contact us within seven (7) days of the date of this letter. As before, if so requested, a Spanish-speaking inspector or assistant can be provided at the time of the inspection or discussion.

Sincerely,

Vincent P. Diem
Senior Community Inspector

EOE FM 402

March 16, 2005

Juan Perez
125 Anywhere Street
Herndon, Virginia 20170

RE: **INSPECTION at 125 ANYWHERE STREET**

Dear Mr. Perez;

Thank you for allowing the Department of Community Development to inspect your home on March 15, 2005, in response to an excessive occupancy complaint. We found no evidence of excessive occupancy.

Again, thank you for so willingly opening your residence to our inspectors. I apologize for any inconvenience.

Sincerely,

Vincent P. Diem
Senior Community Inspector

EOE FM 610

16 de marzo de 2005

Juan Pérez
125 Anywhere Street
Herndon, Virginia

Re: INSPECCION en 125 ANYWHERE STREET

Estimado Sr. Pérez:

Gracias por permitir al Departamento de Desarrollo Comunitario el inspeccionar su residencia el día 15 de marzo de 2005 en relación al caso de ocupación excesiva. No encontramos ninguna evidencia de ocupación excesiva.

Gracias por permitir a nuestros inspectores el acceso a su residencia. Acepte nuestras disculpas por cualquier inconveniencia causada.

Atentamente,

Vincent P. Diem
Jefe de Inspectores de Zonificación

EOE FM 610S

March 15, 2005

Juan Perez
125 Anywhere Street
Herndon, Virginia 20170

RE: **INSPECTION at 125 ANYWHERE STREET**

Dear Mr. Perez;

Thank you for allowing the Department of Community Development to inspect your house on March 15, 2005 in response to an excessive occupancy complaint. We found no evidence of excessive occupancy. However, please be aware that you are in violation of the Virginia Uniform Statewide Building Code. Below is a list of the violations:

1. **Construction without the required permits. *USBC 111.1***
2. **Concealed construction and use of space without the required minimum inspections. *USBC 115.4 & 119.1***
3. **Each floor and each new constructed bedroom require smoke detector. *IPMC 704.1 & R-317.1***
4. **Constructed a bedroom without emergency egress window... Minimum of 5 square feet clear opening at grade level; minimum dimension opening height of 22 inches; and minimum dimension opening width of 20 inches. *R-310.1***

To avoid further legal actions by the Town please correct the above violations by applying for a permit by March 25, 2005 and obtaining the permit by April 8, 2005. Obtain all approved required inspections by April 22, 2005.

Per section 106 of the Virginia Uniform Statewide Building Code you have the right to appeal a decision of the Building Official. Appeals shall be submitted in writing and within 90 days.

Please contact the Building Official's office at (703)435-6850, to receive further information on filing building permit applications and to schedule a re-inspection.

Sincerely,

Vincent P. Diem
Senior Community Inspector

EOE FM 710

15 de marzo 2005

Juan Pérez
125 Anywhere Street
Herndon, Virginia 20170

RE: **INSPECCION en 125 ANYWHERE STREET**

Estimado Sr. Pérez;

Gracias por permitir al Departamento de Desarrollo Comunitario el inspeccionar su residencia el día 15 de marzo de 2005 en relación al caso de ocupación excesiva. No encontramos ninguna evidencia de ocupación excesiva. Sin embargo, tome nota que actualmente se encuentra en violación al Código Uniforme de Construcción de Virginia. A continuación encontrara el detalle de las violaciones:

1. **Construcción sin el debido permiso. USBC 111.1**
2. **Construcción encubierta y uso de espacio sin las inspecciones exigidos. USBC 115.4 & 119.1**
3. **Cada nivel y cada dormitorio nuevo requiere un detector de incendios. IPMC 704.1 & R-317.1**
4. **Construcción de un dormitorio sin la ventana de salida de emergencia
....Apertura mínima de 5 pies cuadrados; dimensión mínima de altura de la apertura de 22 pulgadas, y dimensión mínima de apertura de ancho de 20 pulgadas. R-310.1**

Para evitar futuras acciones legales por parte de la Alcaldía de Herndon, por favor corrija las violaciones arriba mencionadas. Es necesario que apliqar para un permiso a no más tardar del 25 de marzo de 2005, obtener el permiso a no más tardar del 8 de abril de 2005 y obtener la aprobación de las inspecciones necesarias a no más tardar del 22 de abril de 2005.

De acuerdo a la sección 106 del Código Uniforme de Construcción de Virginia, usted tiene derecho a apelar la decisión del Oficial de Construcción. Las apelaciones deben ser presentadas por escrito y dentro de un período de 90 días.

Por favor comuníquese con el Oficial de Construcción al (703) 435-6850 para recibir mas información en como solicitar el permiso de construcción y como programar una re-inspección.

Atentamente,

Vincent P. Diem
Senior Community Inspector

EOE FM 710S

March 16, 2005

CASE FILE #05-1234
RE: TAX ID# XXXX XX XXXX

JUAN PEREZ
125 ANYWHERE STREET
HERNDON, VIRGINIA 20170

CERTIFIED MAIL
#0000 1111 2222 3333 4444

VIOLATION NOTICE

PURSUANT TO THE ZONING ORDINANCE OF THE HERNDON TOWN CODE (2000) OF THE TOWN OF HERNDON, VIRGINIA

The Community Inspector, and Deputy Zoning Administrator, alleges and finds that:

The structure and premises located at an address commonly known as 125 Anywhere Street, in the Town of Herndon, Fairfax County, Virginia, (residence) is being used and occupied in a manner which is not permitted within the Zoning Ordinance, based on the following circumstances and conditions:

The residence was designed, constructed and approved for use as a SINGLE-FAMILY DWELLING, within the Residential (R-10) zoning district, intended and required to be occupied by a FAMILY.

On January 5, 2005, a complaint was received by the Town of Herndon, alleging that several adult males were reportedly residing in the residence. Several vehicles were also reported as being associated with the residence.

On January 8, 2005, an early morning observation conducted by Senior Community Inspector Vincent P. Diem between the hours of 5:30a.m. and 8:30a.m., revealed seven adult males departing from the dwelling. The Town's evidence indicates that occupants of the residence continually and frequently change.

A meeting was scheduled with you, Juan PEREZ, as the identified property owner on March 15, 2005 at your residence. At 2:15p.m. on March 15, 2005, we knocked on the front door of the residence located at 125 Anywhere Street, which you responded by opening the door. Before entering, Town staff identified themselves by displaying their official identification and then requested your consent to enter the dwelling. You granted permission to enter. You orally agreed to an interior home inspection, after having been advised of your right to decline the inspection. Representatives of the Town staff who visited your residence, included Sr. Community Inspector Vincent P. Diem, Building Official John Orrison, and Community Inspector Assistant Maria Ramos, who was acting as translator.

The meeting provided an opportunity to review the applicable ordinances and codes within the Town of Herndon regarding occupancy. In reviewing the reported square footage of the dwelling with real estate documents, it was determined that the total amount of livable square footage equaled 2,098 square feet. If the residence were to be occupied solely by members of the same family, the current ordinance would provide for no more than six related adults and any number of children, not to exceed what is otherwise limited within the Virginia Uniform Statewide Building Code for bedroom occupancy limits.

During the meeting, you had initially indicated that the residence was occupied only by members of your family consisting of you, your wife, two nephews, two cousins, and two unrelated renters. You had also indicated that you had constructed interior alterations in the lower level of the dwelling unit, without having first obtained a building permit as required by the Virginia Uniform Statewide Building Code.

An interior inspection of the residence identified several alleged violations of the Virginia Uniform Statewide Building Code, as noted by the Building Official. Included within those violations were the construction of interior walls without necessary building permits, the use of uninhabitable rooms for sleeping purposes, lack of smoke detectors, lack of means of egress, and electrical wiring problems. Those concerns will be referenced within the official correspondence from the Building Official's office and will require your immediate attention to resolve the situations, which present serious safety issues.

The inspection also revealed several adult males within the dwelling, all of whom were not reportedly related to you, and were in addition to those initially reported during our discussion. In fact, it was determined during the inspection that you and your wife do not reside at this address as had been stated by you. You also did not know the names of all of the occupants, some of whom had been at the residence only a short time. According to you, only one occupant had entered into a verbal lease agreement with you and all of the occupants are paying you rent, in the form of money. The individuals found to be residing at the dwelling and reportedly renting rooms, as stated by you, are as follows:

NAMES OF OCCUPANTS

By permitting this number of unrelated individuals to reside together in a single-family dwelling, the owner, lessee, or other responsible person has created the following non-permitted uses and occupancies of the residence which constitute zoning violations:

- 1. Establishing a non-permitted “*Transient Lodging Business*”**
Transient lodging business means a use conducted without a zoning inspection permit in a residential zoning district, by which transient lodging is provided to individuals for money or other thing of value.
(§78-2. Definition of “family” and “transient lodging business”; §78-3. Prohibited Uses; §78-1355(a). Occupancy of Dwelling Units; and §78-1356. Dwelling Unit Occupancy Limitations, Zoning Ordinance, Herndon Town Code)

2. Exceeding “Single-Family Dwelling” Occupancy Limitations and Occupancy of a Dwelling Unit by other than a Family

Dwelling, single-family means a building designed for or occupied exclusively by one family or having a use permit to contain an accessory dwelling unit.

Dwelling Unit means a single unit providing complete, independent living facilities for one or more persons, including provisions for living, sleeping, eating, sanitation, and (unless Town Council otherwise acts by conditional use permit) one kitchen.

Family means one or more persons occupying a single housekeeping unit and using common cooking facilities, provided that unless all members are related by blood or marriage, no such family shall contain over four persons.

(§78-2. Definition of “single-family dwelling”, “dwelling unit”, and “family”; §78-3. Prohibited Uses; §78-1355(a). Occupancy of Dwelling Units; and §78-1356. Dwelling Unit Occupancy Limitations, Zoning Ordinance, Herndon Town Code)

ON BEHALF OF THE TOWN OF HERNDON, AND AS THE DEPUTY ZONING ADMINISTRATOR, YOU ARE RESPECTFULLY ORDERED TO IMMEDIATELY CEASE THESE VIOLATIONS OF THE HERNDON ZONING ORDINANCE. AFTER 30 DAYS, YOU SHALL NOTIFY THE DEPARTMENT OF COMMUNITY DEVELOPMENT TO PROVIDE AN UPDATE TO THIS SITUATION AND TO SCHEDULE A RE-INSPECTION OF YOUR RESIDENCE. FAILURE TO DO SO WILL RESULT IN FURTHER LEGAL ACTIONS OR OTHER ENFORCEMENT STEPS.

In accordance with Section 15.2-2311 of the Code of Virginia (1950), as amended, you have the right to appeal this decision to the Board of Zoning Appeals within 30 days after your receipt of this letter. Otherwise the decisions set forth in this letter shall be final and unappealable if not appealed within the thirty-day period.

TOWN OF HERNDON, VIRGINIA

BY: _____

Vincent P. Diem
Community Inspector and Deputy Zoning Administrator

For further information regarding this notice, please call Vincent P. Diem at (703)435-6800 X 2012.

Si prefiere comunicarse en español, puede llamar a Maria Ramos (asistente del inspector de la comunidad) al (703)707-2672.

Cc: Henry G. Bibber, Director of Community Development
Elizabeth M. Gilleran, Zoning Administrator
John Orrison, Building Official
Tenants – 125 Anywhere Street, Herndon, Virginia 20170

EOE FM 620

9 de marzo de 2005

NUMERO DE CASO # 05-1234
TAX ID# XXXX -XX XXXX

JUAN PEREZ
125 ANYWHERE STREET
HERNDON, VA 20170

CORRESPONDENCIA CERTIFICADA
#0000 1111 2222 3333 4444

NOTIFICACION DE VIOLACION

DE ACUERDO CON LA ORDENANZA DE ZONIFICACION DEL CODIGO DE LA ALCALDIA MUNICIPAL DE HERNDON (2000), DE LA ALCALDIA MUNICIPAL DE HERNDON, VIRGINIA

El Inspector Comunitario y Sub.-administrador de Zonificación alega y descubre que:

La estructura y recinto situados en un domicilio comúnmente conocido cómo 125 Anywhere Calle, en la Ciudad de Herndon, Condado de Fairfax, Virginia (residencia) está siendo usada y ocupada de manera no permitida dentro de la Ordenanza de Zonificación, basado en las siguientes circunstancias y condiciones:

La residencia fue diseñada, construida y aprobada para ser usada como una VIVIENDA DE FAMILIA UNICA, dentro del distrito Residencial de Zonificación (R10), planeado y requerido para ser ocupado por UNA FAMILIA.

El 05 de enero de 2005 una queja fue recibida en la Alcaldía Municipal de Herndon, alegando que varios hombres adultos según se informa residen en la residencia. Numerosos vehículos fueron también reportados como asociados con esta residencia.

El 08 de enero de 2005, Temprano por la mañana una inspección realizada por el Inspector Senior Vicent P. Diem, entre las 5:30 am. y las 8:30a.m, reveló que 7 hombres adultos partieron de la vivienda. La evidencia de la Alcaldía indica que los ocupantes de la residencia continuamente y frecuentemente cambian.

Una reunión fue establecida con usted, Juan PEREZ, identificado cómo el dueño de la propiedad, el 15 de marzo de 2005 en su residencia. A las 2:15pm del 15 de marzo de 2005 nosotros golpeamos en su puerta del frente de su residencia situada en 125 Anywhere calle, la cual usted respondió abriendo la puerta. Antes de entrar, personal de la Alcaldía se identificó mostrando las identificaciones oficiales y luego requirieron de su consentimiento para acceder a la vivienda. Usted otorgó el permiso para entrar. Usted oralmente aceptó una inspección interior de la casa, después de haber sido puesto en conocimiento de su derecho de rehusar la inspección.

Representantes del personal de la Alcaldía quienes visitaron su residencia, incluido el Inspector Senior de la Comunidad Vincent P. Diem, el Oficial de Construcción John Orrison, y la Asistente de Inspector de la Comunidad, Maria Ramos, quien estaba actuando como traductora.

La reunión nos dio la oportunidad revisar las ordenanzas y códigos aplicables dentro de la Alcaldía de Herndon acerca de ocupación. Al revisar los pies cuadrados reportados de la vivienda con documentos reales del estado, fue determinado que el total de pies cuadrados habitable equivale 2,098 pies cuadrados. Si la residencia fuera únicamente ocupada por miembros de una misma familia, la actual ordenanza permitiría no más de 6 adultos relacionados y cualquier número de niños sin exceder los límites establecidos en el Código Uniforme de la Construcción del Estado de Virginia, para la ocupación de dormitorios.

Durante la reunión, inicialmente usted había indicado que la residencia estaba ocupada solamente por miembros de su familia consistiendo en usted, su esposa, dos sobrinos, dos primos, uno y/o dos inquilinos no relacionados. Usted también había indicado que había construido o producido alteraciones en el primer nivel de la unidad de vivienda sin antes obtener permiso aprobado de construcción, cómo es requerido en el Código Uniforme de Construcción del Estado de Virginia.

Una inspección interior de la residencia identificó múltiples violaciones al Código Uniforme de la Construcción, cómo fue observado por el Oficial de Construcción. Incluidas dentro de esas violaciones está la construcción interior de paredes sin los necesarios permisos de construcción, el uso de cuartos inhabitables para propósitos de dormir, falta de detectores de humo, falta de salidas de egreso o emergencia, y problemas con el cableado eléctrico. Estas preocupaciones serán especificadas dentro de la correspondencia oficial del la Oficina del Oficial de Construcción y requerirá de su inmediata atención para resolver las situaciones, las cuales presentan serios problemas de seguridad.

La inspección también reveló múltiples hombres adultos dentro de la vivienda, quienes no fueron reportados inicialmente, como relacionados con Ud., y que fueron sumados a aquellos inicialmente reportados durante nuestra conversación. De hecho, fue determinado durante la inspección que usted y su esposa no residen en este domicilio como ha sido establecido por Ud. Usted también no sabía los nombres de todos los ocupantes, algunos de los cuales han estado en la residencia solamente por un tiempo. De acuerdo con usted, solamente un ocupante ha entrado en un arreglo de renta verbal con usted y todos los ocupantes están pagándole una renta, en dinero. Los individuos encontrados residiendo en la vivienda y reportados como rentando cuartos, según lo establecido por usted, son los siguientes:

(NOMBRES DE LOS OCUPANTES)

Permitiendo este número de individuos sin parentesco que residan juntos en una vivienda unifamiliar, y rentando cuartos, el propietario, inquilino u otra persona responsable, ha creado los siguientes usos no permitidos de ocupación y residencia los cuales constituyen violaciones:

1. **Estableciendo un “Negocio de Albergue y/o albergue y comidas” No Permitido.**
Negocio de albergue significa un uso conducido sin el permiso de de Inspección de Zonificación en un distrito residencial de zona, por el cual albergue es provisto para individuos por dinero o otra cosa de valor.
(§78-2 *Definición de familia y de negocio de albergue de personas, transitorio*, §78-3. *Usos Prohibidos*, §78-1355(a). *Ocupación de unidades de vivienda*, y §78-1356. *Limitaciones a la ocupación residencial, Ordenanza de Zonificación, Del Código de la Alcaldía Municipal de Herndon*)

2. Exceso a la “Vivienda para una familia” Limitaciones a la Ocupación y Ocupación de vivienda por otros que no son familia.

Vivienda para una familia significa una construcción designada para u ocupada exclusivamente por una familia o teniendo un permiso de uso para contener una unidad de vivienda accesoria.

Unidad de vivienda significa una unidad que provee completas, independientes, facilidades de vida para una o mas personas, incluyendo provisiones para vivir, dormir, comer, sanidad y (a menos que el Alcalde haya otorgado un permiso condicional) una sola cocina.

Familia significa una o mas personas ocupando una sola casa y unidad y utilizando facilidades comunes de cocina, provistas a menos que todos los miembros estén relacionados por sangre o matrimonio, ninguna familia podrá contener más de cuatro personas.

(§78-2 Definición de familia y de negocio de albergue de personas, transitorio, §78-3. Usos Prohibidos, §78-1355(a). Ocupación de unidades de vivienda, y §78-1356. Limitaciones a la ocupación residencial, Ordenanza de Zonificación, Del Código de la Alcaldía Municipal de Herndon)

EN EL NOMBRE DE LA ALCALDIA MUNICIPAL DE HERNDON, Y COMO SUB ADMINISTRADOR DE ZONIFICACION, YO LE ORDENO RESPETUOSAMENTE EL CESE INMEDIATO DE ESTAS VIOLACIONES A LA ORDENANZA DE ZONIFICACION DE LA ALCALDIA MUNICIPAL DE HERNDON. DESPUES DE LOS 30 DIAS USTED DEBE NOTIFICAR AL DEPARTAMENTO DE DESARROLLO DE LA COMUNIDAD LAS ACCIONES REALIZADAS QUE ACTUALICEN Y/O MODIFIQUEN ESTA SITUACION Y SOLICITAR UNA RE INSPECCION DE SU RESIDENCIA. FALLAR EN HACER ESTO PODRA RESULTAR EN FUTURAS ACCIONES LEGALES U OTROS PASOS PARA HACERLO CUMPLIR.

De acuerdo con la Sección 15.2-2311 del Código de Virginia (1950), y sus enmiendas, usted tiene el derecho de apelar esta decisión con el Comité de Zonificación. Apele dentro de los 30 días posteriores al recibo de esta carta. De otra manera las decisiones establecidas en esta serán finales e inapelables si no apela dentro del periodo de 30 días.

TOWN OF HERNDON, VIRGINIA

Vincent P. Diem
Inspector de la Comunidad y sub. Administrador de Zonificación

Para más información referente a esta notificación, por favor llamar a Vincent P. Diem al (703) 435-6800 X 2012.

Si prefiere comunicarse en Español, puede llamara a Maria Ramos o Susana Schmiedel al (703) 707-2672

Cc: Henry G. Bibber, Director de Desarrollo de la Comunidad
Elizabeth M. Gilleran, Administrador de Zonificación
John Orrison, Oficial de Construcción
Rentistas o inquilinos – 125 Anywhere Calle, Herndon, Virginia, 20170

EOE FM 620S

**EXCESSIVE OCCUPANCY
ENFORCEMENT**

**APPENDIX C
ADMINISTRATIVE
INSPECTION
WARRANTS**

**POLICY & PROCEDURE
MANUAL**

DEPARTMENT OF COMMUNITY DEVELOPMENT
TOWN OF HERNDON

POLICIES AND PROCEDURES FOR OBTAINING AND SERVING ADMINISTRATIVE INSPECTION WARRANTS

§C.1. AUTHORIZATION

The Code of Virginia and the Herndon Town Code provide the necessary authority for resolving violations of the Zoning Ordinance and enforcing the provisions of the Building Code.

- A. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to §15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under §15.2-2307.
- B. The local governing body may also inspect and enforce the provisions of the Building Code for existing buildings and structures, whether occupied or not. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.
- C. If the local building department receives a complaint that a violation of the Building Code exists that is an immediate and imminent threat to the health or safety of the owner or tenant of a residential dwelling unit or a nearby residential dwelling unit, and the owner or tenant of the residential dwelling unit that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject dwelling, the local building official or his agent may present sworn testimony to a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local building official or his agent an inspection warrant to enable the building official or his agent to enter the subject dwelling for the purpose of determining whether violations of the Building Code exist. The local building official or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.

The property owner has the right to demand that the zoning administrator or building official first obtain a search warrant.

§C.2. ADMINISTRATIVE SEARCHES

The U.S. Supreme Court, in *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523, 87 S.Ct. 1727 (1967) and *See v. City of Seattle*, 387 U.S. 541, 87 S.Ct. 1737 (1967) determined “Administrative” searches conducted to enforce public safety ordinances in non-emergency situations constitute searches within the ambit of the Fourth Amendment that must be conducted under the authority of a search warrant absent consent. The warrants, the court determined, can be issued upon a showing that there is a reasonable basis (as distinguished from probable cause) to believe the premises may not be in conformity with the municipality’s public safety ordinances. The Court also determined that “‘probable cause’ to issue a warrant to inspect must exist if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling.”

- A. Probable Cause. *Mosher Steel v. Tieg*, 229 Va. 95 (1985) recognized that probable cause for administrative search warrants may be of two distinct types. First, affidavits may establish the likelihood of specific violations. In such situations, the standards for evaluating probable cause are identical to the standards for criminal search warrants. Second, in the absence of specific violations, affidavits may establish that the administrative inspection is based on more general but still reasonable legislative or administrative standards.
- B. Application. All complaints for administrative inspection warrants shall be submitted to the Office of the Town Attorney for review and approval prior to application before the court. When seeking an administrative inspection warrant, the Community Inspector shall sufficiently allege factual circumstances demonstrating there is a reasonable basis to believe the subject property is not in conformity with the Town’s ordinances and codes. The Community Inspector’s statements should be sufficient to permit the court to determine necessity for the warrant and the appropriate scope of the search. The complaint shall identify with particularity the areas sought to be inspected and the items sought to be seized, including items sought to be photographed or videotaped. Notwithstanding the matters set forth in the complaint for administrative inspection, no inspection pursuant to warrant shall exceed the scope of the Court’s order authorizing the inspection.
- C. Execution of Warrant. No complaint for administrative inspection warrant shall seek execution of the warrant outside the hours of 6:00 A.M. through 9:00 P.M., Monday through Friday; and 8:00 A.M. through 3:00 P.M. on Saturdays, unless: (a) the Department has attempted within 30 days prior to the application for warrant to schedule an inspection of the residence during such hours or has been denied access and, either (b) there is reasonable grounds to believe that evidence of the suspected violation will be absent during normal business hours; or (c) there is reasonable grounds to believe that execution of an Administrative Warrant outside of normal business hours will prevent an imminent threat to the health, safety or welfare of the residents of a dwelling unit or the public. Notwithstanding the matters set forth in the complaint for administrative inspection, no warrant shall be executed

outside of normal business hours unless specifically set forth in the Court's order authorizing the inspection.

- D. Supervision and Scope of Search. A Department of Community Development supervisor shall accompany every Community Inspector serving an administrative inspection warrant. Cabinetry and furniture should not be searched absent probable cause for believing a code violation may be present in the area; mere suspicion is insufficient justification for such a search. Closets may be visually inspected solely to determine whether the close is being used as a sleeping area and if provided in the Complaint for Administrative Inspection Warrant and in the Warrant itself. The Community Inspector may visually inspect the interior of closet spaces but not any clothing, boxes, furniture or containers in such closet.

Assistance from Police Department. Police officers may accompany the Community Inspectors during the execution of an administrative inspection warrant for the sole purpose of serving the warrant, facilitating entry and providing security to that Community Inspector. The police officer shall not assist in any search or interrogation of the property owner or occupants but may ascertain the identity of the occupants and assist in Spanish language translation. The following procedures shall be followed when requesting police department assistance for serving administrative inspection warrants:

- A. When a Community Inspector determines that assistance is required to serve an administrative inspection warrant, the Community Inspector shall contact the Senior Community Inspector to discuss the circumstances necessitating police department assistance.
- B. The Senior Community Inspector shall make a determination regarding the Community Inspector's request for police department assistance based on the totality of the facts presented by the Community Inspector. While requests for police assistance may be granted under other circumstances, request for police assistance SHALL be granted when a warrant will be executed outside the hours of 6:00 A.M. through 9:00 P.M., Monday through Friday, and 8:00 A.M. through 3:00 P.M. Saturdays and when the Community Inspector has a reasonable belief that one or more occupants has been involved in gang activity, the dwelling has been used for gang activity or when the Town has had prior experience with a dwelling whose occupants have been aggressive or threatening toward Town staff.
- C. Should the Senior Community Inspector determine police department assistance is justified, he/she shall contact the appropriate personnel within the police department to arrange for police assistance during the service of the administrative inspection warrant.

§C.3. VIRGINIA GENERAL DISTRICT COURT FORMS (DC-390 and DC-391)

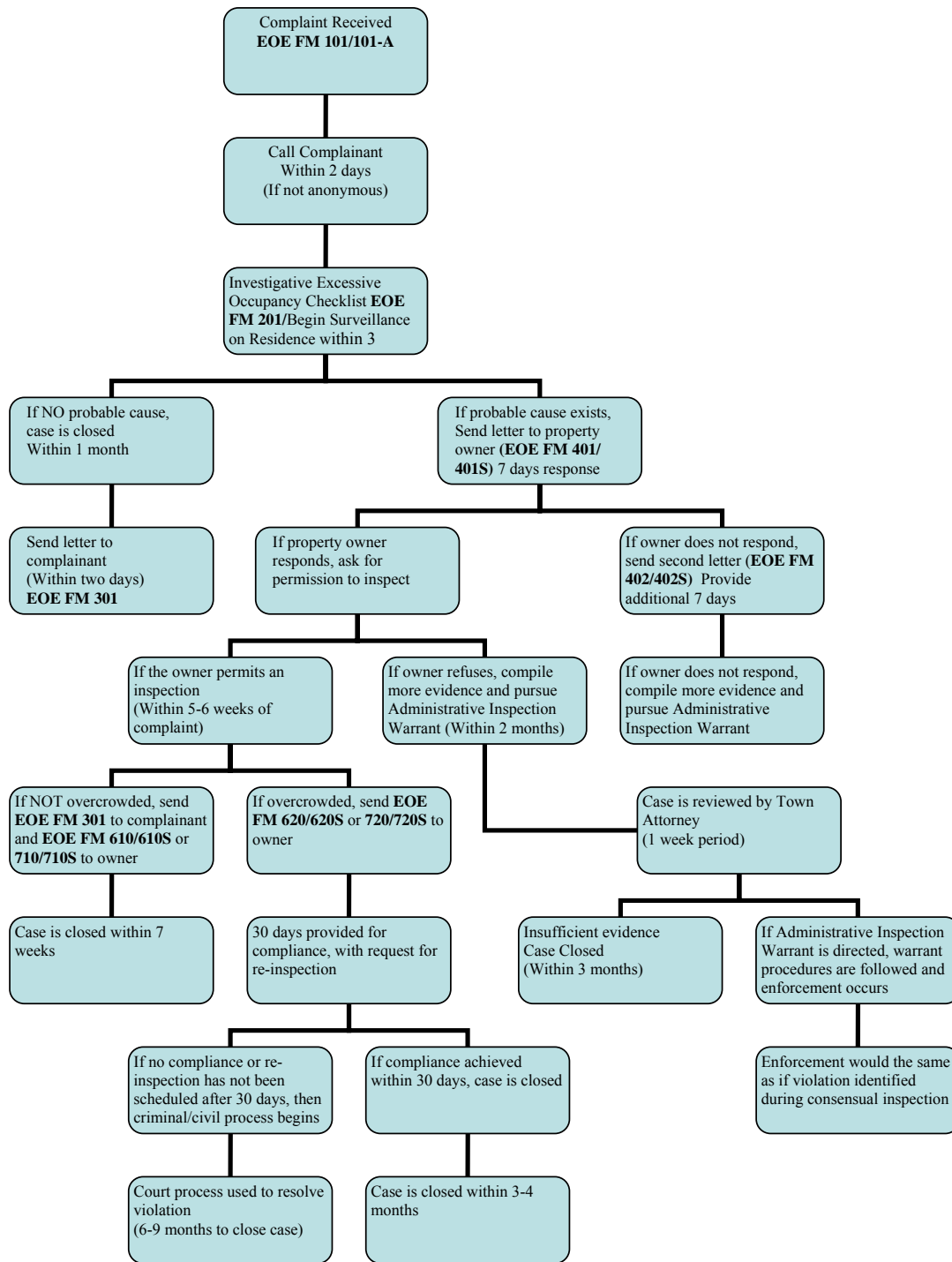
Attached, with instructions.

**EXCESSIVE OCCUPANCY
ENFORCEMENT**

**APPENDIX D
PROCEDURAL CHART**

**POLICY & PROCEDURE
MANUAL**

DEPARTMENT OF COMMUNITY DEVELOPMENT
TOWN OF HERNDON



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