

CHAPTER 20

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ARTICLE I. IN GENERAL

SECTION 20-1. POLICE POWERS OF HEALTH DIRECTOR; OBSTRUCTING.

The health director is hereby vested with police authority in the performance of his duties. It shall be unlawful for any person to obstruct or attempt to obstruct the health director in the discharge of his official duties. (Code 1959, §11-1)

State Law References--Local health departments and directors, Code of Virginia, §§32.1-30 to 32.1-35, *et seq.*

SECTION 20-2. DEFINITIONS.

- (a) "Officers", when used in this chapter, shall mean duly authorized officers and deputies of the City of Winchester police force.
- (b) "Members", when used in this chapter, shall mean employees of the City of Winchester police force who are not officers. Members shall include secretaries, administrative staff and other non-officers. (Ord. No. 049-95, 10-17-95)

SECTION 20-3. OFF-DUTY ASSIGNMENT OF LAW ENFORCEMENT OFFICERS.

Law enforcement officers of the City and deputy sheriffs, with the permission of the Chief of Police or the City Sheriff, may be assigned to off-duty employment which may require the use of police powers in the performance of such employment. The Chief of Police and the City Sheriff are authorized to promulgate reasonable rules and regulations applicable to such off-duty employment. (Ord. No. 046-2006, 12-12-06)

State Law Reference –Employment of off-duty officers, Code of Virginia, §15.2-1712.

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SECTION 20-4. VOLUNTEER DISABLED PARKING UNITS.

- (a) The Police Department shall establish and supervise volunteer disabled parking enforcement units.
- (b) Such volunteer disabled parking enforcement units shall have the power to enforce violations of Section 46.2-1242 of the Code of Virginia, 1950, as amended.
- (c) Excluding Section 46.2-1242 of the Code of Virginia, 1950, as amended, volunteers acting pursuant to this section shall not have the power or duty to enforce any other traffic or criminal laws of the state or the City of Winchester, Virginia.
- (d) No volunteer acting pursuant to this section shall carry a firearm or other weapon during the course of his or her volunteer enforcement duties.

(Ord. No. 045-2006, 12-12-06)

State Law Reference – Virginia Code §§46.2-1242, 46.2-1244

SECTIONS 20-5 - 20-15. RESERVED.

ARTICLE II. POLICE DEPARTMENT

SECTION 20-16. GENERAL POWERS AND DUTIES OF CITY MANAGER RELATIVE TO DEPARTMENT; LIMITATION ON COUNCIL ACTION ON DEPARTMENT MATTERS.

- (a) The city manager shall have supervision, general charge and management of the police department.
- (b) The city manager shall be solely responsible to the city council for the proper training, discipline and administration of the police department and for the enforcement of the ordinances of the City. The council shall deal with police department matters solely through the city manager and then only when acting as a body in a regular or special meeting. (Ord. of 3-9-76, §§18-1, 18-2)

Cross references-- Members of police department recognized as part of official safety program, §2-7; Police powers of fire marshal, §10-33; intimidating or impeding

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law-enforcement officer in discharge of his duty, §16-1; automatic telephone calls or alarms to police department, §16-2; police radio receivers prohibited in taxicabs, §31-23.

State Law References--Police and public order in cities, Code of Virginia, §15.1-137 *et seq.*

SECTION 20-17. APPOINTMENT AND REMOVAL OF CHIEF.

- (a) The City Manager shall appoint a permanent Chief of Police. In the event of a vacancy of a Chief of Police, the City Manager may appoint or remove an Interim Chief of Police for a reasonable period of time or for a duration as prescribed by City Council. Such appointment to be for an indefinite period, subject to removal at any time by the City Manager upon written notice, by the Manager, of charges of misconduct, inefficiency or failure to carry out printed regulations of the department or the written orders of the City Manager.
- (b) Before the appointment of a Chief of Police shall become effective, the City Manager shall announce to the City Council his appointee, and the appointment shall be confirmed by a majority vote of the Council in an open vote. In case of disapproval of such an appointee, the City Manager shall propose further appointees until a Chief of Police is confirmed by a majority of the Council.
- (c) Upon removal of the Chief of Police for the reasons stated in subsection (a) above, the City Manager shall report such removal, in writing, at the next meeting of the Council, stating the charges on which the chief was dismissed. The Chief of Police may appeal the removal to the Council, in writing, within fifteen (15) days of removal. The Council shall appoint a special committee of three (3) members, who may or may not be councilmen, for investigation of the charges and report to the Council. If the committee, by a majority report, finds upon investigation that the charges for dismissal are proved, the action of the City Manager shall be final and so reported to the Council. If the committee cannot find substantiation for the charges, it will so report to the Council, and the Council may, by a majority vote, direct the City Manager to reinstate the chief. Failing such a majority vote, the dismissal by the City Manager shall be final.
(Ord. of 3-9-76, §18-3; Ord. No.049-95, 10-17-95; Ord. No. 2011-21, 10-11-11)

SECTION 20-18. GENERAL POWERS AND DUTIES OF CHIEF.

The Chief of Police shall be responsible to the City Manager for carrying out the printed regulations of the police department and the written orders of the City Manager and for the enforcement of the City Ordinances, State Code, and other applicable criminal law.
(Ord. of 3-9-76, §18-4; Ord. No. 2011-21, 10-11-11)

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State Law Reference--General powers and duties of local police force, Code of Virginia, §15.1-138.

SECTION 20-19 APPOINTMENT, SUSPENSION, AND DISMISSAL OF OFFICERS AND MEMBERS.

- (a) The City Manager, on the recommendation of the Chief of Police and the personnel director, shall appoint for an indefinite period such number of officers and members of the police department as the City Council may prescribe. Such officers and members shall be selected and promoted, however, on a merit basis of qualifications to be prescribed in the regulations referred to in §20-22.
- (b) In accordance with the provisions of the Comprehensive Employee Management System, the Chief of Police may suspend or dismiss any officer of the department on written notice of charges of misconduct or inefficiency or for the failure or refusal to obey the printed regulations or written orders of the chief, or where, the member, by his conduct, in the opinion of the Chief of Police, interferes with the proper operation of the police department. Members shall be included in the City's Personnel Management System and subject to the grievance procedures contained therein. Nothing in this section shall prohibit officers from utilizing alternative procedures provided for under the Code of Virginia or other applicable law.
- (c) Before any dismissal, demotion, suspension without pay or transfer for punitive reasons may be imposed on any officer, the following must be complied with:
 - 1. The officer shall be notified in writing of all charges, the basis therefor, and the action which may be taken;
 - 2. The officer may, within five (5) calendar days after the date of the written notice provided for above, to respond orally and in writing to the charges.
 - 3. In making his response, the officer may be assisted by counsel at his own expense; and
 - 4. The law enforcement officer shall be given written notification of his right to initiate a grievance under the grievance procedure established by the City of Winchester. A copy of the City of Winchester's grievance procedure shall be provided to the law enforcement officer upon his request. An officer may proceed under either the City of Winchester's grievance procedure or under this chapter, but not both.
- (d) 1. Whenever an officer is dismissed, demoted, suspended or transferred for punitive reasons, he may, within five (5) calendar days following such action

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request a hearing. If such request is timely made, a hearing shall be held within a reasonable amount of time set by the City; provided, however, that the hearing shall be set no later than fourteen (14) calendar days following the date of request unless a later date is agreed to by the officer or member. A record shall be made of the hearing.

2. The hearing shall be conducted by a panel, such panel to consist of one employee from within the City selected by the grievant, one employee from within the City of equal rank of the grievant but no more than two ranks above appointed by the City Manager, and a third employee from within the City to be selected by the other two employees. In the event that such two employees cannot agree upon their selection, the chief judge of the judicial circuit wherein the duty station of the grievant lies shall choose such third member.

(Ord. No. 049-95, 10-17-95; Ord. No. 2011-21, 10-11-11)

SECTION 20-19.1. IMMEDIATE SUSPENSION.

Nothing in this chapter shall prevent the immediate suspension without pay of any officer or whose continued presence on the job is deemed to be a substantial and immediate threat to the welfare of the City or the public, nor shall anything in this chapter prevent the suspension of any officer for refusing to obey a direct order issued in conformance with the City's written and disseminated rules and regulations. In such a case, the officer shall, upon request, be afforded the rights provided for under this chapter within a reasonable amount of time set by the City. (Ord. No.049-95, 10-17-95)

SECTION 20-19.2. OUTCOME OF HEARING.

The recommendations of the panel, and the reasons therefor, shall be in writing, shall be transmitted promptly to the officer or his attorney, and to the Chief of Police. Such recommendations shall be advisory only, but shall be accorded significant weight. (Ord. No. 049-95, 10-17-95)

SECTION 20-19.3. INFORMAL COUNSELING NOT PROHIBITED.

Nothing in this chapter shall be construed to prohibit the informal counseling of an officer or member by a supervisor in reference to a minor infraction of policy or procedure which does not result in disciplinary action being taken against the officer. (Ord. No. 049-95, 10-17-95)

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SECTION 20-20. AUXILIARY POLICE OFFICERS.

The Chief of Police is hereby authorized to appoint auxiliary police officers as he deems necessary, not to exceed the number of regularly sworn officers of the force. The Chief of Police, with the approval of the City Manager, shall establish rules and regulations concerning the operation of the auxiliary police officers; their uniforms, arms, other equipment and training. (Ord. of 3-9-76, §18-5; Ord. No. 026-81, 10-13-81)

SECTION 20-21. PERSONNEL RECORDS.

All records of applications, examinations and qualifications of the officers and members of the police department, their appointments, ratings, suspensions, dismissals and the approvals or disapprovals thereof, shall be in writing and filed under the name of the officer or member with the records of the police department. (Ord. of 3-9-76, §18-7)

SECTION 20-22. DEPARTMENTAL ORDERS OF CITY MANAGER THROUGH CHIEF.

All orders and instructions issued by the City Manager concerning the police department shall be issued through the Chief of Police. (Ord. of 3-9-76, §18-6)

SECTION 20-23. DEPARTMENTAL RULES AND REGULATIONS.

Proper rules and regulations for the police department and amendments thereto, outlining the rights and duties of the City Manager, Chief of Police and the members of the department, a system of promotion and training and a rating system, shall be drafted by the Chief of Police under the direction of the City Manager in accordance with the provisions of the Comprehensive Employee Management System. (Ord. of 3-9-76, §18-8; Ord. No. 2011-21, 10-11-11)

SECTION 20-24. BUDGET ESTIMATES.

The Chief of Police shall prepare an annual budget estimate for the police department, which shall be submitted to the City Manager for recommendation as prepared or amended to the City Council. (Ord. of 3-9-76, §18-9; Ord. No. 2011-21, 10-11-11)

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SECTION 20-25. REMOVAL AND DISPOSITION OF PERSONAL PROPERTY ABANDONED ON PUBLIC PROPERTY, CONFISCATED, LOST, UNCLAIMED OR OTHERWISE RECEIVED BY THE POLICE DEPARTMENT.

- (a) The Chief of Police is authorized to provide for the removal of any tangible personal property abandoned on the streets or other public places of the City, which constitutes or is liable to constitute a menace to the safety of persons or vehicles, and shall receive and hold all unclaimed or unidentified property turned over to the police department or confiscated by the department in the course of investigations or arrests.
- (b) Whenever such property has no inherent value, is or appears to be inherently dangerous, or may not lawfully be sold or used, the Chief of Police shall provide for it to be destroyed or to be disposed of as any other waste products of similar kind are now disposed of by the street cleaning forces of the City, or as otherwise prescribed in law.
- (c) Should the property be of value and the owner can be ascertained, it shall be turned over to such owner upon the payment of all costs incurred by the Chief of Police incident to the removal and preservation of such property.
 - 1. The Chief of Police or his designee shall make reasonable attempts to notify the rightful owner of the property and such property shall be held by the police department, awaiting a claim by the rightful owner, for at least sixty (60) days. Whenever such other property turned over to the police department remains unclaimed by the rightful owner thereof for at least sixty (60) days, and there is no law enforcement justification to hold the property (the property is not evidence or determined to be fruits of a crime), the police chief or his designee shall give notice of such fact to the finder of such property at the finder's last known address. The finder shall be allowed thirty (30) days from the date of such notice from the police chief or his designee to claim such property. Funds or property that is subject to asset forfeiture under State or Federal Law are excluded from the application of this Ordinance.
 - 2. When the Chief of Police or his designee has determined that the owner of such property cannot be ascertained and that the finder has not claimed, or has not indicated any intention of claiming, such property within thirty (30) days from the date of such notice, he shall dispose of such property as hereinafter provided.
- (d) If such property consists of currency, coin or negotiable securities, it shall be turned over by the Chief of Police or his designee to the City Treasurer, who shall credit the same to the general fund of the City if the currency, coins, or negotiable

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securities are not claimed by the rightful owner or finder. If there is a legitimate claimant the Treasurer will turn these funds over to that claimant at the direction of the Chief of Police in accordance with City Code 20-25(c) 1.

- (e) All firearms and weapons ordered confiscated by a court or remaining unclaimed may be used by and as property of the department of police, or may be exchanged for more suitable police weapons or supplies for use by the department of police, or sold at public auction, or may be destroyed, whichever the Chief of Police may deem proper. Prior to the destruction of such firearms and other weapons, the chief shall comply with the notice provisions contained herein in subsection (i).
- (f) All other weapons which cannot be legally returned to the owner or finder may be confiscated for use by the department of police in training or public education as property of the department of police.
- (g) The Chief of Police may, as he deems proper, confiscate for City use any such unclaimed property which is utilizable for the department of police or other City department or agency for public use.
- (h) Bicycles may not be claimed by the finder, but may be donated by the Chief of Police to a charitable organization, or disposed of as otherwise provided in this section.
- (i) Other such property which remains unclaimed or not disposed of by one of the above subsections shall be sold in accordance with the City's Policy on Disposal of Surplus Property, or by public auction, or shall be turned over to the City purchasing agent for sale by sealed bids or public auction, whichever the Chief of Police may deem proper. Requests for sealed bids for such property or the sale thereof at public auction shall be only after the chief shall cause to be inserted in a newspaper having a general circulation in the City of Winchester, once a week for two successive weeks, an advertisement which shall describe the property with reasonable certainty; shall specify a date, time and place of the sale; and shall notify all persons interested that, unless such property is claimed by the owner, with satisfactory proof of ownership and payment of costs incurred in its removal and preservation, before a specified day, the property will be sold.
- (j) All proceeds derived from the sale of such property, after deduction of any cost of advertisement, auction fees or other costs of sale, shall be delivered to the City Treasurer to be credited to the general fund of the City, if no claim for the proceeds has been made within sixty (60) days of the date of sale. Any such owner shall be entitled to apply to the City of Winchester within three (3) years from the date of the sale and, if timely application is made therefore and satisfactory proof of ownership of the property is established to the satisfaction of the chief, the net proceeds of the sale shall be paid to the owner without interest or other charge. No claim shall be made nor any suit, action or proceeding be

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instituted for the recovery of such proceeds after three (3) years from the date of the sale.

- (k) This section shall apply to any personal property belonging to another which has been acquired by a law enforcement officer, pursuant to official duties, which is not needed in any criminal prosecution, which has not been claimed by its rightful owner and which the state treasurer has indicated will be declined if remitted under the Uniform Disposition of Unclaimed Property Act, Code of Virginia, 1950, as amended, Section 55-210.1 *et seq.* (Ord. of 10-14-75; Ord. No. 006-81, 3-10-81; Ord. No. 008-82, 4-13-82; Ord. No. 004-2005, 2-8-05; Ord. No. 2011-21, 10-11-11; Ord. No. 2016-2, 2-9-16)

SECTIONS 20-26 - 20-29. RESERVED.

ARTICLE III. CONCEALED HANDGUN PERMITS

SECTION 20-30. CONCEALED HANDGUN PERMITS.

The police department shall process applications for concealed handgun permits made by citizens of the City pursuant to Va. Code §18.2-308, and shall fully cooperate with the courts in processing and evaluating such applications. (Ord. No. 018-97, 7-8-97)

SECTION 20-31. REPEALED.

(Ord. No. 018-97, 7-8-97; Ord. No. 2012-33, 11-13-12)

ARTICLE IV. ELECTRONIC SUMMONS SYSTEM

SECTION 20-32. ASSESSMENT OF COSTS IN CRIMINAL AND TRAFFIC CASES FOR THE COSTS OF AN ELECTRONIC SUMMONS SYSTEM.

There is hereby imposed and assessed a fee of \$5.00 as part of the costs in each criminal and traffic case in the District and Circuit Courts within the City. The Clerk of the Court in which the action is filed shall collect these assessments and remit them to the City Treasurer. The Treasurer shall hold the funds subject to disbursements by the City Council to local law enforcement agencies solely to fund software, hardware and associated equipment costs for the implementation and maintenance of an electronic summons system. (Ord. No. 2014-32, 9-9-14)

State Law References – Va. Code 17.1-275.5 and 17.1-279.1.

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