

Incorporated by an 1879 Act of Assembly.

Charter, 1968, c. 646.

2002, cc. 494, 534 (§ 3.1).

Incorporation and Boundaries.

§ 1.1. Incorporation.

The inhabitants of the territory comprised within the present limits of the Town of Herndon, as such limitations 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 Herndon, 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, renew, or amend at its pleasure by proper ordinance. (1968, c. 646)

§ 1.2. Boundaries.

The territory embraced within the Town of Herndon is that territory in the County of Fairfax, Virginia, established in chapter 376 of the Acts of Assembly of 1938, as amended by order entered in a voluntary boundary line adjustment case by the Circuit Court of Fairfax County, Virginia, on December 20, 1988, in "Board of Supervisors of Fairfax County and Town Council of Herndon," Law 85815, recorded in the Clerk's Office of the Circuit Court of Fairfax County, Virginia, on November 6, 1997, as instrument number 97-151937, Deed Book 10166, Page 1311. (1968, c. 646; 1998, c. 137)

Powers.

§ 2.1. General Grant of Powers.

The Town of Herndon 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 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. (1968, c. 646)

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

The powers set forth in Chapters 9 and 11 of Title 15.2 of the Code of Virginia (1950), as amended, and as may be amended from time to time, are hereby conferred on and vested in the Town of Herndon. The powers supplement any other powers specifically or generally conferred on the Town of Herndon or on towns in the Commonwealth. (1968, c. 646; 1973, c. 356; 1975, c. 165; 1998, c. 137)

§ 2.3. Light, ventilation, sanitation and use and occupancy of buildings; inspection warrants.

A. The Town of Herndon may regulate the light, ventilation, sanitation and use and occupancy of buildings heretofore or hereafter constructed, altered, remodeled or improved, and the sanitation of the premises surrounding such buildings.

B. In regulating use and occupancy of such buildings, the town, among other powers, may by ordinance limit, restrict, lower, or control the number of people who may reside in or occupy a building or dwelling unit, to discourage or eliminate neighborhood blight caused by excessive occupancy, as defined by the Virginia Uniform Statewide Building Code.

C. The town may provide that the violation of an ordinance adopted under this section constitutes a Class 3 misdemeanor and may enforce this section by suit in equity.

D. In exercising the powers granted by this section, the town may inspect buildings according to (i) the procedures set out in §§ 19.2-393 through 19.2-397 of the Code of Virginia, with necessary changes for administrative enforcement, or (ii) general law of this state for criminal enforcement. (1995, cc. 718, 787)

§ 2.4 Inspection of residential units.

Upon an affirmative finding of the need to protect the public health, welfare, and safety of its citizens, the Town of Herndon may provide by ordinance for the issuance of certificates of compliance with current building regulations for existing residential rental buildings located in areas of the town subject to neighborhood blight, designated by the town council, after inspections of such buildings upon a termination of the tenancies or when such rental property is sold. Such certificate of compliance shall be issued in accordance with the administrative provisions of the Virginia Uniform Statewide Building Code. (1995, cc. 718, 787)

Chapter 3.

Mayor and Council.

§ 3.1. Election, Qualification and Term of Office of Council Members and Mayor.

(a) The Town of Herndon shall be governed by a town council composed of six council members and a mayor, all of whom shall be qualified voters of the town. Candidates for town offices shall not be identified on the ballot by political affiliation. In order to have their names placed on the ballot, all candidates shall be nominated only by petition as provided by general law pursuant to § 24.2-506.

(b) The mayor and council members shall be elected on the first Tuesday in May of each even-numbered year. The mayor and council members elected under this section shall enter upon the duties of their offices on the first day of July following the election. (1968, c. 646; 1971, c. 207; 1973, c. 356; 2002, cc. 494, 534)

§ 3.2. Vacancies on Council.

Vacancies on the Council shall be filled for the unexpired portion of the term by a majority vote of the remaining members of the Council. (1968, c. 646)

§ 3.3. Vacancy in the Office of Mayor.

A vacancy in the office of mayor shall be filled for the unexpired portion of the term by a majority of the members of the council. (1968, c. 646)

§ 3.4. 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, shall abate or be discontinued by reason of the expiration of the term of office or removal of any of its members. (1968, c. 646)

§ 3.5. 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. (1968, c. 646)

§ 3.6. Powers and Duties of Mayor.

The mayor shall be the chief executive officer of the town. He shall have and exercise all power and authority conferred by general law not inconsistent with this charter. He shall preside over the meetings of the town council and shall have the same right to speak and vote therein as members of the town council. He shall be recognized as the head of the town government for all ceremonial and military purposes. He shall perform such other duties consistent with his office as may be imposed by the council. He shall see that the duties of the various town officers are faithfully performed. In times of public danger, or emergencies, he may take command of the police and maintain order and enforce laws, and for this purpose, may deputize such assistant policemen as may be necessary. He, or the person acting as mayor, may sign and deliver such documents or instruments as the council, this charter, or the laws of the Commonwealth shall require or authorize. (1968, c. 646; 1973, c. 356; 1998, c. 137)

§ 3.7. Vice Mayor.

The town council shall elect from its members, by a majority of the members present, a vice mayor. During the absence or inability of the mayor to act, the vice mayor shall possess the powers and discharge the duties of the mayor. While serving in the place of the mayor, the vice mayor may vote as a member of the town council. (1968, c. 646)

§ 3.8. Meetings of Council.

The town council shall fix the time of their stated meetings, and they shall meet at least once a month. The council shall keep a journal of its official proceedings and its meetings shall be open. Four members of the town council shall constitute a quorum for the transaction of business at any meeting. Special meetings may be called at any time by the mayor or by four members of the council; provided that the mayor and all council members are duly notified a reasonable period of time prior to such meeting, and no business shall be transacted at a special meeting thereof, except that for which it shall be called. If all members are present, this provision may be waived by a majority vote of the council. (1968, c. 646)

§ 3.9. Rules of Order and Procedure

The town council shall establish its own rules of order and procedure, and may take appropriate action against its own members and other persons for violations thereof. (1968, c. 646)

§ 3.10. Council to Fix Salaries.

The town council shall fix the salaries of the mayor and members of the town council and the appointed officers and employees of the town. The town council is further authorized to establish and fix the salaries of members of boards or commissions of the town. Such salaries shall be subject to the limitations prescribed by all other applicable laws and in no event shall an increase in salaries established for the mayor, council, boards or commissions become effective within that term of the council during which the salaries are fixed. (1968, c. 646; 1973, c. 356; 1980, c. 72)

Chapter 4.

Town Manager.

§ 4.1. Appointment.

The town council may appoint a chief administrative officer of the town who shall be called the town manager, fix his salary and delegate to him such administrative duties, powers and responsibilities as it believes to be in the best interest of the town. During his tenure of office the town manager shall reside within the town. The town manager shall serve at and during the pleasure of the town council. (1968, c. 646)

§ 4.2. Duties.

It shall be the duty of the town manager to (a) attend all meetings of the town council, with the responsibility to council and advise but with no voting rights; (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 he deems desirable; (c) prepare and submit the annual budget to the town council and be responsible for its administration after its adoption; (d) prepare in suitable form for publication and submit to the town council at a regular meeting in September of each year a concise, comprehensive report of the financial transactions and administrative activities of the town government during the immediately preceding fiscal year; (e) present adequate financial and activity reports as required by the town council; (f) arrange for an annual audit by a certified public accountant, the selection of whom shall be approved by the town council; and (g) perform such other duties as may be prescribed by this charter or required in accordance therewith by the Mayor or the town council or which may be required of the chief administrative officer of a town by the general laws of the Commonwealth other than the duties conferred on the mayor by this charter. (1968, c. 646)

§ 4.3. Temporary Transfer of Personnel between Departments and Removal of Personnel.

The town manager shall have the power, whenever the interests of the town require, to assign employees of any department, bureau, office or agency under his supervision to the temporary performance of duties in another department, bureau, office or agency. The town manager shall not have the right or power to appoint, transfer, or remove the town attorney or deputy town attorneys, but the town council may delegate to the town manager the authority to appoint and remove other personnel. (1968, c. 646; 1973, c. 356; 1975, c. 165; 1980, c. 72; 1993, c. 356)

§ 4.4. Relations with Boards, Commissions and Agencies.

The town manager shall have the right to attend and participate in the proceedings of, but not to 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. (1968, c. 646)

§ 4.5. Acting Town Manager.

The town council may designate 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. (1968, c. 646)

§ 4.6. Town Clerk.

The town clerk shall be the clerk of the town council and shall keep the journal of its proceedings and shall record all ordinances and resolutions in a book or books kept for the purpose. The clerk shall be the custodian of the corporate seal of the town and shall be the officer authorized to use and authenticate it. The clerk shall perform such other duties and keep such other records as the town council, the town manager or the general laws of the Commonwealth require of town clerks. (1973, c. 356; 1993, c. 356)

Chapter 5.

Appointive Officers.

§ 5.1. Appointments.

The town council shall appoint a town attorney and deputy town attorneys and may appoint or delegate to the town manager the appointment of such other officers of the town as they deem necessary. The town manager shall be responsible for appointing and supervising the work of the town clerk. Each and every officer appointed by the town council shall be directly responsible to the town council and mayor. Such officers shall perform such duties as are required by general law, as well as such additional duties not inconsistent with general law as this charter or the council may prescribe. (1968, c. 646; 1973, c. 356; 1975, c. 165; 1980, c. 72; 1993, c. 356)

§ 5.2. Deputies and Assistants.

The town council may appoint or authorize the appointment by the town manager of such deputies and assistants to appointive offices as they may deem necessary. (1968, c. 646; 1975, c. 165)

§ 5.3. Term of Office.

Officers and deputy and assistant officers of the town shall serve at and during the pleasure of the town council. The town council may delegate to the town manager the authority to suspend or remove the officers and employees of the town whose appointment has or may be delegated to the town manager. (1968, c. 646; 1975, c. 165)

§ 5.4. Bonds.

Officers and deputies and assistants appointed by the town council shall execute such bonds as may be required by resolution of the town council. (1968, c. 646)

§ 5.5. Vacancies in Office.

Vacancies in any appointive office shall be filled by the town council or in the manner prescribed by it but not inconsistent with the general laws or the provisions of this charter pertaining to the appointment of town officers. (1968, c. 646; 1975, c. 165)

§ 5.6. Appointment of One Person to More Than One Office.

The town council may appoint the same person to more than one appointive office. (1968, c. 646)

§ 5.7. (1968, c. 646; repealed 1973, c. 356)

§ 5.8. Residency of Appointive Officers and Employees.

Appointive officers and employees of the town need not reside within the town, except as specifically specified by the provisions of the charter or by general law or unless specifically required by the council. (1975, c. 165)

Chapter 6.

Municipal Court.

§ 6.1. (1968, c. 646; repealed 1975, c. 165)

§ 6.2. (1968, c. 646; repealed 1975, c. 165)

§ 6.3. (1968, c. 646; repealed 1975, c. 165)

§ 6.4. (1968, c. 646; repealed 1975, c. 165)

§ 6.5. (1968, c. 646; repealed 1975, c. 165)

Chapter 6.1.

The Town Attorney.

§ 6.1:1. Powers and Duties of the Town Attorney.

The town attorney shall be the legal advisor of (1) the council, (2) the town manager, (3) all departments, boards, commissions and agencies of the town in all matters effecting the interest of the town and shall (a) upon request, furnish an opinion on any question of law involving the respective official powers and duties; (b) at the request of the town manager or of the council or mayor, prepare ordinances for introduction and render his opinion as to the form and legality thereof; (c) draw or approve all bonds, deeds, leases, contracts or other instruments to which the town is a party or in which it has an interest; (d) represent the town as counsel in any civil case in which it is interested and in criminal cases charging either the violation of town ordinances or the commission of a misdemeanor within the town or in which the constitutionality or validity of any ordinance of the town is brought in issue; (e) with the approval of the council, institute and prosecute all legal proceedings he shall deem necessary or proper to protect the interest of the town; (f) attend in person or assign one of his assistants to attend all meetings of the council; (g) have such other powers and duties as may be assigned to him by ordinance or lawfully required by the council. (1975, c. 165)

§ 6.2:2. Appointment of an Assistant Town Attorney.

The town council may appoint such deputy town attorneys as they may deem necessary and it may appoint special counsel to perform any of the duties imposed upon the town attorney. Such attorneys shall serve at and during the pleasure of the town council. (1975, c. 165)

§ 6.3:3. Qualifications of the Attorneys for the Town.

The town attorney and his deputies must be licensed to practice law within the Commonwealth of Virginia. (1975, c. 165)

Chapter 7.

Miscellaneous.

§ 7.1. Elections Governed by State Law.

All town elections shall be held and conducted in the manner prescribed by the laws of the Commonwealth. (1968, c. 646)

§ 7.2. Actions against Town for Damages, etc.

(a) No action shall be maintained against the town for injury to any person or property or wrongful death alleged to have been sustained by reason of the negligence of the town, or any officer, agent or employee thereof, unless a written statement by the

claimant, his agent or attorney, or representative of the nature of the claim and of the time and place at which the injury is alleged to have occurred, or to have been received, shall have been filed with the town attorney or with the mayor within six months after such cause of action shall have accrued. No officers, agents or employees of the town shall have authority to waive such condition precedent or any of them, except if the claimant during such six-month period 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 six-month period, then the time for giving notice shall be tolled until the claimant sufficiently recovers from said injury so as to be able to give such notice.

(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 the said judgment, or any 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 and may delegate by ordinance this power, in whole or in part, to the town manager. (1968, c. 646; 1975, c. 165; 1998, c. 137)

§ 7.3. 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. (1968, c. 646)

§ 7.4. Board of Zoning Appeals.

The Council shall appoint a Board of Zoning Appeals, consisting of five members, none of whom shall hold any other positions with the town and each of whom shall be a qualified voter of said town. Their term of office shall be for five years each,

except that original appointments shall be made for such terms that the term of one member shall expire each year. (1968, c. 646)

§ 7.4:1. Architectural Control Districts.

(a) Authority of town council to designate.--In order to protect and promote the general welfare, and to prevent deterioration of the appearance of the town which would tend to create hazards to public health, safety and morals and destroy opportunity for the development of business and industry, the town council may designate, within any land areas zoned commercial and/or industrial, architectural control districts in which no structure shall be erected, reconstructed, altered or restored until approved by the Board of Architectural Review.

However, any lot, parcel or area of land which is used for other than single family, detached residences, or which is the subject of an application for a use permit or building permit involving any such other use, may be designated as an architectural control district without regard to its zoning classification.

(b) Board of Architectural Review; authority to create; composition; appointment, qualifications and terms of office of members; powers and duties; appeals from actions.--The council may create a board of architectural review. The board shall consist of five members appointed by majority vote of the council for terms not to exceed three years. At least one member of the board shall be an architect registered in Virginia and at least one shall be a member of the Virginia State Bar. All members of the board shall be residents of the Town of Herndon except one architect member who may or may not be a resident of the Town of Herndon. In the event that the one architect member shall not be a resident of the Town of Herndon, his appointment shall be for a period of one year. The council shall prepare and publish appropriate standards, rules, regulations and procedures for the operation of the board and to carry out the purposes and objectives herein set forth; provided, that the council shall not adopt as part of any such standards a specific architectural style; it shall provide for appeals to the town council from any final decision of the board, which appeal shall stay the board's decision pending the outcome of the appeal before the council. The council, on appeal, shall apply the same standards as those established for the board and may affirm, reverse, or modify the decision of the board, in whole or in part. Parties aggrieved by the decision of the town council shall have the right to appeal to the Circuit Court of Fairfax County for review by filing a petition, at law, setting forth the alleged illegality of the town council's actions, provided such petition is filed within thirty days after the final decision is rendered by the town council. The filing of the said petition shall stay the council's decision pending the outcome of the appeal to the court. The court may reverse or modify the decision of the council, in whole or in part, if it finds upon review that the decision of the council is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the council.

(c) Board of Architectural Review; purposes.--The purpose of the board shall be to assure that all buildings and landscaping erected in the designated architectural control districts conform to accepted architectural standards for permanent buildings, as contrasted with engineering standards designed to satisfy safety requirements only, and exhibit external characteristics as to material, texture, color, lighting, dimensions, line and mass of demonstrated architectural and aesthetic durability; and to prevent the erection in such district of buildings the external characteristics of which are designed to

serve as advertisements or commercial displays or buildings which in terms of material, texture, color, dimension, lighting, line or mass exhibit characteristics likely to deteriorate rapidly or to be of short term architectural or aesthetic acceptability, be plainly offensive to human sensibilities or otherwise constitute a reasonably foreseeable detriment to the community. (1973, c. 356; 1993, c. 356)

§ 7.5. Town of Herndon School Board.

The town council shall appoint three citizens of the town to the Town of Herndon School Board, one for a term of one year, one for a term of two years, and one for a term of three years. The Town of Herndon School Board is authorized to take and receive sums of money by gift, bequest, or otherwise, to be kept invested and the income therefrom used to assist persons in obtaining a education or for the educational purposes for which said donation, gift, or bequest shall have been made. (1968, c. 646)

§ 7.6. Exemption of Real and Personal Property Used for Manufacturing Purposes.

The council may, by a two-thirds vote of the body, exempt real and personal property used for manufacturing purposes or other enterprises from all taxes for municipal purposes for a period not exceeding five years if it deem it expedient to do so in order to encourage the establishment of such enterprise therein or thereon. (1968, c. 646)

§ 7.7. Acceptance of Federal Aid, Contributions, etc.

The Town of Herndon 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 proposes for which such grants and contributions may be made. (1968, c. 646)

§ 7.8. Eminent Domain.

The Town of Herndon shall have the powers of eminent domain set forth or referred to in Chapter 19 of Title 15.2 of the Code of Virginia (1950), as amended, and as may be amended from time to time. (1968, c. 646; 1998, c. 137)

§ 7.9. Disclosure 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 the general law. (1968, c. 646)

§ 7.10. 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. (1968, c. 646)

§ 7.11. 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. (1968, c. 646)

§ 7.12. Ordinances in Force.

All ordinances now in force in the Town of Herndon, not inconsistent with this charter, shall be and remain in force until altered, amended, or repealed by the town council. (1968, c. 646)

§ 7.13. Severability of Provisions.

If any clause, sentence, paragraph or part of this chapter 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. (1968, c. 646)