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HOUSE BILL NO. 2572

House Amendments in [] — January 23, 2019

A BILL to amend and reenact §§ 1.2 and 2.2, § 2.3, as amended, § 3.1, § 3.2, as amended, §§ 3.3 through 3.9, 3.12, 3.15, and 4.1, § 4.2, as amended, §§ 4.3, 4.5, 4.6, 4.7, 5.1, 5.2, and 7.2, § 7.3, as amended, and §§ 8.4, 8.6, 8.7, 8.10, and 8.11 of Chapter 112 of the Acts of Assembly of 1971; to amend Chapter 112 of the Acts of Assembly of 1971 by adding a section numbered 3.1:1; and to repeal §§ 5.3 and 5.4, Chapter 6 (§§ 6.1, 6.2, and 6.3), and §§ 8.2, 8.3, and 8.5 of Chapter 112 of the Acts of Assembly of 1971, which provided a charter for the Town of Berryville in Clarke County, relating to boundaries, town powers, town council, town officers, appointments, and actions against town.

Patron Prior to Engrossment—Delegate LaRock

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 1.2 and 2.2, § 2.3, as amended, § 3.1, § 3.2, as amended, §§ 3.3 through 3.9, 3.12, 3.15, and 4.1, § 4.2, as amended, §§ 4.3, 4.5, 4.6, 4.7, 5.1, 5.2, and 7.2, § 7.3, as amended, and §§ 8.4, 8.6, 8.7, 8.10, and 8.11 of Chapter 112 of the Acts of Assembly of 1971 are amended and reenacted and that Chapter 112 of the Acts of Assembly of 1971 is amended by adding a section numbered 3.1:1 as follows:

§ 1.2. Boundaries.

The corporate boundaries of the town of Berryville shall be as follows:

Beginning at a pipe in the west side of North Buckmarsh Street (U.S. Route No. 340), such point being at the intersection of the west right-of-way line of North Buckmarsh Street and an extension of the north lot line of the Episcopal parsonage; thence along the west right-of-way line of North Buckmarsh Street, N 27° 43' E. a distance of 634.47 feet to a pipe; thence N. 45° 42' W. 2241.36 feet along the rear lot lines on the north side of Walnut Street to a pipe; thence S. 56° 34' 30" W. a distance of 160.38 feet to a pipe; thence S. 45° 45' 30" W. a distance of 4490.77 feet to a pipe in the orchard of H. F. Byrd, such line crossing West Main Street (Va. Route 7); thence, still through the orchards of H. F. Byrd and other properties, S. 57° 25' E. a distance of 3754.92 feet to a spike in the center line of South Church Street; thence S. 53° 42' E. a distance of 1736.86 feet to a pipe, such line crossing the Norfolk and Western Railway right-of-way; thence along a 13° 13' curve, parallel to the Norfolk and Western Railway, such curve having a tangent bearing of N. 62° 10' E. and a tangent distance of 250.80 feet to a pipe and point of intersection; thence still parallel to the Norfolk and Western Railway N. 49° 03' E. a distance of 2484.97 feet to a point of intersection of a 15° 38' curve, the corporate limits following the curve; thence N. 64° 44' E. a distance of 585.77 feet to a pipe; thence N. 49° 41' W. a distance of 3315.36 feet to a pipe and the place of beginning. In addition: Annexation Area A, 350 acres, Deed Book 193, Page 226; Annexation Area B1, 7.691 acres, Deed Book 227, Page 779; Annexation Area B2, 8.965 acres, Deed Book 237, Page 794; Annexation Area B3, 63.0898 acres, Deed Book 258, Page 156; Annexation Area B4, 10.5316 acres, Deed Book 279, Page 257; Annexation Area B5, 196.5 acres, Deed Book 308, Page 685; Annexation Area B6, 114.38 acres, Deed Book 364, Page 501; Annexation Area B7, 42.2588 acres, Deed Book 421, Page 722; Annexation Area B8, 41.81 acres, Deed Book 472, Page 284.

§ 2.2. Adoption of certain sections of Code of Virginia.

The powers set forth in §§ ~~15.1-837~~ 15.2-1100 through ~~15.1-915~~ 15.2-1133, both inclusive, of Chapter ~~48~~ 11 of Title ~~15.1~~ 15.2 of the Code of Virginia, as in force on January 1, ~~1971~~ 2019, are hereby conferred on and vested in the town of Berryville.

§ 2.3. Eminent domain.

The powers of eminent domain set forth in ~~Title 15.1~~ Chapter 19 (§ 15.2-1901 et seq.) of Title 15.2, Title 25 25.1, Chapter ~~1.1~~ and §§ ~~33.1-121~~ through 33.1-132, Chapter ~~1~~, and Chapter 10 (§ 33.2-1000 et seq.) of Title 33.2 of the Code of Virginia, as amended, and all acts amendatory thereof and supplemental thereto, mutatis mutandis, are hereby conferred upon the town of Berryville subject to the provisions of § ~~25-233~~ 25.1-200 of the Code of Virginia.

(a) In any case in which a petition for condemnation is filed by or on behalf of the town, a true copy of a resolution or ordinance duly adopted by the town council declaring the necessity for any taking or damaging of any property, within or without the town, for the public purposes of the town, shall be filed with the petition and shall constitute sufficient evidence of the necessity of the exercise of the powers of eminent domain by the town. The town may employ the procedures conferred by the

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59 foregoing laws, mutatis mutandis, and may, in addition thereto, proceed as hereinafter provided.

60 (b) Certificates issued pursuant to §§ ~~33.1-121 to 33.1-132~~ 33.2-1019 through 33.2-1029, inclusive,
61 of the Code of Virginia, as amended, and acts amendatory thereof and supplemental thereto, may be
62 issued by the town council, signed by the mayor and countersigned by the town treasurer. Such
63 certificate shall have the same effect as certificates issued by the Commonwealth Transportation
64 Commissioner, under the aforesaid laws, and may be issued in any case in which the town proposes to
65 acquire property or interest therein by the exercise of its powers of eminent domain for any lawful
66 public purpose, whether within or without the town; provided, that the condemnation authority shall be
67 subject to the provisions of § ~~25-233~~ 25.1-200 of the Code of Virginia.

68 (c) In addition to the powers conferred by the aforesaid laws, such certificates may be amended or
69 canceled by the court having jurisdiction of the proceedings, upon petition of the town, at any time after
70 the filing thereof; provided, that the court shall have jurisdiction to make such order for the payment of
71 costs and damages, if any, or the refund of any excessive sums theretofore paid pursuant to such
72 certificate as shall, upon due notice and hearing, appear just. The court shall have jurisdiction to require
73 refunding bonds, for good cause shown by the town or any other person or party in interest, prior to
74 authorizing any distribution of funds pursuant to any certificate issued or deposit made by the town.

75 Chapter 3.

76 Mayor, ~~Recorder~~ Vice Mayor, and Town Council.

77 § 3.1. Composition of council; qualifications of mayor, ~~recorder~~ vice mayor, and ~~councilmen~~ council
78 members.

79 The town of Berryville shall be governed by a town council composed of the mayor, the ~~recorder~~
80 vice mayor, and four ~~councilmen~~ council members. The mayor, ~~recorder~~ vice mayor, and ~~councilmen~~
81 council members shall be residents and qualified voters of the town. The mayor and ~~recorder~~ vice mayor
82 shall be elected from the town at large. The four ~~councilmen~~ council members shall reside one in each
83 ward of the town, but shall be elected by all of the qualified voters of the town.

84 § 3.1:1. Office of recorder continued as office of vice mayor.

85 The office of vice mayor shall become effective on July 1, 2022, and the previously established office
86 of recorder shall remain effective until July 1, 2022.

87 § 3.2. Election and term of office of mayor, ~~recorder~~ vice mayor, and ~~councilmen~~ council members.

88 Elections for mayor, ~~recorder~~ vice mayor, and ~~councilmen~~ council members shall be held on the first
89 Tuesday in May of each even-numbered year. On the first Tuesday in May, ~~1972~~ 2020, a mayor and
90 ~~councilmen~~ council members from Wards 1 and 3 shall be elected for a term of four years; and a
91 recorder and councilmen from Wards 2 and 4 shall be elected for a term of two years. On the first
92 Tuesday in May, ~~1974~~ 2022, a ~~recorder~~ vice mayor and ~~councilmen~~ council members from Wards 2 and
93 4 shall be elected for terms of four years. ~~Thereafter, the mayor, recorder and all councilmen shall be~~
94 elected for terms of four years.

95 § 3.3. When terms of office to begin.

96 The terms of office for the mayor, ~~recorder~~ vice mayor, and ~~councilmen~~ council members shall begin
97 on the first day of July next following their election.

98 § 3.4. Oath of office.

99 The mayor, ~~recorder~~ vice mayor, and ~~councilmen~~ council members shall each, before entering upon
100 the duties of their office, make oath or affirmation that they will truly, faithfully, and impartially
101 discharge the duties of their offices to the best of their abilities, so long as they shall continue therein.

102 § 3.5. Vacancies in office.

103 Vacancies in the office of mayor, ~~recorder~~ vice mayor, or ~~councilman~~ council member shall be filled
104 within forty-five days for the unexpired terms by a majority vote of the remaining members of the town
105 council.

106 § 3.6. When new election for mayor, ~~recorder~~ vice mayor, or ~~councilman~~ council member required.

107 If any person who shall have been duly elected mayor, ~~recorder~~ vice mayor, or ~~councilman~~ council
108 member shall not be eligible, as herein prescribed, or shall refuse to take the oath or affirmation required
109 under this Charter within two weeks from the day of the beginning of his the term of office, the town
110 council shall declare his the office vacant, and shall order a new election for mayor, ~~recorder~~ vice
111 mayor, or ~~councilman~~ council member, as the case may be.

112 § 3.7. Powers and duties of mayor.

113 The mayor shall be a member of the town council, shall preside over the meetings of the town
114 council, and shall have the same right to speak and vote therein as other members of the town council.
115 He The mayor shall be recognized as the head of the town government for all ceremonial purposes, for
116 the purposes of military law, and for the service of civil processes. The mayor shall have no power of
117 veto over the ordinances and resolutions of the town council.

118 § 3.8. Powers and duties of ~~recorder~~ vice mayor; ~~recorder~~ vice mayor to act as mayor during absence,
119 disability, etc., of mayor.

120 The ~~recorder~~ vice mayor shall be a member of the town council and shall have the same right to

121 speak and vote therein as other members of the town council. ~~The recorder shall keep the journal of the~~
122 ~~proceedings of the town council and have charge of and preserve the records of the town.~~ In the absence
123 from the town, or disqualification, inability, or sickness of the mayor, or during any vacancy in the
124 office of mayor, the ~~recorder~~ *vice mayor* shall perform the duties of the mayor and be vested with all
125 ~~his~~ *powers of the mayor. The recorder shall have the powers and duties of the vice mayor as set forth*
126 *in this section until July 1, 2022.*

127 § 3.9. Absence or disability of mayor and ~~recorder~~ *vice mayor.*

128 If both the mayor and ~~recorder~~ *vice mayor* are absent or unable to act, the town council shall, by a
129 majority vote of the members present, elect from its members a person to serve as acting mayor until
130 either the mayor or ~~recorder~~ *vice mayor* is present and able to act. The person so elected shall possess
131 the powers and discharge the duties of the mayor during such period of time.

132 § 3.12. Meetings of council.

133 The town council shall fix the time of ~~their~~ *stated its regular* meetings; ~~and they shall meet at least~~
134 ~~once a month.~~ Special meetings may be called at any time by the mayor or by three members of the
135 town council; provided, that all members shall be duly notified a reasonable period of time prior to any
136 special meeting.

137 § 3.15. Council to fix salaries.

138 The town council is hereby authorized to fix the salaries of each of the members of the town
139 council, members of boards or commissions, and all appointed officers. The salaries of the mayor,
140 ~~recorder~~ *vice mayor*, and ~~councilmen~~ *council members* shall not be ~~charged~~ *changed* during the term for
141 which they were elected.

142 § 4.1. Appointment and qualifications.

143 There shall be a town manager, who shall be the executive officer of the town and shall be
144 responsible to the town council for the proper administration of the town government. ~~He~~ *The town*
145 *manager* shall be appointed by the town council for an indefinite term. ~~He~~ *and shall serve at the*
146 *pleasure of the town council. The town manager shall* be chosen solely on the basis of ~~his~~ executive and
147 administrative qualifications, with special reference to ~~his~~ actual experience in or knowledge of accepted
148 practice in respect to the duties of ~~his~~ *the* office. At the time of ~~his~~ *the* appointment, ~~he~~ *the town*
149 *manager* need not be a resident of the town or the Commonwealth, but during ~~his~~ *the* tenure of office, [
150 ~~he~~] shall reside within Clarke County.

151 § 4.2. Duties.

152 It shall be the duty of the town manager to:

- 153 (a) Attend all meetings of the town council, with the right to speak but not to vote.
- 154 (b) Keep the town council advised of the financial condition and the future needs of the town and of
155 all matters pertaining to its proper administration, and make such recommendations as may seem ~~to him~~
156 desirable.
- 157 (c) Prepare and submit the annual budget to the town council and be responsible for its
158 administration after its adoption.
- 159 (d) Present adequate financial and activity reports as required by the town council.
- 160 (e) Arrange for an annual audit by a certified public accountant, the selection of whom shall be
161 approved by the town council.
- 162 (f) *Be responsible for the supervision of all town employees.*
- 163 (g) Perform such other duties as may be prescribed by this charter or required of ~~him~~ *the town*
164 *manager* in accordance therewith by the town council or which may be required of the chief executive
165 officer of a town by the general laws of the Commonwealth, other than the duties conferred on the
166 mayor by this charter.

167 § 4.3. Powers as to town officers and employees.

168 All officers and employees of the town, except those appointed by the town council pursuant to this
169 charter or the general laws of the Commonwealth, shall be appointed and may be removed by the town
170 manager, who shall ~~report~~ *advise the town council* of each appointment or removal ~~to the town council~~
171 ~~at the next meeting thereof promptly~~ following any such appointment or removal.

172 § 4.5. Council not to interfere in appointments or removals; relationship with council.

173 Neither the town council nor any of its members, *including the mayor and vice mayor*, shall direct or
174 request; the appointment of any person to or ~~his~~ removal from any office or employment by the town
175 manager or by any ~~of his~~ subordinates or in any way take part in the appointment or for removal of
176 officers and employees of the town, except as specifically provided in this charter. Except for the
177 purpose of inquiry, the town council and its members shall deal with the administrative services solely
178 through the town manager, and neither the town council nor any member thereof shall give orders,
179 either publicly or privately, to any subordinate of the town manager. ~~Any councilman violating the~~
180 ~~provisions of this section or voting for a motion, resolution or ordinance in violation of this section shall~~
181 ~~be guilty of a misdemeanor and, upon conviction thereof, shall cease to be a councilman.~~

182 § 4.6. Relations with boards, commissions and agencies.

183 The town manager shall have the right to attend and participate in the proceedings of, but not vote
184 in, the meetings of all boards, commissions, or agencies created by this charter or by ordinance and any
185 other board or commission the town council may designate.

186 § 4.7. Acting town manager.

187 The town council shall designate by resolution a person to act as town manager in case of the
188 *extended* absence, incapacity, death, or resignation of the town manager, until ~~his~~ *the town manager's*
189 return to duty or the appointment of ~~his~~ *a* successor.

190 § 5.1. Appointment.

191 The town council may appoint ~~such~~ *the following* officers of the town as ~~they~~ *the town council* may
192 deem necessary. ~~Such officers may include, but shall not be limited to, a town manager, a town~~
193 ~~attorney, a town treasurer, a town assessor, a judge of the municipal court and justices of the peace:~~
194 ~~town manager, assistant town manager for administration/treasurer, assistant town manager for~~
195 ~~community development/operations, and town attorney. Such officers shall be appointed for an indefinite~~
196 ~~term and shall serve at the pleasure of the town council.~~ The enumeration of officers in this section
197 shall not be construed to require the appointment of any of such officers herein named. Officers
198 appointed by the town council shall perform such duties as may be specified ~~in this charter~~ by the town
199 council.

200 § 5.2. Deputies and assistants.

201 The town council may ~~appoint such deputies and assistants to establish a deputy or assistant position~~
202 ~~for the appointive offices as the town council may deem necessary. The town manager shall appoint and~~
203 ~~supervise such deputies and assistants.~~

204 § 7.2. Actions against town for damages, etc.

205 (a) No action shall be maintained against the town for damages for any injury to any person ~~or~~
206 property alleged to have been sustained by reason of the negligence of the town, or any officer, agent,
207 or employee thereof, unless a written statement, ~~verified by oath of the claimant, his agent or attorney,~~
208 ~~or the personal representative of any decedent whose death is a result of the alleged negligence of the~~
209 ~~town, its officers, agents or employees, of the nature of the claim and the time and place at which the~~
210 ~~injury is alleged to have occurred, or to have been received, shall have been filed with the mayor or an~~
211 ~~attorney appointed by the town council for this purpose, and the town is hereby authorized to appoint~~
212 ~~such an attorney, within sixty days after such cause of action shall have accrued. Where the claimant is~~
213 ~~an infant or non compos mentis, or the injured party dies within such sixty days, such statement may be~~
214 ~~filed within one hundred twenty days; provided, that if the complainant is compos mentis during such~~
215 ~~sixty day period but is able to establish by clear and convincing evidence that due to the injury~~
216 ~~sustained for which a claim is asserted that he was physically or mentally unable to give such notice~~
217 ~~within the sixty day period, then the time for giving notice shall be tolled until the claimant sufficiently~~
218 ~~recovers from such injury so as to be able to give such notice. No officer, agent or employee of the~~
219 ~~town shall have authority to waive such conditions precedent or any of them notice is given to the town~~
220 ~~in accordance with § 15.2-209 of the Code of Virginia.~~

221 (b) In any action against the town to recover damages against it for any negligence in the
222 construction or maintenance of its streets, alleys, lanes, parks, public places, sewers, reservoirs, or water
223 mains, *water treatment plant, wastewater treatment plant, stormwater system, or other town facilities,*
224 where any person or corporation is liable with the town for such negligence, every such person or
225 corporation shall be joined as defendant with the town in such action brought to recover damages for
226 such negligence, and where there is a judgment or verdict against the town, as well as the other
227 defendant, it shall be ascertained by the court or jury which of the defendants is primarily liable for the
228 damages assessed.

229 (c) If it is ascertained by the judgment of the court that some person or corporation other than the
230 town is primarily liable, there shall be a stay of execution against the town until execution against such
231 person or persons or corporation or corporations shall have been returned without realizing the full
232 amount of such judgment.

233 (d) If the town, when not primarily liable, shall pay such judgment in whole or in part, the plaintiff
234 shall, to the extent that such judgment is paid by the town, assign the judgment to the town, without
235 recourse on the plaintiff, and the town shall be entitled to have execution issued for its benefit against
236 the other defendant or defendants who have been ascertained to be primarily liable, or may institute any
237 suit to enforce such judgment or an action at law, or scire facias to revive such judgment.

238 (e) No order shall be entered or made, and no injunction shall be awarded by any court or judge, to
239 stay proceedings of the town in the prosecution of their works, unless it be manifest that they, their
240 officers, agents, or servants are transcending the authority given them in this charter, and that the
241 interposition of the court is necessary to prevent injury that cannot be adequately compensated in
242 damages.

243 (f) The town council is authorized and empowered to compromise any claim for damages or any suit

244 or action brought against the town.

245 § 7.3 Creation of debt; issuance of bonds.

246 The town council *by a majority vote* is authorized to cause the town ~~by a majority vote~~ to incur debt
247 and to issue bonds, notes, and other evidences of indebtedness for the purposes and in the manner set
248 forth for towns in the Constitution of the Commonwealth of Virginia and the Public Finance Act of
249 1991, Chapter 5.1 (§ 15.2-2600 *et seq.* of Title ~~15.1~~ 15.2 of the Code of Virginia of 1950, as amended),
250 or any acts amendatory thereof or supplemental thereto.

251 § 8.4. Bonds of officers and employees.

252 The town council may require all or any officers and employees of the town to give bond for the
253 faithful and proper discharge of their duties. As used herein, the words "officers and employees" shall
254 include officers and employees paid solely or partly by the town. The town ~~may~~ *shall* pay the premium
255 on such bonds from the town funds and may provide for individual surety bonds or for a bond covering
256 all officers and employees or any group thereof. The bond shall be payable to the town as its interest
257 may appear in event of breach of the conditions thereof.

258 § 8.6. United States government employees.

259 No person, otherwise eligible, shall be disqualified, by reason of his accepting or holding an office,
260 post, trust, or emolument under the United States government, from serving as an officer or employee of
261 the town, or as a member, officer, or employee of any board or commission.

262 § 8.7. Acceptance of federal aid, contributions, etc.

263 The town shall have the power to receive and accept from any federal agency grants of any kind for
264 or in aid of the construction of any project, the procuring or reserving of park land, open spaces or any
265 recreational facility, and to do all such things or make any covenants or agreements which may be
266 necessary or required in order to obtain and use such federal grants. The town may receive and accept
267 aid or contributions from any source or money, property, labor, or other things of value, to be held,
268 used, and applied only for the purposes for which such grants and contributions may be made.

269 § 8.10. Ordinances continued in force.

270 All ordinances now in force in the town of Berryville, not inconsistent with this charter, shall be and
271 remain in force until altered, amended, or repealed by the town council.

272 § 8.11. Severability of provisions.

273 If any clause, sentence, paragraph or part of this charter shall for any reason be adjudged by any
274 court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the
275 remainder of this charter, but shall be confined in its operation to the clause, sentence, paragraph, or part
276 thereof directly involved in the controversy in which such judgment shall have been rendered.

277 **2. That §§ 5.3 and 5.4, Chapter 6 (§§ 6.1, 6.2, and 6.3), and §§ 8.2, 8.3, and 8.5 of Chapter 112 of**
278 **the Acts of Assembly of 1971 are repealed.**