

1 **Ordinance To Amend And Re-Enact Chapter 3 Of The Zoning Ordinance Of The City Of**
2 **Hampton, Virginia Entitled “Uses Permitted” By Amending Section 3-2 To Add The New**
3 **Zoning District Titled PH-1 (Phoebus Business District) To The Use Table and Section 3-3**
4 **Pertaining To Additional Standards On Permitted Uses.**

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6 **Whereas**, the public necessity, convenience, general welfare and good zoning practice so
7 require;

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9 **BE IT ORDAINED** by the Council of the City of Hampton, Virginia that chapter 3 of the Zoning
10 Ordinance of the City of Hampton, Virginia, be amended and re-enacted as follows:

11
12 **CHAPTER 3 – USES PERMITTED**

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16 **Sec. 3-2. Table of uses permitted.**

17 [See attached use table for changes.]

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21 **Sec. 3-3. Additional standards on uses.**

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23 The following uses have additional standards:

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25 ...

- 26 (11) **Day care 3** in the R-R, R-LL, R-43, R-33, R-22, R-15, R-13, R-11, R-9, R-8, R-4,
27 MD-1, MD-2, MD-3, MD-4, R-M, C-1, C-2, C-3, HRC-2, **PH-1**, DT-1, DT-2, and
28 DT-3 districts, or;

29 **Day care 3, accessory** in the M-1, M-2, M-3, HRC-1, and HRC-3 districts.

30 The evaluation of a request for use permit for a day care 3 or day care 3,
31 accessory use shall include the traffic impact of the proposed use on the
32 surrounding road network. Further provided that the use permit for a day care 3
33 shall automatically expire and become null and void if the property is not used for
34 the permitted purpose for a continuous six-month period.

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37 (15) **Rummage sale, temporary** in the C-1, C-2, C-3, M-2, RT-1, **PH-1**, DT-1, and
38 DT-2 districts.

39 Permitted only for a corporation, trust, religious organization, association,
40 community chest, fund, or foundation organized and operated for religious,
41 charitable, scientific, literary, community, or educational purpose.

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45 (21) **Coin-operated amusement devices, accessory** in the C-1, C-2, C-3, **PH-1**,
46 RT-1, DT-1, and DT-2 districts.

47 No more than six (6) coin-operated amusement machines shall be allowed as an
48 accessory use at any business establishment.

- 49 (22) **Live entertainment 1, in conjunction with a restaurant use** in the C-1, C-2, C-
50 3, RT-1, BB-3, BB-4, BB-5, **PH-1**, DT-1, and DT-2 districts. or;

51 **Live entertainment 1, in conjunction with a micro-brewery/distillery/winery**
52 **use** in the M-1, M-2, M-3, HRC-1, HRC-2, **PH-1**, DT-1, and DT-2 districts.

53 Live entertainment 1 venues are defined as venues where capacity is limited to
54 no more than 50 people and subject to a live entertainment permit granted by the
55 zoning administrator with the following attached conditions:

- 56 (a) Live entertainment shall be conducted inside the building only;
57 (b) Performance space shall be no greater than 10% of the gross floor area.
58 The applicant shall submit a floor plan indicating the location of the
59 proposed performance space;
60 (c) The hours of operation for live entertainment shall be specified on the live
61 entertainment permit application and shall not extend past 10:00 p.m.
62 Sunday through Thursday and 11:59 p.m. Friday and Saturday;
63 (d) Any sound or noise from amplified music shall not exceed a noise level
64 measurement of 60 dBA upon the real property of another as determined
65 by a sound level meter using the "A" weighting scale in accordance with
66 the American National Standard Institute;
67 (e) Each ingress/egress point in the building shall be monitored by an
68 attendant during the hours of operation, and additional attendants may be
69 required to monitor vehicle parking areas that serve the building and
70 maintain and control patron behavior upon exit of the building into the
71 parking areas;
72 (f) The live entertainment permit shall be valid for 18 months from the date of
73 approval by the zoning administrator. After 12 months of operation, prior
74 to the expiration date, the live entertainment permit will be scheduled for
75 review by the zoning administrator to consider if the continuation of the
76 live entertainment permit would not be detrimental to the public health,
77 safety and welfare and that to continue the activities under the live
78 entertainment permit would not cause public inconvenience, annoyance,
79 disturbance or have an undue impact on the community or be
80 incompatible with other uses of land in the zoning district. The review will
81 be based, in part, upon a physical site review, traffic flow and control,
82 access to and circulation within the property, off-street parking and
83 loading, hours and manner of operation, noise, light, neighborhood
84 complaints, police service calls, and any violations of any federal, state or
85 local law. If, after review, the zoning administrator determines that the live
86 entertainment permit would not be detrimental to the public health, safety
87 and welfare and that to continue the activities under the live entertainment

88 permit would not cause public inconvenience, annoyance, disturbance or
89 have an undue impact on the community or be incompatible with other
90 uses of land in the zoning district, the zoning administrator may
91 administratively extend the live entertainment permit in five (5) year
92 increments. Each such extension shall be subject to the same
93 administrative review. If the zoning administrator determines that that the
94 live entertainment permit would be detrimental to the public health, safety
95 and welfare and that to continue the activities under the live entertainment
96 permit would cause public inconvenience, annoyance, disturbance or
97 have an undue impact on the community or be incompatible with other
98 uses of land the zoning district, the zoning administrator will notify the
99 permittee of a denial of the extension in writing in the same manner as
100 required under chapter 1 of the zoning ordinance. A permittee aggrieved
101 by the decision of the zoning administrator may appeal the decision of the
102 zoning administrator to the board of zoning appeals in the manner set
103 forth in chapter 13 of the zoning ordinance. Nothing contained herein
104 shall limit the rights of a permittee to seek a new live entertainment
105 permit; and

- 106 (g) The zoning administrator, or appointed designee, shall have the ability to
107 revoke the live entertainment permit upon violations of any of the above
108 conditions.

109 (23) **Live entertainment 2, in conjunction with a restaurant use** in the C-1, C-2, C-
110 3, RT-1, BB-3, BB-4, BB-5, *PH-1*, DT-1, and DT-2 districts. or;

111 **Live entertainment 2, in conjunction with a micro-brewery/distillery/winery**
112 **use** in the M-1, M-2, M-3, HRC-1, HRC-2, *PH-1*, DT-1, and DT-2 districts.

113 Live entertainment 2 venues are defined as venues with a capacity greater than
114 50 people and subject to obtaining a use permit by city council. The city will
115 evaluate each application on a site-by-site basis with regard to the surrounding
116 land use patterns and city council may impose more restrictive conditions when
117 the proposal is adjacent to residential land uses. Conditions shall include, but are
118 not limited to, the following:

- 119 (a) Submission of a site plan indicating the location and total area of the live
120 entertainment performance space;
121 (b) Hours of operation;
122 (c) Any sound or noise from amplified music;
123 (d) Staffing for ingress/egress points in the building and vehicle parking
124 areas;
125 (e) Term limitation on the use permit, administrative review and extension or
126 denial of use permit.

127 (24) **Religious facility** in the R-R, R-LL, R-43, R-33, R-22, R-15, R-13, R-11, R-9, R-
128 8, R-4, MD-1, MD-2, MD-3, MD-4, R-M, C-1, C-2, C-3, RT-1, BB-1, BB-2, BB-3,
129 BB-4, BB-5, *PH-1*, DT-1, DT-2, and DT-3 districts.

Religious facilities and accessory uses such as convents, Sunday schools, parish houses, and assembly rooms (excluding rescue mission or temporary revival), are permitted provided:

- (a) For the above uses with a capacity within any single assembly area, of no more than five hundred (500) people, no vehicular access shall be permitted from any residential street unless required for emergency vehicular access.
- (b) For the above uses with a capacity within any single assembly area of between five hundred one (501) and one thousand (1,000) people, no vehicular access shall be permitted from any residential or minor collector street unless required for emergency vehicular access.
- (c) For the above uses with a capacity within any single assembly area in excess of one thousand (1,000) people, no vehicular access shall be permitted from any residential, minor collector, or collector street unless required for emergency vehicular access.
- (d) Notwithstanding the provisions of chapter 12, Nonconformities, a religious facility may make additions to its physical plant, without regard to any street access requirements or limitations, provided:
 - (i) Any addition or construction of additional buildings which increases sanctuary seating above the limits which would otherwise be imposed by street access requirements, shall occur only on the property owned in accordance with section 57-12 of the Code of Virginia by the religious facility at the time of adoption of this ordinance;
 - (ii) All additions or construction of additional buildings shall comply with the setback requirements in effect at the time of submission of the site plan for the addition or construction; and
 - (iii) Any addition or construction of additional buildings which increases sanctuary seating shall be accompanied by additional parking spaces for the new seating provided at the ratio required at the time of submission of the site plan for such addition or construction.

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- (30) *Small artisan shop* ~~Manufacturing of arts and crafts~~ in the *PH-1*, C-2 and C-3 districts is required to have a retail sales component as part of any such use. *Additionally in the PH-1 district, total area of such use shall not exceed 5000 square feet.*

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- (33) **Communication antenna, commercial building-mounted** in the R-R, R-LL, R-43, R-33, R-22, R-15, R-13, R-11, R-9, R-8, R-4, MD-1, MD-2, MD-3, MD-4, R-M,

C-1, C-2, C-3, M-1, M-2, M-3, RT-1, BB-3, BB-4, BB-5, HRC-2, HRC-3, *PH-1*, DT-1, DT-2, and DT-3 districts.

The following minimum conditions shall be met:

- (a) The building is not a single-family dwelling;
- (b) The minimum height of the building shall be no less than 35 feet;
- (c) The height of the antenna (including support structures) shall not exceed 22 feet above the highest point of the building;
- (d) The antenna and support structures are painted so that they are compatible with the primary building structure, unless roof mounted; and
- (e) Intermodulation testing is coordinated through the Hampton police division demonstrating that the proposed antenna operation is designed in a manner to eliminate interference with public safety communications. Such testing shall also be required from each subsequent operator prior to any building permits to add or modify antennas. Should any equipment associated with the antennas be found to interfere with public safety communications, the owner shall be responsible for the elimination of such interference.

- (34) **Communication tower, commercial** in the R-R, R-LL, R-43, R-33, R-22, R-15, R-13, R-11, R-9, R-8, R-4, MD-1, MD-2, MD-3, R-M, C-1, C-2, C-3, M-1, M-2, M-3, RT-1, HRC-1, HRC-2, HRC-3, *PH-1*, DT-1, DT-2, DT-3, and PO-1 districts.

The following minimum conditions shall be met:

- (a) Use permit applications for commercial communication towers shall include the following:
 - (i) A site plan drawn to scale specifying the location of tower(s), guy anchors (if any), transmission building(s) and other accessory uses, parking, access, landscaped areas (specifying size, spacing, and plant material proposed) fences, and identify adjacent property owners.
 - (ii) A report from a registered structural or civil engineer indicating tower height and design, structure, installation and total anticipated capacity of the structure (including number and types of antennas which could be accommodated). This data shall demonstrate that the proposed commercial communication tower conforms to all structural requirements of the Uniform Statewide Building Code and shall set out whether the commercial communication tower will meet the structural requirements of EIA-222 E "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures" published by the Electronic Industries Association, effective June 1, 1987 or current update.
 - (iii) A statement from a registered engineer that the NIER (nonionizing electromagnetic radiation) emitted therefrom does not result in a ground level exposure at any point outside such facility which exceeds the lowest applicable exposure standards established by

216 any regulatory agency of the U.S. government or the American
217 National Standards Institute.

218 (iv) Evidence of the lack of space on suitable existing commercial
219 communication towers, buildings, or other structures to locate the
220 proposed antenna and the lack of space on existing commercial
221 communication tower sites to construct a tower for the proposed
222 antenna within the service area shall be considered in the review
223 of use permit applications for a new commercial communication
224 tower.

225 (v) Intermodulation testing is coordinated through the Hampton police
226 division demonstrating that the proposed antenna operation is
227 designed in a manner to eliminate interference with public safety
228 communications. Such testing shall also be required from each
229 subsequent operator prior to any building permits to add or modify
230 antennae. Should any equipment associated with the antennae be
231 found to interfere with public safety communications, the owner
232 shall be responsible for the elimination of such interference.

233 (b) The following locational criteria shall be considered in determining the
234 appropriateness of sites for commercial communication towers:

235 (i) Whether the application represents a request for multiple use of a
236 commercial communication tower or site, or use on a site
237 contiguous to an existing commercial communication tower site.

238 (ii) Whether the application contains a report that other potential
239 users of the site and the commercial communication tower have
240 been contacted, and they have no current plans, to the best of
241 their ability to determine, that could be fulfilled by joint use.

242 (iii) Whether the application shows how the commercial
243 communication tower or site will be designed or laid out to
244 accommodate future multiple users. Specific design features
245 evaluated shall include but not be limited to height, wind loading,
246 and coaxial cable capacity.

247 (iv) Whether the proposed commercial communication tower is to be
248 located in an area where it would be unobtrusive and would not
249 substantially detract from aesthetic or neighborhood character,
250 due either to location, to the nature of surrounding uses, (such as
251 industrial uses) or to lack of visibility caused by natural growth or
252 other factors.

253 (c) Accessory facilities may not include offices, vehicle storage, or outdoor
254 storage unless permitted by underlying zoning.

255 (d) Advertising and/or signage on tower structures is prohibited.

256 (e) The minimum setback requirements from the base of the commercial
257 communication tower to any property line abutting a right-of-way of any
258 planned or existing street, and all residential uses shall be at least 50 feet
259 unless a greater setback is specified due to site specific characteristics.

260 For property lines abutting nonresidential uses, the minimum setback
261 requirements shall be at least 25 feet unless a greater setback is
262 specified due to site specific characteristics. The minimum setback for
263 guy towers shall be equal to 40% of tower height.
264 (f) Minimum site size shall be no less than 2,000 square feet.
265 (g) Commercial communication towers 200 feet in height or less shall have a
266 galvanized finish or be painted silver. Regulations of the Federal Aviation
267 Commission or Federal Communications Commission supersede this
268 requirement if contradictory.
269 (h) Commercial communication towers shall be illuminated as required by the
270 Federal Aviation Administration. However, if not required by the Federal
271 Aviation Commission, no lighting shall be incorporated.
272 (i) Landscaping shall be required as set forth in the "City of Hampton
273 Landscape Guidelines" on file with the department of community
274 development, development services center.
275 (j) Additional conditions may be included contingent upon site specific
276 characteristics for commercial communication towers other than those
277 exempt under subsection (k) herein below.
278 (k) Commercial communication towers up to 150 feet in height sited on
279 properties included in the inventory of appropriate sites for
280 communication towers which is adopted by reference as a component of
281 the 2006 community plan, as amended, are exempt from the use permit
282 requirement provided all the above listed provisions, except for
283 subsection (j), are satisfied and proposals to site said improvements are
284 first reviewed by the planning commission, with its recommendation
285 forwarded to the appropriate board or commission for further
286 consideration. Failure on the part of the planning commission to act on
287 such proposals within 90 days of submission of a complete application
288 shall be deemed to be an approval, unless the applicant agrees to an
289 extension of time.

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293 (36) **Promotional event** in the C-1, C-2, C-3, M-2, RT-1, *PH-1*, DT-1, and DT-2
294 districts.
295 The following minimum conditions shall be met:
296 (a) That an operating permit be secured from the zoning administrator at a
297 cost of \$50.00 for each permit issued.
298 (b) That the event conform and comply with the guidelines following:
299 (i) All rides shall be inspected and approved by the city building
300 official for safety and soundness.
301 (ii) All rides shall be surrounded with a restraining barrier to limit
302 access to the rides.

303 (iii) All electrical wiring shall, to the greatest extent possible, be placed
304 in areas generally not open to the public or protected from public
305 contact.

306 (iv) All facilities for the preparation or dispensing of food shall be
307 approved by the city health official.

308 (v) The sponsors or operators of the event shall provide security
309 forces adequate to maintain order at the site.

310 (vi) The event, if held in a parking area, shall not occupy more than
311 10% of the total parking area.

312 (vii) The sponsor or operator of the event shall provide proof of liability
313 insurance in an amount predetermined by council.

314 (viii) The hours of operation shall be established at the time of
315 application. However, no such event shall extend beyond the
316 normal operating hour of the establishment being promoted.

317 (ix) The provisions of these regulations in no way exempts any such
318 event from complying with all other state and local codes and
319 ordinances.

320 (x) All animals in any event shall be inoculated as required and
321 approved by the city health official.

322 (xi) Enclosures, buildings, shelters, and/or related equipment that may
323 present a fire hazard shall be inspected and approved for use by
324 the fire marshal.

325 (c) That any such event shall be limited to not more than 30 consecutive
326 calendar days.

327 (d) That the zoning administrator shall not issue any operating permit if the
328 proposed event would violate any provisions of the zoning ordinance or
329 any other city codes or ordinances.

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333 (44) **Laboratory or research office** in the M-1, LFA-2 LFA-3, LFA-4, LFA-6, *PH-1*,
334 HRC-1, HRC-2, and HRC-3 districts shall not permit the testing of explosives.

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338 (47) **Micro-brewery/distillery/winery** in the *PH-1*, DT-1 and DT-2 districts shall
339 | include a retail component which is open to the general public.

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341 (48) *Outdoor dining, Phoebus in the PH-1 district shall be subject to a zoning*
342 *administrator permit and the hours of operation shall not extend beyond the*
343 *hours of operation for the principle establishment.*