

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 640

An Act to provide a new charter for the City of Portsmouth and to repeal Chapter 471 of the Acts of Assembly of 1970, as amended, which provided a charter for the City of Portsmouth.

[S 1138]

Approved March 26, 2011

Be it enacted by the General Assembly of Virginia:

1.

CHARTER FOR THE CITY OF PORTSMOUTH.

CHAPTER 1. INCORPORATION AND BOUNDARIES.

§ 1.01. Incorporation.

The inhabitants of the territory comprised within the limits of the City of Portsmouth, as they are or hereafter may be established by law, shall continue to be body politic and corporate and as such shall have perpetual succession, may sue and be sued, contract and be contracted with and may have a corporate seal, which it may alter at its pleasure.

§ 1.02. Boundaries.

The boundaries of the city shall be as described in Chapter 265, Acts of Assembly, 1858; as codified by Chapter 370, Acts of Assembly, 1894; by an order of the Circuit Court of Norfolk County entered November 21, 1908, in its Common Law Order Book 21, page 467; by an order of the Supreme Court of Appeals confirming an order of the Circuit Court of Norfolk County entered June 26, 1918, which said order of the Supreme Court of Appeals is recorded in the Circuit Court of Norfolk County in Common Law Order Book 27, page 141; by an order of the Circuit Court of the City of Portsmouth entered September 25, 1933, in its Common Law Order Book 4, page 421; by an order of the Supreme Court of Appeals confirming an order of the Circuit Court of Norfolk County entered September 27, 1946, which said order of the Supreme Court of Appeals is recorded in the Circuit Court of Norfolk County in Common Law Order Book 44, page 583; by an order of the Circuit Court of Norfolk County entered August 20, 1959, in its Common Law Order Book 58, page 185; and by an order of the Circuit Court of the City of Chesapeake entered October 2, 1967, in its Common Law Order Book 66, page 357.

CHAPTER 2. POWERS.

§ 2.01. General Grant.

The City of Portsmouth shall have and it may exercise all the powers granted to cities by Article VII of the Constitution of Virginia, and Title 15.2 and other applicable titles of the Code of Virginia, as those laws may be amended from time to time. The powers thus granted are those that are explicitly granted and those that are reasonably inferred therefrom. The city shall also have the power to take other official actions not in conflict with the Constitution of Virginia or other laws of Virginia for the preservation of the safety, health, peace, good order, comfort, convenience, morals and welfare of its citizens.

§ 2.02. Eminent Domain.

The powers of eminent domain set forth in Title 15.2 and Title 33.1 of the Code of Virginia, 1950, as amended, and all amendments thereto, with necessary changes in points of detail, are hereby conferred on the city.

In any cases in which a petition for condemnation is filed by or on behalf of the city, a true copy of the resolution or ordinance duly adopted by the City Council declaring the necessity for any taking or damaging of any property within or without the city, for the purposes of the city, shall be filed with the petition and shall constitute sufficient evidence of the necessity of the exercise of the power of eminent domain by the city.

§ 2.03. Sale of Real Property.

The restrictions imposed by Article VII, Section 9 of the Constitution of Virginia on the sale of real property owned by the city, plus any other restrictions and authorizations imposed or conferred by the Constitution or Code of Virginia, as amended, shall apply to the city. The city may sell or convey any of its property to the Commonwealth of Virginia, any political subdivision thereof, or to the federal government, without advertisement and without receiving bids.

§ 2.04. Waterworks.

The city shall also have the power to contract with any other political subdivision in this state for

the use of its own water supply, or the water supply of such other political subdivision, in whole or in part, upon any terms as may be agreed upon. The city may contract for the sale of water, whether within or without the city limits, and collect such rates or charges for the use thereof as it may deem proper, or as may be agreed upon with any other political subdivision under the provisions hereof or any other law of this state.

The city may establish or enlarge its waterworks, within or without the limits of the city, contract and agree with the owners, whether the same be individuals, private corporations, or public service corporations, of any land, water, water rights or easements, for the use or purchase thereof, or may have the same condemned for the location, extension and enlargement of the works, the pipes connected therewith, or any fixtures or appurtenances thereof.

The city shall have the power to make reasonable rules and regulations and to enact ordinances with adequate penalties for protecting its water supply from pollution and for protecting from injury its waterworks, pipes, fixtures, lakes and land or anything connected therewith, and for these purposes to exercise full police powers and sanitary patrol over all of Portsmouth's lands comprised within the watershed tributary. The city shall have the power to prosecute violations of any such rules, regulations, and ordinances and to obtain injunctive relief in the courts of the city, regardless of the place of occurrence of any violation or act.

§ 2.05. Other Utilities.

The City Council, in addition to other powers conferred by law, shall have the power:

a. To establish, acquire, enlarge, maintain and operate electric lighting and power plants and systems, gasworks and systems, motor bus and other transportation systems, either within or partly within and partly without, the city limits.

b. To furnish electric current, transportation and gas to consumers for domestic or commercial purposes, and charge and collect compensation therefore.

c. To acquire by purchase, lease, condemnation or otherwise, land, rights-of-way, and easements for the purpose of establishing, extending, maintaining and repairing such plants, systems or works, wires, poles, conduits, motor vehicles, pipes or other fixtures or appurtenances thereto.

d. To acquire by purchase or lease, in whole or in part, the lighting and power plants or systems, gasworks or systems, motor bus or other transportation systems, and other property and appurtenances of any person or corporation operating within the city, or in the territory contiguous thereto.

CHAPTER 3. CITY COUNCIL.

§ 3.01. Composition.

The City Council of the City of Portsmouth (hereinafter referred to as the City Council or the Council) shall consist of a Mayor and six Council members to be elected by and from the city at large.

§ 3.02. Nomination of Candidates.

a. Candidates for the offices of Mayor and members of the City Council under the provisions of this Charter shall be nominated by petition. Any qualified voter of the city may be nominated as provided herein. Subject to the provisions herein, there shall be printed on the ballots to be used in any municipal election for the election of Mayor and City Council members the names of all candidates who have been nominated by petition and no others. A nominating petition shall conform substantially to the following requirements:

(1) Such petition shall state the name and place of residence of each person whose name is presented for a place upon the ballot, and shall request such person or persons to become a candidate or candidates for the office of Mayor or City Council.

(2) Such petition shall be signed by at least one hundred and twenty-five (125) qualified electors of the city and shall contain the residence address of each elector and an affidavit of any other qualified voter who witnessed said signatures.

(3) Each elector signing a petition may subscribe to one nomination for each of the places to be filled at the ensuing election, and no more.

(4) Such petition shall not be signed by any elector prior to the first Tuesday in January of the year of such election, and such petition shall be filed with the general registrar of the city not later than the time fixed for the closing of the polls on the first Tuesday in June of the year of the election.

b. Any person whose name has been submitted for candidacy by petition as herein provided, shall file his or her acceptance of such candidacy with the general registrar of the city not later than the time fixed for the closing of the polls on the first Tuesday in June of the year of the election, otherwise that name shall not appear on the ballot. The filing of such acceptance shall be deemed equivalent to the filing of notice of candidacy under the general election laws of the State, and no other notice of candidacy need be given by the person filing the same.

c. No person may be a candidate for the office of Mayor and office of City Council member in the same election.

d. Candidates for the offices of Mayor and City Council member shall appoint one campaign treasurer and file the name and address of said campaign treasurer with the Portsmouth Electoral Board not later than the first Tuesday of June of the year of the election. Any candidate who fails to

appoint and report the appointment of a treasurer shall be deemed to have appointed him/herself treasurer. All candidates for such offices shall comply with the applicable provisions of Chapter 9 of Title 24.2 of the Code of Virginia.

§ 3.03. Election of Mayor and City Council Members.

a. On the first Tuesday in May in nineteen hundred seventy-four, and on the first Tuesday in May of every fourth year thereafter, there shall be a general election at which time the qualified voters of the city shall elect three City Council members for terms of four years. On the first Tuesday in May nineteen hundred seventy-six, and on the first Tuesday in May of every fourth year thereafter, there shall be a general election at which the qualified voters of the city shall elect a Mayor and three Council members for terms of four years. All terms shall begin on the first day of July next following the date of their election.

However, beginning in 2012, the municipal election shall be held at the time of the November general election with terms to commence on January 1. No term of a Mayor or member of Council elected in 2008 or 2010 shall be shortened in implementing the change to the November election date. The Mayor and members of Council who were elected at a May general election and whose terms are to expire as of June 30 shall continue in office until their successors have been elected at the November general election and have been qualified to serve.

b. The candidates at any municipal election for the election of City Council members, equal in number to the places to be filled, who receive the largest number of votes cast at such election shall be declared elected to the office of City Council. The candidate for Mayor who receives the largest number of votes at any municipal election shall be declared elected to the office of Mayor.

c. In the event any member of City Council during his or her tenure of office shall desire to be a candidate for the office of Mayor, he or she shall be eligible to do so, but shall tender resignation as a member of City Council not fewer than ten days prior to the final date for the filing of petitions and notices of acceptance as specified herein, such resignation to be effective on December 31st of the election year. Such resignation shall state the council member's intention to run for the office of Mayor and shall require no formal acceptance by the remaining members of City Council and shall be final and irrevocable as of the date it is tendered.

d. The remaining two-year term of office of any City Council member who has resigned for the stated purpose of running for office of Mayor shall be filled at the same succeeding general municipal election at which the office of Mayor is filled. The two-year term shall be filled by the candidate for City Council receiving the next highest vote to those candidates declared elected to the office of City Council member pursuant to subsection b. above. Such two-year term shall begin on the first day of January next following the date of such election.

e. The City Clerk shall notify all successful candidates of the process to qualify for office immediately after their election has been certified by the proper officials.

§ 3.04. City Council Vacancies.

If, for any reason, there is an insufficient number of certified elected candidates for the office of City Council after any municipal election, or if a City Council vacancy otherwise occurs, except for resignations to run for the office of Mayor which should be filled as specified in § 3.03 c. above, such vacancies shall be filled for the unexpired portion of the term by majority vote of the remaining members of the City Council, or, if the Council shall fail to fill a vacancy in its membership within sixty days of the occurrence of the vacancy, by appointment by a majority of the judges of the Circuit Court of the City.

If any person duly elected to the City Council shall fail to take the oath of office prior to the first day of January following such election, he or she shall be deemed to have declined the office, and the seat shall be deemed vacant. If any person appointed to the City Council to fill an unexpired term shall fail to take the oath of office within thirty days of such appointment, he or she shall be deemed to have declined the office, and the seat shall be deemed vacant.

§ 3.05. Induction of Mayor and City Council Members.

The Mayor and each City Council member, before entering upon the duties of office, shall take the oath of office. The oath of office may be administered by the City Clerk, the judge or clerk of any court, or by any other officer authorized by law.

§ 3.06. Election of Mayor and Vice-Mayor.

a. The City Attorney shall preside over such meeting, and any adjournment thereof, until a Mayor and a Vice-Mayor have been elected or are present or City Council has selected one of its members to preside over the meeting.

b. At the first regular meeting in January 2013, and at the first regular meeting in January every second year thereafter, the City Council shall proceed to choose by majority vote of all the members thereof one of their number to be Vice-Mayor for the ensuing two years. Until this business has been completed, the Council shall not adjourn for a period longer than forty-eight hours.

c. The Mayor shall be elected in nineteen hundred seventy-six and every four years thereafter in the manner specified in § 3.03 herein.

§ 3.07. Election of Mayor Pro Tempore.

When from any cause both the Mayor and the Vice-Mayor are absent from a meeting or are unable to preside, a Mayor pro tempore shall be elected by the City Council to preside during the absence or disability of the Mayor and Vice-Mayor. The City Attorney shall preside over any such meeting until a Mayor pro tempore shall have been elected, which shall be the first order of business at any such meeting.

§ 3.08. Vacancies in the Offices of Mayor or Vice-Mayor.

a. Vacancy in the office of Mayor shall be filled for the remainder of the unexpired term thereof in the same manner as prescribed for vacancies in the office of City Council in § 3.04 herein. In the event the Mayor is appointed from the members of the Council and elects to serve as such, he or she shall immediately tender resignation as a member of City Council and the vacancy created thereby shall be filled as provided in § 3.04.

b. Vacancy in the office of the Vice-Mayor, for any reason, shall be filled by majority vote of all the members of the City Council for the unexpired portion of the term.

§ 3.09. Duties of Mayor.

The Mayor shall preside over the meetings of the City Council and shall have the same right to vote and speak therein as other members of City Council.

The Mayor shall be recognized as the head of the city government for all ceremonial purposes, the purposes of military law, and the service of civil process. In the absence or disability of the Mayor, the Vice-Mayor shall perform the duties of Mayor.

§ 3.10. City Council Prohibited from Furnishing City Anything Requiring Payment.

No member of the City Council shall be allowed to furnish any goods or services except services as a member of City Council for which he or she received any consideration in money or otherwise, either directly or indirectly, under penalty of the forfeiture of office. Any person making under oath a charge of this nature before any judge of the Portsmouth Circuit Court shall cause the accused council member to show cause why he or she should not be removed. If such charge is sustained, the judge shall remove the person from office and order the forfeiture of the consideration involved.

§ 3.11. Noninterference in Appointments or Removals.

Neither the City Council nor any of its members shall direct or request the appointment of any person to or the removal of any person from any office or employment by the City Manager or by any of the Manager's subordinates, or in any way take part in the appointment of or removal of officers and employees of the city except as specifically provided in this Charter. Except for the purpose of inquiry, the City Council and its members shall deal with the administrative services of the city solely through the City Manager. Neither the City Council nor any member thereof shall give orders either publicly or privately to any subordinate of the City Manager. Any Council Member violating the provisions of this section or voting for a motion, resolution or ordinance in violation of this section shall be guilty of a class three misdemeanor and upon conviction thereof shall forfeit office as a Council Member.

§ 3.12. Council as Continuing Body.

The City Council shall be a continuing body and no measure pending before such body shall abate or be discontinued by reason of the expiration of the term of office or removal of the members of said body or any of them. Provided, however, that any measure, ordinance or resolution which is not finally adopted or approved by the City Council within six (6) months of the date of its introduction or presentation to the Council shall not thereafter be considered by such body unless such measure, ordinance or resolution shall again be introduced in or presented as required by law.

§ 3.13. Special Meetings.

Special meetings of the City Council may be called by the Mayor or any three (3) members of the Council. Notice of each special meeting shall contain a statement of the specific item or items of business to be transacted, and no other business shall be transacted at such meeting except by the unanimous consent of all the members of the City Council.

§ 3.14. Procedures.

No ordinance or resolution appropriating money exceeding the amount of five hundred dollars (\$500), imposing taxes, or authorizing the borrowing of money shall be passed except by a recorded affirmative vote of a majority of all members elected to the governing body.

§ 3.15. Ordinances Subject to Initiative and Referendum.

The provisions of this charter pertaining to the processes of initiative and referendum shall not apply to administrative, appropriation, financial or revenue ordinances.

CHAPTER 4. CITY CLERK.

§ 4.01. City Clerk.

The City Council shall appoint a City Clerk who shall serve at the pleasure of the City Council. The City Clerk shall be chosen solely on the basis of his or her professional qualifications.

§ 4.02. Powers and Duties.

The City Clerk shall be the clerk of the City Council, shall keep the journal of its proceedings, to include resolutions, and shall record all ordinances in a book kept for that purpose. The Clerk shall be the custodian of the corporate seal of the city and shall be the officer authorized to use and authenticate

it. The Clerk shall have such other powers and duties as are provided by law or imposed from time to time by the City Council.

§ 4.03. Deputy Clerks and Other Employees.

The City Clerk may appoint deputy clerks and other employees for whom there are authorized and funded positions. Such appointees shall serve at the pleasure of the City Clerk.

CHAPTER 5.

CITY MANAGER.

§ 5.01. City Manager.

The City Council shall appoint a City Manager who shall be the executive and administrative head of the city government. The City Manager shall be chosen solely on the basis of his or her professional qualifications, and shall serve at the pleasure of the City Council.

In the event of the inability of the Manager to temporarily perform the duties of office by reason of absence or disability, he or she shall designate someone to perform the duties of the office during that period. If the Manager is unable to make the designation, the Council shall do so. A delegation pursuant to this section shall be in writing addressed to members of the City Council and filed with the City Clerk.

§ 5.02. Powers and Duties.

The City Manager shall be responsible to the City Council for the efficient and professional administration of all affairs of the city. The Manager shall have power and duty:

- a. To see that all laws and ordinances are enforced.*
- b. Except as otherwise provided in this Charter or by law, to appoint and manage all employees in all departments, offices, and agencies of the city. The Manager may delegate this authority among the Manager's appointees. For all such persons appointed by the Manager, the Manager shall have the power of discipline, subject to applicable law. Assistants and deputies to the Manager and department heads appointed by the Manager shall serve at the pleasure of the Manager.*
- c. To transfer or reassign employees under the Manager's control to other departments or agencies of the city, when the Manager deems such action to be in the best interests of the city.*
- d. To exercise supervision and control over all departments and divisions of the city for which the Manager appoints the head.*
- e. To appoint Fire Marshals, who shall have such authority as is provided at common law or by statute or regulation.*
- f. To attend all regular meetings of the City Council, with the right to take part in the discussion, but having no vote. He or she shall be entitled to notice of all special meetings.*
- g. To recommend to the City Council for adoption such measures as the Manager may deem necessary or expedient.*
- h. To make and execute in the ordinary course of business all contracts on behalf of the city, and also such other contracts as may be authorized by the City Council.*
- i. At the direction of City Council, to prepare and submit an annual or biennial budget after receiving estimates made by the heads or directors of the departments and any board or commission not within a department.*
- j. To keep the City Council at all times fully advised as to the financial condition and needs of the city.*
- k. To perform all such other duties as may be prescribed by this charter or other laws of the Commonwealth of Virginia, or be required by ordinance or resolution of the City Council.*

CHAPTER 6.

CITY ATTORNEY.

§ 6.01. Appointment.

The City Council shall appoint a City Attorney, who shall serve at the pleasure of the City Council. The City Attorney shall be chosen solely on the basis of his or her professional qualifications.

§ 6.02. Powers and Duties.

The City Attorney, either personally or through his or her office, shall:

- a. Be the chief legal advisor and counselor for the City Council, the City Manager, and all departments, boards, commissions and agencies of the city in all matters affecting the interests of the city.*
- b. Manage and control all the law business of the city.*
- c. Represent the city and its officials and employees in all civil proceedings affecting the interests of the city.*
- d. Institute, prosecute, defend, compromise and settle all legal proceedings necessary and proper to protect the interests of the city.*
- e. Prepare ordinances and resolutions for the City Council.*
- f. Prosecute violations of the City Code, unless prosecuted by the Commonwealth's Attorney.*
- g. Appoint deputy and assistant city attorneys and other employees for whom there are authorized and funded positions. The deputy and assistant city attorneys shall serve at the pleasure of the City Attorney.*

h. Exercise such other powers and responsibilities as are inherent in the position or as may be authorized by law or conferred by the City Council.

**CHAPTER 7.
CITY ASSESSOR.**

§ 7.01. City Assessor.

The City Council shall appoint a City Assessor, who shall serve at the pleasure of the City Council. The City Assessor shall be chosen solely on the basis of his or her professional qualifications.

§ 7.02. Powers and Duties.

The City Council may prescribe the duties of the City Assessor, may fix the compensation of the Assessor and require that the Assessor shall have no other employment than with the City of Portsmouth. All duties and powers which are prescribed for the Commissioner of the Revenue for the assessment of real estate pursuant to the general laws of Virginia shall devolve upon the Assessor.

§ 7.03. Technical and Clerical Assistance.

The Assessor may appoint persons to perform such technical and clerical tasks as necessary and advisable to effectively exercise the duties and powers authorized by law, and for whom there are authorized and funded positions.

**CHAPTER 8.
BOARD OF EQUALIZATION OF REAL ESTATE ASSESSMENTS.**

§ 8.01. Board of Equalization of Real Estate Assessments.

The Circuit Court of the City of Portsmouth shall appoint a Board of Equalization of Real Estate Assessments (the Board). The Board shall sit for the purpose of equalizing real estate assessments in the city, to hear complaints alleging the lack of uniformity of assessments, errors in acreage of such assessments and complaints that real property is assessed at more than fair market value.

§ 8.02. Composition and Terms of Office.

The Board shall be composed of three members. The initial members of the Board shall be appointed in the following manner: one member shall be appointed for a term of one year, one member shall be appointed for a term of two years, and one member shall be appointed for a term of three years. As the terms of the initial members expire, their successors shall be appointed for terms of three years. All members of the Board shall meet the qualifications for such members and shall exercise their duties and powers as prescribed by the Code of Virginia, as amended.

§ 8.03. Compensation.

The City Council shall fix the compensation for members of the Board.

**CHAPTER 9.
CONSTITUTIONAL OFFICERS.**

§ 9.01. Constitutional Officers.

The city is committed to the continued existence of each of its constitutional officers: the Attorney for the Commonwealth, Commissioner of the Revenue, City Treasurer, City Sheriff, and Clerk of the Portsmouth Circuit Court. Each of said offices is essential to the efficient and effective operation of city government, and each office plays a separate and distinct role in that process. Each office shall continue to exercise such powers, responsibilities, and authority, express and implied, as may be set forth in the Constitution of Virginia and the Code of Virginia.

**CHAPTER 10.
PUBLIC EDUCATION.**

§ 10.01. Composition.

The city shall provide for public education through a city School Board, a Superintendent of Schools, and the employees thereof. The School Board and the Superintendent of Schools shall exercise all the powers conferred and perform all the duties imposed upon them by general law.

§ 10.02. School Board.

The School Board shall be composed of nine members who shall be elected at large for terms of four years in the manner prescribed by general law. Vacancies shall be filled in the same manner in which general law provided for the filling of vacancies of City Council members pursuant to Article 6 (§ 24.2-226 et. seq.) of Chapter 2 of Title 24.2 of the Code of Virginia with the interim appointment to be made by a majority vote of the remaining members of the School Board.

§ 10.03. School Superintendent.

The School Board shall appoint a School Superintendent who shall be chosen solely on the basis of his or her professional qualifications.

**CHAPTER 11.
CIVIL SERVICE COMMISSION.**

§ 11.01. Creation and Term of Office.

There shall be a Civil Service Commission, which shall be composed of three persons appointed by the judges of the Circuit Court of the City of Portsmouth (the Commission and the Court, respectively). No person shall be appointed a member of the Commission who is not a citizen of the United States and a resident of Portsmouth, or who holds any office or post of employment under the city, or the Commonwealth of Virginia or any political subdivision thereof, or any public service corporation owned

by the city or Commonwealth, other than the office of notary public, or who is an officer or member of any national, state or local committee of any political party, or an officer of such party, or who is an officer or member of a committee of a partisan political club, or an officer of such club. Such appointments shall be made without regard to race, color, religion, sex, disability, or national origin.

The term of office of each Commissioner shall be four years. Any vacancy shall be filled by the Court for the unexpired portion of the term. Each January, the Commissioners shall elect a Chair and a Vice-Chair for a one-year term.

The Commission shall hold meetings upon call of the Chair. Meetings shall occur at least once a quarter, and at such other times as may be required.

Any member of the Commission may be removed from office by the Court for incompetency, incompatibility, or dereliction of duty or malfeasance in office or for injecting, or attempting to inject, political, religious, racial or other unlawful discriminatory influence into the administration of the provisions of this Chapter, or for other good cause. However, no member of the Commission shall be removed until charges are provided in writing, followed by a full hearing with reasonable notice.

The members of the Commission shall devote due time and attention to the performance of their duties. The Commission shall conduct its meetings in accordance with Robert's Rules of Order, except to the extent modified by the Commission.

§ 11.02. Functions and Duties.

The authority, powers, and responsibilities of the Commission shall apply to, and be limited to, the Police Department and the Fire Department. The members and employees of said departments may be referred to herein as the "Civil Service."

a. It shall be the duty of the Commission to make suitable rules and regulations not inconsistent with applicable law and this Chapter. The rules and regulations shall provide in detail the manner in which examinations may be held, and appointments, promotions, transfers, reinstatements, demotions, suspensions and discharges shall be made. The rules and regulations and any amendments thereof shall be made available for free public distribution.

b. All tests shall be practical, and shall consist only of subjects which will fairly determine the capacity of persons examined to perform duties of the position to which appointment is to be made, and may include tests of physical fitness and of manual skill.

c. The Commission may make investigations concerning and report upon all matters touching the enforcement and effect of this Chapter, and the rules and regulations prescribed hereunder; inspect all institutions, departments, offices, places, positions and employments affected hereby, and ascertain whether this Chapter and all rules and regulations are being obeyed. Investigations may be made by the entire Commission or by a single Commissioner designated by the Commission for such purpose.

d. In the course of an investigation or hearing, the Commission shall have the power to administer oaths, subpoena and require the attendance of witnesses and the production of books, papers, documents and accounts appertaining to the investigation. The Commission may also cause the depositions of witnesses residing within or without the city to be taken in the manner prescribed by law for like depositions in civil actions. The oaths administered and the subpoenas issued hereunder shall have the same force and effect as the oaths administered by a circuit court judge; and the failure upon the part of any person so subpoenaed to comply with the provisions of this section may be enforced by equitable relief.

e. All hearings and investigations before the Commission shall be governed by this Chapter and by the rules and practices and procedures to be adopted by the Commission, and in the conduct thereof the Commission shall not be bound by the technical rules of evidence. No informality in any proceeding or hearing, or in the manner of taking testimony before the Commission, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Commission.

f. The Commission shall hear and determine appeals or complaints from a covered employee's removal, suspension, demotion, discharge, or other disciplinary action.

g. The Commission shall provide for, formulate and hold competitive tests devised in accordance with applicable laws to determine the relative qualifications of persons who seek employment in any class or position and as a result thereof establish eligibility lists for the various classes of positions, and to provide that persons laid off because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be reemployed.

h. The Commission shall certify to the appointing authority, upon written request, the names of the persons on the eligibility list for the class for which one or more vacant positions exist, and if there is no such list, to establish a provisional or temporary appointment list of the class. No temporary or provisional appointment shall continue for a period longer than four months; nor shall any person receive more than one provisional appointment or serve more than four months as a provisional appointee in any fiscal year.

i. The Commission shall keep such records as may be necessary for the proper administration of its responsibilities.

j. The Commission shall make such reports as the City Council may require; provided, however, it

shall be the duty of the Commission to report at least annually to the Council showing its actions, the rules in force, the practical effects thereof, and any suggestions it may have for the improvement of the civil service.

k. The Commission shall be entitled to seek equitable relief, if necessary to implement any of its powers, rights, or responsibilities as set forth hereunder. The power to seek equitable relief shall extend to, but shall not be limited to, failure of any person to honor a subpoena or a subpoena duces tecum duly issued by or on behalf of the Commission; the failure to comply with a lawful direction of the Commission in the conduct of an investigation, hearing, or appeal; and failure to provide the level of administrative or financial support to which the Commission is entitled under this Chapter. In any such proceeding, the Commission shall be represented by the City Attorney; but if the City Attorney is unable to provide such representation for any reason, then by legal counsel retained by the Commission.

§ 11.03. Annual Appropriation.

There is hereby appropriated out of the general funds an appropriation to carry out the purposes of this Chapter, which appropriation shall be one-fourth of one percent of the total payroll of those included under the jurisdiction and scope of this Chapter; provided, however, that if the Council shall make an appropriation for the support of the Commission exceeding that amount, this section shall not be operative for said year but otherwise shall be in full force and effect.

§ 11.04. Rooms, Supplies, and Clerical Assistance.

The City Council or the City Manager shall provide the Commission with suitable and convenient rooms and cause the same to be furnished, heated and lighted and supplied with all office supplies and equipment necessary to carry on the business of the Commission, and to provide such clerical assistance as may be necessary.

§ 11.05. Chief and Deputy Chiefs: Standards for Appointments and Promotions.

The provisions of this Chapter dealing with eligibility lists and the right to appeal discipline shall not apply to any Department Chief or Deputy Department Chief.

§ 11.06. Appointments to Vacant Positions.

In general, all appointments to and promotions in the police and fire departments shall be made solely on merit, efficiency and fitness, which shall be ascertained by competitive and impartial means.

a. Whenever a position in the classified service becomes vacant, the appointing authority, if it desires to fill the vacancy, shall request from the Commission the names of persons eligible for appointment thereto. The Commission shall certify the names on the eligibility list for the class to which the vacant position has been allocated that are willing to accept employment. The appointing authority may then appoint a certified person to the vacant position.

b. Whenever request is made, or whenever a position is held by a temporary appointee and an eligibility list for the class of such position exists, the Commission shall certify the names of the persons eligible for appointment to the appointing authority, who may then appoint a certified person to the position.

c. To enable the appointing authority to exercise a choice in the filling of positions, no appointment, employment, or promotion in any position in the classified service shall be deemed complete until after the expiration of a period of not more than one year probationary service, during which the appointing authority may terminate the employment of the person, if during the performance test thus afforded, upon observations or considerations of the performance of duty, the appointing authority deems the employee unfit or unsatisfactory for service in the department. Whereupon the appointing authority shall designate a person or persons certified for such position and such person or persons shall likewise enter upon said duties until some person is found who is deemed fit for appointment, employment or promotion for the probationary period required.

§ 11.07. Tenure of Office; Discharge.

The tenure of everyone holding office, place, position or employment under the civil service provisions of this Chapter, shall be only during good behavior and efficient performance of duty. Any such person may be removed, discharged, suspended without pay, or reduced in rank, or deprived of vacation privileges or other privileges for any of the following reasons:

a. Incompetent or inefficient performance of duty or inattention to or dereliction of duty;

b. Insubordination, discourteous treatment of the public or a fellow employee or any other act of omission or commission of similar nature tending directly to discredit or injure the public service or to jeopardize the effective functioning of the service, or any willful violations of the provisions of this Chapter or the rules and regulations to be adopted hereunder;

c. Mental or physical unfitness for the position which the employee holds;

d. Any conduct which is dishonest, deceitful, immoral or declared criminal by statute or common law, regardless of whether a criminal conviction is obtained;

e. Drunkenness or use of intoxicating liquors, narcotics or any other dangerous drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the functions and duties of his or her position;

f. Conviction of a felony, or a misdemeanor involving moral turpitude, or a pattern of misconduct as

manifested by a series of convictions of misdemeanors not involving moral turpitude;

g. Failure to report to an appropriate superior authority administrative errors, incompetence, misconduct, inefficiency, neglect of duty, or any other form of misconduct or negligence of which the employee has knowledge;

h. Failure of a supervisory employee or commanding officer to take appropriate corrective action with regard to such employees under his supervision or command as may be guilty of any form of neglect of duty or misconduct where the supervisor or commanding officer knows or should have known of such derelictions;

i. Failure to achieve professional progress and advancement in accordance with reasonable and definitive criteria established by the Civil Service Commission and set forth in its rules and regulations; provided, however, that such failure must be a personal failure of the employee and not one directly caused by conditions beyond the control of the employee; provided, further, that no person shall be disciplined under this rule unless and until he or she is given adequate written notice of his deficiencies and a reasonable time to correct them; and

j. Violation of any applicable law or regulation dealing with standards of conduct.

§ 11.08. Disciplinary Procedure.

a. No full-time, nonprobationary employee in the civil service shall be removed, suspended, demoted or discharged except for cause, as set forth in § 11.07, stated in writing by the appointing authority. The employee may appeal such disciplinary action to the Commission within ten days, unless a different and legally authorized appeal or grievance procedure is chosen by the employee. A civil service employee may select only one appeal or grievance procedure and may not change procedures once the initial election is made. The Commission shall thereafter conduct a hearing and receive such testimony from witnesses and other evidence as may be relevant to the matter. Thereafter, the Commission shall have general authority to affirm, reverse, or modify the disciplinary action that has been appealed, based on the evidence and the law.

b. All appeal hearings conducted by the Commission pursuant to this section shall be open to the public, after reasonable notice to the accused of the time and place of such hearing. At any such appeal hearing the accused may appear in person and by counsel and may present a defense. The Commission shall retain the power to sequester witnesses during a public appeal hearing. However, if the appellant requests that the appeal hearing be conducted in private, the Commission shall have discretion to grant that request.

§ 11.09. Appeals from Decisions of the Civil Service Commission.

An employee or appointing authority may appeal a decision of the Commission involving discipline. The appeal shall be initiated by written notice filed with the Commission stating the grounds for appeal. The Commission shall file with the Court a certified record of the proceedings, including a hearing transcript, within twenty days of receipt of the appeal. The Court shall then hear and review the appeal in a summary manner upon the Commission's written record, plus such legal briefs and oral argument as the Court deems proper. After a hearing, the Court may affirm, modify or reverse the Commission's decision. The Court's review will be limited to whether the appointing authority's actions were in good faith and for cause, and the decision of the Commission shall be affirmed unless the Court concludes, based on the record and the law, that the decision was not in good faith or was not for cause.

§ 11.10. Political Services Disregarded and Prohibited; Other Discriminatory Actions Prohibited.

a. No person holding any office, place, position or employment subject to the civil service is under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing to do so.

b. No public officer whether elected or appointed shall discharge, promote, demote or in any manner change the official rank, employment or compensation of any person under the civil service, or promise or threaten to do so, for giving or withholding or neglecting to make any contribution of money or services, or any other valuable thing, for any political purpose.

c. No person shall be appointed to or promoted to, suspended from, demoted, removed or discharged from any position in the classified service, or in any way favored or discriminated against with respect to employment in the civil service because of race, color, religion, sex, national origin or political affiliations.

d. No person shall seek or attempt to use any political endorsement in connection with any appointment to a position in the classified service. No recommendation for any person who applies for office or position in the classified service, or for examination under the provisions of this Chapter, except, as to character, and, in the case of former employers, as to ability, shall be considered by the Commission, director, or the appointing authority in giving any examination, appointment, promotion or reinstatement under this Chapter.

e. No person shall use, or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action

of any person, or for any consideration.

f. No person in the classified service, and no member of the Commission, shall, directly or indirectly, pay or promise to pay any assessment, subscription, or contribution for any political organization or purpose, or solicit or take part in soliciting, or receive any such assessment, subscription or contribution. No person shall solicit any such assessment, subscription or contribution of any employee in the classified service.

g. No person in the classified service, and no member of the Commission shall take any active part in the management of any political party or in any political campaign; provided, however, nothing in this Chapter shall be construed to prohibit or prevent any such officer or employee from exercising the rights of a citizen privately to express an opinion or from enjoying entire freedom from all interference in casting a vote, or from seeking or accepting election or appointment to public office.

CHAPTER 12.

INITIATIVE, REFERENDUM, AND RECALL.

§ 12.01. Petition for Initiative.

a. Any proposed ordinance, including any ordinance for the repeal or amendment of an existing ordinance, may be submitted to the City Council by petition signed by electors equal in number to at least thirty percent (30%) of the electors voting for governor in the last preceding gubernatorial election. Such petition shall contain the proposed ordinance in full.

b. The petition shall be substantially in the following form:

To the Council of the City of Portsmouth, Virginia:

We, the undersigned, qualified electors of this city, respectfully petition your honorable body to ordain the following ordinance:

Signature of Elector	Street Address	Date Signed
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c. The execution of the petition by an elector shall be acknowledged before a notary, or it may be proved by the oath of a witness who shall swear that he or she knows the elector and that the petition was signed by the elector in the presence of the witness. The petition may be in the form of separate sheets, each sheet containing at the top thereof the petition as set forth above, and when bound together and offered for filing, shall be deemed to constitute one petition.

§ 12.02. Petition for Referendum.

a. At any time within thirty days following the adoption of an ordinance, except an emergency ordinance, a petition signed by electors equal in number to at least thirty percent (30%) of the electors voting for governor in the last preceding gubernatorial election protesting against the enactment of such ordinance and requesting its repeal, may be presented to the City Council. Such petition need not contain the text of the ordinance sought to be repealed, but it shall be sufficient to refer to it by ordinance number or code section number.

b. The petition shall be substantially in the following form:

To the Council of the City of Portsmouth, Virginia:

We, the undersigned, qualified electors of this city, respectfully petition your honorable body to repeal the following ordinance:

Signature of Elector	Street Address	Date Signed
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c. The execution of the petition by an elector shall be acknowledged before a notary, or it may be proved by the oath of a witness who shall swear that he or she knows the elector and that the petition was signed by the elector in the presence of the witness. The separate sheets, each sheet containing at the top thereof the petition as set forth above, and when bound together and offered for filing, shall be deemed to constitute one petition.

§ 12.03. Time of Filing.

All papers comprising a Petition for Initiative or Referendum shall be filed with the City Clerk thirty days from the date of the first signature thereon, and when so filed, the Clerk shall submit the same to the City Council at its next regular meeting.

§ 12.04. Duty of City Attorney.

Before any ordinance proposed by petition in accordance with § 12.01 hereof shall be submitted to the City Council, it shall first be approved as to form by the City Attorney. If the City Attorney disapproves of the proposed ordinance or amendment, the reasons therefore shall be stated in writing to the person submitting the proposal for examination.

§ 12.05. Duty of City Council.

Upon the presentation of a petition as provided in this Chapter, it shall be the duty of the City Council either to pass such proposed ordinance without alteration or repeal such existing ordinance within sixty days after determining the sufficiency of the petition or submit the question of the adoption or repeal of the ordinance, as the case may be, to the electorate at the next general election occurring more than sixty days after determining the sufficiency of the petition.

§ 12.06. Elections.

a. All initiative and referendum elections shall be conducted, and the result canvassed and certified by the regular election officials, as provided by the general laws of the state, and except as otherwise provided in this Chapter, all such elections shall be governed by the general election laws.

b. If a majority of the qualified electors voting on a proposed ordinance shall vote in favor thereof, it shall thereupon become a valid and binding ordinance of the city, and the same shall not be repealed or amended, except by a vote of the electors, within two years thereafter.

c. If a majority of the qualified electors voting on the repeal of an existing ordinance shall vote in favor of its repeal, it shall thereupon stand repealed and be of no force and effect.

d. Where an election has been held upon the question of the adoption or repeal of any ordinance in accordance with this Chapter, then no election may be held upon a substantially similar question for two years following such election, except that the council may submit the repeal, amendment or modification of any ordinance adopted under subsection b. above, to be voted upon at any general election succeeding its adoption.

§ 12.07. Publication of Ordinance.

Whenever an ordinance is required under the provisions of this Chapter to be submitted for adoption or repeal to the electors of the city, the City Clerk shall cause the ordinance to be published once in a daily newspaper published in or having a general circulation in the City of Portsmouth. Such publication shall occur not more than sixty days nor fewer than thirty days prior to the date of such election.

§ 12.08. Judicial Review.

A petition, which complies with the requirements of this Chapter as to form, number of signers, and manner of execution, shall be accepted as prima facie sufficient. The Circuit Court of the City of Portsmouth shall have summary jurisdiction upon complaint of an elector to determine the sufficiency of the petition and the genuineness of the signatures thereon, and the qualifications of the electors signing the same, and may make such order in the matter as justice may require. Such proceedings shall be instituted within ten days after presentation of the petition, and the burden of proof shall be on the complainant.

§ 12.09. Recall of Elective Officers.

a. Any elective officer of the city may be removed from office at any time after one year from the beginning of the term of office by the electors qualified to vote for a successor for such incumbent. The procedure to effect such removal shall be as hereinafter set forth.

b. A petition signed by electors equal in number to at least thirty percent (30%) of the electors of the city voting for governor in the last preceding gubernatorial election, and demanding the election of a successor of the officer sought to be removed, shall be filed with the Clerk of the Circuit Court. The petition shall contain a general statement of the grounds upon which the election of a successor is sought. Such petition may be filed at any time after one year has elapsed since the beginning of the term of the official sought to be removed. Each signer shall include the number and street of his or her residence in the city, and the date he or she signed the petition. Such petition may be in the form of separate papers, but each separate paper to which signatures are appended shall contain at the top thereof the original petition or a duplicate statement thereof, and when bound together and offered for filing, such separate papers shall be deemed to constitute one petition with respect to the election of the successor of the officer or officers named therein. One of the signers of such petition shall make oath before a proper official that the statements made therein are true, as he or she believes, and upon such separate paper, the circulator of the petition to which signatures are appended shall make oath that each signature to such paper is the genuine signature of the person whose name it purports to be, and that it was signed in his or her presence.

c. If it appears that the petition is signed by the requisite percentage of electors, the same shall be accepted as prima facie regular and sufficient, but it shall be subject to summary review in the same manner as provided in § 12.08 of this Chapter.

d. If the petition is sufficient, and if the officer or officers whose removal is sought do not resign within five days after the sufficiency of the petition has been determined by a judge of the Circuit Court, a judge thereof shall thereupon order and fix a day for holding an election for the selection of a successor to each officer named in said petition, which election shall be held not fewer than thirty nor more than forty days from the presentation of the petition or from the making of any court order thereon. The judge shall cause publication of notice and all arrangements to be made for holding such election and the same shall be conducted and the result thereof returned and declared in all respects as in other special elections, in so far as possible.

e. A nomination of a candidate to succeed each officer sought to be removed shall be made without the intervention of a primary election, by filing with the Clerk of the Circuit Court at least ten days prior to such special election, a petition proposing a person for such office, signed by the electors equal in number to at least thirty percent (30%) of the electors of the city voting for governor in the last preceding gubernatorial election.

f. The ballots at such election shall conform to the following requirements: with respect to each officer whose removal is sought, the question shall be submitted: Shall (name of officer) be removed from the office (name of office) by recall? Beneath the aforesaid question shall be placed the names of the candidates to fill the vacancy. The name of the officer whose removal is sought shall not appear on the ballot as a candidate to succeed him/herself.

g. In any such election, if a majority of the votes cast on the question of removal be affirmative, the candidate receiving the highest number of the votes cast shall be declared elected and if more than one council member is removed at such election, the candidates receiving the highest number of votes, equal in number to the number of council members removed, shall be declared elected. The officer whose removal is sought shall thereupon be deemed removed from office upon the announcement of the official canvass of the election. The successor of any officer so removed shall hold office during the unexpired term of his predecessor. In case the person or persons receiving the highest number of votes shall fail to qualify within ten days after receiving notification of election, the office shall be deemed vacant. The question of the removal of any officer shall not be submitted to the electors a second time during the same term of office, until after the expiration of one year from the determination of the first application for removal. The method of removal herein provided is cumulative and additional to such other methods as may be provided by law.

**CHAPTER 13.
MISCELLANEOUS.**

§ 13.01. Present Ordinances, Rules, and Regulations.

All city ordinances, rules and regulations and orders legally made by any department, board, commission or office of the city that are in force at the effective date of this charter, in so far as they or any portion thereof are not inconsistent herewith, shall remain in force until amended or repealed.

§ 13.02. Severability.

If any provision of the Charter or the applicability thereof to any person or circumstance is held invalid, the remainder of this Charter and the applicability of it and of such provision to other persons or circumstances shall not be affected thereby.

2. That Chapter 471 of the Acts of Assembly of 1970, as amended, is repealed.