



## **TOWN COUNCIL**

### **Work Session**

November 3, 2016

Cape Charles Civic Center

6:00 p.m.

1. Call to Order
  - A. Roll Call / Establish quorum
  
2. Order of Business:
  - A. Open Space District Limited Commercial Activity Text Amendment
  - B. Animal Pens and Tethering in the Residential Districts
  
3. Adjourn

  <b>TOWN OF CAPE CHARLES</b>	<b>AGENDA TITLE: Open Space District limited commercial activity text amendment</b>		<b>AGENDA DATE:</b> November 3, 2016
	<b>SUBJECT/PROPOSAL/REQUEST:</b> Proposed text amendments to zoning ordinance allowing limited commercial activity in the Open Space district.		<b>ITEM NUMBER:</b> 2A
	<b>ATTACHMENTS:</b> Staff reports to Planning Commission.		<b>FOR COUNCIL:</b> Action ( ) Information ( X )
	<b>STAFF CONTACT (s):</b> Larry DiRe	<b>REVIEWED BY:</b> Brent Manuel, Town Manager	

**BACKGROUND:**

The Open Space District is comprised of the Town Public Beach and Central Park. No commercial activity is allowed in the Open Space District per the Town Zoning Ordinance. This spring and early summer, several local businesses approach staff inquiring about the possibility of conducting commercial activity on Town property adjacent to the beach. They were told that by Open Space District regulations they could not, and that a text amendment was required to be able to do so. At least two requested that staff bring the issue and the proposed text amendment to the Planning Commission for consideration.

Staff brought forward proposed text amendment to the Planning Commission. The proposed text amendment set specific time and space restrictions to allow for limited types of refreshment\snack and beach-related commercial activity. As the attached staff reports to the Planning Commission show, the time-bound restrictions expanded, but the space-bound restrictions did not. Commercial activity is restricted to a limited area near the picnic tables\kiosk location. As the discussion of the commercial operations developed, the Commission requested information on the operations of the Cape Charles Farmers’ Market to see if that operation is analogous to what is likely to happen at the Town Public Beach. A copy of the Farmers’ Market policies and procedures is attached with the September 6<sup>th</sup> staff report. The Farmers’ Market provides one model. A number of administrative matters need to be further developed should the text amendment happen. At the October 4<sup>th</sup> Planning Commission meeting, the Commissioners requested that staff bring the proposed text amendment to a Town Council work session to obtain feedback about whether this is a matter that should be pursued.

**ITEM SPECIFICS:**

Proposed text amendment reads as follows:

***Section 3.15.B***

*The Town recognizes the seasonal nature of this District. Certain limited refreshment and beach-related commercial activity is compatible with the permitted uses listed below. Commercial activity shall be restricted to May 1<sup>st</sup> through September 15<sup>th</sup>, between the hours of 9:00 am through sunset. Commercial activity is restricted to the area east (landward) of the toe of the dune to the Boardwalk, south of the pavilion to the fishing pier. Individual vendor sites shall not exceed one-hundred (100) square feet. No commercial activity will be conducted from motor vehicles, and all commercial activity shall exclude the use of external generators and electronic amplification. Signage will not be affixed but may be flags and banners to a maximum of six (6) square feet in area. All vendors are required to abide by the conditions of*

*their business license and failure to do so may result in loss of vending privileges.*

**RECOMMENDATION:**

Following discussion staff recommends the Council direct staff accordingly.

# Planning Commission Staff Report

**From:** Larry DiRe   
**Date:** August 15, 2016  
**Item:** 5c – Proposed draft text amendment to Article III Section 3.15.B limited access commercial activity in the Open Space District

**Attachments:** None

---

## Item Specifics

The Town Zoning Ordinance prohibits any commercial activity in the Open Space District. The Town Public Beach and Central Park are zoned Open Space. Recently several local businesses have approach staff inquiring about commercial activity in that District. They have been informed of the Zoning Ordinance language. Both have inquired about the possibility of future commercial activity, and were told how the text amendment process works. The following draft language addresses limited commercial activity on a portion of the Town Public Beach Open Space District.

### **Section 3.15.B**

*The Town recognizes the seasonal nature of this District. Certain limited refreshment and beach-related commercial activity is compatible with the permitted uses listed below. Commercial activity shall be restricted to May 1<sup>st</sup> through September 15<sup>th</sup>, Thursday through Sunday, and the hours of noon through 6:00 pm. Commercial activity is restricted to the area east (landward) of the toe of the dune to the Boardwalk, south of the pavilion to the fishing pier. No commercial activity will be conducted from motor vehicles and shall exclude the use of external generators and electronic amplification. Signage will not be affixed but may be flags and banners to a maximum of six (6) square feet in area.*

## **Discussion**

The proposed draft text amendment to the above cited section is presented for review and comment. Should the Planning Commission find the language acceptable or revise such language and approve recommendation for amendment to the Town Council, a public hearing will be required.

## **Recommendation**

Following discussion provide direction to staff.

# Planning Commission Staff Report

**From:** Larry DiRe   
**Date:** September 6, 2016  
**Item:** 5b – Proposed draft text amendment to Article III Section 3.15.B limited access commercial activity in the Open Space District

**Attachments:** Farmer's market vendor agreement

---

## Item Specifics

The following Zoning Ordinance section addresses potential limited commercial activity within the Open Space District. The Zoning Ordinance contains language that restricts all commercial activity on the Town beach and in Central Park. A number of vendors have inquired about providing refreshments and beach-related amenities on the Town's property and were told that they could not do so under the current language. The Planning Commission reviewed draft text amendment language at the August 15<sup>th</sup> meeting. The revised draft text is presented below.

In addition, the Commission tasked staff with acquiring information about the current vendor practices used by the Cape Charles Museum for their weekly farmers' market, held on the museum's grounds. Staff learned the following:

- An on-site manager is present for every market day
- The number of vendors of particular categories of goods is limited to ensure diversity at the market
- The on-site manager ensures that each vendor is providing only the type of good for which the vendor received approval
- All vendors hold appropriate insurance
- All vendors are required to participate in a specific number of market days, failure to meet that participation rate results in loss of vendor privilege and space
- All vendors are required to set up and break down during specific time periods before and after the market activities
- There is limited on-site consumption, resulting in limited accumulation and discarding of garbage
- Vendors of consumable goods are more successful than vendors of crafts and collectibles
- There are a number of prohibited activities including smoking, hawking, and promoting political activities
- All vendors sign formal agreement

## Section 3.15.B

*The Town recognizes the seasonal nature of this District. Certain limited refreshment and beach-related commercial activity is compatible with the permitted uses listed below. Commercial activity shall be restricted to May 1<sup>st</sup> through September 15<sup>th</sup>, between the hours of noon through 6:00 pm. Commercial activity is restricted to the area east (landward) of the toe of the dune to the Boardwalk, south of the pavilion to the fishing pier. Individual vendor sites shall not exceed one-hundred (100) square feet. No commercial activity will be conducted from motor vehicles, and all commercial activity shall exclude the use of external generators and electronic amplification. Signage will not be affixed but may be flags and banners to a maximum of six (6) square feet in area. All vendors are required to abide by the conditions of their business license and failure to do so may result in loss of vending privileges.*

**Discussion**

The proposed draft text amendment to the above cited section is presented for review and comment. Should the Planning Commission find the language acceptable or revise such language and approve recommendation for amendment to the Town Council, a public hearing will be required.

**Recommendation**

Following discussion provide direction to staff.

## 2016 POLICIES AND PROCEDURES

**MARKET ELIGIBILITY** – Participation is open to local (see 'Definitions' page) growers, harvesters, watermen, bakers, makers of prepared food, artists and artisans (hereafter, “the vendors”). The Market is a vendor-produced only market. Vendors may be the actual producing individual, an immediate family member, staff or employee of the producing individual’s farm/ facility (which is owned or leased by the vendor).

**MARKET DATES, DAY, HOURS OF OPERATIONS** – The Market will be open, rain or shine, in 2016 on Tuesdays during the following hours: May 3 through May 24, from 4pm to 7pm. May 31 through August 30 from 4pm to 7:30pm. September 6<sup>th</sup> through October 25<sup>th</sup>, from 4pm to 7pm

**LOCATION** – The Market is located on the grounds of the Cape Charles Museum, 814 Randolph Avenue, Cape Charles Virginia 23310

**MARKET MANAGER** – The Market Manager will be present at The Market during operation. The Market Manager will make the assignment of spaces, approve the use of equipment, and design the business operation “mix” of all the selling spaces in order to enhance the total operation of the Market.

### APPLICATION REQUIREMENTS, AGREEMENTS, PERMITS AND FEES –

1. **Property and Facility Visits:** The Market Manager or a Market representative will arrange to visit all of its vendors’ farms, kitchens and workshops during normal business hours, to verify compliance with the vendor-produced only and food safety inspections rules. Failure to permit an onsite inspection may result in a suspension from The Market.
2. **Sales Tax** – All vendors are required to have a Virginia State Sales and Use Tax Certification number. Vendors must collect these taxes at the Market. (Vendors attending 3 or fewer markets may submit sales tax using the ST-50 form available @ <http://www.tax.virginia.gov/taxforms/Business/Sales%20and%20Use%20Tax/ST-50a.pdf>)
3. **Liability Insurance** – The Market strongly recommends vendors to carry premises and product liability insurance specifically endorsed to cover their Cape Charles Farmers’ Market operations with policy limits not less than 500,000.00 dollars, and to provide proof of this insurance with the application. Preference will be given to applicants with this insurance.
4. **Certificates and Permits** – When applicable, vendors must attach copies of state and federal inspection certificates for their products. Vendors whose offerings do not meet the definition of “Farm and Domestic Products” must obtain a business license from the Town of Cape Charles (See 'Definitions' page for clarification). Vendors and Guest Chefs who will be serving food, beverages, or samples at The Market must obtain a Temporary Event Permit from the Northampton County Health Department. (Vendor/Chef is responsible for the permit fee.)
5. **Regulations** - Vendors are responsible for all appropriate labeling, licenses, product inspections, weights, measures and pesticide rules. Accuracy of scales / weights is the responsibility of the vendor. At all times, items sold in the Market must meet requirements of all applicable health and sanitation codes, as well as local, state, and federal agricultural requirements. It is the sole responsibility of the vendor to ensure compliance. Northampton County and the State of Virginia will make inspections of the Market.
6. **Fees** – Fees collected are for promotion and operation of the Market. A \$25.00 application fee will be charged for all new applicants for the 2016 season. This fee is to be paid with the application. The fee will be waived for returning vendors. Vendors will pay a weekly space rental of \$10.00 for a 12’ X 12’ tent space or a 10’ X 18’ truck space. Vendors must make their rental payment to the Market Manager. No subleasing or loaning of space is allowed.
7. **Tokens** - The market is working to become a SNAP-EBT vendor. We intend to either use an exact receipt method or issue \$1.00 wooden tokens for EBT/SNAP eligible purchases and for special promotions. All vendors selling eligible products are required to accept these receipts or tokens and turn them into the manager for reimbursement.

**ATTENDANCE** - - **Full Season Vendors** are guaranteed a space and expected to attend the entire market season. Rent for these spaces may be paid weekly on market day or, if more convenient for the vendor, pre-paid by the month. Full Season Vendors may be absent a total of 3 markets during the season without paying rent if they have notified the market manager **at least 7 days** prior to those absences. Rent will be owed on any additional market days they are absent. If a full season vendor is absent in excess of 3 times, the manager will discuss with the vendor whether assuming an occasional vendor status would be

more appropriate.

- **Occasional Vendors** will be scheduled to participate in individual markets based on space availability and the discretion of the Market Manager. They will apply to be an occasional vendor for specific weeks and, once their requested weeks are approved, they must submit payment in full for those weeks. The occasional vendor stands a greater chance of receiving all of his requested dates by scheduling and pre-paying for them before the start of the season. However, vendors may take their chances on availability and apply by the month. Should any dates need to be cancelled by the vendor, an alternative date will be offered. There are no refunds.
- **In case of inclement or severe weather;** the Market reserves the authority to cancel and/or close a market due to weather conditions. The decision will be made based on weather reports and local understanding of on-site market conditions, and not the Market Manager's personal judgment as a former resident of Minnesota-Wisconsin (grin). Closures will be posted on the Cape Charles Market and Cape Charles Museum FaceBook pages, the Cape Charles Market website, and sent by text or email. The Market Manager will email, text or telephone all scheduled vendors by 6am in the event of a full closure. Should the market be closed, you will not be charged for the day. However, if the market is open and you have reserved a space, you will be charged for the day even if you choose not to show up.
- **In the event of a last minute personal emergency** which will prevent attendance, vendors should notify the Market Manager as soon as possible to alleviate worry and concern on the part of fellow vendors and shoppers.
- **The Holiday Market:** Attendance at the Holiday Market by full season vendors is not assumed. All vendors who wish to attend must reserve and pre-pay their space with the Market Manager.
- **Importance of Reliability:** Vendors who consistently fail to show up for reserved market stalls, will be asked to reconsider whether The Market is for them. We cannot keep open, unused spaces while prospective vendors are waiting for a place. Absences disappoint our customers and are strongly discouraged!!!!

**SET-UP AND OPERATION** - Vendors may begin to set up at 2:30pm on market days beginning at 4pm and at 7:30 AM on market days beginning at 9am, and must be done prior to the opening bell.

**Vendors are required to stay until the Market closes. Early take-down is disruptive and dangerous.**

Vendors are required to stop selling at 7 or 7:30pm (Holiday Market: 1pm). They must leave their spaces clean and remove their display and truck by 8:30pm. (Holiday market: 2pm)

No sales are allowed before the opening time or after the closing time. Orders may be taken prior to market day, but shall not be filled (delivered to the customer) until after the opening time. Contact the Market Manager if you need to be absent, if you are running late or if you need assistance.

**DISPLAYS** - All tents, canopies, pop-ups, umbrellas, signs and display items must be sufficiently and safely secured to the ground and/or **weighted** down from the start of the Market day. Vendors must keep their display of goods within the confines of spaces assigned by the Market Manager. Vendors may not display any food products on the ground.

At no time shall the safety or convenience of customers or vendors be compromised by any vendor's display. Vendors will clearly display prices of all items and post their farm/ facility/ business name and location. Signs must be posted *before* sales begin.

Honest and Accurate labeling and representation is required of all vendors. Vendors must have available on site all licenses and certifications.

**VENDOR CLEAN-UP RESPONSIBILITIES** - Vendors are responsible for disposal of all trash and debris generated by their respective businesses, and must take it away with them. Vendors must provide trash receptacles at their site for trash generated by samples they offer customers. The on-site Cape Charles Museum Market trash and recycling bins are provided only for trash from public traffic at the Market.

**Ice may not be emptied anywhere on the property or in the street.** Use of Styrofoam for product packaging is prohibited at the Market in an effort to minimize environmental impact and help increase environmental awareness.

**PROHIBITED ACTIVITIES** - The consumption of alcoholic beverages is not allowed. Music or other broadcasts from radios, stereos, etc. must be kept within the limits of the assigned space and not disturb adjacent vendors. No Smoking. Hawking (loud, high-pressure promotion of a product) is prohibited. No promotion of political opinions or religious beliefs, Possession of a firearm is prohibited.

**COMPLIANCE** - The Market Manager will enforce all policies and procedures at the Market. Any

vendor found not in compliance will be given a written notice and may be subject to exclusion from further participation in the Market. Vendors selling products that are non-vendor-produced are liable to be permanently removed from the Market.

**GRIEVANCE POLICY** - In the event of customer dissatisfaction with a particular vendor or some aspect of market operations, the dispute must be resolved to the satisfaction of the Customer, Vendor and Market Manager in a timely manner. It is the position of the Market to not confront vendors within the marketplace to discuss violations of our rules and regulations. Conflict does little to provide vendors and shoppers with a welcoming environment. However, if the infraction itself endangers the public, or the vendor is disruptive, then the Market management will address citations on site. Otherwise, the Market management will address concerns after the Market closes.

All violations of the market rules and customer complaints will be reported by the Market Manager to The Cape Charles Historical Society Market Subcommittee, who has final authority in resolving issues. Failure by a vendor to comply with the Market rules or comply with the Market Manager's resolution of a complaint can result in the removal of the vendor from market participation.

**The procedure regarding violations of the Market rules is as follows:** **First violation:** Vendor receives written notification of violation and must cease action cited in violation. **Second violation:** If vendor is found committing the same violation or any other violation, then vendor can stay for that market day but will lose the right to sell the following 2 weeks with no refund of pre-paid fees. **Third violation:** If vendor is found committing the same violation or any other violation then, vendor can stay for that market day but loses the right to sell for the rest of the market season with no refund of pre- paid fees.

**ACCIDENT/ INJURY** - Any accident or injury must be immediately reported to the Market Manager or 911. Anyone who participates in the Market, whether vendor, customer or otherwise, attends at his or her own risk.

Vendors will operate at their own risk and assume liability from the customers.

**PET POLICY** - The Market welcomes patrons with pets as long as they adhere to a few simple rules: All animals must be kept on a short leash (no expandable or retractable leashes). Animals are to be by the owner's side and under control at all times. They must be kept away from produce and other food products. Animals are not allowed in the buildings at any time. Animals must be children and other animal friendly. Animal waste must be cleaned up **immediately** by the owner.

**CHILDREN** - Small children brought to the Market by vendors and shoppers **must** be kept under the direct supervision of a designated adult.

**RESTROOMS** - Two restrooms available on site.

**ADVERTISING** - The Cape Charles Market is committed to the success of the Market and will advertise as effectively as possible within the budget. The Cape Charles Market is responsible for the creation, selection and purchasing of all advertisements for the Market. This includes both paid and non-paid promotion in print and electronic media.

Market vendors may, at their own expense, advertise their products and presence at the Market. However, such advertising must be specific to the market vendor and his/her products, not to The Cape Charles Market at-large.

**DEFINITIONS Artisan** - A skilled person in an applied art.

**Farm or Domestic Products** - Included are products that are grown or produced on farms or in homes or gardens. These products are further defined as follows:

- a. Produce -Vegetables, fruit, grains, eggs, plants, plant cuttings, flowers, seeds, nuts, and herbs.
- b. Prepared Foods -Foods that are processed in some way by the vendor and are approved by the Health Department. These items include, but are not limited to, cured meats, baked goods, preserves, pickles, juices, home canned products, and cheeses.
- c. Handicrafts -Handcrafted products that are made in the home. The product may be made from manufactured materials provided that a substantial part of its value is from the crafting of the vendor or the vendor's family.

**Local** - Within a 100 mile radius of Cape Charles. In order to maintain a broad offering

of products, the accepted area may be expanded at the Market Manager's discretion.

**Value-added** - Any product grown, raised, or caught by the vendor and increased in value by labor and creativity. Examples: fruit to jams, milk to cheese, fresh flowers to dried flower arrangements, herbs to soaps/fragrances, etc.

**Vendor** - Persons who have paid their stall rent and agreed to comply with the Cape Charles Market regulations. This can be the actual producing individual, an immediate family member, staff, or employee who has participated in the production of the product being offered at the Market.

**Vendor-produced** - Goods that are grown, raised, caught, or made by the vendor.

## **ALLOWABLE PRODUCTS**

The Cape Charles Market is a vendor-produced only market. Vendors are required to bring only products they grow, raise, make or catch. For those bringing homemade products and crafts, the use of local ingredients is highly encouraged. Vendors shall submit the Product Plan included with their application at the beginning of the season, indicating the crops and products they plan to sell at the Market. If, at a later time, the vendor wishes to add new items beyond those listed on their application, they must notify the manager in writing so that their application can be updated and those items can be reviewed and approved prior to selling them at the Market. No products may be sold without prior approval.

Products allowed include:

1. Vegetables, fruits, herbs, flowers, plants and eggs, which were grown or raised by the farmer/grower.
2. Fresh baked goods from scratch (not store-bought mixes).
3. Cheeses or other value-added products from milk, which are made in accordance with health codes and use vendor-produced or locally-sourced milk.
4. Meats from livestock or poultry raised by the vendor which have been processed according to health and agricultural regulations.
5. Fish and shellfish raised or caught by the vendor in compliance with health and fishery regulations.
6. Value-added products freshly made from scratch by the vendor, such as jams, honey, syrups, sauces, salsas, canned vegetables and fruits, juices, "to-go" entrees, etc. Processing must comply with health codes.
7. Handmade soaps, candles and cosmetics.
8. Coffee, teas and herbs for which the vendor has participated in at least 50% of their creation (roasting, blending, etc.) if the ingredients are not grown by the vendor.
9. Art and artisanal crafts and products where the value has been increased over the raw materials by at least 75% and the product has met with the approval of the market manager.
10. Beverages and other food offered for immediate consumption at the market which have been prepared and served in compliance with VDACS and/or Health Department regulations. (Vendor must pay Meals Tax.)
11. Other items with Market Manager's approval.

Products **NOT** allowed: Items purchased from a manufacturer or grower for resale.

Alcohol. Tobacco products. Livestock. (Vendor may ask Manager for permission to bring animals for display.) Products or literature of a political or religious nature. Products generally recognized as offensive (IE with content, words or images that would be objectionable or upsetting to some or most people in the community. This is determined by the Market Manager, whose decisions on the matter will be accepted as final)

The Market Manager is available to refer vendors to the appropriate local, state, or other governing bodies who will advise on regulations, certifications, and other guidelines.

# Planning Commission Staff Report

**From:** Larry DiRe   
**Date:** October 4, 2016  
**Item:** 5b – Proposed draft text amendment to Article III Section 3.15.B limited access commercial activity in the Open Space District

**Attachments:** None

---

## Item Specifics

The following Zoning Ordinance section addresses potential limited commercial activity within the Open Space District. The Zoning Ordinance contains language that restricts all commercial activity on the Town beach and in Central Park. Over the past several months the Planning Commission has reviewed and discussed various aspects of this proposal including administrative matters such as licensing and enforcement. Last month staff presented information from the Cape Charles Museum's farmer's market program. Following that meeting, staff discussed several administrative matters with other department heads and will work cooperatively if the proposal becomes a text amendment, then subsequently enacted. As discussed last month, if enacted vendors will not be allowed to sublease their space, and vendor attendance will be tracked. The Planning Commission reviewed draft text amendment language at the August 15<sup>th</sup> and September 6<sup>th</sup> meetings. The revised draft text is presented below.

### **Section 3.15.B**

*The Town recognizes the seasonal nature of this District. Certain limited refreshment and beach-related commercial activity is compatible with the permitted uses listed below. Commercial activity shall be restricted to May 1<sup>st</sup> through September 15<sup>th</sup>, between the hours of 9:00 am through sunset. Commercial activity is restricted to the area east (landward) of the toe of the dune to the Boardwalk, south of the pavilion to the fishing pier. Individual vendor sites shall not exceed one-hundred (100) square feet. No commercial activity will be conducted from motor vehicles, and all commercial activity shall exclude the use of external generators and electronic amplification. Signage will not be affixed but may be flags and banners to a maximum of six (6) square feet in area. All vendors are required to abide by the conditions of their business license and failure to do so may result in loss of vending privileges.*

## **Discussion**

The proposed draft text amendment to the above cited section is presented for review and comment. Should the Planning Commission find the language acceptable or revise such language and approve recommendation for amendment to the Town Council, a public hearing will be required.

## **Recommendation**

Following discussion provide direction to staff.

 <p>TOWN OF CAPE CHARLES</p>	<b>AGENDA TITLE: Animal pens and tethering in the Residential Districts</b>		<b>AGENDA DATE:</b> November 3, 2016
	<b>SUBJECT/PROPOSAL/REQUEST:</b> Proposed text amendments to Town Code and zoning ordinance regulating animal pens and tethering in residential districts.		<b>ITEM NUMBER:</b> 2B
	<b>ATTACHMENTS:</b> Staff reports to Planning Commission.		<b>FOR COUNCIL:</b> Action ( ) Information ( X )
	<b>STAFF CONTACT (s):</b> Larry DiRe	<b>REVIEWED BY:</b> Brent Manuel, Town Manager	

**BACKGROUND:**

Staff is bringing forward proposed text amendments to the Town Code and certain sections of the zoning ordinance to regulate animal pens, and tethering. The Planning Commission discussed these proposed amendments over a several month period earlier this year. The issue of the condition of animal pens in the Residential - 1 District was addressed by a town resident during the public comment section of a Planning Commission meeting. The resident also provided photographs of the unsanitary and unhealthy conditions of a neighborhood dog pen. Animal tethering is addressed in the Town Code. Article X Section 50-190 addresses many freedom of movement issues and allows for tethering of animals for no more than twelve hours in any twenty-four-hour period. No mention is made of tethering being attended or unattended by the property or animal owner. The attached staff reports to the Planning Commission provide further detail and should inform Council of the larger issues and proposed text amendments to remedy these issues.

**ITEM SPECIFICS:**

Proposed text amendments.

***Section 2.9***

*Dog pen means any structure used to enclose and confine domestic canines outside of the principal building or structure on a lot. Pens shall be located only in the rear yard and in accordance with the Town’s zoning regulations. Pens shall be designed to provide the canines with shelter from the elements of nature, and constructed in such a manner as not to cause injury to the animal or interfere with movement, vision or respiration. Pens shall be in a clean, dry, and sanitary condition at all times. Animal waste shall not be allowed to accumulate.*

***Section 3.2.B.8***

*Dog pens.*

**RECOMMENDATION:**

Following discussion staff recommends the Council provide direction toward legislative action.

# Planning Commission Staff Report

**From:** Larry DiRe   
**Date:** May 16, 2016  
**Item:** 5b-Dog pens in the Residential – 1 District  
**Attachments:** City of Suffolk dog and cat ordinance; dog pen photo

---

## Item Specifics

At the March 1<sup>st</sup> Planning Commission meeting there were several public comments regarding the treatment of house pets being kept in outdoor pens. During the public comment section of that meeting the attached photo was distributed. The Town does have an animal ordinance (Article X Chapter 50) as part of the Town Code and enlists the services of the Northampton County Animal Control Office for enforcement. Treatment of the animals is a different issue from the condition and location of the confinement pens. Such confinement pens are not discussed in either Article III or Article IV of the Town Zoning Ordinance. (Kennels are expressly prohibited as a home occupation, however).

The following two sections from the City of Suffolk animal ordinance provide language for consideration regarding adequate space requirements for confinement pens, and acceptable standards for the condition of such pens.

*Sec. 10-42. - Unattended tethering of dogs prohibited.*

*It shall be unlawful to tether any unattended dog whether or not the dog has been provided adequate space. A violation of this section shall be punishable as a class 4 misdemeanor.*

*Sec. 10-154. - Confinement.*

*While on the property of its owner, an animal found to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults or other animals. **The structure shall be designed to provide the animal with shelter from the elements of nature.** When off its owner's property, an animal found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal. (Bold added for emphasis.)*

## Discussion

Following the received public comments, staff is presenting this item to the Planning Commission within the context of regulating the condition and location of dog pen confinements in the Residential – 1 District to the same extent that other accessory structures are regulated.

## Recommendation

Following discussion provide direction to staff.

# Planning Commission Staff Report

**From:** Larry DiRe   
**Date:** June 7, 2016  
**Item:** 5b- Draft text amendment on dog pens in the Residential – 1 District  
**Attachments:** None

---

## Item Specifics

For the past several months the Planning Commission has been reviewing the issue of dog enclosures (for the purpose of this report “pens”) within the residential areas of Cape Charles. Last month the Commissioners reviewed ordinance language from the City of Suffolk. Concern over the condition of domestic dogs left in outdoor pens has been raised by residents on several occasions. Following the May 16<sup>th</sup> meeting staff was tasked with developing draft language on this issue. Staff is proposing the following draft text amendments to zoning ordinance Article II Section 2.9 (definitions) and Article III Section 3.2.B.8:

### Section 2.9

*Dog pen means any structure used to enclose and confine domestic canines outside of the principal building or structure on a lot. Pens shall be located only in the rear yard and in accordance with the Town’s zoning regulations. Pens shall be designed to provide the canines with shelter from the elements of nature, and constructed in such a manner as not to cause injury to the animal or interfere with movement, vision or respiration. Pens shall be in a clean, dry, and sanitary condition at all times. Animal waste shall not be allowed to accumulate.*

### Section 3.2.B.8

*Dog pens.*

## Discussion

The proposed draft text amendment to the above cited sections is presented for review and comment. Should the Planning Commission find the language acceptable or revise such language and approve recommendation for amendment to the Town Council, a public hearing will be required. The process to finally amend the zoning ordinance is several more months in the making.

## Recommendation

Following discussion provide direction to staff.

# Planning Commission Staff Report

**From:** Larry DiRe   
**Date:** July 18, 2016  
**Item:** 5b-Dog tethering ordinance  
**Attachments:** City of Suffolk dog and cat ordinance

---

## Item Specifics

At both the March 1<sup>st</sup> and May 16<sup>th</sup> Planning Commission meetings there were public comments regarding the treatment of house pets being kept in outdoor pens, and further discussion about the condition of dog confinement pens in the Residential – 1 District. Discussion moved from the pens to the tethering of domestic dogs outdoors for a prolonged period of time. The Town does have an animal ordinance (Article X Chapter 50) as part of the Town Code and enlists the services of the Northampton County Animal Control Office for enforcement. The specific regulation of tethered animals is found in Section 50 – 190 and reads as follows:

*An animal owner in the town shall allow each animal to (i) easily stand, sit, lie, turn about and make all other normal body movements in a comfortable, normal position for the animal and (ii) interact safely with other animals in the enclosure. When an animal is tethered, "adequate space" means a tether that permits the above actions and is appropriate to the age, size, and health of the animal; is attached to the animal by a properly applied collar, halter, or harness configured so as to protect the animal from injury and prevent the animal or tether from becoming entangled with other objects or animals, or from gaining access to public thoroughfares, or from extending over an object or edge that could result in the strangulation or injury of the animal; and is at least ten feet in length or three times the length of the animal whichever is longer, as measured from the tip of its nose to the base of its tail, except when the animal is being walked on a leash or is attached by a tether to a lead line. When freedom of movement would endanger the animal, temporarily and appropriately restricting movement of the animal according to professionally accepted standards for the species is considered provision of adequate space. Provided, however, that no animal shall be tethered for more than 12 hours in a 24-hour period.*

This ordinance speaks directly to the physical condition of the tethered dog and sets a time period of "12 hours in a 24-hour period" as a maximum. Previously the Commissioners discussed a different approach to tethering through review of the time period allowed for dogs to be tethered. The City of Suffolk ordinance was reviewed and language from that document reads as follows:

*Sec. 10-42. - Unattended tethering of dogs prohibited.*

*It shall be unlawful to tether any unattended dog whether or not the dog has been provided adequate space. A violation of this section shall be punishable as a class 4 misdemeanor.*

## Discussion

Following the previous public comments and planning Commission discussion, staff is presenting this item for further discussion within the context of regulating the condition and location of dog confinements.

## Recommendation

Following discussion provide direction to staff.