

# FINAL DRAFT

## Sec. 2-35. - Order of business.

The order of business at regular council meetings shall be as follows:

- (1) First: Call to Order
- (2) Second: Invocation
- (3) Third: Minutes
- (4) Fourth: Visitors
- (5) Fifth: Agenda

## Sec. 14-31. - Appointment; powers.

- (a) The council may appoint an officer to be known as the animal warden, who shall have the power to enforce the 1950 Code of Virginia, as amended, [§3.2-6555](#) et seq., all ordinances enacted under such law, all laws for the protection of domestic animals, and town ordinances that pertain to animals and fowl. In addition, the council may appoint one or more deputy animal wardens to assist the animal warden in dog inspection activities and law enforcement. Such animal wardens and deputy animal wardens shall have a knowledge of the state's animal control and protection laws that they are required to enforce. When in uniform or upon displaying a badge or other office credentials, animal wardens and deputy animal wardens shall have the power to issue a warning or summons to any person found in the act of violating any such law or any ordinance enacted under such regulation of the town. The animal warden and the deputy animal wardens shall be paid as the council shall prescribe.
- (b) The council may contract with one or more additional local jurisdictions to enforce the dog laws in the local jurisdictions by the animal warden or deputy animal wardens. Any such contract may provide that the local jurisdiction employing the animal warden or deputy animal wardens shall be reimbursed a portion of the salary and expenses of the animal warden or deputy animal wardens.

## Chapter 18 - BUILDINGS AND BUILDING REGULATIONS <sup>[1]</sup> (Amended)

### Footnotes:

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**Charter reference**— Powers of town, §2.

**Cross reference**— Businesses, ch. 22; Fire prevention and protection, ch. 34; streets, sidewalks, and other public places, ch. 62; taxation, ch. 70; utilities, ch. 78; zoning, ch. 86.

**State Law reference**— Access to and use of buildings by handicapped, Code of Virginia, [§2.2-1159](#); dangerous buildings and other structures, Code of Virginia, §§[15.2- 906](#),[15.2-907](#), [15.2-908](#), [15.2-908.1](#)

regulations concerning the construction of houses, Code of Virginia, [Chapter 6](#), fences around swimming pools, Code of Virginia, §[15.2-921](#); display of numbers on buildings, Code of Virginia, §[15.2-2024](#); buildings, monuments and lands of local governments, Code of Virginia, §[15.2-1638](#) et seq.; light, ventilation, and sanitation of buildings and premises, Code of Virginia, §[15.2-1117](#); Virginia Industrialized Building Safety Law, Code of Virginia, [Chapter 4](#) et seq.; Uniform Statewide Building Code, Code of Virginia, [Chapter 6](#) et seq.; local licensing of certain contractors, Code of Virginia, §[54.1-1117](#).

- Sec. 18-1. - Virginia Uniform Statewide Building Code.

(a) Adoption. There is hereby adopted by reference in the Town of Marion the Virginia Uniform Statewide Building Code, the provisions of which are adopted and shall control all matters concerning the design, construction, alteration, addition, enlargement, repair, removal, demolition, conversion, use, location, occupancy and maintenance of buildings, and all other functions which pertain to the installation of systems vital to buildings and structures and their service equipment as defined by the Virginia Uniform Statewide Building Code, and shall apply to buildings or other structures in the town.

(b) Enforcement. In that the town council does not have a licensed building inspector, the Town Council of Marion has elected to have the Smyth County, Virginia, Building Inspector enforce the provisions of Title 36, [Chapter 6](#) of the Code of Virginia (1950, as amended), and the regulations of the Virginia Board of Housing and Community Development, the Virginia Uniform Statewide Building Code, including the Construction Code (Part I), the Rehabilitation Code (Part II). The town council retains its right to hire a building inspector or to contract with other licensed building inspectors to enforce it. Absent the necessary contractual arrangements having been made, the building inspector for Smyth County, Virginia, shall enforce the above-mentioned regulations.

The town council for the Town of Marion, Virginia, has elected to enforce (Part III) maintenance provisions of the Virginia Uniform Statewide Building Code as promulgated by the Virginia Board of Housing and Community Development under the authority of Code of Virginia, (1950, as amended) §[36-105](#). The town has designated the Town of Marion Zoning Department as the agency within the local government responsible for such enforcement, and the Town of Marion has appointed the property maintenance code official and/or the town code official within the Town of Marion Zoning Department as the code official for enforcement. Notice shall be provided for unsafe structures or structures unfit for human occupancy as provided in Section 106 et seq. of the Virginia Maintenance Code.

(c) Enforcement procedures. The town property maintenance official shall institute and enforce the provisions of the property maintenance code per the provisions for unsafe buildings and structures. Additionally, when the property maintenance code official receives a written complaint alleging a code violation, an investigation and inspection and all authorized enforcement may occur.

(d) Board of Appeals. The town council for the Town of Marion hereby authorizes the formation of the local building code board of appeals. The board is to consist of five members, to be initially appointed on staggering four-year terms. The board is to operate in accordance with the provisions set for in the Virginia Uniform Statewide Building Code.

(e) Appeals. The local building code board of appeals is designated as the appeals board to hear appeals arising from the application of the provisions of the property maintenance code; responsible for the enforcement of the Virginia Uniform Statewide Building Code by hiring

building officials or by contracting with other localities for the enforcement thereof, therefore if the necessary contractual arrangements are made, the county shall enforce the Virginia Uniform Statewide Building Code in the town.

(f) Repair and rehabilitation or demolition of unsafe structures.

(1) Duty to remove, repair, or secure unsafe structure. It shall be unlawful and constitute a nuisance for the owner or occupant of any land or lot in the Town of Marion to permit any structure, house, or dwelling place thereon to be habitually kept or which, in relation to existing use, constitutes a hazard to safety or health because of inadequate maintenance, dilapidation, obsolescence or abandonment. Owners of real property, agents of owners, and/or persons in control of buildings within the Town of Marion shall remove, repair, or secure any building, wall or any other structure or portion thereof which might endanger the public health or safety of other residents of the town.

(2) Unsafe structures: procedures. The following guidelines shall apply concerning unsafe structures if an owner fails to comply with his duty set forth above:

(i) Notice to owner and lienholder. When the maintenance official identifies any unsafe structure, they may give written notice to the owner, the owner's agent, or another person in control of such building and any lienholder of record of their obligations under this section. This notice shall require the owner, agent for the owner, or person in control of such building within a stated time to complete improvements, demolish, or remove the building, structure, or portion thereof. For purposes of this section, reasonable notice shall include a written notice:

(a) Sent by certified mail, return receipt requested, to the last known address of the property owner, and

(b) Published once a week for two successive weeks in a general circulation newspaper in the Town of Marion.

**State Law reference**— Similar provisions, Code of Virginia, Article 1, §[15.2-906](#) et seq.

(ii) Time limit for action by the owner. The maintenance official shall take no action to remove or repair any building, wall, or any other structure before the passage of 30 days from the notice required in subsection (2)(i) above. However, nothing contained herein shall preclude the maintenance official from sealing any building, wall, or other structure that appears to be an immediate safety issue.

(iii) Procedure when the owner fails to comply. If the owner, agent for the person, or person in control of such buildings has failed to comply with all requirements of the notice and this section, then the Town of Marion, through its agents or employees, may remove, repair or secure any building, wall or any other structure which might endanger the public health or safety of other residents of the town. Restoration of the structure may include maintenance work to the exterior of a building to prevent deterioration of the building or adjacent buildings.

(iv) Costs and expenses recoverable. In the event the Town of Marion, through its own agents or employees, removes, repairs, or secures any building, wall, or any other structure according to this section, the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the town as taxes and levies are collected.

**State Law reference**— Similar provisions, Code of Virginia, Article 1, §[15.2-900](#) et seq.

(v) Lien of charges authorized by this section. Every charge authorized by this section with which the owner of any unsafe structure shall have been assessed and which remains unpaid, whether or not reduced to judgment, shall constitute a lien against the parcel on which the hazardous structure is situated, which such lien shall rate in parity with liens for unpaid local taxes and enforceable in the same manner as provided in [Code of Virginia, 1950, as amended,] Article 3, §[58.1-3940](#) et seq.

**State Law reference**— Similar provisions, Code of Virginia, Article 4, §[58.1-3965](#) et seq.

(g) Penalty. Except as otherwise explicitly provided, a violation of any provision of this chapter shall constitute a misdemeanor punishable by a fine of not more than \$2,500.00; additionally, if the violation concerns a residential unit and if the offense remains uncorrected at the time of conviction, the court shall order the violator to abate or remedy the violation to comply with the code. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within six months of the date of conviction.

(h) Building code not superseded. Nothing herein shall be construed to limit the authority of the building official as set out in general law or in the uniform statewide building code to enforce Part I and Part II or the maintenance official to enforce Part III.

(i) Liabilities of persons enforcing building code or maintenance code. The building official, maintenance official, or other employee charged with enforcing the building code or maintenance code, who is acting in good faith and without malice for the Town of Marion in the discharge of their duties, shall not thereby render themselves liable personally. They are hereby relieved from all personal liability for any damage that may occur to persons or property as a result of any act required or because of any act or omission in the discharge of their duties.

(j) In the case of emergency and compliance with all applicable provisions of the law, and with proper identification, the building official or maintenance official shall have the right to enter all buildings, structures, and/or premises at any reasonable hour. They shall have the authority to cut the electricity off and/or disconnect the wiring where live electricity could cause loss of life, limb, or property.

(Code 1960, §§4-1, 4-2; Ord. of 9-16-19)

**State Law reference**— Enforcement of Uniform Statewide Building Code, Code of Virginia, §[36-105](#).

- Sec. 18-2. - Construction permits.
- It shall be unlawful for any person to begin any construction of buildings or any other structures within the town without first obtaining a zoning permit from the town engineer and providing to the town engineer a copy of the building or other permit obtained from the county for such construction.

(Code 1960, §4-3)

- Sec. 18-3. - Removal, repair, and securing buildings and other structures.

- (a) The property owners in the town shall, at such times as the council may prescribe, remove, repair, or secure any building, wall, or other structure that might endanger other town residents' public health or safety.
- (b) The council, through its agents or employees, may remove, repair, or secure any building, wall, or any other structure which might endanger the public health or safety of other residents of the town, wherein the owner and lienholder of such property after reasonable notice and a reasonable time to do so has failed to remove, repair or secure such building, wall or other structure. For purposes of this section, reasonable notice shall include a written notice mailed by certified or registered mail, return receipt requested, sent to the last known address of the property owner, and published in a newspaper having general circulation in the town per the applicable provisions of the 1950 Code of Virginia, as amended, §[15.2-906](#). The town shall take no action to remove, repair, or secure any building, wall, or other structure for at least 30 days after receiving the return receipt or newspaper publication.
- (c) If the council, through its agents or employees, removes, repairs, or secures any building, wall, or any other structure after complying with the notice provisions of this section, the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the town as taxes and levies are collected.
- (d) Every charge authorized by this section with which the owner of any affected 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 the 1950 Code of Virginia, as amended, §§[58.1-3940](#) et seq. and [58.1-3965](#) et seq.

(Code 1960, §4-4)

**State Law reference**— Similar provisions, Code of Virginia, §[15.2-906](#).

Secs. 30-1;30-30. - Reserved.

□ ARTICLE II. – NOISE <sup>[2]</sup> Footnotes:

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State Law reference— Motorcycle noise, Code of Virginia, §[46.2-1050](#); use of air cannons, Code of Virginia, §[15.2-918](#); sport shooting ranges, Code of Virginia, §[15.2-917](#); aircraft noise attenuation features in buildings and structures, Code of Virginia, §[15.2-2295](#)

• Sec. 30-31. - Definitions.

• The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All terminology used in this article, not defined in this section, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

A-weighted sound level means the sound pressure in decibels as measured on a decimeter metering the A-weighting network. The level so read is designated dBA.

Decibel means a unit for describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micro pascals (20 micro newtons per square meter).

Noise means any sound that disturbs humans or causes or tends to cause any adverse psychological or physiological effect on humans.

Noise disturbance means any sound at levels as outlined in this article.

(Ord. of 6-6-94, §1.02)

**Cross reference**— Definitions generally, [§1-2](#).

- Sec. 30-32. - Loud noise prohibited.
- It shall be unlawful for any person to make, continue to make, or cause any loud or unusual noise, or any noise which disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others within the town's limits.

(Ord. of 6-6-94, §1.01)

- Sec. 30-33. - Maximum permissible sound levels by land use.

(a) No person shall operate or cause to be operated any source of sound arising from those activities outlined in [section 30-32](#) in such manner as to create a sound level that exceeds the limits set forth for the receiving land use district in table 1, for more than 50 percent of any measurement period, which shall not be less than ten minutes, when measured at the boundary of the receiving land use and as a result of a source of sound being located on some other property.

Table 1.

Sound Levels by Receiving Land Use

Receiving Land Use	Time	Sound Level Limit in dB
Agricultural	7:00 p.m.— 6:00 a.m.	60
Residential	7:00 p.m.—7:00 a.m.	60
Residential/office	7:00 p.m.— 7:00 a.m.	60
Office/business	At all times	70
Industrial/utilities	At all times	70
Community facilities	10:00 p.m.—10:00 a.m.	60
Recreational/open space/ commercial recreation	10:00 p.m.— 7:00 a.m.	65

(b) No person shall operate or cause to be operated a public or private motor vehicle or motorcycle on a public right-of-way in such a manner that the sound level emitted by, on, or within the motor vehicle or motorcycle when measured at a distance of 50 feet or more away from the offending vehicle, exceeds the level outlined in table 2. If the public or private motor vehicle or motorcycle is stationary for five minutes or longer, then Table 1 shall apply.

Table 2.

Sound Levels by Receiving Land Use

• Vehicle Class	Sound Level Limit in dB
All motor vehicles of GVWR or GCWR 6,000 lbs. or more	90
Any motorcycles	86
Any other motor vehicle or any combination of vehicles towed by any motor vehicle	82
Amplified noise from any vehicle	76

(Ord. of 6-6-94, §1.03; Ord. of 9-17-01)

- Sec. 30-34. - Specific offenses enumerated.

The following acts, among others, are declared to be infractions of this article, but such enumeration shall not be deemed to be exclusive, namely:

- (1) Continuous horns, signaling devices, or any harsh and unreasonably loud sounds emanating from a motor vehicle.
- (2) Radios, television sets, musical instruments, loudspeakers, amplifiers, or other machines or devices for the producing or reproducing of sound in such manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants, with louder volume than necessary for convenient hearing for the persons who are in the room, vehicle, or chamber in which such machine or device is operating.
- (3) Continuous yelling or shouting on a public street or any public place or private residence or at any place or time, disturbing persons in the vicinity.
- (4) The keeping of any animal causing long and continued noises disturbing the comfort of the peace and repose of any person in the vicinity.
- (5) The operation of any electric motors, compressors, or internal combustion engines on parked vehicles where noise endangers the health and well-being of others within the Town's limits between 11:00 p.m. and 7:00 a.m.
- (6) Making, aiding, countenancing, or assisting in making a false fire alarm.
- (7) Illegal use or discharge of a firearm.



(Ord. of 6-6-94, §1.04)

**State Law reference**— Municipal regulation of the discharge of firearms, Code of Virginia, §[18.2-280](#); false fire alarms, Code of Virginia, §[18.2-212](#); discharging firearms, Code of Virginia, §[18.2-279](#) et seq.

- Sec. 30-35. - Noise in the operation of motor vehicles.

(a) No vehicle shall be loaded with materials likely to create loud noises by striking together without using reasonable effort to deaden the noise.

(b) The use in, upon, or attached to any motor vehicle operating on any street of the town of any radio, phonograph, musical instrument, bell, whistle, loudspeaker, amplifier, or device of any kind whatsoever whereby sound from that place is cast upon any street to promote or advertise the sale of goods, wares or merchandise, or for the purpose of advertising auction sales, sporting events or other businesses or things advertised thereby is prohibited. The provisions of this subsection shall not apply to motor vehicles driven in a duly authorized parade. The use of a loudspeaker on a motor vehicle for making auction sales in streets directly in front of the property then being sold, and entirely outside of the business districts of the town, shall not be construed as a violation of this subsection when such use is limited strictly to the selling at auction of such property.

(c) It shall be unlawful for any person operating a motor vehicle within the town to create in the operation thereof any unreasonably loud or disturbing noise.

(d) In operating a motor vehicle in the town, the following acts, among others, are declared to create loud or disturbing noises in violation of this section. Still, such enumeration shall not be deemed to be exclusive, namely:

(1) The use of a motor vehicle so out of repair as to cause loud grating, grinding, rattling, or any other noise.

(2) The practice of unnecessarily racing a vehicle's motor while standing or moving, causing noise from such an engine.

(3) The practice of unnecessarily retarding the spark to the motor of a motor vehicle and thereby causing loud and explosive noise from the engine.

(4) In starting a motor vehicle from a standing position, the practice of gaining speed unnecessarily quickly and thereby causing loud noise from the motor and the screeching of tires, or either of such noises.

(5) The practice of coming to an unreasonably quick stop with a motor vehicle, causing grinding of brakes and screeching of tires or other such noises.

(Code 1960, §10-13)

**State Law reference**— Muffler cutout, etc., illegal, Code of Virginia, §[46.2-1047](#).

- Sec. 30-36. - Exceptions to prohibitions of the article.



None of the prohibitions in [section 30-34](#) shall apply or be enforced against:

- (1) Emergency vehicles. Any police or fire vehicle or any ambulance while engaged in emergency business.
  - (2) Maintenance and construction projects. Excavations or repairs of bridges, streets, or highways by or on behalf of the city, county, or state during the night when public safety, welfare, and convenience render it impossible to perform such work during the day. Likewise excluded are sewer and water installations when conducted under similar conditions.
  - (3) Parades, fireworks, musical concerts, or other special events the general public may attend.
- (Ord. of 6-6-94, §1.05; Ord. of 9-8-94(1))

- Sec. 30-37. - Ticketing procedure.

Violators of the provisions of this article shall be ticketed based on the frequency of complaints and standard procedures used by the police in other ordinance violations.

(Ord. of 6-6-94, §1.06)

- Sec. 30-38. - Penalty for violation of article.

Persons who are found to be in violation of this article shall be guilty of a class 2 misdemeanor.

(Ord. of 6-6-94, §1.07)

- Secs. 30-39;30-60. - Reserved.
- • ARTICLE III. - NUISANCES
- • DIVISION 1. - GENERALLY
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- Sec. 30-61. - Nuisances prohibited within the town.

It shall be unlawful for any person to cause, harbor, commit or maintain, or to suffer to be caused, harbored, committed or maintained, any nuisance as defined by the statutes or common law of this state or as defined by this Code or other ordinances of the town at any place within the town.

(Code 1960, §11-1)

- Sec. 30-62. - Certain nuisances are enumerated.

(a) The following acts, when committed, or conditions when existing, within the town are hereby defined and declared to be nuisances:

- (1) An act done or committed or aided or assisted to be done or committed by any person, or any substance, being or thing kept, maintained, placed or found in or upon any public or private place, which is injurious or dangerous to the public health or safety.

- (2) All buildings, bridges, or other structures of whatever character are kept or maintained or permitted by any person owning or having control thereof to be kept or maintained in a condition unsafe, dangerous, unhealthy, or injurious to the public.
- (3) All trees and other appendages of or to realty kept or maintained or permitted by any person owning or having control thereof to be kept or maintained in a condition unsafe, dangerous, unhealthy, or injurious to the public.
- (4) All ponds or pools of stagnant water and all foul or dirty water or liquid when discharged through any drain, pipe, spout, or thrown into or upon any street, public place, or lot to the injury of the public.
- (5) All obstructions caused or permitted on any street or sidewalk to the danger of the public, and all stones, rubbish, dirt, filth, slops, vegetable matter, or other article thrown or placed by any person on or in any street, sidewalk or other public place, which in any way may cause any injury to the public.
- (6) All stables, cattle yards, hog, sheep, or cow pens or yards or structures for poultry, permitted by the owner thereof or the person responsible therefor to be harboring or breeding places for rodents or otherwise to be in such a condition as to become offensive or injurious to the public or persons in the neighborhood thereof.
- (7) All houses or buildings used for special storage of powder, dynamite, or other explosive substances, except those maintained pursuant to a permit issued by a competent authority.
- (8) All septic tanks, privies, cesspools, and privy vaults of a type prohibited by state law or by rules and regulations promulgated by authority of state law, or which are maintained in any manner contrary to state law or rules and regulations promulgated by authority of state law or which otherwise constitute a menace to the health of, or are offensive too, persons in the neighborhood thereof.

(b) The nuisances described in this section shall not be construed as exclusive, and any act of commission or omission and any condition which constitutes a nuisance by statute or common law of the state, when committed, omitted, or existing within the town limits, is hereby declared to constitute a nuisance.

(Code 1960, §11-2)

- Sec. 30-63. - Responsibility of property owners, occupants, and others.

Each owner, lessee, tenant, occupant, or person in charge of any real property within the town, and each agent or representative of any such person, is hereby charged with the responsibility for the maintenance and use of such real property in such manner that no use of, or activity or condition upon or within, such real property shall constitute a nuisance. All such persons are hereby charged with the duty of observing all of the provisions of this article. Still, such responsibility shall not be construed to permit any other person not charged with such responsibility to commit or maintain any nuisance upon or within any real property in the town.

(Code 1960, §11-3)

- Sec. 30-64. - Violation of article; penalty; order to abate.

The punishment for each violation of this article shall be as provided in [section 1-8](#) of the Code of the Town of Marion, 1996, and the court may, in addition to such punishment, order the nuisance to be abated or removed, prescribing the time within which such order shall be executed. Should the nuisance not be abated or removed per the court's ruling, the offending person shall be guilty of a separate offense for each day that such nuisance shall continue after that. The court may cause such a nuisance to be abated or removed at the cost of the offending person, such cost to be recovered as taxes are collected.

**State Law reference**— Effect of common law, Code of Virginia, [§1-10](#); the power of town to cause any nuisance to be abated, Code of Virginia, §§[15.2-900](#), [15.2-901](#); nuisances generally, Code of Virginia, [Title 48](#).

- Secs. 30-65;30-85. - Reserved.
- • DIVISION 2. - ABATEMENT
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- Sec. 30-86. - Inspections, investigations, and complaints.

It shall be the duty of the chief of the fire department, fire marshal, the town engineer, or the police chief to cause inspections to be made from time to time of all portions of the town to determine whether any condition exists or activity is being practiced which constitutes a nuisance. In addition, such officials shall cause an investigation upon a complaint made by any responsible person.

(Code 1960, §11-4)

- Sec. 30-87. - Right to enter private premises.

Upon compliance with all applicable provisions of law, town officials shall have the right to enter private premises at reasonable times for the purposes specified in (Code 1960, §11-5)

**State Law reference**— Search warrants, Code of Virginia, §[19.2-52](#) et seq.

- Sec. 30-88. - Notice to cease and desist.

If at any time a town official shall find that an activity or practice which constitutes a nuisance is occurring within the town, he shall promptly and by the most expeditious means notify the violator to cease and desist forthwith.

(Code 1960, §11-6)

- Sec. 30-89. - Notice to abate—Issuance; compliance; appeal.

If at any time a town official shall find that a condition that constitutes a nuisance exists within the town, he shall give notice in writing to the owner, occupant, or person in charge of the premises upon which such condition exists, stating therein the condition which constitutes a nuisance, and directing such addressee to remedy the condition within the time stated in such notice, which shall not be more than fifteen days. It shall be unlawful

for any such owner, occupant, or person in charge of such premises to fail to comply with the terms of such notice, provided that the owner, occupant, or person in charge may, within two days from the service thereof, appeal to the town council, in which case the terms of such notice shall stay pending action of the town council, which shall be final; provided further, that if the official giving notice states in such notice that the condition which constitutes a nuisance is such as to be an imminent hazard to the health, safety or welfare of the public or any person within or near the premises upon which such nuisance exists, then the addressee shall comply with the terms of such notice.

(Code 1960, §11-7)

- Sec. 30-90. - Same—Action by town upon non-compliance.

(a) Upon the failure of any person to whom notice has been given per [section 30-89](#) to comply with the terms of such notice, or with the terms imposed by the town council on appeal, as the case may be, the official giving such notice shall forthwith direct the appropriate town official to remedy the condition which is the subject of such notice, and the expense incurred by the town in so doing shall be charged to the addressee of such notice, to be collected as town taxes or in any other manner authorized by law.

(b) Abatement by the town of any condition which constitutes a nuisance and reimbursement to the town of expenses incurred shall not bar prosecution for maintenance of a nuisance.

(Code 1960, §11-8)

- Sec. 30-91. - Article does not prohibit arrest for committing or maintaining a nuisance.

Nothing in this article shall be construed to prohibit any police officer from arresting anyone for committing or maintaining a nuisance when such an arrest is made under law.

(Code 1960, §11-9)

## Chapter 38 - HEALTH AND SANITATION <sup>[1]</sup>

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### Footnotes:

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**Editor's note**— An ordinance adopted Feb. 19, 2019, amended ch. 38 in its entirety to read as herein set out. Former ch. 38 pertained to the same subject matter, consisted of §§38-1, 38-2, and derived from an ordinance adopted on Sept. 19, 2016.

**Charter reference**— Powers of town, § 2.

**Cross reference**— Animals, ch. 14; businesses, ch. 22; cemeteries, ch. 26; Environment, ch. 30; Fire prevention and protection, ch. 34; offenses and miscellaneous provisions, ch. 46; solid waste, ch. 58; Utilities, ch. 78.

**State Law reference**— Certain local regulations pertaining to food and beverage containers prohibited, Code of Virginia, [§10.1-1425](#); state funds for drug enforcement, Code of Virginia, [§15.2-1715](#); local ordinances regulating smoking, Code of Virginia, [§15.2-2828](#) et seq.; municipal regulation of health, safety, and general welfare, Code of Virginia, [§15.2-1102](#);

municipal regulation of beverages, foods, and sanitation of food establishments, Code of Virginia, §[15.2-1109](#); regulation of well covers, Code of Virginia, §[18.2-318](#); inspection warrant for inspecting or testing for toxic substances, Code of Virginia, §[19.2-393](#) et seq.; sanitation in transportation terminals, festivals, fairs, service stations, etc., Code of Virginia, §[32.1-202](#).

- Sec. 38-1. - Maintenance of properties inside town limits.

(a) The town council has deemed it necessary that all grass, weeds, and other foreign growth on any property within the town's corporate limits or any part thereof shall not be allowed to grow to a length of 15 inches or greater. Undeveloped land used to produce hay or other active farming operations is exempted.

(b) Furthermore, the owner/tenant of a property is subject to the following specific provisions:

- (1) [R-1 zone.] Any vacant lot located in an R-1 (residential zone 1) with a structure on either side of said lot must be maintained so that the appearance of the vacant lot conforms with the adjoining property or properties.

The lot must be maintained per subsection [38-1\(b\)](#) to the furthest point that the adjoining properties are maintained.

(2) [R-2, R-3 zones.] Any vacant lot located in an R-2 (residential zone 2) or R-3 (residential zone 3) that has a structure on either side of said lot must be maintained so that the appearance of the vacant lot conforms with the adjoining property or properties.

The lot must be maintained:

- a. Seventy-five feet from the front of the lot's parcel line; or
- b. To the furthest point that the adjoining properties are maintained, whichever distance is less.

The lot must be maintained per subsection [38-1\(b\)](#).

(3) [MA, CD, CG, CL, and IG zones.] Any vacant lot located in a MA (medical arts zone), CD (commercial downtown zone), CG (commercial general zone), CL (commercial limited zone), and IG (industrial general zone) that adjoins a residential zone that has a residential structure on either side of the said lot must be maintained so that the appearance of the vacant lot conforms to the adjoining property or properties. The lot must be maintained per subsection [38-1\(b\)](#) to the furthest point that the adjacent properties are maintained and 25 feet off the side parcel line that adjoins any residential lot with a structure located upon.

(4) [Trees.] Trees ten inches in diameter or over are exempt from subsections (c) and (d).

(5) Hedges, shrubbery, and other plantings.

(a) Hedges, shrubbery and other plantings shall be well maintained and healthy. They shall be kept trimmed and free from becoming a hazard or an obstruction to traffic, vehicular, and/or pedestrian visibility.

(b) On corner lots, all hedges, shrubbery and other plantings (excluding trees) must not exceed three feet in height, as described in section 4.9 of the Town of Marion Zoning Ordinance, fences, and obstructions to vision.

(c) It shall be deemed a public nuisance for the owner/tenant of any property within the town or any part thereof to allow grass, weeds, or other foreign growth to grow to a length of 15 inches or greater or in a manner that violates this section. The owner/tenant of the property located within the town shall cut or cause to be removed grass, weeds, and other foreign growth upon issuance of a proper notice of a violation of this section.

(d) Any owner/tenant who violates the provisions of this section shall be subject to the penalties and/or remediation action described in [section 38-3](#), and each day that such grass, weeds, or other foreign growth shall remain uncut shall be deemed to constitute a separate offense under this section.

(Ord. of 2-19-19)

- Sec. 38-2. - Accumulations on properties located inside town limits.
- (a) General provisions.

(1) Definitions. The following words or terms, when used herein, shall be deemed to have the meanings set forth below:

**Storage:** A building or shed which contains a pitched roof and doors for the purpose of keeping items inside and out of sight from any street or right of way. Nontraditional storage structures such as shipping containers, storage pods, semi-trailers, and manufactured / mobile homes will not be allowed for any type of permanent storage solutions, however Shipping Containers and Storage Pods will be allowed with a special use permit for temporary uses such as, but not limited to, moving a residence and temporary construction for 30 days.

Storage structures cannot exceed the height of the primary structure, and the square footage of the storage structure cannot exceed 25% of the square footage of the primary structure.

**Junk** shall include, but not be limited to, parts of machinery or motor vehicles, old tires, unused/broken items such as furniture, stoves, refrigerators or other appliances, remnants of wood/lumber, old pallets, metal, or any other castoff matter of any kind, whether or not the same could be put to any reasonable use.

A blighted structure shall include, but not be limited to, any dwelling, mobile home, RV, campers, garage, or outbuilding, or any factory, shop, store, warehouse, or any other structure or part of a structure which, because of fire, wind, or another natural disaster, or physical deterioration, is no longer habitable as a dwelling nor useful for the purpose for which it may have been intended.

**Building materials** shall include, but not be limited to, lumber, bricks, concrete or cinder blocks, plumbing materials, electric wiring or equipment, heating ducts or equipment, shingles, mortar, cement, nails, screws, or any other materials used in constructing any structure.

**Person** shall include all natural persons, firms, co-partnerships, corporations, and all associations of natural persons, incorporated or unincorporated, whether acting by themselves or by a servant, agent, or employee. All persons who violate any of the provisions of this article, whether as owner, occupant, leasee, agent, servant, or employee, shall, except as herein otherwise provided,

be equally liable as principals.

Trash and rubbish shall include, but not be limited to, any and all forms of debris not herein otherwise classified. For example, waste, empty cans, food containers, paper goods, bottles, crockery, utensils, boxes, cardboard, ripped or torn plastic sheeting and/or tarps, barrels, and all other articles customarily considered trash or junk.

Firewood, storage of firewood. In addition, wood or wood products intended to be used as property owner's personal firewood in a residence or an accessory structure is allowed, provided any/all wood products are stacked neatly adjacent to the residence or other buildings therein, and said stack shall be either in the side yard, as defined by the front of the residential structure, or in the back yard. Natural trees that have fallen or been caused to fall and have been cut for firewood must be kept organized. Fallen or cut trees must then be split and stacked for fireplace use within 15 days of the event, causing the tree to be on the ground.

Screen, screened, or screening means visually shielding or obscuring rubbish or clutter. "For the purpose of this section, "clutter" includes mechanical equipment, household furniture, containers, and similar items that may be detrimental to the well-being of a community when they are left in public view for an extended period or are allowed to accumulate "Virginia Code § [15.2-901](#)" trash, and/or junk, as defined in this section, by permanent construction and maintenance of a solid fence, up to eight feet high, or earth berms to lessen the visual impacts on surrounding properties and roads. Whose vertical surface is covered by a solid or opaque material through which no complete visual images can be seen. Plastic, cloth, tarp, or any like material that will deteriorate over time is not permitted as screening material.

Fences (including gates) shall be constructed of products sold for fencing. any castoff material, including but not limited to metal, wood, and plastic material, used to construct a fence (including gates) shall not be allowed.

Virginia Code § [15.2-908](#) Authority to remove or repair the defacement of buildings, walls, fences, and other structures.

- A. The town of Marion is authorized to undertake or contract to remove or repair the defacement of any public building, wall, fence, or other structure or any private building, wall, fence, or other structure where such defacement is visible from any public right-of-way. For purposes of this section, the term "defacement" means the unauthorized application by any means of any writing, painting, drawing, etching, scratching, or marking of an inscription, word, mark, figure, or design of any type.
- B. Before such removal, the town zoning department shall give notice to the owner and lessee, if any, of any private building or facility that has been defaced that, within fifteen (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 defacements, the town of Marion may remove or repair the defacement.
- C. Except as provided herein, all such removal or repair, unless undertaken by the property owner, shall be at the expense of the town; provided, however, that the removal or repair work may be conducted by volunteers or individuals required to perform community service by order of any court, under appropriate Town supervision.



D. If the defacement occurs on a public or private building, wall, fence, or other structure located on an unoccupied property, and the town, through its own agents or employees, removes or repairs the defacement and after complying with the notice provisions of this section, the actual cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the town as taxes are collected.

E. Every charge authorized by this section with which the owner of any such property shall have been assessed and that 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. The town manager or the town manager's designee may waive and release such liens to facilitate the sale of the property. Such liens may be waived only to a purchaser unrelated by blood or marriage to the owner who has no business association with the owner. All such liens shall remain a personal obligation of the property owner when the liens are imposed.

F. The court may order any person convicted of unlawfully defacing property described in subsection (b) to pay full or partial restitution to the town for costs incurred by the town in removing or repairing the defacement.

G. An order of restitution pursuant to this section shall be docketed as provided in section [8.01-446](#), Code of Virginia, when so ordered by the court or upon written request of the city and may be enforced by the town in the same manner as a judgment in a civil action.

Junk vehicle or junk recreation vehicle means a vehicle that is inoperable or missing parts so that it is not maintained for driving and which, by its condition, cannot be, or is not, restored to an operable condition within 90 days from the date of the notice served. Vehicle or vehicles which are stored within a completely enclosed building or screened per the definition above are exempt.

A junk mobile home means a condition in which one or more of the following issues exist:

- a. A substantial danger or hazard to public health, safety, or welfare;
- b. Unused by the owner either as their primary residence or as rental stock for a period of more than 12 continuous months;
- c. Is uninhabited because of deterioration or decay;
- d. Any condition which constitutes a fire hazard;
- e. Subjects adjoining property to danger or damage by storm, soil erosion, or rodent infestation;
- f. Becomes a place frequented by trespassers and transients seeking a temporary hideout or shelter;
- g. Nonconforming structures cannot be replaced with similar structures other than as allowed by vested right pursuant to Virginia Code and Town of Marion Zoning Ordinance section 5.3-06.

(2) The town council has determined the storage or accumulation of trash, garbage, refuse, litter, clutter, or other substances such as rubbish, junk, building materials, and the non-maintenance

of blighted structures, or allowing overgrowth and unstacked/uncut firewood upon any private property within the Town of Marion tends to result in blighted and deteriorated neighborhoods resulting in the deterioration of values for adjoining properties; an increase in criminal activity; the spread of vermin and disease; and is contrary to the public peace, health, safety, and general welfare of the community.

(3) It shall be unlawful for any person to store or permit the storage or accumulation of trash, garbage, refuse, litter, clutter, or other substances such as rubbish or junk, on any private property in the Town of Marion except within a completely enclosed building or upon the business premises of a duly licensed junk dealer, junk buyer, dealer in auto parts, dealer in secondhand goods where the land use has been zoned for this type of business and the property has adequate screening from adjoining properties as described by definition above in subsection (1).

(4) It shall be unlawful for any person to store or permit the storage or accumulation of unused building materials on any private property except in a completely enclosed building or except where such building materials are a part of the stock of a business located on said property or except when such materials are being used in the construction of a structure on the property along with a valid building permit issued by the Smyth County Building Inspector's office.

(5) It shall be unlawful to allow any unused building material, trash, clutter, rubbish, junk, construction waste, or discarded materials to accumulate in such a manner to create an unsanitary condition, become a harborage for insects, rodents, or any other vermin including, but not limited to, snakes, or become a nuisance to adjacent properties due to blowing or scattering debris.

(6) Unstacked/uncut firewood can be considered rubbish and unlawful on any property in the Town of Marion if found in any other condition other than that described by definition above in subsection (a)(1).

(b) Any owner/tenant who violates the provisions of this section shall be subject to the penalties and/or remediation action described in [section 38-3](#), and each day that such prohibited condition remains shall be deemed a separate offense under this section.

(Ord. of 2-19-19)

- Sec. 38-3. - Notice, enforcement, and penalties.

(a) Complaints.

- (1) Any person and/or staff member may file a complaint that a property in the Town of Marion violates this chapter. If filed by a citizen, such a complaint must be in writing, signed by the complainant, and forwarded to the code enforcement official. The Town of Marion shall not be obligated to investigate anonymous complaints or complaints not filed in writing. The complaint shall be filed at the Town of Marion Police Department, 307 S. Park Street, Marion, VA 24354.

(b) Notice of violation.

- (1) If a violation of this chapter occurs on any lot or tract of land in the town or upon any alley or sidewalk adjacent to such lot or tract of land, and a complaint is filed under subsection (a)(1) above, such complaint shall be forwarded to the enforcement official who will

investigate the site to determine if an unlawful condition does exist. If the enforcement official determines that an unlawful condition does exist, a notice of violation shall be issued to the owner, and if the property is a rental property, owner and tenant, requiring the owner/tenant to:

- a. Remove any non-compliant issue within 15 days from the date of said notice of violation or;
- b. Request a hearing with the town manager or zoning administrator within 15 days to show cause why such violation should not be enforced or enter into mitigation with the town as described in subsection (3) below.
- c. A failure to correct the violation or request an appeal within 15 days will result in the issuance of a summons.
- d. After having received reasonable notice, should the owner and/or occupant of the property found in violation of the provisions of this chapter fail to take action to bring the property into compliance, the town code enforcement officer official, town police chief zoning administrator, or the town manager may, in addition to or in lieu of a summons, assign staff to remove, or cause to be removed, any junk, trash rubbish, grass, weeds or other foreign growth.

1. Such removal by the code enforcement official and/or zoning administrator shall not excuse or relieve any person of the obligations imposed by this chapter nor format the penalties for violation thereof.

2. Any junk, trash, clutter, or rubbish removed from unenclosed private property or coming into the possession of the enforcement official, zoning administrator and/or police department by abandonment on public property in the Town of Marion and which is determined by the town council to be of no value other than as scrap metal, can be disposed of by the manner as to eliminate the unsightly accumulation of such worthless hulks and the hazards to public health attendant thereto with the least possible delay.

3. The removal cost shall include but is not limited to, equipment use, labor, benefits, administration fees, and disposal fees. The code enforcement official shall certify to the town council the description of the property on which the junk was abated, the date and method of removal by report, photographs and/or video with date stamped images, and such other information as may be deemed necessary, and the town clerk shall bill the costs to the owner or owners of the property involved and a lien shall immediately be placed on such property until the cost is paid in full for removal of the junk, debris, and rubbish.

(1) Issuance. Said notice of violation shall be deemed issued by placing the same in the U.S. mail, certified, return receipt requested, to the owner's last known address as indicated on the county's assessment roll. Service shall be complete upon mailing of the certified return receipt. Furthermore, such notice shall be posted in a conspicuous place on the property. If the certified letter is not signed for and returned to the sender, the Town of Marion has made all efforts to contact the property owner and/or tenant. After 15 days have expired, the town can pursue enforcement with the town's resources to bring non-compliant properties into compliance.

(2) Mitigation (grace period). Should the owner desire to enter into an agreement to mitigate the accumulation of the rubbish, junk, or any such non-compliant issue, such owner shall immediately notify the enforcement official, and the parties shall negotiate a mitigation agreement. Mitigation includes but is not limited to, a phased and/or timed removal plan and

screening. No language in this code is to be construed as compelling the town to enter into such an agreement if acceptable terms and conditions to the town are not met.

(3) Compliance. In the event that the person to whom such order is issued fails or refuses to comply therewith immediately, the town may, without prior notice to the owner, occupant, or agent of the owner, the condition giving rise to the issuance of the emergency order, and to assess and collect the entire cost thereof by placing an immediate lien on the entire property.

(c) Emergency violation.

(1) Whenever the town determines an emergency exists which requires immediate action to protect the public health, safety, and welfare, the town may, without prior notice or hearing, issue a violation stating that such emergency exists and requiring that such action be taken as deemed necessary to meet the emergency. Notwithstanding any provision of this chapter to the contrary, such violation shall be effective immediately.

(2) Any person to whom such emergency violation is issued shall comply in addition to that immediately, and it shall be unlawful to fail or refuse to comply so.

(3) In the event that the person to whom such emergency violation is issued fails or refuses to comply therewith immediately, the town may, without prior notice to the owner, occupant, or agent of the owner, provide through town forces, contract, or otherwise, to remove, correct or otherwise abate the condition giving rise to the issuance of the emergency violation, and to assess and collect the entire cost thereof by placing an immediate lien on the entire property.

(d) Enforcement.

(1) The provisions of this chapter and the subsections prescribed above shall be administered and enforced by the Town of Marion's Enforcement Official.

(2) The council hereby designates the town's attorney, or their designee, as the town's legal representative in the enforcement of the provisions of this chapter in any court of the applicable jurisdiction.

(3) Unpaid charges under this section constitute a lien against the property. 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 the 1950 Code of Virginia, as amended, § [58.1-3940](#) et seq. and [58.1-3965](#) et seq.

(4) Violations of this chapter shall be subject to a civil penalty of \$50.00 for the first violation or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts and being within 12 months of the first violation shall be subject to a civil penalty of \$200.00. Each business day the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in penalties exceeding \$3,000.00 in a 12-month period.

(5) The town council for the Town of Marion has provided that such violations shall be punishable as class 3 misdemeanors. In the event three civil penalties have been previously imposed on the same defendant for the same or similar violation, not arising from the same set of

operative facts, within a 24-month period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation.

(Ord. of 2-19-19)