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**HOUSE BILL NO. 1390**

Offered January 9, 2013

Prefiled December 14, 2012

A *BILL 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.*

\_\_\_\_\_  
 Patron—Ransone (By Request)

\_\_\_\_\_  
 Referred to Committee on Counties, Cities and Towns

**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~~

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HB1390

59 *selection* of a town manager by the council, he shall be vested with the administrative and executive  
60 powers of the town and shall hold office during the pleasure of the council. He shall receive such  
61 compensation as shall be fixed by the council. The town manager shall see that within the town the  
62 laws, ordinances, resolutions and bylaws of the council are faithfully executed. He shall attend all  
63 meetings of the council and recommend for adoption such measures as he shall deem expedient. He  
64 shall make reports to the council from time to time upon the affairs of the town, keep the council fully  
65 advised of the town's financial condition and its future financial needs. He shall prepare and submit to  
66 the council a tentative budget for each fiscal year. He shall perform such other duties as may be  
67 prescribed by the council and shall be bonded in such amount as the council may deem necessary.

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

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

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

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

83 § 17-a. The council shall elect, from among its members, a ~~president pro tempore~~ *vice mayor* of the  
84 council at its first meeting following any regular municipal election who shall preside in the absence of  
85 the mayor and who shall assume the duties of the mayor in case of his absence or inability to act.

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

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

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

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

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

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

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

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

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

119 § 23. Four councilmen, *in addition to or in the absence of the mayor*, shall constitute a quorum for  
120 the transaction of business, except as otherwise provided herein or by the general statutes of this State.

121 But no vote shall be reconsidered or rescinded at any special meeting, unless at such special meeting  
122 there be present as large a number of members of the council as were present when such a vote was  
123 taken.

124 § 24. A ~~journal~~ Minutes shall be kept of the proceedings of the town council, *typed in the form of a*  
125 *journal or in electronic form, posted on the town's website, and kept in perpetuity*, and at the request of  
126 any member present the yeas and nays shall be recorded on any question. At the next meeting the  
127 proceedings shall be ~~read submitted~~ and signed by the person who was presiding when the previous  
128 meeting adjourned, or if he be not then present, by the person presiding when they were read.

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

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

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

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

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

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

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

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

180 § 59. There shall be appointed by the council a town treasurer, who ~~shall hold office during the~~  
181 ~~pleasure of the council; but the present treasurer of the town shall continue to discharge the duties of the~~

182 office until removed by the council or until his successor shall have qualified. Any vacancy in this  
183 office shall be promptly filled by the council. The said treasurer shall be the disbursing agent of the  
184 town and have the custody of all money and all evidences of value belonging to the town or held in  
185 trust by the town. He shall receive all money belonging to and received by the town and keep correct  
186 accounts of all receipts from all sources and of all expenditures of all departments. He shall collect all  
187 taxes and assessments, water rents, and other charges belonging to and payable to the town, and for that  
188 purpose he is hereby vested with powers similar to those which are now or may hereafter be vested in  
189 county and town treasurers for the collection of county, town, and State taxes under the general law; he  
190 shall keep, disburse and deposit all money or funds in such manner and in such places as may be  
191 determined by ordinance or the provisions of the law applicable thereto; he shall pay no money out of  
192 the treasury, except in the manner prescribed by this charter or by ordinance or the general law; he shall  
193 perform such duties as are usually incident to the office of commissioner of revenue in relation to the  
194 assessment of property for town taxation and town license taxes and shall have power to administer  
195 oaths in the performance of his official duties; and shall make such reports and perform such other  
196 duties not inconsistent with the office as may be required by this charter or by ordinance or resolution  
197 of the council. The treasurer shall not be entitled to any commission for handling the funds of the town  
198 but shall be paid such salary as may be provided by the council, and before entering upon the duties of  
199 his office shall execute a bond in such amount and with such security as the council by ordinance may  
200 prescribe. The council may, in its discretion, and if it deems it necessary or convenient, appoint some  
201 person or persons from the electors of the town to assist the town treasurer in the collection of all taxes  
202 and assessments, water rents, and other charges belonging to and payable to the town, which person may  
203 be the town sergeant, or superintendent of water works, but before entering upon the discharge of his  
204 duties, such person shall execute a bond in such amount and with such security as the council by  
205 ordinance, may prescribe. The treasurer shall be subject to the supervision of the ~~council~~ *town manager*  
206 of the ~~town~~ *Town* of Kilmarnock ~~and~~, shall perform such other duties not inconsistent with his office as  
207 may be required of him by the town ~~council~~; *manager*, and he shall make all such reports as may be  
208 required of him by the town council.

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

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

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