

MINUTES
BERRYVILLE TOWN COUNCIL
Tuesday, December 9, 2014
Berryville-Clarke County Government Center
Regular Meeting
7:30 p.m.

Town Council:

Present: Wilson Kirby, Mayor; Harry Lee Arnold, Jr., Recorder; Allen Kitselman; Mary Daniel; David Tollett

Absent: Douglas Shaffer

Staff: Keith Dalton, Town Manager; Christy Dunkle, Assistant Town Manager/Planner; Neal White, Chief of Police; Ann Phillips, Town Clerk

Press: Val Van Meter, Winchester Star

1. Call to Order

Mayor Kirby called the public hearings to order at 7:33 p.m.

a) Lindsey Might, Owner, requests a Special Use Permit in order to operate a Home Occupation (home-based massage therapy) at 404 North Church Street.

There was no public comment.

b) The Berryville Planning Commission is recommending a text amendment to the Berryville Zoning Ordinance, Article VI, Section 601 (Open Space Residential); Section 602 (Detached Residential-1); Section 603 (Detached Residential-2); and Section 604 (Detached Residential-4) extending the validity of lot size, yard and bulk requirements in effect at the time of subdivision plat approval prior to January 1, 2011 until July 1, 2017 in order to align with Virginia Code § 15.2-2209.1. Extension of approvals to address housing crisis.

There was no public comment.

Upon motion by Council member Tollett, seconded by Council member Kitselman, the public hearings were closed.

2. Call to Order

Mayor Kirby called the meeting to order at 7:36 p.m.

3. Pledge of Allegiance

4. Approval of Minutes

Upon motion by Recorder Arnold, seconded by Council member Kitselman, the minutes of the November 11, 2014, meeting were approved by the following vote:

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
David Tollett	- Aye
Douglas Shaffer	- Absent

5. Citizens Forum

Mayor Kirby recognized Francis Nance, 303 30th Street, Virginia Beach, who represents Marlyn Development. He delivered a packet and informational letter to each Council member, and spoke in favor of a proposal for a 120 unit senior living project in Annexation Area B. He said that he had been involved in the development of the senior assisted living next to the proposed location. Mr. Nance said that the allocation of units is what he will be concerned with. Sixty units have already been approved, and they will be asking for an additional 60 units. Mr. Nance noted that rents could be lower than projected. He added that a market study shows there is a need and a market for this development.

Mayor Kirby recognized Jon Erickson of Morris Ritchie Associates who also spoke in favor of the Marlyn proposal. He noted that a previous plan for a 60 unit development had been approved, but that funding was not granted and so the project was shelved. Mr. Erickson said that the development needs to be 120 units in order to be viable. He added that they are working with BADA, the development unit will have more amenities than the one previously proposed, and that all infrastructure is already in place.

Mayor Kirby recognized Dan Garrett of 303 Archer Court, Berryville. Mr. Garrett said that he had been an advocate of affordable senior housing since 1995, and is in support of the Marlyn Corporation proposal for 120 units. He said that the Mary Hardesty House has proven to be a successful addition to the community.

Mayor Kirby recognized Jerry Johnson, 20 B East Main Street, Berryville. Mr. Johnson said that he was not here to rehash the parking meter replacement issue, but he felt many residents don't know that the Town is considering the replacement of meters. He asked that the Council survey the residents about whether parking meters should be kept before making a decision.

Mayor Kirby recognized Brian McClemens of 333 East Fairfax Street. Mr. McClemens informed the Council that the Main Street Deli will be closing at the end of the month.

Mayor Kirby recognized Stephanie Scott of 212 Treadwell Street. Ms. Scott said that she has been at this address since 2008, lives alone, and that her water bills have been \$20 to \$40. She now has a very high water bill for 11000 gallons. She asked for assurance that this high bill will not happen again, and has requested relief on this bill. Mr. Dalton noted that he had offered to test the water meter, but that malfunction was not suspected.

6. Report of the Mayor

Mayor Kirby noted that he had nothing to report since the Christmas Parade had been cancelled because of inclement weather, and he had been unable to attend the rescheduled Christmas Tree Lighting on December 7.

7. Report of the Town Manager

Mr. Dalton said that he and Ms. Moreland were working with Clarke County jointly in the study of collecting delinquent real estate taxes. He said they are looking at automatic turnover of delinquent accounts to a collection attorney which may require a code change. Mr. Dalton asked if the Budget and Finance Committee would want to meet and discuss the issue, and Mr. Arnold indicated he would be interested. Council member Daniel asked if an RFP were required. Mr. Dalton said that the service may be secured without going through a procurement process, but we could do an RFQ if the Town Council so desired.

Mr. Dalton discussed the proposed Snow Emergency Routes and highlighted the reasons for each route's inclusion:

Buckmarsh Street – This is a U.S. Highway with a considerable amount of traffic. Presently, only one section of North Buckmarsh has on-street parking but if lane markings are changed on South Buckmarsh then parking may be allowed there as well. Note – South Buckmarsh would not have to be included if on-street parking remained prohibited.

Hermitage Blvd.- This collector road serves an important role in moving traffic in Berryville.

Mosby Blvd. – This collector road serves an important role in moving traffic in Berryville. The community's only supermarket is located on this street. Note – this may be able to be removed from this list if the Town Council determines to restrict on-street parking on Mosby Blvd.

Jackson Drive – This street provides a link between Hermitage Blvd. and Mosby Blvd.

Lincoln Avenue and Tyson Drive between Hermitage Blvd. and Lincoln Avenue- Johnson Williams Middle School, which is accessed from Lincoln Avenue, serves as a community emergency shelter and as a VDH inoculation site. The section of Tyson under consideration connects Hermitage Blvd. to Lincoln Avenue.

Mr. Dalton noted that Lincoln Ave. is much narrower than the other included routes. Council member Daniel asked how residents would be notified and where were the Lincoln Ave. residents to park their vehicles. Mr. Dalton responded that there would be an educational process: there is already a snow emergency plan, and this would expand that plan. Residents would be informed of any code change. Radio news reports would be the means of notification that a snow emergency plan was in effect.

Mr. Dalton said that the amended ordinance would allow the Town Manager to declare an emergency and keep it in effect longer than 24 hours which is the current duration, thereby allowing cleanup after bigger storms to be handled more easily. He added that we are not rushing into this, that VDOT will have to approve any plan, and it is a long process. Mr. Dalton also noted that the Public Works Department sees a real need for snow emergency routes. Council member Daniel said that she was concerned about how the fines for violations under the plan would be handled.

Mr. Dalton said that if Council was comfortable with the plan, it could be forwarded to VDOT for approval. Council agreed by consensus to forward the plan to VDOT. Mr. Dalton added that attorney Bob Mitchell has already reviewed the plan.

8. Planner's Report

Action Items:

- a. Lindsey Might, Owner, requests a Special Use Permit in order to operate a Home Occupation (home-based massage therapy) at 404 North Church Street.

Recorder Arnold moved that the Council of the Town of Berryville hereby approve the Special Use Permit for the property located at 404 North Church Street, identified as Tax Map Parcel number 14A2-((2))-20, zoned DR-4 Detached Residential in order to operate a Home Occupation (massage therapy) with the following conditions:

- **Hours of operation: Monday through Saturday 11:00am to 8:00pm and Sundays from 12:00 noon until 6:00pm**
- **One client at a time with approximately 20 minutes overlap for a second client appointment.**

Council member Kitselman seconded the motion which carried by the following vote:

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
David Tollett	- Aye
Douglas Shaffer	- Absent

- b. The Berryville Planning Commission is recommending a text amendment to the Berryville Zoning Ordinance, Article VI, Section 601 (Open Space Residential); Section 602 (Detached Residential-1); Section 603 (Detached Residential-2); and Section 604 (Detached Residential-4) extending the validity of lot size, yard and bulk requirements in effect at the time of subdivision plat approval prior to January 1, 2011 until July 1, 2017 in order to align with Virginia Code § 15.2-2209.1. Extension of approvals to address housing crisis.

Recorder Arnold moved that the Council of the Town of Berryville approve the proposed text amending Article VI of the Berryville Zoning Ordinance modifying the timeframe for validity of lot size, yard and bulk requirements in effect at the time of approval for plats and subdivisions approved prior to January 1, 2011 by establishing Sections 601.7(e), 602.9(f), 603.9(f) and 604.9(f). Council member Kitselman seconded the motion which carried on the following vote:

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
David Tollett	- Aye
Douglas Shaffer	- Absent

AN ORDINANCE AMENDING
ARTICLE VI, ADDITIONAL DISTRICTS, ESTABLISHING SECTIONS 601.7(e), 602.9(f),
603.9(f) AND 604.9(f), CONCERNING LOT SIZE, YARD AND BULK REQUIREMENTS,
OF THE TOWN OF BERRYVILLE ZONING ORDINANCE

BE IT ORDAINED, by the Council of the Town of Berryville, that Article VI, Additional Districts, establishing sections 601.7(e), 602.9(f), 603.9(f) and 604.9(f), of the Town of Berryville Zoning Ordinance shall be amended as follows:

ARTICLE VI

601.7 ADDITIONAL REGULATIONS

- (e) The lot size, yard, and bulk requirements in effect at the time of subdivision plat approval prior to January 1, 2011 shall remain applicable to such subdivisions until July 1, 2017. The foregoing shall not be effective unless any unreleased performance bonds and agreements or other financial guarantees of completion of public improvements in or associated with the subdivision are continued in force. (00/14)

602.9 ADDITIONAL REGULATIONS

- (a) The lot size, yard, and bulk requirements in effect at the time of subdivision plat approval prior to January 1, 2011 shall remain applicable to such subdivisions until July 1, 2017. The foregoing shall not be effective unless any unreleased performance bonds and agreements or other financial guarantees of completion of public improvements in or associated with the subdivision are continued in force.” (00/14)

603.9 ADDITIONAL REGULATIONS

- (a) The lot size, yard, and bulk requirements in effect at the time of subdivision plat approval prior to January 1, 2011 shall remain applicable to such subdivisions until July 1, 2017. The foregoing shall not be effective unless any unreleased performance bonds and agreements or other financial guarantees of completion of public improvements in or associated with the subdivision are continued in force.” (00/14)

604.9 ADDITIONAL REGULATIONS

- (f) The lot size, yard, and bulk requirements in effect at the time of subdivision plat approval prior to January 1, 2011 shall remain applicable to such subdivisions until July 1, 2017. The foregoing shall not be effective unless any unreleased performance bonds and agreements or other financial guarantees of completion of public improvements in or associated with the subdivision are continued in force.” (00/14)

9. Standing Committee Reports

a) BADA Liaison – Allen Kitselman

Council member Kitselman said that Marlyn Development had come before the BADA with their 120 unit proposal. He said that there needs to be time to study the proposal, and noted his concern that by granting their request for a higher number of multi-family units, we are surrendering the diversity of housing types.

b) Budget Finance / CIP – Jay Arnold

Recorder Arnold referred to Ms. Moreland’s staff report which includes a draft calendar for planning the 2015-2016 budget. Mr. Dalton asked for input on the calendar. Mr. Dalton added that he is asking that the audit report be in hand sooner this year rather than being presented at a Council meeting.

c) Community Improvements – Allen Kitselman

Council member Kitselman said that the CDBG grant effort continues.

d) Planning Commission – Doug Shaffer

Council member Shaffer was absent.

e) Police and Security – Mary Daniel

Upon a motion by Council member Tollett, seconded by Council member Daniel, the minutes of the Police and Security Committee meeting on November 19, 2014, were approved.

Council member Daniel said that one item of note from the meeting is that because of a change in state law, the Town, (rather than the County Sheriff’s office) is now responsible for custodial transport of individuals in mental crisis who are involuntarily committed to a mental health facility. This change means more resources, especially manpower, will be required.

Chief White introduced the proposed changes to streamline Chapter 13 of the Berryville Code which will eliminate duplication of the State Code. He said that there are costs associated with confinement of individuals if they held under the Town Code.

Council member Daniel moved that the Council of the Town of Berryville adopt the proposed Ordinance repealing and readopting Chapter 13 of the Berryville Code. Council member Tollett seconded the motion which carried by the following vote:

Wilson Kirby

- Aye

Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
David Tollett	- Aye
Douglas Shaffer	- Absent

Chapter 13 - OFFENSES-MISCELLANEOUS [1]

Sec. 13-1. - Attempt to commit misdemeanor.

Sec. 13-2. - Reserved.

Sec 13-3. - Curfew for minors.

Sec. 13-4. - Reserved.

Sec. 13-5. - Reserved.

Sec. 13-6. - Reserved.

Sec. 13-7. - Reserved.

Sec. 13-8. - Calling or summoning ambulance or firefighting apparatus without just cause; maliciously activating fire alarms in public buildings.

Sec. 13-9. - Reserved.

Sec. 13-10. - Reserved

Sec. 13-11. - Disorderly conduct in public places.

Sec. 13-11.1. - Reserved.

Sec. 13-12. - Obstructing free passage of others.

Sec. 13-12.1. - Reserved.

Sec. 13-13. - Profane, swearing and intoxication in public; penalty; transportation of public inebriates to detoxification center.

Sec. 13-13.1. - Drinking alcoholic beverages, or tending to another, in public place; penalty.

Sec. 13-13.2. - Drinking while operating a motor vehicle; penalty.

Sec. 13-14. - Reserved.

Sec. 13-15. - Keeping, residing in or frequenting a bawdy place; "bawdy place" defined.

Sec. 13-16. - Reserved.

Sec. 13-17. - Reserved.

Sec. 13-18. - Unlawful operation of coin box telephone, parking meter, vending machines, etc.

Sec. 13-19. - Reserved.

Sec. 13-20. - Reserved.

Sec. 13-21. - Reserved.

Sec. 13-22. - Willful and malicious damage or defacement of public or private facilities, penalty.

Sec. 13-23. - Reserved.

Sec. 13-24. - Trespass after having been forbidden to do so; penalties.

Sec. 13-25. - Instigating, etc., such trespass of others; preventing service to persons not forbidden to trespass.

Sec. 13-26. - Soliciting.

Sec. 13-27. - Reserved.

Sec. 13-28. - Reserved.

Sec. 13-29. - Reserved.

Sec. 13-30. - Open storage of inoperative vehicles in certain zoning districts.

Sec. 13-31. - Discarding or abandoning iceboxes, etc.; precautions required.

Sec. 13-32. - Removal weeds and other foreign growth.

Sec. 13-32.1. - When action to be taken pursuant to section 13-32.

Sec. 13-33. - Maintenance of property consisting of Dog Run.

Sec. 13-34. - Expecting in public places.

Sec. 13-35. - Regulation of use and conduct on town basketball court.

Sec. 13-36. - Regulation of use and conduct in Rose Hill Park.

Sec. 13-37. - Damage or defacement of recreational facilities.
Sec. 13-38. - Designation of date and hours for Halloween activities.
Sec. 13-39. - Urination and defecation in public prohibited.

Sec. 13-1. - Attempt to commit misdemeanor.

Every person who attempts to commit an offense which is a misdemeanor shall be punished by the same punishment prescribed for the offense the commission of which was the object of the attempt, except as otherwise specifically provided.

(Code 1971, § 13-5)

Cross reference— Penalty for misdemeanors, § 1-11.

State law reference— Similar provisions, Code of Virginia, § 18.2-27.

Sec. 13-2. – Reserved.

Sec. 13-3. - Curfew for minors.

(a) *Definitions.* In this section:

Curfew hours means:

- (1) 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, Thursday, until 6:00 a.m. of the following day; and
- (2) 11:00 p.m. on any Friday or Saturday until 6:00 a.m.

Emergency means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, or automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

Establishment means any privately-owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

Guardian means:

- (1) A person who, under court order, is the guardian of the person of a minor; or
- (2) A public or private agency with whom a minor has been placed by a court.

Minor means any person under eighteen (18) years of age.

Operator means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of any association or partnership and the officers of a corporation.

Parent means a person who is a natural parent, adoptive parent, or step-parent of another person.

Public place means any place, whether on public or private property, to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

Remain means to:

- (1) Linger or stay; or
- (2) Fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

(b) *Offenses.*

- (1) A minor commits an offense if he remains in any public place or the premises of any establishment within the town during curfew hours.
- (2) A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the town during curfew hours.
- (3) The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours, unless such owner, operator or employee notifies and receives approval from the chief of police of the town, or his designee, in advance of the day it is intended to permit one or more minors to remain upon the premises of the establishment during curfew hours.

(c) *Defenses.*

- (1) It is a defense to prosecution under subsection (b) that the minor was:
 - a. Accompanied by the minor's parent or guardian;
 - b. On an errand at the direction of the minor's parent or guardian, without any detour or stop;
 - c. In a motor vehicle involved in interstate travel;
 - d. Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
 - e. Involved in an emergency;
 - f. On the sidewalk abutting the minor's residence or abutting the residence of a next door neighbor if the neighbor did not complain to the police department about the minor's presence;
 - g. Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the town, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the town, a civic organization, or another similar entity that takes responsibility for the minor;
 - h. Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or
 - i. Married or had been married or had disabilities of minority removed in accordance with the law of the Commonwealth of Virginia.
- (2) It is a defense to prosecution under subsection (b)(3) hereinabove that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

- (d) *Enforcement.* Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in subsection (c) hereinabove is present.
- (e) *Severability.* If any provision of this section is held to be invalid or unenforceable, all other provisions shall, nevertheless, continue in full force and effect.
- (f) *Penalties.* A person who violates a provision of this chapter is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable as a Class 4 misdemeanor.

(Code 1971, § 3-9.1; Ord. of 8-15-95)

Cross reference— Penalty for Class 4 misdemeanor, § 1-11.

Sec. 13-4. – Reserved.

Sec. 13-5. - Reserved.

Editor's note—

An ordinance adopted July 10, 1990, repealed former § 13-5, relative to the sale of beer or wine on Sunday, which derived from Code 1971, § 13-6 and an ordinance adopted Feb. 9, 1971.

Sec. 13-6. – Reserved.

Sec. 13-7. – Reserved.

Sec. 13-8. - Calling or summoning ambulance or firefighting apparatus without just cause; maliciously activating fire alarms in public buildings.

Any person who without just cause therefor, calls or summons, by telephone or otherwise, any ambulance, or firefighting apparatus, or any person who maliciously activates a manual or automatic fire alarm in any building used for public assembly or for other public use, including, but not limited to, schools, theaters, stores, office buildings, shopping centers and malls, coliseums and arenas, regardless of whether fire apparatus responds or not, shall be deemed guilty of a Class 1 misdemeanor.

(Code 1971, § 13-3; Ord. of 3-14-92)

Cross reference— Penalty for Class 1 misdemeanor, § 1-11

State law reference— Similar provisions, Code of Virginia, § 18.2-212.

Sec. 13-9. – Reserved.

Sec. 13-10. – Reserved.

Sec. 13-11. - Disorderly conduct in public places.

A person is guilty of disorderly conduct if, with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

- (a) In any street, highway, public building, or while in or on a public conveyance, or public place engages in conduct having a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct is directed; or
- (b) Willfully or being intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts any funeral, memorial service, or meeting of the town council or a division thereof, or of any school, literary society or place of religious worship, if the disruption (i) prevents or interferes with the orderly conduct of the meeting or (ii) has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed; or
- (c) Willfully or while intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts the operation of any school or any activity conducted or sponsored by any school, if the disruption (i) prevents or interferes with the orderly conduct of the operation or activity or (ii) has a direct tendency to cause acts or violence by the person or persons at whom, individually, the disruption is directed.

However, the conduct prohibited under subsections (1), (2) or (3) of this section shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this chapter.

The person in charge of any such building, place, conveyance, meeting, operation or activity may eject therefrom any person who violates any provisions of this section, with the aid, if necessary, of any persons who may be called upon such purpose.

A person violating any provision of this section shall be guilty of a Class 1 misdemeanor.

(Code 1971, §§ 13-11, 13-12; Ord. of 3-14-92)

Cross reference—Penalty for Class 1 misdemeanor, § 1-11.

State law reference— Similar provisions and authority of town to adopt above section, Code of Virginia, § 18.2-415.

Sec. 13-11.1. – Reserved.

Sec. 13-12. - Obstructing free passage of others.

Any person or persons who in any public place or on any private property open to the public unreasonably or unnecessarily obstructs the free passage of other persons to and from or within such place or property and who shall fail or refuse to cease such obstruction or move on when requested to do so by the owner or lessee or agent or employee of such owner or lessee or by a duly authorized enforcement officer shall be guilty of a Class 1 misdemeanor. Nothing in this section shall be construed to prohibit lawful picketing.

(Code 1971, § 15-13; Ord. of 3-14-92)

Cross reference—Penalty for Class 1 misdemeanor, § 1-11.

State law reference— Similar provisions, Code of Virginia, § 18.2-404.

Sec. 13-12.1. – Reserved.

Sec. 13-13. - Profane, swearing and intoxication in public; penalty; transportation of public inebriates to detoxification center.

If any such person profanely curses or swears or is intoxicated in public, whether such intoxication results from alcohol, narcotic drug or other intoxicant or drug of whatever nature, he shall be deemed guilty of a Class 4 misdemeanor. If a court-approved detoxification center is located in the area, a law-enforcement officer may authorize the transportation, by police or otherwise, of public inebriates to such detoxification center in lieu of arrest; however, no person shall be involuntarily detained in such center.

(Code 1971, § 13-13; Ord. of 3-14-92)

Cross reference— Penalty for Class 4 misdemeanors, § 1-11; profane speech or music from sound trucks, § 11-33.

State law reference— Similar provisions, Code of Virginia, § 18.2-.388

Sec. 13-13.1. - Drinking alcoholic beverages, or tending to another, in public place; penalty.

- (a) If any person takes a drink of alcoholic beverages or tends a drink thereof to another, whether accepted or not, at or in any public place as defined in Code of Virginia §4.1-100, he shall be guilty of a Class 4 misdemeanor.
- (b) This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in any rooms or areas approved by the Virginia Alcoholic Beverage Control Board in a licensed establishment, provided such establishment or the person who operates the same is licensed to sell alcoholic beverages at retail for on-premise consumption and the alcoholic beverages drunk or offered were purchased therein.
- (c) This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in any room or area approved by the Virginia Alcoholic Beverage Control Board at an event for which a banquet license or mixed beverage special events license has been granted. Nor shall this section prevent, upon authorization of the license, any person from drinking his own lawfully acquired alcoholic beverages or offering a drink thereof to another in approved areas and locations at events for which a coliseum or stadium license has been granted.

(Ord. of 7-14-92)

Cross reference— Penalty for Class 4 misdemeanor, § 1-11.

State law reference— Similar provisions, Code of Virginia, § 4.1-128

Sec. 13-13.2. - Drinking while operating a motor vehicle; penalty.

- (a) It shall be unlawful for any person to consume an alcoholic beverage while driving a motor vehicle upon a public highway in this town. A violation of this section is punishable as a Class 4 misdemeanor.
- (b) A rebuttable presumption that the driver has consumed an alcoholic beverage in violation of this section shall be created if (i) an open container is located within the passenger compartment of the motor vehicle, (ii) the alcoholic beverage in the open container has been at least partially removed and (iii) the appearance, conduct, odor of alcoholic beverage, speech or other physical characteristics of the driver of the motor vehicle may be reasonably associated with the consumption of an alcoholic beverage.

(Ord. of 7-14-92)

Cross reference— Penalty for Class 4 misdemeanor, § 1-11.

State law reference— Similar provisions, Code of Virginia, § 18.2-323.1

Sec. 13-14. – Reserved.

Sec. 13-15. - Keeping, residing in or frequenting a bawdy place; "bawdy place" defined.

It shall be unlawful for any person to keep any bawdy place, or to reside in or at or visit, for immoral purposes, any bawdy place. Each and every day such bawdy place shall be kept, resided in or visited, shall constitute a separate offense. In a prosecution under this section the general reputation of the place may be proved.

As used in this Code, "bawdy place" shall mean any place within or without any building or structure which is to be used for lewdness, assignation or prostitution.

A person violating this section shall be guilty of a Class 1 misdemeanor.

(Ord. of 3-14-92)

Cross reference— Penalty for Class 1 misdemeanor, § 1-11.

State law reference— Similar provisions, Code of Virginia, § 18.2-347.

Sec. 13-15.1. – Removal, repair, etc., of buildings and other structures harboring a bawdy place.

a) As used in this section:

"Affidavit" means the affidavit prepared by a locality in accordance with subdivision B 1 a hereof.

"Bawdy place" means the same as that term is defined in Sec. 13-15.

"Corrective action" means the taking of steps which are reasonably expected to be effective to abate a bawdy place on real property, such as removal, repair or securing of any building, wall or other structure.

"Owner" means the record owner of real property.

"Property" means real property.

(b) If a bawdy place exists on a property, the following provisions shall apply:

(1) The Town Council may undertake corrective action with respect to property in accordance with the procedures described herein:

a. The town shall execute an affidavit, citing this section, to the effect that (i) a bawdy place exists on the property and in the manner described therein; (ii) the town has used diligence without effect to abate the bawdy place; and (iii) the bawdy place constitutes a present threat to the public's health, safety or welfare.

b. The town shall then send a notice to the owner of the property, to be sent by regular mail to the last address listed for the owner on the town's assessment records for the property, together with a copy of such affidavit, advising that (i) the owner has up to thirty days from the date thereof to undertake corrective

action to abate the bawdy place described in such affidavit and (ii) the town will, if requested to do so, assist the owner in determining and coordinating the appropriate corrective action to abate the bawdy place described in such affidavit.

c. If no corrective action is undertaken during such thirty-day period, the town shall send by regular mail an additional notice to the owner of the property, at the address stated in the preceding subparagraph, stating the date on which the town may commence corrective action to abate the bawdy place on the property, which date shall be no earlier than fifteen days after the date of mailing of the notice. Such additional notice shall also reasonably describe the corrective action contemplated to be taken by the town. Upon receipt of such notice, the owner shall have a right, upon reasonable notice to the town, to seek equitable relief, and the town shall initiate no corrective action while a proper petition for relief is pending before a court of competent jurisdiction.

- (2) If the town undertakes corrective action with respect to the property after complying with the provisions of subparagraph (b)(1), the costs and expenses thereof shall be chargeable to and paid by the owner of such property and may be collected by the town as taxes and levies are collected.
- (3) Every charge authorized by this section with which the owner of any such property has been assessed and which remains unpaid shall constitute a lien against such property with the same priority as liens for unpaid local taxes and enforceable in the same manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1 of the Code of Virginia.

(c) If the owner of such property takes timely corrective action pursuant to such ordinance, the town shall deem the bawdy place abated, shall close the proceeding without any charge or cost to the owner and shall promptly provide written notice to the owner that the proceeding has been terminated satisfactorily. The closing of a proceeding shall not bar the locality from initiating a subsequent proceeding if the bawdy place recurs.

(d) Nothing in this section shall be construed to abridge or waive any rights or remedies of an owner of property at law or in equity.

State Law Reference – Enabling Legislation, Code of Virginia § 15.2-908.1

Sec. 13-16. – Reserved.

Sec. 13-17. – Reserved.

Sec. 13-18. - Unlawful operation of coin box telephone, parking meter, vending machines, etc.

Any person who shall operate, cause to be operated, or attempt to operate or cause to be operated any coin box telephone, parking meter, vending machine or other machine that operates on the coin-in-the-slot-principle, whether of like kind or not, designed to receive only lawful coin of the United States of America or token, in connection with the use or enjoyment of telephone or telegraph service, parking privileges or any other service, or the sale of merchandise or other property, by means of a slug, or any false, counterfeit, mutilated, sweated or foreign coin, or by any means, method, trick or device whatsoever, not authorized by the owner, lessee, or licensee of such coin box telephone, parking meter, vending machine or other machines, designed only to receive lawful coin of the United States of America or token, without depositing in or surrendering to such coin box telephone, parking meter, vending machine, or other machine lawful coin of the United States of America or token to the amount required

therefor by the owner, lessee or licensee of such coin box telephone, parking meter, vending machine or other machine, shall be guilty of a Class 3 misdemeanor.

(Code 1971, § 13-9; Ord. of 3-14-92)

Cross reference— Penalty for Class 3 misdemeanor, § 1-11; parking meters, § 10-67 et seq.

State law reference— Similar provisions, Code of Virginia, § 18.2-179.

Sec. 13-19. — Reserved.

Sec. 13-20. — Reserved.

Sec. 13-21. — Reserved.

Sec. 13-22. -. Willfully and maliciously damage or defacement of public or private facilities, penalty

(a) It shall be unlawful to willfully and maliciously damage or deface any public buildings, facilities and personal property or any private buildings, facilities and personal property. The penalty for a violation of this section is a Class 1 misdemeanor. The punishment for any such violation in which the defacement is (i) more than 20 feet off the ground, (ii) on a railroad or highway overpass, or (iii) committed for the benefit of, at the direction of, or in association with any criminal street gang, as that term is defined by Virginia Code § 18.2-46.1, shall include a mandatory minimum fine of \$500.

(b) Upon a finding of guilt under this section, in any case tried before the court without a jury, in the event the violation constitutes a first offense that results in property damage or loss, the court, without entering a judgment of guilt, upon motion of the defendant, may defer further proceedings and place the defendant on probation pending completion of a plan of community service work. If the defendant fails or refuses to complete the community service as ordered by the court, the court may make final disposition of the case and proceed as otherwise provided. If the community service work is completed as the court prescribes, the court may discharge the defendant and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings.

(c) Community service shall, to the extent feasible, include the repair, restoration or replacement of any damage or defacement to property within the town, and may include clean-up, beautification, landscaping or other appropriate community service within the town. A designee of the town shall supervise the performance of any community service work required and to report thereon to the court imposing such requirement. At or before the time of sentencing under the ordinance, the court shall receive and consider any plan for making restitution or performing community service submitted by the defendant. The court shall also receive and consider the recommendations of the supervisor of community service in the town concerning the plan.

(d) Notwithstanding any other provision of law, no person convicted of a violation of this section shall be placed on probation or have his sentence suspended unless such person makes at least partial restitution for such property damage or is compelled to perform community services, or both, as is more particularly set forth in Virginia Code § 19.2-305.1.

(e) If the town seeks to clean or cover the defacement, it shall give notice to the owner and lessee, if any, of any private building or facility that has been defaced that, within 15 days of receipt of such notice, if the owner or lessee does not clean or cover the defacement or object to the removal of the defacement, the town may clean or cover the defacement at the town's expense.

(Code 1971, §§ 13-18, 13-19; Ord. of 3-14-92)

Cross reference— Penalty for Class 1 misdemeanor, § 1-11; damaging parking meters, § 10-71; damaging water or sewer system property, § 17-3.

State law reference—Enabling legislation, Code of Virginia, § 15.2-1812.2

Sec. 13-23. - Injuring, tampering with, etc., vehicles, aircraft, etc.

- (a) Any person who shall, individually or in association with one or more others, willfully break, injure, tamper with, or remove any part or parts of, any vehicle, aircraft, boat or vessel, for the purpose of injuring, defacing or destroying such vehicle, aircraft, boat or vessel, or temporarily or permanently preventing its useful operation, or for any purpose against the will or without the consent of the owner of such vehicle, aircraft, boat or vessel, or who shall in any other manner willfully or maliciously interfere with or prevent the running or operation of such vehicle, aircraft, boat or vessel, shall be guilty of a Class 1 misdemeanor.
- (b) Any person who shall, without the consent of the owner or person in charge of a vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad, climb into or upon such vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad with intent to commit any crime, malicious mischief or injury thereto, or who, while a vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad is at rest and unattended, shall attempt to manipulate any of the levers and starting crank or other device, brakes or mechanism thereof or to set such vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad in motion, with the intent to commit any crime, malicious mischief or injury thereto, shall be guilty of a Class 1 misdemeanor. This subsection shall not apply when any such act is done in an emergency or in furtherance of public safety or by or under the direction of an officer in the regulation of traffic or performance of any other official duty.
- (c) The provisions of this section shall not apply to a bona fide repossession of a vehicle, aircraft, boat or vessel by the holder of a lien thereon or by the agents or employees of such lienholder.

(Code 1971, § 11-6)

Cross reference— Penalty for Class 1 misdemeanor, § 1-11; motor vehicles and traffic, Ch. 10; railroads, Ch. 14.

State law reference— Similar provisions, Code of Virginia, §§ 18.2-146—18.2-148.

Sec. 13-24. - Trespass after having been forbidden to do so; penalties.

- (a) If any person without authority of law goes upon or remains upon the lands, buildings or premises of another, or any portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted by such persons or by the holder of any easement or other right-of-way authorized by the instrument creating such interest to post such signs on such lands, structures, or premises or part or portion or area thereof, at a place or places where it or they may be reasonably seen, or if any person, whether he is the owner, tenant or otherwise entitled to the use of such land, building or premises, goes upon, or remains upon such land, building or premises after having been prohibited from doing so by a court of competent jurisdiction by an order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-278.2 through §§ 16.1-278.6, 16.1-278.8, 16.1-278.14, 16.1-278.15, or § 16.1-279.1 of the Code of Virginia, or an ex parte order issued pursuant to § 20.105 of the Code of Virginia, and after having been served with such order, he shall be guilty of a Class 1 misdemeanor. This section shall not be construed to affect in any way the provisions of §§ 18.2-132 through 18.2-136 of the Code of Virginia.

(b) Any owner, lessee, custodian, or the agent of such person, or other person lawfully in charge of real property may, in writing on a form prescribed by the chief of police, designate the police department as a "person lawfully in charge thereof", as those terms are used in subsection (a) of this section, for the purpose of forbidding another to go or remain upon the lands, buildings or premises of such owner, lessee, custodian, or the agent of such person, or other person lawfully in charge. Such designation:

- (1) Shall include a description of the land, building or premises to which it applies;
- (2) Shall reference the period of time during which it is in effect; and
- (3) Shall be kept on file in the office of the chief of police or in such other location within the police department as the chief of police deems appropriate.

(Code 1971, §§ 13-25, 13-26; Ord. of 3-14-92)

Cross reference— Penalty for Class 1 misdemeanor, § 1-11.

State law reference— Similar provisions, Code of Virginia, § 18.2-119

Enabling legislation, Code of Virginia, § 15.2-1717.1

Sec. 13-25. - Instigating, etc., such trespass of others; preventing service to persons not forbidden to trespass.

If any person shall solicit, urge, encourage, exhort, instigate or procure another or others to go upon or remain upon the lands, buildings, or premises of another, or any part, portion or area thereof, knowing such other person or persons to have been forbidden, either orally or in writing, to do so by the owner, lessee, custodian or other person lawfully in charge thereof, or knowing such other person or persons to have been forbidden to do so by the owner, lessee, custodian or other person lawfully in charge thereof, or knowing such other person or persons to have been forbidden to do so by a sign or signs posted on such lands, buildings, premises or part, portion or area thereof at a place or places where it or they may reasonably be seen; or if any person shall, on such lands, buildings, premises or part, portion or area thereof prevent or seek to prevent or seek to prevent the owner, lessee, custodian, person in charge or any of his employees from rendering service to any person or persons not so forbidden, he shall be guilty of a Class 1 misdemeanor.

(Ord. of 3-14-92)

Cross reference— Penalty for Class 1 misdemeanor, § 1-11.

State law reference— Similar provisions, Code of Virginia, § 18.2-120.

Sec. 13-26. -- Soliciting.

- (a) It shall be unlawful for any person to solicit money or other things of value, or to solicit the sale of goods or services:
- (1) In an aggressive manner in any public area;
 - (2) Within fifteen (15) feet of any entrance or exit of any bank during the hours of operation of such bank;
 - (3) Within fifteen (15) feet of any automated teller machine;
 - (4) From or to any person seated within an outdoor café area, during the hours of operation of such outdoor café;
 - (5) From or to any person who is conducting business at any vendor table or cart;
 - (6) On private property, if the owner, tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property

(7) While walking on, standing on or going into any street or highway used for motor vehicle travel in order to solicit from any driver or occupants of a motor vehicle.

(b) The town manager may, upon application setting forth the name and permanent address of the applicant, together with the name of the person by whom he is employed and the address of such employer, issue a permit to the applicant permitting the solicitation of orders in the town on the streets and on private premises, except where it appears, by a sign posted in a reasonably conspicuous place, that solicitors, peddlers, hawkers, itinerant merchants and transient vendors of goods, services, wares and merchandise or books and magazine subscriptions are not desired.

(c) This section shall not be construed to prevent the representative of a charitable, patriotic or religious organization, who has secured a permit from the town manager, from soliciting funds for charitable, patriotic or religious purposes.

(d) For the purposes of this section the following words and phrases shall have the meanings ascribed to them below, unless a different meaning is plainly required by the context:

Aggressive manner means and includes:

- (1) Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation, without the person's consent;
- (2) Approaching or following the person being solicited, if that contact is: (i) intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (ii) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
- (3) Continuing to solicit the person being solicited after the person has made a negative response, if continuing the solicitation is: (i) intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (ii) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
- (4) Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person to take evasive action to avoid physical contact with the person making the solicitation; and
- (5) Intentionally or recklessly using obscene or abusive language or gestures: (i) intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (ii) words intended to or reasonably likely to intimidate the person into responding affirmatively to the solicitation.

Public area means an area to which the public or a substantial group of persons has access, including, but not limited to: alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, sidewalks, streets open to the general public, and the doorways and entrances to buildings, together with the grounds enclosing them.

Solicit means to request an immediate donation of money or other thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value. A solicitation may take the form of, without limitation, the spoken, written or printed word, or by other means of communication (for example: an outstretched hand, extended cup or hat, etc.).

(e) Any person violating the provisions of this section shall be guilty of a Class 3 misdemeanor

Cross reference— Penalty for Class 3 misdemeanor, § 1-11; streets and sidewalks, Ch. 15.

State law reference – Enabling legislation, Code of Virginia, § 15.2-913, Code of Virginia § 46.2-931.

Sec. 13-28. – Reserved.

Sec. 13-29. – Reserved.

Sec. 13-30. - Open storage of inoperative vehicles in certain zoning districts.

- (a) It shall be unlawful and a class 4 misdemeanor for any person, firm or corporation to keep, except within a fully enclosed building or structure or otherwise shielded or screened from view, on any property zoned for residential or commercial purposes, any motor vehicle, trailer, or semi-trailer, as such are defined in section 46.2-100 of the Code of Virginia, which is inoperative. As used in this section, an "inoperative motor vehicle" shall mean any motor vehicle which is not in operating condition; or which for a period of sixty (60) days or longer has been partially or totally disassembled by the removal of tires and wheels, the engine, or other essential parts required for the operation of the vehicle, or on which there are displayed neither valid license plates nor a valid inspection decal. However, the provisions of this act shall not apply to licensed business which on June 26, 1970, is regularly engaged in the business as an automobile dealer, salvage dealer or scrap processor.
- (b) A maximum of one (1) inoperable motor vehicle, trailer, or semi-trailer may be kept outside of a fully enclosed building or structure, as long as such vehicle, trailer, or semi-trailer is shielded or screened from view. "Shielded or screened from view" means not visible by someone standing at ground level from outside of the property on which the subject vehicle is located or the vehicle is covered by a cover made for vehicles.
- (c) The owners of property zoned for residential or commercial purposes shall, at such time or times as the council may prescribe, remove therefrom any such vehicles, trailers or semi-trailer described above that are not kept within a fully enclosed building or structure.
- (d) The town manager through the towns agents and employees may remove such inoperable motor vehicles, trailers, or semi-trailers as hereinabove described whenever the owner of the premises, after reasonable notice, has failed to do so. Reasonable notice may be given by first class and registered or certified mail addressed to the owner of the premises, as shown on the current real estate tax records, at the address to which the real estate tax bill is mailed; personal service upon an owner of the premises upon which the vehicles are located; or conspicuously posting notice of the violation upon the premises where the inoperative motor vehicles are located. In the event any such motor vehicle, trailer, or semi-trailer is so removed, the town manager through the towns agents and employees may dispose of the same, after giving additional notice to the owner of the vehicle.
- (e) The cost of any such removal and disposal shall be chargeable to the owner of the vehicle or premises and may be collected by the town as taxes and levies are collected. Every such cost with which the owner of the premises has been assessed shall constitute a lien against the property from which the vehicle was removed, the lien to continue until actual payment of such cost has been made to the town.

(Ord. of 7-18-85; Ord. of 5-9-89; Ord. of 6-13-06)

Cross reference— Penalty for Class 4 misdemeanor, § 1-11; motor vehicles and traffic; Ch. 10; zoning ordinance, App. A.

State law reference— Authority for above section, Code of Virginia, § 15.2-904.

Sec. 13-31. - Discarding or abandoning iceboxes, etc.; precautions required.

It shall be unlawful for any person, firm or corporation to discard, abandon, leave or allow to remain in any place any icebox, refrigerator or other container, device or equipment of any kind with an interior storage area of more than two (2) cubic feet of clear space which is airtight, without first removing the door or doors or hinges from such icebox, refrigerator, container, device or equipment.

This section shall not apply to any icebox, refrigerator, container, device or equipment which is being used for the purpose for which it was originally designed, or is being used for display purposes by any retail or wholesale merchant, or is crated, strapped or locked to such an extent that it is impossible for a child to obtain access to any airtight compartment.

Any violation of the provisions of this section shall be punishable as a Class 3 misdemeanor.

(Code 1971, § 13-15; Ord. of 3-14-92)

Cross reference— Penalty for Class 3 misdemeanor, § 1-11.

State law reference— Similar provisions, Code of Virginia, § 18.2-319.

Enabling legislation, Code of Virginia, § 15.2-1102

Sec. 13-32. - Removal of weeds and other foreign growth.

- (a) The owners of property in the town shall, at such time or times as the council may prescribe, shall cut or provide for the cutting thereon of grass, weeds and other foreign growth at intervals to be designated by council or as often as may be necessary to prevent breeding and harboring places for insects, reptiles and rodents and to prevent other hazards to the health or safety of residents of the town or other nuisances.
- (b) The owners of vacant developed or undeveloped property in the town, including such property upon which buildings or other improvements are located, shall cut the grass, weeds and other foreign growth on such property or any part thereof at such time or times as council shall prescribe. Council may, whenever it is deemed necessary, after reasonable notice, have such grass, weeds or other foreign growth cut by its agents or employees, in which event the cost and expenses thereof shall be chargeable to and paid by the owner of such property and may be collected by the town as taxes and levies are collected.
- (c) For purposes of this section, one written notice per growing season to the owner of record of the subject property shall be considered reasonable notice.
- (d) Violations of this section shall be subject to a civil penalty of \$50 for the first violation, or violations arising from the same operative facts. Each business day during which the same violation is found to have existed shall constitute a separate offense. Subsequent violations not arising from the same set of operative facts within 12 months of the first violation shall be subject to a civil penalty of \$200. In no event shall a series of violations of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of \$3,000 in a 12 month period.
- (e) That every charge authorized by this section with which the owner and lienholder of any such property shall have been assessed and which remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1, Code of Virginia, 1950, as amended.

(Code 1971, § 8-4; Ord. of 9-8-87; Ord. of 3-14-92; Ord. of 9-12-95)

Cross reference— Removal of accumulations of garbage and refuse, § 8-2.

State law reference— Authority for above section, Code of Virginia, §15.2-901.

Sec. 13-32.1. - When action to be taken pursuant to section 13-32.

Whenever the chief of police certifies in writing to the town manager that there has existed on any property in the town, grass weeds or other foreign growth exceeding a uniform height of twelve (12) inches for a continuous period of forty-eight (48) hours, the town manager is authorized to proceed pursuant to section 13-32 of the Code of the Town of Berryville.

(Ord. of 6-11-96)

Sec. 13-33. - Maintenance of property consisting of Dog Run.

- (a) The town council of the Town of Berryville hereby declares that unsanitary and unhealthful conditions which may detrimentally affect the health, safety and welfare of all members of the general public are created by the failure of property owners and tenants to maintain by keeping clean, open and free of trash, garbage, refuse, litter, weeds and other foreign growth which may impede or prohibit the natural flow of water through that portion of their property consisting of Dog Run.
- (b) Property owners and tenants shall maintain by keeping clean, open and free of trash, garbage, refuse, litter, weeds and other foreign growth which may impede or prohibit the natural flow of water through that portion of their property consisting of Dog Run.
- (c) A violation of this section is deemed to be a public nuisance, and shall constitute a Class 3 misdemeanor.

(Code 1971, § 9-8; Ord. of 9-12-95)

Cross reference— Penalty for Class 3 misdemeanor, § 1-11.

Sec. 13-34. - Expecting in public places.

No person shall spit, expectorate, or deposit any sputum, saliva, mucus, or any form of saliva or sputum upon the floor, stairways, or upon any part of any public building or place where the public assemble, or upon the floor of any part of any public conveyance, or upon any sidewalk abutting on any public street, alley or lane of the town.

Any person violating any provision of this section shall be guilty of a Class 4 misdemeanor.

(Code 1971, § 9-7; Ord. of 3-14-92)

Cross reference— Penalty for Class 4 misdemeanor, § 1-11.

State law reference— Similar provisions, Code of Virginia, § 18.2-322.

Enabling legislation, Code of Virginia, § 15.2-1700.

Sec. 13-35. - Regulation of use and conduct on town basketball court.

It shall be unlawful for any person or persons to violate the following regulations, which shall be posted, pertaining to the use and the behavioral conduct of any such person or persons upon the town basketball courts:

- (a) No bicycles, skateboards or skating permitted on the court.
- (b) No trespassing between the hours of 6:00 p.m. to 7:00 a.m. from September 1 to June 1, or between the hours 9:00 p.m. to 7:00 a.m. from June 1 to September 1, except by special permission from the town.
- (c) No alcoholic beverages or glass containers.
- (d) No loud and abusive or obscene language.
- (e) No hanging on basketball rims.
- (f) No bare feet.
- (g) Except by special, advance permission for organized, group-sponsored activities,
 - (1) Use shall be limited to half-court if other groups or individuals are waiting to play.
 - (2) No individuals or group shall monopolize the court for a period of more than one hour if other groups or individuals are waiting to play.
- (h) The Town of Berryville is not responsible for injuries.
- (i) The police department is authorized to eject and revoke future use of the court by any person violating these rules or in any other manner behaving in a disorderly fashion.

Any person violating any provision of this section shall be guilty of a Class 4 misdemeanor.

(Ord. of 10-13-87; Ord. of 6-13-95)

Cross reference— Penalty for a Class 4 misdemeanor, § 1-11.

State law reference— Similar provisions, Code of Virginia, § 15.2-1800 & 15.2-1806.

Sec. 13-36. - Regulation of use and conduct in Rose Hill Park.

It shall be unlawful for any person or persons to violate the following regulations which shall be posted pertaining to the use and the behavioral conduct of any such person or persons in Rose Hill Park.

- (a) No trespassing from dusk until dawn. Hours may be extended by the Town Council or Town Manager as the need arises.
- (b) No alcoholic beverages or glass containers.
- (c) No bare feet.
- (d) Playground equipment is intended for use only by children 12 years old or younger.
- (e) Do not use equipment when it is wet.
- (f) No, pushing, shoving or other dangerous play
- (g) Do not use equipment improperly.
- (h) No camping.
- (i) No building of fires except in park grills designed for food preparation, or for the purposes of special ceremonies with permission from the Town Manager.
- (j) No relic hunting or use of metal detectors or similar devices.
- (k) No littering.
- (l) Waste from domestic animals must be immediately collected and disposed of properly.
- (m) No skateboarding.
- (n) No hunting or discharge of firearms, fireworks, explosives, box and arrows, slingshots, or similar weapons and devices. This section does not preclude the firing of military salutes as a part of an event authorized by the Town.
- (o) No vehicles are permitted in the park unless authorized by the Town Manager or designee. Driving over or parking on walkways or picnic table pads is prohibited.

- (p) The Town of Berryville is not responsible for injuries. This area to be used with adult supervision only.

Any person violating any provision of this section shall be guilty of a Class 4 misdemeanor.

(Ord. of 10-13-87)

Cross reference— Penalty for Class 4 misdemeanor, § 1-11.

State law reference— Similar provisions, Code of Virginia, § 15.2-1800 & § 15.2-1806

Sec. 13-37. - Damage or defacement of recreational facilities.

It shall be unlawful for any person to willfully and maliciously damage or deface any real or personal property constituting the recreational facilities set forth in section 13-35 and section 13-36 of this chapter.

A violation of this section shall constitute a Class 1 misdemeanor.

(Ord. of 10-13-87)

Cross reference— Penalty for Class 1 misdemeanor, § 1-11.

State law reference— Similar provisions, Code of Virginia, § 15.2-1812.2.

Sec. 13-38. - Designation of date and hours for Halloween activities.

- (a) The council may, in its discretion and as it may deem appropriate, designate on an annual basis the date upon which, and hours during which, Halloween night will be celebrated in the Town of Berryville for the purpose of the conduct of such activity as is embraced in the colloquial expression "trick or treating." Such designation shall be made by appropriate formal motion of the council in meeting duly assembled.
- (b) Any such designation as is provided for in subparagraph (a) herein will be advertised in a manner to advise residents of the designation as deemed appropriate by the Town Manager.
- (c) It shall be unlawful for any minor, as defined in section 13-3(a) herein, to violate, or for any parent, guardian or other adult person having the care, custody and control of any minor to permit or allow such minor child to violate the provisions of this section.
- (d) Violations of this section shall be prosecuted as a misdemeanor. Any minor violating the provisions of this section shall be dealt with in accordance with the state juvenile and domestic relation law and procedure.

(Ord. of 10-10-89)

State law reference— Similar provisions, Code of Virginia, § 15.2-926

Sec. 13-39. - Urination and defecation in public prohibited.

It shall be unlawful for any person to urinate or defecate in a public place not specifically designated as a public restroom or public bathroom. Any violation of this section shall be punishable as a Class 4 misdemeanor.

(Ord. of 4-10-90)

Cross reference— Penalty for Class 4 Misdemeanor, § 1-11.

State law reference— Enabling legislation - §15.2-1700.

FOOTNOTE(S):

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State Law reference— Crimes and offenses generally, Code of Virginia, title 18.2. ([Back](#))

--- (2) ---

Cross reference— Penalty for Class 1 misdemeanor, § 1-11. ([Back](#))

Index of sections repealed / reserved by action of Council December 9, 2014

- Sec. 13-2 Causing or encouraging acts rendering children delinquent, abused, etc., penalty.
- Sec. 13-4 Minors prohibited in poolrooms.
- Sec. 13-6 Obstructing justice by threats or force.
- Sec. 13-7 Joint action to resist or obstruct execution of legal process.
- Sec. 13-9 Assault and battery.
- Sec 13-10 Abusive language.
- Sec. 13-11.1 Unlawful congregations; obstructing traffic.
- Sec. 13-12.1 Loitering prohibited; penalty for violation.
- Sec. 13-14 Being a prostitute or prostitution.
- Sec. 13-16 Aiding prostitution or illicit sexual intercourse.
- Sec. 13-17 Using vehicle to promote prostitution or illicit sexual intercourse.
- Sec. 13-19 Petit larceny defined; how punished.
- Sec. 13-20 Shoplifting.
- Sec. 13-21 Rights of merchants as to violations of section 13-19 or 13-20.
- Sec. 13-23 Injuring, tampering with, etc., vehicles, aircraft, etc.
- Sec. 13-27 Begging or soliciting alms on streets.
- Sec. 13-28 Peeping or spying into structure occupied as dwelling.
- Sec. 13-29 Entering property of another for purpose of damaging it, etc.

Mr. Dalton noted that there had been a tragic death on Church Street recently. He praised the efforts of the John H. Enders, Boyce, and Mount Weather Fire Departments.; local business Broy and Son; the Police Department, including Chief White, Corporal Reagan, and Investigator Frenzel; the Public Works Department including Rick Boor, Ralph Elliott, and Patrick Lickey; and the members of the Fairfax County Technical Rescue Team. He added that it was an opportunity to think of what is in some of the yards in Town.

f) Streets and Utilities – Wilson Kirby

Mayor Kirby said that the minutes of the Committee meeting on November 24 could not be approved since Council member Shaffer was absent.

Mr. Dalton presented lane marking options for Mosby Blvd. between Buckmarsh Street and Jackson Drive. Council member Daniel asked whether VDOT has an opinion and Mr. Dalton said that VDOT recommends leaving the marking as it is now. Mr. Dalton explained that the condition of the road between Ashby and Buckmarsh is poor, it will be repaved in the spring,

and that is why the lane marking is being discussed now. The Mayor said that with the paving being scheduled for spring, there is time to study the options before making a decision.

Mayor Kirby said that at last month's public hearing, five people spoke against keeping the parking meters in downtown. The Streets and Utilities Committee considered the plan. He added that several individuals spoke to him personally asking that meters be kept. The Committee is recommending that the meters be replaced, and feels it would be best for the Town to purchase new meters.

Recorder Arnold moved that the Council of the Town of Berryville adopt the following Resolution setting parking meter rates.

RESOLUTION OF THE COUNCIL OF
THE TOWN OF BERRYVILLE, VIRGINIA
Setting Rates for Parking Meters

WHEREAS, the proper management of parking is critically important to the vitality of Berryville's downtown; and

WHEREAS, The Council of the Town of Berryville has established parking meter zones in its downtown to assist in the proper management of parking spaces; and

WHEREAS, it has been determined that the downtown parking meters are reaching the end of their useful lives and are in need of replacement; and

WHEREAS, the income from parking meters helps support important Town functions; and

WHEREAS, parking meter rates have not been adjusted in decades.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Town of Berryville, that the rate for parking at fifteen minute meters shall be five cents and the rate for parking at a two-hour meter shall be twenty-five cents per hour.

BE IT FURTHER RESOLVED that these new rates will become effective immediately upon the installation of new meters or the reprogramming of existing meters.

By order of the Town Council this ninth day of December, 2014.

Council member Kitselman seconded the motion which carried by the following vote:

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
David Tollett	- Aye
Douglas Shaffer	- Absent

Recorder Arnold moved that the Council of the Town of Berryville adopt the following Ordinance amending Berryville Code Sections 10-62, 10-67, and 10-70 and authorize the Town Manager to utilize General Fund Contingency Funds to update parking meters.

Sec. 10-62. General penalty for marking violations; certification of contest of parking citation

(a) Unless otherwise provided, any person violating the provision of section 10-70 relating to parking in metered spaces shall be guilty of a traffic infraction and punished as prescribed in Section 10-1; provided, however, that any such violation may be satisfied, in full, by payment to the town treasurer of three five dollars (\$35.00) within twenty-four (24) hours of such violation, or five seven dollars (\$57.00) within five fifteen (15) days of such violation. If payment for such violation is not received within five fifteen (15) days, the fine shall be assessed at thirty dollars (\$30.00).

Sec. 10-67. Establishment of meter zones and parking meter rates.

For the purpose of this division, the parking meter zones and parking meter rates shall be as established by resolution by the town council.

Sec. 10-70. Deposit of coin money required; overtime parking.

(a) When any vehicle shall be parked in any parking space adjacent to a parking meter installed under this division, the operator of such vehicle shall, upon entering such parking space, immediately deposit, or cause to be deposited, in such parking meter, a coin or coins money of the United States, the denominations of which shall be indicated on the meter, which shall put such meter in operation for the time prescribed on the meter. Failure to so deposit such coin or coins money and to put the meter in operation, the parking space may be lawfully occupied by such vehicle during the period of time prescribed for the particular amount deposited shall constitute a violation of this section. If such vehicle shall remain in such parking space beyond the prescribed time limit for the particular amount deposited, and the parking meter shall indicate illegal parking, violation, or expired, such vehicle shall be considered as being parked overtime and beyond the prescribed period of legal parking time. It shall be unlawful for any person to cause, allow, permit, or suffer any vehicle owned or operate by him to be parked overtime or beyond the period of legal parking time in any parking meter zone established under this division.

(b) Strike

(c) Renumbered

(d) Renumbered

Council member Kitselman seconded the motion which carried on the following vote:

- Wilson Kirby - Aye
- Harry Lee Arnold, Jr. - Aye
- Mary Daniel - Aye
- Allen Kitselman - Aye

David Tollett	- Aye
Douglas Shaffer	- Absent

Mr. Dalton noted that the Public Utilities and Public Works Monthly reports are enclosed.

g) Personnel / Appointments – Jay Arnold
Recorder Arnold had nothing to report.

10. Other

Recorder Arnold said that the Christmas Tree Lighting had gone well this past Sunday when he substituted for the Mayor at the rescheduled ceremony.

11. Closed Session

Closed Session – The Berryville Town Council entered closed session in accordance with §2.2-3711-A-3, Code of Virginia, in order to discuss the purchase of real property associated with the upgrade of the Town’s Wastewater Treatment Plant and Treated Water Transmission Line.

a. Motion to enter Closed Session

It was moved by Recorder Arnold, seconded by Council member Kitselman that the Council of the Town of Berryville enter Closed Session in accordance with §2.2-3711-A-3, Code of Virginia, in order to discuss the purchase of real property associated with the upgrade of the Town’s Wastewater Treatment Plant and Treated Water Transmission Line.

VOTE:

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
David Tollett	- Aye
Douglas Shaffer	- Absent

b. Enter Closed Session

The Town Council entered closed session at 9:05 p.m.

c. Reconvene Open Session

The Town Council reconvened in open session at 9:22 p.m. upon a motion by Council member Kitselman and seconded by Council member Daniel.

VOTE:

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye

Allen Kitselman	- Aye
David Tollett	- Aye
Douglas Shaffer	- Absent

d. Certification of Closed Session

Recorder Arnold moved that the Council of the Town of Berryville adopt the following resolution regarding certification of closed session.

CERTIFICATION OF CLOSED SESSION

WHEREAS, the Council of the Town of Berryville, Virginia (Council), has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712.D of the Code of Virginia requires a certification by this Council that such closed meeting was conducted in conformity with Virginia law,

NOW, THEREFORE, BE IT RESOLVED that the Council hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Council.

Council member Kitselman seconded the motion which carried on the following vote:

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
David Tollett	- Aye
Douglas Shaffer	- Absent

Recorder Arnold moved that the Council of the Town of Berryville approve the settlement of the pending condemnation case for the acquisition of the Frye property (Tax Map Parcel 16-((A))-40) for the construction of the treated water transmission line, for \$71,000 and that the Town Manager be authorized to execute a settlement agreement in a form approved by the Town's attorney. Council member Kitselman seconded the motion which carried on the following vote:

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
David Tollett	- Aye
Douglas Shaffer	- Absent

12. Adjourn

There being no further business, upon motion by Council member Daniel, seconded by Council member Kitselman and passed, the Council meeting was adjourned at 9:26 p.m.

Wilson Kirby, Mayor

Harry Lee Arnold, Jr., Recorder