

BERRYVILLE, TOWN OF

Established 1798.

Moved from County of Frederick to County of Clarke, 1841.

Incorporation and Charter, 1870, c. 366; repealed, 1898, c. 819.

Charter, 1898, c. 819; repealed, 1971, c. 112.

Charter, 1971, c. 112.

Amended 1972, c. 29 (§ 3.2)

1994, c. 324 (§§ 2.3, 4.2, 7.1, 7.3).

CHAPTER 1.

INCORPORATION AND BOUNDARIES.

§ 1.1. Incorporation.--The inhabitants of the territory comprised within the present limits of the town of Berryville, as such limits are now or may hereafter be altered and established by law, shall constitute and continue a body politic and corporate to be known and designated as the town of Berryville, and as such shall have perpetual succession, may sue and be sued, implead and be impleaded, contract and be contracted with, and may have a corporate seal which it may alter, review or amend at its pleasure by proper ordinance. (1971, c. 112)

§ 1.2. Boundaries.--The corporate boundaries of the town of Berryville shall be as follows:

Beginning at a pipe in the west side of North Buckmarsh Street (U.S. Route No. 340), such point being at the intersection of the west right-of-way line of North Buckmarsh Street and an extension of the north lot line of the Episcopal parsonage; thence along the west right-of-way line of North Buckmarsh Street, N 27° 43' E. a distance of 634.47 feet to a pipe; thence N. 45° 42' W. 2241.36 feet along the rear lot lines on the north side of Walnut Street to a pipe; thence S. 56° 34' 30" W. a distance of 160.38 feet to a pipe; thence S. 45° 45' 30" W. a distance of 4490.77 feet to a pipe in the orchard of H. F. Byrd, such line crossing West Main Street (Va. Route 7); thence, still through the orchards of H. F. Byrd and other properties, S. 57° 25' E. a distance of 3754.92 feet to a spike in the center line of South Church Street; thence S. 53° 42' E. a distance of 1736.86 feet to a pipe, such line crossing the Norfolk and Western Railway right-of-way; thence along a 13° 13' curve, parallel to the Norfolk and Western Railway, such curve having a tangent bearing of N. 62° 10' E. and a tangent distance of 250.80 feet to a pipe and point of intersection; thence still parallel to the Norfolk and Western Railway N. 49° 03' E. a distance of 2484.97 feet to a point of intersection of a 15° 38' curve, the corporate limits following the curve; thence N. 64° 44' E. a distance of 585.77 feet to a pipe; thence N. 49° 41' W. a distance of 3315.36 feet to a pipe and the place of beginning. (1971, c. 112)

§ 1.3. Wards.--The town of Berryville shall be divided into four wards. The boundaries of such wards shall be established by the town council by ordinance. (1971, c. 112)

CHAPTER 2.

POWERS.

§ 2.1. General grant of powers.--The town of Berryville shall have and may exercise all powers which are now or hereafter may be conferred upon or delegated to

towns under the Constitution and laws of the Commonwealth of Virginia, as fully and completely as though such powers were specifically enumerated herein, and no enumeration of particular powers by this charter shall be held to be exclusive, and the town shall have, exercise and enjoy all the rights, immunities, powers and privileges, and be subject to all the duties and obligations, now appertaining to and incumbent on the town as a municipal corporation. (1971, c. 112)

§ 2.2. Adoption of certain sections of Code of Virginia.--The powers set forth in §§ 15.1-837 through 15.1-915, both inclusive, of Chapter 18 of Title 15.1 of the Code of Virginia, as in force on January 1, 1971, are hereby conferred on and vested in the town of Berryville. (1971, c. 112)

§ 2.3. Eminent domain.--The powers of eminent domain set forth in Title 15.1, Title 25, Chapter 1.1 and §§ 33.1-121 through 33.1-132, Chapter 1, of the Code of Virginia, as amended, and all acts amendatory thereof and supplemental thereto, mutatis mutandis, are hereby conferred upon the town of Berryville subject to the provisions of § 25-233.

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

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

(c) In addition to the powers conferred by the aforesaid laws, such certificates may be amended or canceled by the court having jurisdiction of the proceedings, upon petition of the town, at any time after the filing thereof; provided, that the court shall have jurisdiction to make such order for the payment of costs and damages, if any, or the refund of any excessive sums theretofore paid pursuant to such certificate as shall, upon due notice and hearing, appear just. The court shall have jurisdiction to require refunding bonds, for good cause shown by the town or any other person or party in interest, prior to authorizing any distribution of funds pursuant to any certificate issued or deposit made by the town. (1971, c. 112; 1994, c. 324)

CHAPTER 3.

MAYOR, RECORDER, AND COUNCIL.

§ 3.1. Composition of council; qualifications of mayor, recorder and councilmen.-The town of Berryville shall be governed by a town council composed of the mayor, the recorder and four councilmen. The mayor, recorder and councilmen shall be residents and qualified voters of the town. The mayor and recorder shall be elected from the town at

large. The four councilmen shall reside one in each ward of the town, but shall be elected by all of the qualified voters of the town. (1971, c. 112)

§ 3.2. Election and term of office of mayor, recorder and councilmen.--Elections for mayor, recorder and councilmen shall be held on the first Tuesday in May of each even-numbered year. On the first Tuesday in May, 1972, a mayor and councilmen from Wards 1 and 3 shall be elected for a term of four years; and a recorder and councilmen from Wards 2 and 4 shall be elected for a term of two years. On the first Tuesday in May, 1974, a recorder and councilmen from Wards 2 and 4 shall be elected for terms of four years. Thereafter, the mayor, recorder and all councilmen shall be elected for terms of four years. (1971, c. 112; 1972, c. 29)

§ 3.3. When terms of office to begin.--The terms of office for the mayor, recorder and councilmen shall begin on the first day of July next following their election. (1971, c. 112)

§ 3.4. Oath of office.--The mayor, recorder and councilmen shall each, before entering upon the duties of their office, make oath or affirmation that they will truly, faithfully and impartially discharge the duties of their offices to the best of their abilities, so long as they shall continue therein. (1971, c.112)

§ 3.5. Vacancies in office.--Vacancies in the office of mayor, recorder or councilman shall be filled within forty-five days for the unexpired terms by a majority vote of the remaining members of the town council. (1971, c. 112)

§ 3.6. When new election for mayor, recorder or councilman required.--If any person who shall have been duly elected mayor, recorder or councilman shall not be eligible, as herein prescribed, or shall refuse to take the oath or affirmation required under this Charter within two weeks from the day of the beginning of his term of office, the town council shall declare his office vacant, and shall order a new election for mayor, recorder or councilman as the case may be. (1971, c. 112)

§ 3.7. Powers and duties of mayor.--The mayor shall preside over the meetings of the town council and shall have the same right to speak and vote therein as other members of the town council. He shall be recognized as the head of the town government for all ceremonial purposes, for the purposes of military law and for the service of civil processes. The mayor shall have no power of veto over the ordinances and resolutions of the town council. (1971, c. 112)

§ 3.8. Powers and duties of recorder; recorder to act as mayor during absence, disability, etc., of mayor.--The recorder shall be a member of the town council and shall have the same right to speak and vote therein as other members of the town council. The recorder shall keep the journal of the proceedings of the town council and have charge of and preserve the records of the town. In the absence from the town, or disqualification, inability or sickness of the mayor, or during any vacancy in the office of mayor, the recorder shall perform the duties of the mayor and be vested with all his powers. (1971, c. 112)

§ 3.9. Absence or disability of mayor and recorder.--If both the mayor and recorder are absent or unable to act, the town council shall, by a majority vote of the members present, elect from its members a person to serve as acting mayor until either the mayor or recorder is present and able to act. The person so elected shall possess the powers and discharge the duties of the mayor during such period of time. (1971, c. 112)

§ 3.10. Council a continuing body.--The town council shall be a continuing body, and no measures pending before such body, or any contract or obligation incurred by it, shall abate or be discontinued by reason of the expiration of the term of office or removal of any of its members. (1971, c. 112)

§ 3.11. General grant of powers to council.--The town council shall have all powers and authority that are now or may hereafter be granted to councils of towns by the general laws of the Commonwealth and by this charter, and the recital of special powers and authorities herein shall not be taken to exclude the exercise of any power and authority granted by the general laws of the Commonwealth to town councils, but not herein specified. (1971, c. 112)

§ 3.12. Meetings of council.--The town council shall fix the time of their stated meetings, and they shall meet at least once a month. Special meetings may be called at any time by the mayor or by three members of the town council; provided, that all members shall be duly notified a reasonable period of time prior to any special meeting. (1971, c. 112)

§ 3.13. Quorum; reconsideration of action.--Three members of the town council shall constitute a quorum for the transaction of business. No vote taken at any meeting shall be reconsidered or rescinded at any subsequent special meeting unless at such special meeting there are as many members of the town council present as were present when such vote was taken. (1971, c. 112)

§ 3.14. Rules of order and procedure.--The town council shall establish its own rules of order and procedure, and may punish its own members and other persons for violations thereof. (1971, c. 112)

§ 3.15. Council to fix salaries.--The town council is hereby authorized to fix the salaries of each of the members of the town council. members of boards or commissions and all appointed officers. The salaries of the mayor, recorder and councilmen shall not be charged during the term for which they were elected. (1971, c. 112)

CHAPTER 4.

TOWN MANAGER.

§ 4.1. Appointment and qualifications.--There shall be a town manager, who shall be the executive officer of the town and shall be responsible to the town council for the proper administration of the town government. He shall be appointed by the town council for an indefinite term. He shall be chosen solely on the basis of his executive and administrative qualifications, with special reference to his actual experience in or knowledge of accepted practice in respect to the duties of his office. At the time of his appointment, he need not be a resident of the town or the Commonwealth, but during his tenure of office, he shall reside within Clarke County. (1971, c. 112)

§ 4.2. Duties.--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 desirable.
- (c) Prepare and submit the annual budget to the town council and be responsible for its administration after its adoption.
- (d) Present adequate financial and activity reports as required by the town council.

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

(f) Perform such other duties as may be prescribed by this charter or required of him in accordance therewith by the town council or which may be required of the chief executive officer of a town by the general laws of the Commonwealth, other than the duties conferred on the mayor by this charter. (1971, c. 112; 1994, c. 324)

§ 4.3. Powers as to town officers and employees.--All officers and employees of the town, except those appointed by the town council pursuant to this charter or the general laws of the Commonwealth, shall be appointed and may be removed by the town manager, who shall report each appointment or removal to the town council at the next meeting thereof following any such appointment or removal. (1971, c. 112)

§ 4.4. Temporary transfer of personnel between departments.--The town manager shall have power, whenever the interests of the town require, irrespective of any other provisions of this charter, to assign employees of any department, bureau, office or agency to the temporary performance of duties in another department, bureau, office or agency. (1971, c. 112)

§ 4.5. Council not to interfere in appointments or removals; relationship with council.--Neither the town council nor any of its members shall direct or request, the appointment of any person to or his removal from any office or employment by the town manager or by any of his subordinates or in any way take part in the appointment or for removal of officers and employees of the town, except as specifically provided in this charter. Except for the purpose of inquiry, the town council and its members shall deal with the administrative services solely through the town manager, and neither the town council nor any member thereof shall give orders, either publicly or privately, to any subordinate of the town manager. Any councilman violating the provisions of this section or voting for a motion, resolution or ordinance in violation of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall cease to be a councilman. (1971, c. 112)

§ 4.6. Relations with boards, commissions and agencies.--The town manager shall have the right to attend and participate in the proceedings of, but not vote in, the meetings of all boards, commissions or agencies created by this charter or by ordinance and any other board or commission the town council may designate. (1971, c. 112)

§ 4.7. Acting town manager.--The town council shall designate by resolution a person to act as town manager in case of the absence, incapacity, death or resignation of the town manager, until his return to duty or the appointment of his successor. (1971, c. 112)

CHAPTER 5. APPOINTIVE OFFICERS.

§ 5.1. Appointment.--The town council may appoint such officers of the town as they may deem necessary. Such officers may include, but shall not be limited to, a town manager, a town attorney, a town treasurer, a town assessor, a judge of the municipal court and justices of the peace. 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 town council. (1971, c. 112)

§ 5.2. Deputies and assistants.--The town council may appoint such deputies and assistants to appointive offices as the town council may deem necessary. (1971, c 112)

§ 5.3. Term of office.--Officers and deputy and assistant officers appointed by the town council shall be appointed for a term of two years, unless otherwise provided by this charter or by ordinance of the town council. Such term shall begin on the first day in July in each even-numbered year. (1971, c. 112)

§ 5.4. Vacancies in office.--The town council shall fill any vacancy in any appointive office for the remainder of the unexpired term. (1971, c. 112)

§ 5.5. Appointment of one person to more than one office.--The town council may appoint the same person to more than one appointive office, at the discretion of the town council. (1971, c. 112)

CHAPTER 6. COURTS.

§ 6.1. Municipal court established; jurisdiction of court.--There is hereby established a municipal court, which shall be known as the Municipal Court of Berryville. Jurisdiction of the municipal court shall be as provided in § 16.1-124 of the Code of Virginia. (1971, c. 112)

§ 6.2. Judge of municipal court; substitute judge.--The judge of the municipal court shall be appointed by the town council. The town council may appoint a substitute judge to serve during the absence or inability to act of the judge of the municipal court. (1971, c. 112)

§ 6.3. Clerk of the municipal court.--The clerk of the municipal court shall be appointed by the town council. (1971, c. 112)

CHAPTER 7. FINANCIAL PROVISIONS.

§ 7.1. Fiscal year.--The fiscal year of the town shall begin on July 1 of each year and end on June 30 of the year following. (1971, c. 112; 1994, c. 324)

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

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

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

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

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

(f) The town council is authorized and empowered to compromise any claim for damages or any suit or action brought against the town. (1971, c. 112)

§ 7.3 Creation of debt; issuance of bonds.--The town council is authorized to cause the town by a majority vote to incur debt and to issue bonds, notes and other evidences of indebtedness for the purposes and in the manner set forth for towns in the Constitution of the Commonwealth of Virginia and the Public Finance Act of 1991, Chapter 5.1 of Title 15.1 of the Code of Virginia of 1950, as amended, or any acts amendatory thereof or supplemental thereto. (1971, c. 112; 1994, c. 324)

CHAPTER 8.

MISCELLANEOUS.

§ 8.1. Elections governed by State law.--All town elections shall be held and conducted in the manner prescribed by the laws of the Commonwealth. (1971, c. 112)

§ 8.2. Amendment of Zoning Ordinance.--The town council may, by ordinance, required that whenever the planning commission recommends against the adoption of any proposed amendment to the Zoning Ordinance to the town, now or hereafter effect, such amendment shall become effective only upon the affirmative vote of two-thirds of the elected members of the town council. (1971, c. 112)

§ 8.3. Applicability of ordinances to lands, etc., outside town.--All ordinances of the town, so far as they are applicable, shall apply on, in or to all land, buildings and structures owned by or leased or rented to the town and located outside the town. (1971, c. 112)

§ 8.4. Bonds of officers and employees.--The town council may require all or any officers and employees of the town to give bond for the faithful and proper discharge of

their duties. As used herein, the words "officers and employees" shall include officers and employees paid solely or partly by the town. The town may pay the premium on such bonds from the town funds and may provide for individual surety bonds or for a bond covering all officers and employees or any group thereof. The bond shall be payable to the town as its interest may appear in event of breach of the conditions thereof. (1971, c. 112)

§ 8.5. Office of town sergeant not to be created.--Notwithstanding the provisions of § 15.1-796 of the Code of Virginia, there shall not be created in the town of Berryville the office of town sergeant. (1971, c. 112)

§ 8.6. United States government employees.--No person, otherwise eligible, shall be disqualified, by reason of his accepting or holding an office, post, trust or emolument under the United States government, from serving as an officer or employee of the town, or as a member, officer or employee of any board or commission. (1971, c. 112)

§ 8.7. Acceptance of federal aid, contributions, etc.--The town shall have the power to receive and accept from any federal agency grants of any kind for or in aid of the construction of any project, the procuring or reserving of park land, open spaces or any recreational facility, and to do all such things or make any covenants or agreements which may be necessary or required in order to obtain and use such federal grants. The town may receive and accept aid or contributions from any source or money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made. (1971, c. 112)

§ 8.8. Conflicts of interest; disclosures of interest.--The town council is hereby empowered to enact a conflict of interest and disclosure ordinance to govern elected and/or appointed town officials not inconsistent with general law. (1971, c. 112)

§ 8.9. Present officers to continue.--The present elected officers of the town shall be and remain in office until expiration of their several terms, and until their successors have been duly elected and qualified. (1971, c. 112)

§ 8.10. Ordinances continued in force.--All ordinances now in force in the town of Berryville, not inconsistent with this charter, shall be and remain in force until altered, amended or repealed by the town council. (1971, c. 112)

§ 8.11. Severability of provisions.--If any clause, sentence, paragraph or part of this charter shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this charter, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered (1971, c. 112)