

092040320

## SENATE BILL NO. 1375

Offered January 14, 2009

Prefiled January 14, 2009

*A BILL to amend and reenact §§ 1, 2, 6, 8, 9, 11, and 12, as severally amended, §§ 13, 14, 17, 18, and 21, §§ 22, 24-26, as severally amended, §§ 28 and 30, § 31, as amended, § 33, §§ 34 and 39 as severally amended, §§ 42 and 44 of Chapter 44 of the Acts of Assembly of 1938, which provided a charter for the Town of Clarksville, and to amend Chapter 44 by adding a section numbered 49, and to repeal § 40 of Chapter 44, relating to the powers and authority of town council and the duty of town manager.*

Patron—Ruff

Referred to Committee on Local Government

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 1, 2, 6, 8, 9, 11, and 12, as severally amended, §§ 13, 14, 17, 18, and 21, §§ 22, 24-26, as severally amended, §§ 28 and 30, § 31, as amended, § 33, §§ 34 and 39 as severally amended, §§ 42 and 44 of Chapter 44 of the Acts of Assembly of 1938 are amended and reenacted and that Chapter 44 is amended by adding a section numbered 49 as follows:**

§ 1. That part of the area of the ~~county~~ County of Mecklenburg, embraced within the boundaries hereinafter in this section described, is hereby incorporated as a town under the name of the town of Clarksville, and the inhabitants within said boundaries shall henceforth constitute and be a body corporate and politic, with all the powers and privileges conferred, and subject to all the duties and obligations imposed, upon towns by general law, together with such modifications thereof and additions thereto and subject to the limitations, as hereinafter set forth, the boundaries of said town, as so incorporated, being as follows:

Beginning at a point on the southern bank of the Dan River fifty feet north of the center of the railroad track at its entrance into the Southern railway company's bridge; thence running parallel with and fifty feet north of the track now used by the Atlantic and Danville railroad to a point one hundred yards beyond the center of the country road crossing near the Atlantic and Danville depot, and at which point a culvert passes beneath the track and empties into a certain branch or drain; thence in a southerly direction, following said branch leading into Blue Creek near the Oxford, North Carolina, country road, and following said Blue Creek to a point at which it enters the Roanoke River; thence along the bank in a northerly direction to the beginning. In addition, that territory being set forth by order of the Circuit Court of Mecklenburg, Virginia, dated July 31, 1951, and recorded in the clerk's office of the Circuit Court of Mecklenburg County, Virginia, in Chancery Order Book 29 at page 554 et seq.

§ 2. The said town, and council thereof, shall in addition to the powers herein and heretofore granted to it, and the duties herein and heretofore granted to it, and the duties herein and heretofore imposed upon it, have all the rights and powers granted to towns under all provisions of the Code of Virginia, unless hereby expressly denied to said town.

~~The powers set forth in §§ 15.1-837 through 15.1-907, both inclusive, of Chapter 18 of Title 15.1 of the Code of Virginia, as in force on January 1, 1972, and as may hereafter be amended, are hereby conferred on and vested in the town.~~

§ 6. The town council may appoint such officers of the town as they deem necessary. Such officers may include, but shall not be limited to a town manager, a town clerk and a town attorney. The enumeration of officers in this section shall not be construed to require the appointment of any of such officers herein named. Officers appointed by the town council shall perform such duties as may be specified in this charter, by the laws of the Commonwealth or by the town council. The town council may appoint such deputies and assistants to appointive offices as the town council may deem necessary. Officers and deputies and assistant officers appointed by the town council, shall serve at the will and pleasure of the town council. The town council may appoint the same person to more than one appointive office, at the discretion of the town council, subject to the provisions of Article VII, Section 6 of the Virginia Constitution. The town manager shall be the executive officer of the town, and shall be responsible to the town council for the proper administration of the town government. It shall be the duty of the town manager to:

(a) Attend all meetings of the town council, with the right to speak but not to vote.

(b) Keep the town council advised of the financial condition and the future needs of the town and of all matters pertaining to its proper administration, and make such recommendations as may seem to him/her desirable.

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59 (c) Prepare and submit the annual budget to the town council and be responsible for its  
60 administration after its adoption.

61 (d) Prepare in suitable form for publication and submit to the town council at the next regular  
62 meeting following the end of each fiscal year, a concise, comprehensive report of the financial  
63 transactions and administrative activities of the town government during the immediately preceding fiscal  
64 year.

65 (ed) Present adequate financial and activity reports as required by the town council.

66 (fe) Arrange for an annual audit by a certified public accountant, the selection of whom shall be  
67 approved by the town council.

68 (gf) Perform such other duties as may be prescribed by this charter, or required of him/her in  
69 accordance therewith by the town council, or which may be required by the chief executive officer of a  
70 town by the general laws of the Commonwealth.

71 All employees of the town, except those appointed by the town council, pursuant to this charter or  
72 the general laws of the Commonwealth, shall be appointed and may be removed by the town manager,  
73 who shall report each appointment or removal to the town council at the next meeting thereof following  
74 any such appointment or removal. The town council shall designate by ordinance a person to act as  
75 town manager in the case of the absence, incapacity, death or resignation of the town manager, until  
76 his/her return to duty or the appointment of his/her successor. Until such time as the town council  
77 appoints any such town manager, the duties and powers outlined herein shall be given the mayor, or  
78 such other person as may be designated by the town council.

79 The town clerk shall be the clerk of the town council. He/she shall keep the journal of the  
80 proceedings and shall record all ordinances and resolutions in a book or books kept for the purpose.  
81 He/she shall be the custodian of the corporate seal of the town and shall be the officer authorized to use  
82 and authenticate it. He/she shall perform such other duties and keep such other records as the town  
83 council may specify or the general laws of the Commonwealth require of town clerks. All records in  
84 his/her office shall be public records and open to inspection at any time during regular business hours.  
85 He/she shall be ex officio the assessor of the corporation with like powers and duties as a commissioner  
86 of the revenue in the assessments of the property for State and county taxation, and shall make and  
87 preserve a book in which the real estate of the town is assessed and one in which the personal property  
88 of the town is assessed for taxation, and shall return the same to the council at such time as it may  
89 prescribe for its inspection and approval. The assessment of real estate and personal property for the  
90 purpose of taxation, shall be the same as the assessment thereof, for the purpose of State and county  
91 taxes, if assessed for taxation by the State or ~~county~~ County of Mecklenburg.

92 The town attorney shall be the legal adviser of the town council. He/she shall represent the town in  
93 all legal affairs as may be requested by ~~the mayor~~, town council, or by an officer of the town appointed  
94 under the provisions of this charter. The town may employ the Commonwealth's Attorney of  
95 Mecklenburg County for criminal prosecutions.

96 The town treasurer shall collect the town taxes and licenses, and shall have the power to levy and  
97 sell for collection as given to county treasurers.

98 Any appointive officers or employees of the town may be appointed and serve whether or not the  
99 appointee be a resident or nonresident of the town.

100 § 8. The mayor shall preside over the meetings of the town council and shall have the same right to  
101 speak therein as other members of the town council; however, he/she shall vote only when they are  
102 equally divided. He/she shall be recognized as the head of the town government for all ceremonial  
103 purposes, for the purpose of military law and for the service of civil process.

104 § 9. At or before its first meeting in July in even-numbered years, the council shall elect one of its  
105 members to be vice-mayor who shall preside at such meetings in the absence of the mayor, and who,  
106 when the mayor is unable to perform any or all such duties so entrusted to the mayor, shall be  
107 designated acting mayor by a majority vote of the other members present. The vice-mayor, when acting  
108 as mayor, shall have all the duties and responsibilities of the position of mayor. The vice-mayor shall be  
109 entitled to a vote on all questions just as any other member except when he/she presides at a council  
110 meeting, at such time he/she shall vote only when it is necessary to break a tie.

111 § 11. The presence of at least four ~~councilmen~~ members shall be necessary to make a quorum for the  
112 transaction of business. The town council shall fix the time of their stated meetings and they shall meet  
113 at least once a month. The mayor or vice-mayor when acting as mayor shall have the authority to call a  
114 special meeting of council at any time. Special meetings may also be called at any time by three  
115 members of the town council. All members shall be duly notified a reasonable period of time prior to  
116 any special meeting. If both the mayor and vice-mayor are absent or unable to act, the town council  
117 shall, by a majority vote of the members present, elect from its members a person to serve as acting  
118 mayor until either the mayor or vice-mayor is present or able to act. The person so elected shall possess  
119 the powers and discharge the duties of the mayor during such period of time. Whenever it is necessary  
120 to elect an acting mayor pursuant to this section, in the absence of both the mayor and vice-mayor, the

town clerk or acting town clerk shall call the meeting of the town council to order and shall preside until an acting mayor is elected. This shall not be construed to vest in the town clerk any of the powers or duties of the mayor, except as expressly stated in this section.

§ 12. The town council is hereby authorized to fix the salaries of each of the members of the town council, mayor, members of ~~board~~ *boards* or commissions and all appointed officers and all employees of the town, at a sum not to exceed any limitations placed by the laws and Constitution of the Commonwealth of Virginia. The salaries of the mayor and town council shall be fixed by the council in August to be effective September ~~one~~ *1st* of each oddnumbered year and shall not be increased or diminished during the following two-year period.

§ 13. The Treasurer, Clerk ~~and~~, policeman and such other officers and employees as may be required by the council so to do, shall before entering upon the duties of their offices or at such other time as the council may require, execute before the council of the said town or other officers of said town, proper bond with security and conditioned as the council may direct. The bonds of the Clerk, Treasurer or other officers from whom bonds may be required shall be conditioned for the faithful performance of their respective duties as such and for the proper collection and accounting for all money and securities which shall come into their hands, respectively, or which shall be their respective duty to collect at such time as the council may order and to pay over all moneys and securities under proper order of the council to those entitled to the same, and such other conditions as the council may direct.

§ 14. If any one who shall have been duly appointed or elected by the council *as* Clerk, Treasurer, policeman or for any other position shall refuse or neglect to take the oath of affirmation, or to give the bond required within the time prescribed, the council for the time being shall declare his/*her* said office vacant and shall forthwith fill such vacancy for the unexpired term, by majority vote of the entire council.

§ 17. If the said treasurer shall fail to account for and pay over all of any ~~moneys~~ *monies* that shall come into his/*her* hands when thereto required by the council, it shall be lawful for the council, in the corporate name of the town, by motion before any court of record held in Mecklenburg county, to recover from the said treasurer and his/*her* sureties or their personal representatives, any sums that may be due from the said treasurer to said town on ten days notice. But this action shall not be construed to prevent the bringing of any action by the town which it might have brought had this section not have been passed.

§ 18. If a policeman, treasurer, officer or employee shall fail to collect, account for, and pay over all taxes, fines and other revenues of the town coming into their hands for collection or safekeeping, according to the conditions of their respective bonds, it shall be lawful for the council to recover the same by motion in the corporate name of the town before any court of record in the said county of Mecklenburg, against the policeman, treasurer, officer or employee and sureties of either on his/*her* bond, or any or either of them, his/*her* or their executors, or administrators, on giving ten days' notice of the same. But this action shall not be construed to prevent the bringing of any action by the town which it might have brought had this section not have been passed.

§ 21. At each regular meeting of the council the proceedings of the last regular meeting and all special meetings since same, shall be read to the council and shall thereupon be corrected if erroneous; and signed by the person presiding for the time being. Upon the call of any member, the ayes and nays on any question shall be called and recorded in the journal or minute book; but by unanimous vote of the members of the council present the reading of the minutes may be dispensed with. It shall be the duty of the clerk to assess all properties, the assessment of which may have been omitted by the county or State. § 22. Any appointed officer may by a three-fourths majority of the council be removed from office for good and sufficient cause and the unexpired term shall be filled by a majority vote of the entire council, but no such removal shall be made without reasonable notice to the officer complained of, and an opportunity afforded him/*her* to be heard in his/*her* defense.

§ 24. It shall be the duty of the treasurer, or any person specifically ordered by the council to collect the taxes and/or the income and revenue of the town, to account for and pay the same to such person or persons and at such times as the council may order; and at such times as the council may prescribe to render an account to the council showing his/*her* receipts and disbursements of the money which he/*she* has or should have collected, and to account for all taxes and other revenues which have been placed in his/*her* hands for collection and to return therewith a list of such as he/*she* shall have been unable with due diligence to collect, to which list the officer so rendering it shall make oath that he/*she* has used due diligence to collect the same, but has been unable to do so.

§ 25. All moneys belonging to said town shall be paid over to the treasurer, and disbursed as directed by a majority vote of the council. He/*she* shall keep regular accounts with the town, crediting it by all moneys received, and, which by due diligence he/*she* might have received, and charging it with all moneys so disbursed, which books, as well as others relating to the business of the town, shall be open at any time to the inspection of the council or any member or agent thereof. He/*she* shall annually

182 on the thirty-first day of August, or as soon thereafter as practicable, settle his/her accounts with the  
183 council or a committee thereof and at the same time he/she shall furnish a statement of all moneys  
184 received by him/her during the preceding year, and of all disbursements made. (1938, c. 44; 1973, c.  
185 100)

186 § 26. The treasurer shall collect all the town taxes, licenses and other revenues, except as may be  
187 specifically otherwise ordered by the council, and shall have the power one month after he/she shall  
188 have received the books, of the assessor of the said town, to distrain and sell therefor in like manner as  
189 a county treasurer may sell and distrain for State taxes, and shall have in all other respects the same  
190 powers as a county treasurer to enforce the payments and collections thereof; and he/she and his/her  
191 securities shall be liable to all fines, penalties and forfeitures that a county treasurer is legally liable to  
192 for any failure or dereliction in his/her said office, to be recovered in the same manner and before the  
193 said courts that said fines, penalties and forfeitures are now recoverable against the county treasurer.

194 § 28. The council so constituted shall have powers within said town to lay off, open, curb and pave  
195 streets, alleys, walks and gutters for the public use, and to alter, improve and light the same and have  
196 them kept in good order and free from obstruction on, over, under and through them; to regulate the  
197 width of sidewalks, and to order the sidewalks, footways and gutters to be kept free and clean and also  
198 may require the owners or occupants of property facing on such sidewalks to keep them free and clean;  
199 to lay off public grounds, and to provide contract for and take care of all public buildings proper for the  
200 needs of the town; to establish and regulate markets; to prescribe the time for holding the same and  
201 what articles shall be sold only in such markets; to prevent injury or annoyance to the public or  
202 individuals from anything dangerous, offensive or unwholesome; to protect the places of divine worship  
203 and about the premises where held; to abate or cause to be abated anything which, in the opinion of a  
204 majority of the whole council, shall be a nuisance; to regulate the keeping of gunpowder and other  
205 combustibles or explosives; to provide in or near the town places for the burial of the dead, and to  
206 regulate interments therein the town; to provide for and regulate building of houses or other structures  
207 and for making of division fences and for the drainage of lots; to make regulations and provisions for  
208 guarding against danger or damages from fire; to establish and regulate fire zones in said town; to  
209 provide for the poor of the town; to provide a revenue for the town and appropriate the same to its  
210 expenses and to provide the annual assessment of taxable property in the town; to adopt its own rules  
211 for the transaction of business and for the government and regulation of its own body; to promote the  
212 general welfare of the town, and to protect the property of persons therein; to keep a town guard; to  
213 appoint and order out a patrol for the town in like manner and for like purposes within the same as the  
214 patrol may be ordered out by the circuit court or justice within the county; to require and take from the  
215 policemen, treasurer and clerk bonds and sureties, in such penalty is the council may see fit, conditioned  
216 for the true and faithful discharge of their duties (all bonds taken by the council shall be made payable  
217 to the town by its corporate name); to permit or prohibit the establishment of new places for the  
218 interment of the dead in or near the town, and to regulate the same; to erect or authorize or prohibit the  
219 erection of gas works or water works or gasoline tanks in or near the town and to regulate the  
220 transportation and sale of gas or gasoline or other explosives in or through the town; to prevent injuries  
221 or pollution, or danger to the water and healthfulness of the town; to receive gifts of real or personal  
222 property either by will or otherwise (for all which purposes named in this ~~clause~~ <sup>section</sup>, except that of  
223 taxation, the council shall have jurisdiction for one mile beyond the town); to regulate and provide for  
224 the weighing and measuring of hay, coal and other articles sold or for sale in said town, and to regulate  
225 the transportation thereof through the streets.

226 § 30. To carry into effect those enumerated powers, and all other powers conferred upon cities and  
227 towns, or its council; expressly or by implication, in this or any other Acts of the General Assembly of  
228 Virginia, the council shall have power to make and pass all needful orders, by-laws and ordinances not  
229 contrary to the Constitution of the United States, and to prescribe, impose and enact reasonable fines not  
230 exceeding one thousand dollars, and penalties, or imprisonment in the county jail for not exceeding  
231 twelve months, or both such fine and imprisonment (except that in case of contempt the imprisonment  
232 in jail should not be for more than ten days or a fine of more than twenty dollars), or to enforce the  
233 collection of a fine which fines, penalties and imprisonment shall be recovered under the judgment of  
234 the mayor of said town, or by the person lawfully exercising his/her functions. And the authorities of  
235 said town may, with the consent of the circuit court of said county, entered of record, have the right to  
236 use the jail of said county of Mecklenburg for any purpose for which the use of a jail may be needed  
237 by them, under the acts of the council or of the State.

238 § 31. All policemen shall have the power to exercise within the corporate limits of said town and in  
239 the county of Mecklenburg within one mile of the corporate limits of said town all the duties that a  
240 constable can legally exercise in regard to the collection of claims executing and levying processes, and  
241 he/she and his/her sureties shall be liable to all fines, penalties and forfeitures that a constable is legally  
242 liable to, for a failure or dereliction in his/her said office, to be recovered in the same manner and  
243 before the same court that said fines, penalties and forfeitures are now recoverable against a constable.

§ 33. The said council shall have the power to make such ordinances, by-laws, orders and regulations as they may deem necessary to prevent hogs, dogs, or other animals from running at large or doing injury or annoying persons or property in the limits of the corporation, and may subject the same owners of such animals to such fines, regulations and taxes as they may deem proper and which fines and taxes shall constitute liens on same, and said animals may be sold or killed after ten days' notice, to enforce payment of said fines and taxes.

§ 34. The council shall not take or use any private property for streets or other public purposes, without making to the owner or owners thereof just compensation for the same; but in all cases where the said corporation cannot be an agreement, obtain title to or an easement in the ground necessary for the purposes, it shall be lawful for said corporation to apply to the Circuit Court of Mecklenburg County for authority to condemn the same, either within or beyond the corporate limits of said town of Clarksville, which shall be applied for and proceeded with according to law. The powers of eminent domain set forth in Title 45-11 and Title 25 15.2 of the Code of Virginia, as amended, are hereby conferred upon the town.

§ 39. The levy so ordered may be upon all the real estate within the said town which is not exempt from taxation, and on all such other property and subjects, subject to local taxation, not prohibited by law; provided that before any bonded debt shall be created by the said council for which money is to be borrowed, the council, if it shall deem it to be to the interest of the corporation to create such debt, evidenced by a recorded vote of a majority of its members, shall hold a public hearing for citizen input. After holding a public hearing the said council may issue and sell the bonds of the said corporation, and said bonds shall be issued in such denominations and bear such interest, commonly thought to be the best rate, said interest to be payable *monthly*, quarterly, semi-annually or annually, as the council may prescribe. The council may select a depository for the money arising from the same or negotiations of the said bonds, and they may require such security therefor as may be approved by a majority of the council; but if they shall choose a national bank or banks as depository or depositories no security shall be required unless specifically ordered.

§ 42. There shall be a lien on the real estate within said town for the town taxes assessed thereon, from the commencement of the year for which they are assessed. When any of said taxes are returned delinquent a list of the same shall be returned to the clerk of the circuit court of the county of Mecklenburg, and be by him/her entered in a book furnished by the said town, and kept in his/her said office, the form and manner of entering the same to be similar to that provided by law for the record of delinquent taxes on real estate due the State or county. In said book there shall also be columns records in which shall be entered the names of purchasers, the amount and date of sale or real estate sold for delinquent taxes as provided in this charter. When the taxes so returned delinquent are entered into said record as herein provided, the same shall be held to be constructive notice of the lien thereof, and the said real estate shall be liable thereto as against creditors, and in the hands of purchasers or other persons into whose hands the said real estate may pass. And the said real estate may be sold for taxes as provided in this charter, whether owned by the persons in whose name it was assessed or not. After said real estate has been so sold for taxes the same may be redeemed within such time and by such persons and upon such terms as is provided by law for the redemption of lands sold for State and county taxes, except that the money paid for such redemption shall be paid to the treasurer of the town of Clarksville. Upon such redemption of said real estate the Treasurer shall issue to the persons so redeeming it a certificate to that effect, which certificate shall be presented to the mayor of the town, who shall countersign the same, and the same when so countersigned shall be presented to the clerk of the circuit court of the county of Mecklenburg, who shall thereupon mark in the said record the redemption of the said real estate, the name of the party redeeming it, and the date thereof, and shall preserve such certificate in his/her office. The clerk shall receive for his/her services a fee of ten cents for each lot of land so entered in such record, a fee of ten cents for the entry of such sale of real estate as is provided in this charter, and a fee of twenty-five cents for such redemption so entered, to be paid by the town of Clarksville, and which shall be charged against and be a lien upon said land along with the taxes against the same. At the expiration of the time within which said real estate may be redeemed, if the same has not been redeemed as herein provided, the clerk of the town of Clarksville shall execute to the purchaser thereof a deed conveying the same in like manner as is prescribed by law for the conveyance of real estate by the clerk of the county which has been sold for delinquent taxes to the State and such deed shall convey title as would be conveyed had the same been sold for State or county taxes.

§ 44. All the ~~right~~ rights, privileges and properties of the said town heretofore acquired and possessed, owned and enjoyed by any act now in force, not in conflict with this act, shall continue undiminished and remain vested in the said town under this act, and all laws, ordinances, acts and resolutions of the council now in force, not inconsistent with this act, shall be and continue in full force and effect until regularly repealed by a council elected as provided under this act.

305        § 49. *The town council may, by ordinance provide that taxes or charges hereafter made, imposed, or*  
306 *incurred for water use within the Town of Clarksville shall be a lien on the real estate served by such*  
307 *waterline. Where residential rental real estate is involved, no lien shall attach (i) unless the user of the*  
308 *water is also the owner of the real estate or (ii) unless the owner of the real estate negotiated or*  
309 *executed the agreement by which such water service was provided to the property.*  
310 **2. That § 40 of Chapter 44 of the Acts of Assembly of 1938 is repealed.**