

CHAPTER 1
GENERAL PROVISIONS

SECTION 1-1. HOW CODE DESIGNATED AND CITED.

The ordinances embraced in this and the following chapters and sections shall constitute and be designated the "Code of the City of Winchester, Virginia" and may be so cited. Such Code may also be cited as "Winchester City Code" (Code 1959, §1-1)

Cross reference--Reading of ordinance adopting a revision or codification of ordinances, §2-64.

State Law Reference--Authority of city to codify and recodify its ordinances, Code of Virginia, §15.1-37.3.

SECTION 1-2. DEFINITIONS AND RULES OF CONSTRUCTION.

In the construction of this Code and of all ordinances of the City, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the council or unless the context clearly requires otherwise:

Generally. The rules of construction given in Code of Virginia, Sections 1-13.1 to 1-13.36, shall govern, so far as they are applicable, the construction of all words not defined in this section or other sections of this Code.

And, or. "And" may be read "or" and "or" may be read "and" where the sense requires it.

Bond. When a bond is required, an undertaking in writing shall be sufficient.

Charter. The word "Charter" shall be the Winchester Charter, being Chapter 39 of the 1932 Acts of the Virginia General Assembly, as amended from time to time.

City. The word "City" shall mean the City of Winchester, in the Commonwealth of Virginia.

Code. Whenever the term "Code" or "this Code" is used without further qualification, it shall mean the "Code of the City of Winchester, Virginia, 1978," as designated in Section 1-1.

Computation of time. Whenever a notice is required to be given, or any other act to be done, a certain time before any proceeding, there must be that time, exclusive of the day for such proceeding, but the day on which such notice is given, or such act is done, may

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be counted as part of the time; but when a notice is required to be given or any other act to be done within a certain time after any event, that time shall be allowed in addition to the day on which the event occurred.

Council. The term "council," "city council" or "common council" shall mean the city council of the City of Winchester.

County. The words "county" or "the county" shall mean the County of Frederick in the Commonwealth of Virginia.

Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.

Health department. The words "health department" shall mean the Winchester Frederick Health Department.

Health director. The words "health director" shall mean the health director of the Winchester-Frederick Health Department, or his authorized agent.

In the city. The words "in the city" or "within the city" shall mean any territory, jurisdiction of which, for the exercise of its regulatory power, has been conferred on the City by public or private law.

Joint authority. Words purporting to give authority to three (3) or more officers or other persons shall be construed as giving such authority to a majority of such officers or other persons.

Minor. The word "minor" shall mean any person under the age of eighteen (18) years.

Month. The word "month" shall mean a calendar month.

Number. A word importing the singular number only may extend and be applied to several persons or things, as well as to one person or thing and a word importing the plural number only may extend and be applied to one person or thing, as well as to several persons or things.

Oath. The word "oath" shall be construed to include an affirmation in all cases in which by law an affirmation may be substituted for an oath.

Occupant or tenant. The word "occupant" or "tenant," applied to a building or land, shall mean any person who holds a written or oral lease of, or who actually occupies the whole or a part of, such building or land, either alone or with others.

Officers, boards, etc. Whenever reference is made to a particular officer, department, board, commission or other agency, without further qualification, it shall be construed as

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if followed by the words "of the City of Winchester," unless otherwise specifically provided.

Owner. The word "owner," applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety, of the whole or of a part of such building or land.

Person. The word person shall include individuals, firms, partnerships, corporations, companies, associations or joint stock associations and any combination of individuals of whatever form or character. It shall include any trustee, receiver, assignee or personal representative thereof carrying on or continuing a business, profession, trade or occupation, but shall not include a trustee, receiver or other representative appointed by a court to liquidate assets for immediate distribution, or a sergeant or a sheriff, or any deputy, selling under authority of process or writ of a court of justice.

Preceding, following. The words "preceding" and "following" mean next before and next after, respectively.

Sidewalk. The word "sidewalk" shall mean any portion of the street between the curb line, or the lateral lines of a roadway where there is no curb, and the adjacent property line, intended for the use of pedestrians.

Signature or subscription. includes a mark when a person cannot write.

State; commonwealth. The word "state" or "commonwealth" shall be construed as if the words "of Virginia" followed it.

State Code. References to the "State Code" or the "Code of Virginia" shall mean the Code of Virginia, 1950, as amended.

Street. The word "street" shall be construed to embrace streets, avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges and the approaches thereto and all other public thoroughfares in the City, and shall mean the entire width thereof between abutting property lines. Such word shall also be construed to include a sidewalk, unless the contrary is expressed or unless such construction would be inconsistent with the manifest intent of the city council.

Swear; sworn. The words "swear" and "sworn" shall be equivalent to the word "affirm" or "affirmed" in all cases in which by law an affirmation may be substituted for an oath.

Tense. Words used in the past or present tense may include the future, as well as the past and present.

Time. Whenever particular hours are specified in this Code, the time applicable shall be official standard time or daylight saving time, whichever may be in current use in the City.

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Written or in writing. shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

Year. The word "year" shall mean a calendar year. (Code 1959, §1-2)

State Law Reference--Similar definitions and rules of construction applicable to state law, Code of Virginia, §1-13, *et seq.*

SECTION 1-3. CATCHLINES OF SECTIONS.

The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or re-enacted. (Code 1959, §1-5)

State Law Reference--Similar provisions as to sections of state code, Code of Virginia, §1-13.9.

SECTION 1-4. PROVISIONS CONSIDERED AS CONTINUATIONS OF EXISTING ORDINANCES.

The provisions appearing in this Code, so far as they are the same as those of the 1959 Code, and all ordinances adopted subsequent to the 1959 Code and included herein, shall be considered as continuations thereof and not as new enactments. (Code 1959, §1-3)

Cross reference--Ordinances generally, §2-61, *et seq.*

SECTION 1-5. MISCELLANEOUS ORDINANCES NOT AFFECTED BY CODE.

Nothing in this Code or the ordinance adopting this Code shall affect any ordinance:

- (a) Promising or guaranteeing the payment of money by or for the City or authorizing the issuance of any bonds or any evidence of indebtedness;
- (b) Authorizing or otherwise relating to any contract;
- (c) Granting any franchise or right;
- (d) Appropriating funds or relating to an annual budget;

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- (e) Authorizing, providing for or otherwise relating to any specific public improvement project;
- (f) Making any assessment;
- (g) Establishing, extending or contracting the corporate limits of the City;
- (h) Authorizing or otherwise relating to the sale, lease or conveyance of city property;
- (i) The purposes of which have been accomplished;
- (j) Which is temporary, although general in effect; or
- (k) Which is special, although permanent in effect;

and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

SECTION 1-6. CODE DOES NOT AFFECT PRIOR OFFENSES, RIGHTS, ETC.

Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing, or any prosecution, suit or proceeding pending or any judgment rendered, on or before the effective date of this Code.

SECTION 1-7. SUPPLEMENTATION OF CODE.

- (a) By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the council. A supplement to the Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.
- (b) In preparing a supplement to this Code, all portions of the Code which have been replaced shall be excluded from the Code by the omission thereof from reprinted pages.

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- (c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, non substantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:
- (1) Organize the ordinance material into appropriate subdivisions;
 - (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles;
 - (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
 - (4) Change the words "this ordinance" or words of the same meanings to "this chapter," "this article," "this division," etc., as the case may be, or to "sections to " (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and
 - (5) Make other non substantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

State Law Reference--Authority to supplement Code, Code of Virginia, §15.1-37.3.

SECTION 1-8. COPIES OF CODE AND SUPPLEMENTS TO BE AVAILABLE FOR PUBLIC INSPECTION.

At least three (3) copies of this Code and every supplement thereto shall be kept in the office of the city clerk and shall there be available for public inspection, during normal business hours.

State Law Reference--Similar provisions, Code of Virginia, §15.1-37.3.

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SECTION 1-9. SEVERABILITY OF PARTS OF CODE.

If any part or parts, section or subsection, sentence, clause or phrase of this Code is for any reason declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Code. (Code 1959, §1-4)

SECTION 1-10. LIMITATION ON AMOUNT OF REAL ESTATE THAT MAY BE HELD BY CERTAIN SOCIETIES AND ASSOCIATIONS.

The trustees, for the use of any society of Freemasons, Odd Fellows, Sons of Temperance, or any other benevolent or literary association, or school league, or other groups organized for rural community civic purposes or improvement of farm life or operations of like purposes and not for profit, are hereby authorized to take and hold, within the corporate limits of the City, not exceeding ten (10) acres of land at any one time. However, a school league may, in addition to the ten (10) acres held by such trustees, hold not exceeding ten (10) acres as a home for the principal of the school for which the league is named, pursuant to Code of Virginia, as amended, §57-20.

Further pursuant to the Code of Virginia, §57-20, any lodge of the Benevolent and Protective Order of Elks may hold not exceeding thirty-five (35) acres of land and any association or post of the Veterans of Foreign Wars, American Legion, Spanish War Veterans, Disabled American Veterans or any similar association of Veterans of the Armed Forces of the United States chartered by an act of Congress may hold not exceeding seventy-five (75) acres of land. (Code 1959, §1-10)(Ord. No. 036-95, 9-12-95)

SECTION 1-11. CLASSIFICATION OF AND PENALTIES FOR VIOLATIONS; CONTINUING VIOLATIONS.

- (a) Whenever in this Code or any other ordinance of the City or any rule or regulation promulgated by any officer or agency of the City, under authority duly vested in such officer or agency, it is provided that a violation of any provision thereof shall constitute a Class 1, 2, 3 or 4 misdemeanor, such violation shall be punished as follows:
- (1) *Class 1 misdemeanor:* By a fine of not more than two thousand five hundred dollars (\$2,500.00), and by confinement in jail for not more than twelve (12) months, either or both.
 - (2) *Class 2 misdemeanor:* By a fine of not more than one thousand dollars (\$1,000.00) and by confinement in jail for not more than six (6) months, either or both.

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- (3) *Class 3 misdemeanor:* By a fine of not more than five hundred dollars (\$500.00).
 - (4) *Class 4 misdemeanor:* By a fine of not more than two hundred fifty dollars (\$250.00).
- (b) Whenever in any provision of this Code or in any other ordinance of the City or any rule or regulation promulgated by an officer or agency of the City, under authority duly vested in such officer or agency, any act is prohibited or is made or declared to be unlawful or an offense or misdemeanor, or the doing of any act is required, or the failure to do any act is declared to be unlawful or an offense or a misdemeanor, where no specific penalty is provided for the violation of such provision and such violation is not described as being of a particular class of misdemeanor, such violation shall constitute a Class 1 misdemeanor and be punished as prescribed in subsection (a)(1) above.
- (c) Each day any violation of this Code or any other ordinance, rule or regulation referred to in this section shall continue shall constitute a separate offense, except where otherwise provided. (Code 1959, §1-6)(Ord. No. 036-95, 9-12-95)

State Law References--Penalties for violation of ordinances, Code of Virginia, §15.1-901; penalties for misdemeanors, Code of Virginia, §18.2-11.; authority of court trying case, upon conviction, to require bond conditioned that the person convicted will not violate the ordinance for the breach of which he was convicted for a period of not more than one year, Code of Virginia, §15.1-902; injunctive relief for continuing violations of ordinances, Code of Virginia, §15.1-905.

SECTION 1-12. PENALTY AND INTEREST FOR FAILURE TO PAY ACCOUNTS WHEN DUE.

Any person failing to pay any city account pursuant to any ordinance hereunder on or before its due date, other than taxes which are provided for in Chapter 27 and Chapter 28 (License fees), shall incur a penalty of ten percent (10%) or ten dollars (\$10.00), whichever is greater, which shall be added to the amount of the account due from such person. No penalty shall be imposed for failure to pay any account if such failure was not in any way the fault of the debtor. The treasurer shall make decisions regarding the penalties.

Interest at the rate of ten percent (10%) annually from the first day following the day such account is due shall be collected upon the principal and penalty of all such accounts. (Ord. No. 036-95, 9-12-95)

State Law Reference--Code of Virginia, §15.1-37.3:6

SECTION 1-13. AMENDMENTS TO STATUTES INCORPORATED BY REFERENCE.

When any provision of a State statute is incorporated into this Code or any ordinance or regulation of the City by reference, all amendments thereto made overtime shall be deemed to be incorporated by such reference. (Ord. No. 036-95, 9-12-95)

State Law Reference--Code of Virginia, §1-13.39.2.

SECTION 1-14. PROCESSING FEE ON CERTAIN INDIVIDUALS

Pursuant to Section 15.2-1613.1 of the Code of Virginia, 1950, as amended, there is hereby imposed a processing fee of twenty-five dollars (\$25.00) on any individual admitted by either one of the district courts of the City of Winchester or the circuit court of the City of Winchester to any county, city, or regional jail following conviction of any offense. The fee shall be ordered by the court as a part of the individual's costs of court, and it shall be collected by the clerk, deposited into the account of the City Treasurer, and shall be used by the Sheriff of the City of Winchester to defray the costs of processing arrested persons into any of the said jails. (Ord. No. 017-2002, 7-9-02)

(Note: The effective date of this Ordinance shall be August 1, 2002.)

SECTION 1-15. ASSESSMENT OF COURT COST FOR COURTHOUSE SECURITY.

Pursuant to Section 53.1-120(D) of the Code of Virginia, 1950, as amended, there is hereby assessed a fee of ten dollars (\$10.00) as part of the costs in each criminal or traffic case which is tried in either one of the district courts of the City of Winchester or in the Circuit Court of the City of Winchester and which results in conviction of any statute or ordinance. This said fee shall be collected by the clerk of the court in which the case is heard, remitted to the Treasurer of the City of Winchester, and held by the Treasurer subject to appropriation by the Common Council to the Sheriff of the City of Winchester for the funding of courthouse security personnel. (Ord. No. 017-2002, 7-9-02; Ord. No. 021-2003, 6-10-03; Ord. No. 2007-22, 6-26-07)

State Law Reference-- Virginia Code §15.2-120(D).

