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**HOUSE BILL NO. 2128**

Offered January 14, 2015

Prefiled January 14, 2015

*A BILL to amend and reenact § 1, as amended, of Article III, § 1 of Article IX, and § 1 of Article X of Chapter 397 of the Acts of Assembly of 1950, which provided a charter for the Town of Amherst, relating to town powers, mayor, council, and town manager.*

Patron—Cline

Referred to Committee on Counties, Cities and Towns

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

**1. That §1, as amended, of Article III, § 1 of Article IX, and § 1 of Article X of Chapter 397 of the Acts of Assembly of 1950 are amended and reenacted as follows:**

**Article III. Administration and Government.**

§ 1. (1) Mayor and councilmen as of July 1, 2010.

The present mayor and councilmen of the town of Amherst shall continue in office and exercise all the powers conferred by this charter and the general laws of the State until January 1, 2011.

(2) Biennial elections; composition of town council; acts and terms of office of mayor and councilmen.

On the day specified by general law for the holding of municipal elections in every even-numbered year, there shall be elected for two year terms by the qualified voters of the town, one elector of the town, who shall be denominated mayor, and five other electors, who shall be denominated councilmen, and the mayor and councilmen shall constitute the town council. They shall enter upon the duties of their offices on the first day of January next succeeding their election, and shall continue in office until their successors are duly elected and qualified. Every person so elected shall take an oath faithfully to execute and discharge the duties of his office to the best of his judgment, and the mayor shall take the oath prescribed by law for State officers. The failure of any person elected or appointed under the provisions of this charter to qualify or to take the oath required, within the time prescribed for entering upon the discharge of the duties of the office to which he is elected or appointed, shall vacate the said office, and the council shall proceed and is hereby vested with power to fill such vacancy in the manner herein prescribed.

(3) Registrar and election officials; electorate.

There shall be appointed for the town a registrar and officers of election in the manner provided for by general law of Virginia, and all elections held in said town shall be conducted in accordance with said general law; the electorate shall be that prescribed by general law.

(4) Council as judge of qualifications and returns of members; power to fine and expel council members, and to fill vacancies in council.

The council shall judge of the election, qualification, and returns of its members; may fine them for disorderly conduct, and, with the concurrence of two-thirds, expel a member. If any person returned be adjudged disqualified, or be expelled, a new election to fill the vacancy shall be held on such day as the council may prescribe. Any vacancy occurring otherwise during the term for which such person was elected shall be filled by the council by the appointment of any one eligible to such office. A vacancy in the office of mayor shall be filled by the council from the electors of the town, and any member of the council may be eligible to fill such vacancy.

(5) Quorum of council.

A majority of the members of the council shall constitute a quorum for the transaction of business.

(6) Salaries of councilmen and mayor; mayor's salary is in lieu of fees.

Each member of the council may receive a salary to be fixed by the council, payable at such times and in such manner as the council may direct. The mayor may receive a salary to be fixed by the council, payable in such manner and at such times as the council may direct.

(7) Powers and duties of mayor generally.

The mayor shall preside at the meetings of the council and perform such other duties as are prescribed by this charter and by the general law, and such as may be imposed by the council consistent with his office. The mayor shall have no right to vote in the council, except in case of a tie he shall have the right to break the same by his vote; but he shall have the right to veto. He shall take care and see that the bylaws, ordinances, acts and resolutions of the council are faithfully executed and obeyed, and shall have and exercise all power and authority conferred by general law on mayors of towns not inconsistent with this charter. He shall see that peace and good order are preserved and that persons and

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HB2128

59 property within the town are protected. He shall authenticate by his signature such documents and  
60 instruments as the council, this charter, or the laws of this Commonwealth require. He shall from time  
61 to time recommend to the council such measures as he may deem needful for the welfare of the town.

62 (8) Approval or veto of ordinances, and resolutions having the effect of ordinances; reconsideration  
63 and passage over veto.

64 Every ordinance, or resolution having the effect of an ordinance, shall, before it becomes operative  
65 be presented to the mayor. If he approves, he shall sign it, but if not, he may return it, with his  
66 objections in writing, to the town ~~clerk~~ *manager* who shall enter the mayor's objections at length on the  
67 minute book of the council. The council shall thereupon proceed to reconsider such ordinance or  
68 resolution. If, after such consideration, two-thirds of all the members elected to the council shall agree to  
69 pass the ordinance or resolution, it shall become operative notwithstanding the objection of the mayor.  
70 In all such cases the votes of members of the council upon such reconsideration and the names of the  
71 members voting for and against the ordinance or resolution shall be entered on the minute book of the  
72 council. If any ordinance or resolution shall not be returned by the mayor within five days (Sunday  
73 excepted) after it shall have been presented to him, it shall become operative in like manner as if he had  
74 signed it, unless his term of office or that of the council, shall expire within said five days.

75 (9) Vice mayor.

76 The council shall, as soon as practicable after qualification, and biennially thereafter following the  
77 regular municipal election, appoint one of its members as vice-mayor. The vice-mayor, during the  
78 absence or disability of the mayor, shall perform the duties and be vested with all the powers, authority,  
79 and jurisdiction, of the mayor; and in the event of a vacancy for any reason in the office of mayor, he  
80 shall act as mayor until a mayor is duly appointed by the town council or is elected. The member of the  
81 council who shall be chosen vice-mayor shall continue to have all the rights, privileges, powers, duties  
82 and obligations of councilman even when performing the duties of mayor during the absence or  
83 disability of the mayor of the town.

84 (10) Regular and special meetings of council.

85 The council shall, by ordinance, fix the time for their regular meetings, which shall be held at least  
86 once a month. Special meetings may be called by the ~~clerk~~ *town manager* at the instance of the mayor  
87 or any two members of the council in writing; and no other business shall be transacted at a special  
88 meeting except that stated in the call, unless all members be present and consent to the transaction of  
89 such other business. The meetings of the council shall be open to the public except when in the  
90 judgment of the council the public welfare shall require executive meetings.

91 (11) Council minute book.

92 The council shall keep a minute book, in which the ~~clerk~~ *town manager* shall note the proceedings  
93 of the council, and shall record proceedings at large on the minute book and keep the same properly  
94 indexed.

95 (12) Council rules or procedures; certain matters may be adopted only by vote of majority of all  
96 members elected to council.

97 The council may adopt rules for regulating its proceedings, but no tax shall be levied, corporate debt  
98 contracted, or appropriation of money exceeding the sum of one hundred dollars be made, except by a  
99 recorded affirmative vote of a majority of all the members elected to the council.

100 (13) There shall be appointed by the council at its first meeting in January, or as soon as practicable  
101 thereafter, a treasurer. The council may provide a salary for the treasurer. He shall give such bond, with  
102 surety and in such penalty as the council prescribes. He shall receive all money belonging to the town,  
103 and keep correct accounts of all receipts from all sources and of all expenditures of all departments. He  
104 shall be responsible for the collection of all taxes, license fees, levies and charges due to the town, and  
105 shall disburse the moneys of the town in the manner prescribed by the council as it may by ordinance  
106 direct.

107 (14) The treasurer shall make such reports and at such time as the council may prescribe. The books  
108 and accounts of the treasurer shall be examined and audited at least once during the term for which he  
109 is elected by a competent accountant selected by the council, such examination and audit to be reported  
110 to the council.

111 (15) Town treasurer; town depository; commingling of funds.

112 The council may in its discretion designate the place of deposit of all town funds, which shall be  
113 kept by the treasurer separate and apart from his personal funds.

114 (16) There shall be appointed by the council, at its first regular meeting in January after its election,  
115 a clerk of the council, who shall hold office at the pleasure of the council. He shall attend the meetings  
116 of the council and keep its minutes and records and have charge of the corporate seal and shall attest  
117 the same. He shall keep all papers required to be kept by the council, shall publish such reports and  
118 ordinances as are required to be published, and shall perform such other duties as the council may from  
119 time to time require. His compensation shall be fixed by the council. Any vacancy in this office shall be  
120 filled by the council.

(17) There shall be appointed by the council at its first regular meeting in January or as soon as practicable thereafter, a town sergeant, who shall also be chief of police; and shall hold office at the pleasure of the council. His duties shall be such as the council prescribes. He shall be vested with the powers of a conservator of the peace. His compensation shall be fixed by the council.

(18) [Repealed.]

(19) The council may appoint or select such other officers as may be necessary, including a business manager for the town, and fix their salaries and define their duties.

(20) Effective date of ordinances, resolutions and by-laws.

All ordinances, resolutions and bylaws passed by the council shall take effect at the time indicated in such ordinances, resolutions or bylaws, but in event no effective date shall be set forth in any such ordinances, resolutions or bylaws passed by the council, the same shall become effective thirty days from its passage.

(21) *Creation of office, appointment, compensation, and removal of town manager.*

The office of town manager is hereby created. The town manager shall be appointed by majority vote of the town council for an indefinite term. The manager shall be chosen by the council solely on the basis of executive and administrative qualifications, with special reference to actual experience in or knowledge of accepted practice in respect to the duties of the office hereinafter set forth. At the time of this appointment, the appointee need not be a resident of the town or state, but during the manager's tenure of office, shall reside within the town. No council member shall receive such appointment during the term for which the council member shall have been elected nor within one year after the expiration of the council member's term. The town manager shall receive such compensation as the council shall fix from time to time by ordinance or resolution. The town council may remove the town manager at any time by a majority vote of its members.

(22) *Powers and duties of the town manager.*

The town manager shall be the chief executive officer of the town, responsible to the council for the management of all town affairs placed in the manager's charge by or under this charter. The town manager shall:

(a) Appoint and suspend or remove all town employees and appointive administrative officers provided for by or under this charter, except as otherwise provided by law, this charter, or personnel rules adopted pursuant to this charter. The town manager may authorize any administrative officer subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office, or agency;

(b) Direct and supervise the administration of all departments, offices, and agencies of the town, except as otherwise provided by this charter or by law;

(c) Attend all town council meetings. The town manager shall have the right to take part in discussion but shall not vote;

(d) See that all laws, provisions of this charter, and acts of the town council subject to enforcement by the town manager or by officers subject to the manager's direction and supervision are faithfully executed;

(e) Prepare and submit the annual budget and capital program to the town council and implement the final budget approved by council to achieve the goals of the town;

(f) Submit to the town council and make available to the public a complete report on the finances and administrative activities of the town as of the end of each fiscal year;

(g) Make such other reports as the town council may require concerning operations;

(h) Keep the town council fully advised as to the financial condition and future needs of the town;

(i) Make recommendations to the town council concerning the affairs of the town and facilitate the work of the town council in developing policy;

(j) Provide staff support services for the mayor and council members;

(k) Assist the council in developing long-term goals for the town and strategies to implement these goals;

(l) Encourage and provide staff support for regional and intergovernmental cooperation;

(m) Promote partnerships among council, staff, and citizens in developing public policy and building a sense of community; and

(n) Perform such other duties as are specified in this charter or may be required by the town council.

(23) *Council not to interfere with appointments or removals.*

Neither the council nor any of its members shall direct or request the appointment of any person to, or removal from, office by the town manager or any of the manager's subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative services of the town. Except for the purpose of inquiry, the council and its members shall deal with the administration solely through the town manager, and neither the council nor any member thereof shall give orders to

182 *any subordinates of the town manager, either publicly or privately.*

183 *(24) Emergencies. In case of accident, disaster, or other circumstance creating a public emergency,*  
184 *the town manager may award contracts and make purchases for the purpose of meeting said emergency,*  
185 *but the manager shall file promptly with council a certificate showing such emergency and the necessity*  
186 *for such action, together with an itemized account of all expenditures.*

187 Article IX. Additional Powers.

188 § 1. In addition to powers elsewhere mentioned in this charter and the powers conferred by general  
189 law and the Constitution, the town shall have the following powers:

190 (1) Nuisances; maintenance of premises; things detrimental to health, morals, aesthetics, safety,  
191 convenience and welfare generally.

192 To compel the abatement and removal of all nuisances within the town or upon property owned by  
193 the town without its limits at the expense of the person or persons causing the same or of the owner or  
194 occupant of the ground or premises wherein the same may be, and to collect said expense by suit or  
195 motion or by distress and sale; to require all lands, lots and other premises within the town to be kept  
196 clean and sanitary and free from stagnant water, weeds, filth, and unsightly deposits, or to make them so  
197 at the expense of the owners or occupants thereof, and to collect said expense by suit or motion or by  
198 distress and sale; to regulate or prevent noisome or offensive business within the said town, or the  
199 exercise of any dangerous or unwholesome business, trade, or employment therein; to regulate the  
200 transportation of all articles through the streets of the town; to compel the abatement of smoke and dust,  
201 and prevent unnecessary noise; to regulate the location of stables and the manner in which the same  
202 shall be constructed and kept; to regulate the location, construction, operation, and maintenance of bill  
203 boards and signs; and generally to define, prohibit, abate, suppress, and prevent all things detrimental to  
204 the health, morals, aesthetics, safety, convenience and welfare of the inhabitants of the town; and to  
205 require all owners or occupants of property having public sidewalks adjacent thereto to keep the same  
206 clean and sanitary, free from weeds, filth, unsightly deposits, ice and snow, and any obstruction.

207 (2) Fire protection generally.

208 To extinguish and prevent fires, and to establish, regulate, and control a fire department or division;  
209 to establish and designate from time to time fire limits, within which limits wooden buildings shall not  
210 be constructed, added to, enlarged or repaired, and to direct that any or all future buildings within such  
211 limits shall be constructed of stone, natural or artificial, concrete, brick, iron or other fireproof materials;  
212 to enact stringent and efficient laws for securing the safety of persons from fires in halls and buildings  
213 used for public assemblages, entertainments or amusements.

214 (3) Explosives; fireworks; firearms; bonfires.

215 To direct the location and construction of all buildings for storing explosives or combustible  
216 substances; to regulate the sale and use of gunpowder, nitroglycerin, fireworks, kerosene, gasoline, and  
217 other like material; to regulate or prevent the exhibition of fireworks, the discharge of firearms, and the  
218 making of bonfires within the corporate limits of said town.

219 (4) Health and sanitation; department of health.

220 To provide for the preservation of the general health of the inhabitants of said town, make  
221 regulations to secure the same, inspect all foodstuffs and prevent the introduction and sale in said town  
222 of any articles or thing intended for human consumption which is adulterated, impure, or otherwise  
223 dangerous to health, and to condemn, seize, and destroy or otherwise dispose of any such article or  
224 thing without liability to the owner thereof; to prevent the introduction or spread of contagious or  
225 infectious diseases, and prevent and suppress disease generally; to provide and regulate hospitals within  
226 or without the town limits, and if necessary to the suppression of disease, to enforce the removal of  
227 persons affected with contagious or infectious diseases to hospitals provided for them; to provide for the  
228 organization of a department or bureau of health, to have the powers of a board of health for the town,  
229 with authority necessary for the prompt and efficient performance of its duties, with the power to invest  
230 any or all of the officials or employees of such department of health with such powers as the police  
231 officers of the town have, to establish quarantine ground within or without the town, and establish and  
232 enforce such quarantine regulations against contagious and infectious diseases as the council may see fit,  
233 subject to the laws of the State and United States.

234 (5) Care, etc., of children and persons sick, aged, insane or paupers.

235 To provide for the care, support and maintenance of children and of sick, aged, insane, or poor  
236 persons and paupers.

237 (6) Maintenance of various institutions.

238 To provide and maintain either within or without the town, charitable, recreative, curative, corrective,  
239 detention or penal institutions.

240 (7) Animals and fowl.

241 To regulate poultry or other fowl, hogs, dogs or other animals being kept in or running at large in  
242 the town, or any thickly populated portion thereof, and to subject the same to such taxes, regulations  
243 and penalties as the council may think proper.

- 244 (8) Acts of annoyance on streets; abuse of animals.  
 245 To prevent the riding or driving of horses or other animals at an improper speed; to prevent the  
 246 flying of kites, throwing of stones, the setting off of fireworks or engaging in any sort of employment in  
 247 the public streets which is dangerous or annoying to passersby, and to prohibit and punish the abuse of  
 248 animals.
- 249 (9) Markets and keeping of foodstuffs; hucksters; junk dealers.  
 250 To establish markets in the town and regulate the same and to enforce such regulations in regard to  
 251 the keeping and sale of fresh meats, vegetables, eggs, and other green groceries, and the trade of  
 252 hucksters and junk dealers as may be deemed advisable.
- 253 (10) Exclusion from town of certain classes of undesirable persons.  
 254 To prevent any person having no visible means of support, paupers, and persons who may be  
 255 dangerous to the peace and safety to the town from coming to town from without the same; and to  
 256 expel therefrom any such person who has been in the town less than twelve months.
- 257 (11) Police powers; police department.  
 258 To exercise full police powers and establish and maintain a department or division of police.
- 259 (12) Drunkards, beggars, etc., gambling; houses of ill-fame; disorderly conduct.  
 260 To restrain and punish drunkards, vagrants, and street beggars; to prevent and quell riots,  
 261 disturbances, and disorderly assemblages; to suppress houses of ill-fame and gambling houses and  
 262 punish operators and inmates of the same; to prohibit and punish the carrying of concealed weapons  
 263 within the town; to prevent and punish lewd, indecent, and disorderly exhibitions in the town. To  
 264 prohibit and punish gambling and betting, disturbances of the peace, disorderly conduct, and public  
 265 swearing and cursing, within the town.
- 266 (13) Malicious mischief.  
 267 To prohibit and punish mischievous, wanton, or malicious damage to school, church, and public  
 268 property, as well as to private property.
- 269 (14) Minors.  
 270 To prohibit minors from and punish them for frequenting, playing or loitering in any public  
 271 poolroom, billiard parlor, or bowling alley, and to punish any proprietor or agent thereof for permitting  
 272 same.
- 273 ~~(15) To compel persons sentenced to confinement in jail for any violation of the laws or ordinances~~  
 274 ~~of the town to work on the public streets, parks, or other public works of the town; and on the~~  
 275 ~~requisition of the mayor it shall be the duty of the sergeant of the town or the sheriff of Amherst~~  
 276 ~~County to deliver such persons to the duly authorized agent of the town for such purposes from day to~~  
 277 ~~day as they may be required. For the purpose of carrying into effect the police regulations of the town,~~  
 278 ~~the town shall have the use of the county jail of Amherst County for the safe keeping and confinement~~  
 279 ~~of all persons who shall be sentenced to imprisonment under the ordinances of the town.~~
- 280 (16) Enjoining of ordinance violations.  
 281 To enjoin and restrain the violation of any town ordinance or ordinances, although a penalty is  
 282 provided upon the conviction of such violation.
- 283 (17) By-laws, rules, regulations and ordinances for the good order of the town, etc.  
 284 To pass and enforce all by-laws, rules, regulations, and ordinances which it may deem necessary for  
 285 the good order and government of the town, the management of its property, the conduct of its affairs,  
 286 the peace, comfort, convenience, order, morals, health, and protection of the citizens and their property,  
 287 and to do such other things and pass such other laws as may be necessary or proper to carry into full  
 288 effect all powers, authority, capacity or jurisdiction, which is or shall be granted to or vested in said  
 289 town, or in the council, court or officers, thereof, or which may be necessarily incident to a municipal  
 290 corporation.
- 291 (18) Maintenance of general welfare, etc.  
 292 To do all things whatsoever necessary or expedient and lawful to be done for promoting or  
 293 maintaining the general welfare, comfort, education, morals, government, peace, health, trade, commerce,  
 294 or industries of the town, or its inhabitants.
- 295 (19) Rewards.  
 296 To offer and pay rewards for the apprehension of criminals.
- 297 (20) Meat and milk inspection; licensing of slaughter houses.  
 298 To provide by ordinance a system of meat and milk inspection, and appoint milk and meat  
 299 inspectors, agents, or officers to carry the same into effect; to prevent, license, regulate, control, and  
 300 locate slaughter houses within or without the corporate limits of the town; and for such services of  
 301 inspection to make reasonable charges; and to provide reasonable penalties for the violation of such  
 302 ordinances.
- 303 (21) Public schools and libraries.  
 304 To establish, organize, administer, or contribute to the support of public schools and libraries, subject

305 to the general laws establishing a standard of education for the State.

306 (22) Inspection of commodities; weights and measure.

307 To inspect, test, measure and weigh any commodity or commodities or articles of consumption for  
308 use within the town; and to establish, regulate, license and inspect weights, meters, measures, and scales.

309 (23) Alcoholic beverages.

310 To make and enforce ordinances, in so far as not prohibited by the general laws of this State, to  
311 regulate, control, license and/or tax the manufacture, bottling, sale, distribution, transportation, handling,  
312 advertising, possession, dispensing, drinking and use of alcohol, brandy, rum, whiskey, gin, wine, beer,  
313 lager beer, ale, porter, stout, and all liquids, beverages and articles containing alcohol by distillation,  
314 fermentation or otherwise.

315 (24) Licensing of motor vehicles.

316 To require every owner or operator of motor vehicles residing in the town, on a date to be  
317 designated by the council, to annually register such motor vehicles and to obtain a license to operate the  
318 same by making application to the ~~treasurer of the town~~ *manager*, or such other person as may be  
319 designated by the council; to issue such license, and to require the owner to pay the annual license fee  
320 therefor to be fixed by the council, provided that the license fee shall not exceed the amount charged by  
321 the State on such machines. The council shall have the right to require the operator of the motor vehicle  
322 to attach a proper license plate on a conspicuous part of the motor vehicle and to keep same thereon in  
323 plain view for common observation. The council may prorate such license fee over periods of not less  
324 than three months.

325 (25) Regulation of motor vehicles and traffic.

326 In so far as not prohibited by general law, to control, regulate, limit and restrict the operation of  
327 motor vehicles carrying passengers for hire upon the streets or alleys of the town; to regulate the use of  
328 automobiles and other automotive vehicles upon the streets; to regulate the routes in and through the  
329 town to be used by motor vehicle carriers operating in and through the town and to prescribe different  
330 routes for different carriers; to prohibit the use of certain streets by motor trucks; and generally to  
331 prescribe such regulations respecting motor traffic therein as may be necessary for the general welfare  
332 and safety.

333 (26) Ordinances generally.

334 To make and enforce ordinances, not inconsistent with the laws of this State.

335 (27) Implementation of powers; penalties for violation of ordinances.

336 To put into force and effect by ordinances any and all the foregoing powers, and any other powers  
337 and authority of the council given by this charter, or any State law, or any amendments thereto; and to  
338 prescribe punishment for the violation of any town ordinance, rule or regulation, or of any provision of  
339 this charter, the penalty not to exceed five hundred dollars (\$500.00) fine or twelve months'  
340 imprisonment in jail, or both.

341 (28) Enumeration of powers not exclusive.

342 The enumeration of particular powers by this charter shall not be deemed to be exclusive, and in  
343 addition to the powers enumerated herein or implied hereby, or appropriate to the exercise of such  
344 powers, it is intended that the town council shall have and may exercise all powers which, under the  
345 constitution and laws of this State, it would be competent for this charter specifically to enumerate.

346 Article X. Actions against Town.

347 § 1. Restrictions.

348 (1) No actions shall be maintained against the town for damages for any injury to any person or  
349 property alleged to have been sustained by reason of the negligence of the town or any officer, agent, or  
350 employee thereof, unless a written statement of the claimant, his agent, or attorney, or the personal  
351 representative of any decedent whose death is a result of the alleged negligence of the town, its officers,  
352 agents or employees, of the nature of the claim and the time and place at which the injury is alleged to  
353 have occurred or to have been received, shall have been filed with the ~~mayer~~ *town manager* or any  
354 attorney appointed by the council for the purpose within sixty days after such cause of action shall have  
355 occurred, except where the claimant is an infant or non compos mentis, or the injured party dies within  
356 such sixty days such statement may be filed within one hundred and twenty days. And no officers,  
357 agents, or employees of the town shall have authority to waive such conditions precedent or any of  
358 them.