

VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 333

An Act to amend and reenact §§ 2 and 3, as amended, § 4, §§ 5, 6, 7, and 16, as amended, § 17, §§ 18, 19, 21, 22, and 23, as amended, §§ 24, 25, and 26, § 29, as amended, § 42, §§ 44 and 45, as amended, § 48, §§ 58, 59, and 60, as amended, and § 71 of Chapter 8 of the Acts of Assembly of 1952, Extra Session, which provided a charter for the Town of Kilmarnock in Lancaster County, and § 17-a of Chapter 672 of the Acts of Assembly of 1966, and to repeal §§ 27, 37, and 41 and § 46, as amended, of Chapter 8 of the Acts of Assembly of 1952, Extra Session, relating to the Town's boundaries, electors, employees, mayor, vice mayor, treasurer, town manager, director of public utilities, and town council.

[H 1390]

Approved March 14, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ 2 and 3, as amended, § 4, §§ 5, 6, 7, and 16, as amended, § 17, §§ 18, 19, 21, 22, and 23, as amended, §§ 24, 25, and 26, § 29, as amended, § 42, §§ 44 and 45, as amended, § 48, §§ 58, 59, and 60, as amended, and § 71 of Chapter 8 of the Acts of Assembly of 1952, Extra Session, and § 17-a of Chapter 672 of the Acts of Assembly of 1966 are amended and reenacted as follows:

§ 2. The present boundaries of the ~~Town~~ town are as set forth in an order of the Circuit Court of Lancaster County, Virginia, entered December 8, 1930, and of record in the Clerk's Office of said Court in Common Law Order Book 1927, at page 248, and a plat recorded therewith at page 252; and as further set forth by an order of the Circuit Court of Lancaster County, Virginia, entered February 2, 1942, which is of record in the Clerk's Office of said Court in Common Law Order Book 1935, at page 434, and a plat recorded therewith at page 436; and as further set forth by an order of the Circuit Court of Lancaster County, Virginia, entered August 1, 1975, which is of record in the Clerk's Office of said Court in Common Law Order Book 1973, at page 361; and as further set forth by order of the Circuit Court of Lancaster County, Virginia, entered November 26, 1984, which is of record in the Clerk's Office of the Court in Common Law Order Book 1984, at page 455, and a plat recorded therewith at page 458A *and as further set forth by order of the Circuit Court of Lancaster County, Virginia, entered April 19, 2007, which is of record in the Clerk's Office of the Court in the Civil Order Book, page 312, instrument number 070001077, case number CL07000047, and a plat recorded therewith at pages 145D-147C.*

§ 3. *The Town of Kilmarnock is governed using the "council-manager" form of government. The administration and government of the town is vested in the council composed of a mayor and six councilmen, all of whom shall be electors of the town.*

(a) At the regular municipal election to be held on the first Tuesday in May in 1986, and on the first Tuesday in May each four years thereafter, the mayor shall be elected. At the regular municipal election to be held on the first Tuesday in May in 1984 and on the first Tuesday in May each two years thereafter, three councilmen shall be elected for a term of four years each. Terms of office shall begin on the first day of July succeeding their election. Each councilman and the mayor elected as hereinabove provided shall serve for the term stated or until his successor has been elected and qualified. The council shall be a continuing body, and no measure pending before such body shall abate or be discontinued by reason of expiration of term of office or removal of any of its members.

(b) The remaining members of the council shall, by a majority vote thereof, fill any vacancy occurring in the council *until the next election, in accordance with § 24.2-228 of the Code of Virginia,* for the entire unexpired term.

§ 4. The electors of the Town of Kilmarnock shall be the actual residents of the ~~Town~~ town, who are otherwise ~~qualified~~ *registered* to vote for members of the General Assembly.

§ 5. The municipal officers of said town shall, in addition to the mayor, consist of a treasurer, chief of police, clerk of the council, and such other officers as may be provided for by the town council; and the council ~~may~~ *shall* appoint such committees of the council, *each of which shall appoint its own chairperson*, and create such boards and departments of town government and administration with such powers and duties and subject to such regulations as it may see fit, consistent with the provisions of this act and the general laws of this State.

§ 6. The council of the ~~town~~ Town of Kilmarnock ~~may, in its discretion, elect~~ *shall employ* a town manager who may also serve as ~~town engineer~~ *the director of public utilities*. Upon the ~~election~~ *selection* of a town manager by the council, he shall be vested with the administrative and executive powers of the town and shall hold office during the pleasure of the council. He shall receive such compensation as shall be fixed by the council. The town manager shall see that within the town the laws, ordinances, resolutions and bylaws of the council are faithfully executed. He shall attend all

meetings of the council and recommend for adoption such measures as he shall deem expedient. He shall make reports to the council from time to time upon the affairs of the town, keep the council fully advised of the town's financial condition and its future financial needs. He shall prepare and submit to the council a tentative budget for each fiscal year. He shall perform such other duties as may be prescribed by the council and shall be bonded in such amount as the council may deem necessary.

§ 7. All officers and employees appointed *by the town council* may be removed by the town council at its pleasure. *All other employees are under the authority of the town manager.*

§ 16. The mayor shall ~~be the chief executive officer of the town and it shall be his duty to see that the bylaws and ordinances thereof are fully executed, and he shall preside over the meetings of the town council, voting only in case of a tie.~~

~~The mayor shall see that the duties of the various city officers, members of the police and fire departments, whether elected or appointed, are faithfully performed. He shall have power to investigate their acts, have access to all books and documents in their office, and may examine them or their subordinates on oath, but the evidence given by persons so examined shall not be used against them in any criminal proceedings.~~

§ 17. The mayor shall communicate to the town council annually at the ~~beginning of each fiscal year, or oftener January town council meeting,~~ if he be required by the council, a general statement of the condition of the town in relation to its government, finances and improvements, with such recommendations as he may deem proper; and may from time to time communicate to the council such suggestions and recommendations as he shall deem proper.

§ 17-a. The council shall elect, from among its members, a ~~president pro tempore~~ *vice mayor* of the council at its first meeting following any regular municipal election who shall preside in the absence of the mayor and who shall assume the duties of the mayor in case of his absence or inability to act.

§ 18. In case of the absence or inability of the mayor and the ~~president pro tempore~~ *vice mayor* of the council, some other member of the council selected by majority vote of the council shall possess the same power and discharge the municipal duties of the mayor during such absence or inability.

§ 19. In case a vacancy shall occur in the office of the mayor, the vacancy shall be filled by the ~~president pro tempore~~ *vice mayor* of the council; and in case of a vacancy in both such offices, the council shall elect one of its remaining members to serve the unexpired portion of the former mayor's term *until such election is required by State law.*

§ 21. The town council is hereby authorized and empowered, by ordinance or resolution, passed by the affirmative recorded vote of ~~two-thirds of the full membership thereof~~ *the majority of those in attendance*, to be determined by yeas and nays, to provide and fix salaries for its members, at such sums or in such amounts as it may determine, to be payable in such amounts and at such time or times as it may direct.

The council may provide and fix the salaries for its members, on the basis of stated amounts or sums for each regular meeting of council attended by members, and may prescribe that no member shall receive any compensation for any meeting of said council not attended by such member.

Said salaries, when provided and fixed, shall be payable out of the general funds of said town when approved for payment by said council.

§ 22. The council shall by ordinance adopt such rules as it may deem proper for the regulation of its proceedings and shall meet at such times as may be prescribed by ordinance, provided, however, that it shall hold at least one regular meeting each month. A majority of the council shall constitute a quorum for the transaction of business.

The mayor, or any two members of the council, may call a special meeting of the council upon at least twelve hours written notice of the time, place and purpose to each member served personally or left at his usual place of business or residence by a town officer, and no business shall be transacted by the council in such special meeting which has not been stated in the notice, provided, however, that these regulations shall not apply when all members of the council attend such meeting or waive notice thereof, nor shall it apply to an adjourned session from a regular meeting. No ordinance or resolution appropriating money exceeding the sum of one hundred dollars shall be passed except by the recorded affirmative vote of a majority of all members elected to the council.

No tax shall be levied or corporate debt contracted, except by a vote of two-thirds of the members ~~elected to~~ *of* council, which vote shall be by yeas and nays and recorded in the ~~journal~~ *minutes*.

Meetings of the council shall be public unless held in executive session as provided by law. Citizens may have access to the minutes and records of the council at any reasonable time.

§ 23. Four councilmen, *in addition to or in the absence of the mayor,* shall constitute a quorum for the transaction of business, except as otherwise provided herein or by the general statutes of this State. But no vote shall be reconsidered or rescinded at any special meeting, unless at such special meeting there be present as large a number of members of the council as were present when such a vote was taken.

§ 24. A ~~journal~~ *Minutes* shall be kept of the proceedings of the town council, *typed in the form of a journal or in electronic form, posted on the town's website, and kept in perpetuity,* and at the request of any member present the yeas and nays shall be recorded on any question. At the next meeting the

proceedings shall be ~~read~~ *submitted* and signed by the person who was presiding when the previous meeting adjourned, or if he be not then present, by the person presiding when they were read.

§ 25. The clerk of the council shall keep said ~~journal~~ *minutes* and shall record the proceedings of the council at large thereon, and keep the same properly indexed.

§ 26. ~~The town council shall be judge of the election, qualifications and returns of its members; For the convenient transaction of business, the council may compel the attendance of absent members, and fine them punish its members for disorderly behavior, and, with the concurrence by a vote of two-thirds of its members, expel a member for malfeasance or misfeasance while in office.~~

§ 29. If any member of said council ~~be voluntarily~~ *is* absent from its meetings consecutively for three months, his seat may be declared vacant by the council, and the unexpired term filled by appointment as provided in paragraph (b) of § 3.

§ 42. The town council shall have the power and authority to lay off public grounds and provide, erect and keep in order all buildings proper for the use of the town; ~~to provide a prison house and workhouse, and employ managers, physicians, nurses and servants for the same, and prescribe regulations for their government and discipline, and persons therein.~~

§ 44. The town council shall have the power and authority to appoint a chief of police and such additional police officers and privates as it may deem necessary or proper and to prescribe their rate of pay; and in addition thereto the mayor, or in his absence, the president pro tempore of the council, or in the absence of both, the councilman, elected by council to perform the duties of the mayor shall have the power and authority whenever the regular police force of the town is inadequate to meet the needs of the occasion, to appoint and swear in such additional or special policemen as he may deem requisite for a term of service not to exceed ten days, and at such compensation as the council may fix for special policemen. The duties and powers of such special policemen shall be the same as that of private of the regular police force.

§ 45. The police force shall be under the control of the ~~mayor~~ *town manager* for the purpose of enforcing peace and order and executing the laws of the Commonwealth and ordinances of the town. For the purpose of enabling them to execute their duties, each policeman is hereby invested with all the power and authority which belonged to the office of constable at common law in criminal cases. The uniforms and badges of office of such police and the rules and regulations governing such police force shall be prescribed by the ~~mayor~~ *town manager*.

§ 48. The town council shall have the power and authority to regulate the keeping or ~~storage~~ *sale* of ~~gunpowder or other combustibles~~ within the town, and ~~to provide magazines for the same, and direct the location of all buildings for the storage thereof;~~ to regulate the sale and use of gunpowder and other combustibles, and firecrackers or fireworks manufactured therefrom; ~~kerosene oil, nitroglycerine, camphene, burning fluid, or other combustible material;~~ to regulate the exhibition of fireworks and the discharge of firearms; and to restrict the making of bonfires in streets, alleys, and yards.

§ 58. A town clerk may be appointed by the council, but in no case shall the mayor, ~~president pro tempore~~ *vice mayor*, or any councilman acting as mayor be so appointed, and shall attend the meetings of the council and shall keep permanent records of its proceedings; he shall be custodian of the town seal and shall affix it to all documents and instruments requiring the seal, and shall attest the same; he shall keep all papers, documents, and records pertaining to the town, the custody of which is not otherwise provided for in this charter; he shall give notice to all parties, presenting petitions or communications; he shall give to the proper department or officials ample notice of the expiration or termination of any franchise, contract or agreements; he shall publish such records and ordinances as the council is required to publish, and such other records and ordinances as it may direct he shall upon final passage transmit to the proper departments or officials copies of all ordinances or resolutions of the council relating in any way to such departments or to the duties of such officials, and he shall perform such other acts and duties as the council may, from time to time, allow or require. *He shall continue to discharge the duties of the office until he is removed by the town council or until his successor shall have qualified. Any vacancy in this office shall be promptly filled by the town council. The town clerk shall be subject to the supervision of the town manager, shall perform such other duties not inconsistent with his office as may be required of him by the town manager, and shall make such reports as may be required of him by the town council.*

§ 59. There shall be appointed by the council a town treasurer, who ~~shall hold office during the pleasure of the council; but the present treasurer of the town~~ shall continue to discharge the duties of the office until removed by the council or until his successor shall have qualified. Any vacancy in this office shall be promptly filled by the council. The said treasurer shall be the disbursing agent of the town and have the custody of all money and all evidences of value belonging to the town or held in trust by the town. He shall receive all money belonging to and received by the town and keep correct accounts of all receipts from all sources and of all expenditures of all departments. He shall collect all taxes and assessments, water rents, and other charges belonging to and payable to the town, and for that purpose he is hereby vested with powers similar to those which are now or may hereafter be vested in county and town treasurers for the collection of county, town, and State taxes under the general law; he shall keep, disburse and deposit all money or funds in such manner and in such places as may be

determined by ordinance or the provisions of the law applicable thereto; he shall pay no money out of the treasury, except in the manner prescribed by this charter or by ordinance or the general law; he shall perform such duties as are usually incident to the office of commissioner of revenue in relation to the assessment of property for town taxation and town license taxes and shall have power to administer oaths in the performance of his official duties; and shall make such reports and perform such other duties not inconsistent with the office as may be required by this charter or by ordinance or resolution of the council. The treasurer shall not be entitled to any commission for handling the funds of the town but shall be paid such salary as may be provided by the council, and before entering upon the duties of his office shall execute a bond in such amount and with such security as the council by ordinance may prescribe. The council may, in its discretion, and if it deems it necessary or convenient, appoint some person or persons from the electors of the town to assist the town treasurer in the collection of all taxes and assessments, water rents, and other charges belonging to and payable to the town, which person may be the town sergeant, or superintendent of water works, but before entering upon the discharge of his duties, such person shall execute a bond in such amount and with such security as the council by ordinance, may prescribe. The treasurer shall be subject to the supervision of the ~~council~~ *town manager* of the ~~town~~ *Town of Kilmarnock* and, shall perform such other duties not inconsistent with his office as may be required of him by the town ~~council~~; *manager*, and he shall make all such reports as may be required of him by the town council.

§ 60. There shall be appointed by the council a chief of police who shall qualify and give bond in such amount as the council may require. He shall be vested with powers of a conservator of the peace, and shall have the same powers and discharge the same duties which formerly belonged to the office of constable at common law within the corporate limits of the town or beyond its corporate limits pursuant to any agreement entered into, or authority arising pursuant to law, and shall perform such other duties as may be from time to time prescribed by the council. *He shall continue to discharge the duties of the office until he is removed by the town council or until his successor shall have qualified. Any vacancy in this office shall be promptly filled by the town council. The chief of police shall be subject to the supervision of the town manager, shall perform such other duties not inconsistent with his office as may be required of him by the town manager, and shall make such reports as may be required of him by the town council.*

§ 71. To regulate the holding and location of shows, circuses, public exhibitions, carnivals, and other similar shows or fairs, or prohibit the holding of same, or any of them, within the town ~~or within one mile thereof.~~

2. That §§ 27, 37, and 41 and § 46, as amended, of Chapter 8 of the Acts of Assembly of 1952, Extra Session, are repealed.