

ORDINANCE TO ADD SECTIONS 30-5.1 THROUGH 30-5.4 TO THE TOWN CODE RELATING TO DESIGNATING THE CHIEF OF POLICE OR HIS DESIGNEES AS “PERSONS LAWFULLY IN CHARGE OF PROPERTY” FOR PURPOSES OF ENFORCING LAWS PROHIBITING TRESPASSING

ORDINANCE #2015-001

WHEREAS, the Town of Haymarket, Virginia, in order to preserve public order and the protection of property within the Town, desires to allow the owners of private property to cooperate with, and to enable to the extent they can support, the police department to deter and prevent trespassing, or the ensuing criminal activity that may follow, and

WHEREAS, Authorizing such a program is mutually beneficial to the good order of the Town, maximizes the efficiency of its police officers, and provides a benefit to the property owner by minimizing court appearance, and

WHEREAS, Virginia Code § 15.2-1717.1 authorizes local governments to adopt, by ordinance, a procedure by which the owner, lessee, custodian, or other person lawfully in charge of real property may designate the local law-enforcement agency as a “person lawfully in charge of the property” for the purpose of forbidding another to go or remain upon the lands, buildings, or premises as specified in the designation, and

WHEREAS, Prince William County has adopted an ordinance as permitted by Virginia Code § 15.2-1717.1, which is codified in the Prince William County Code as §§ 16-41.1 through 16-41.4, and

WHEREAS, the Town Council desires to amend the Town Code to adopt ordinances modeled on Prince William County Code §§ 16-41.1 through 16-41.4,

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Haymarket, meeting this 2nd day of November, 2015, in regular session, that the Town Council finds that amending the Town Code as stated in the preamble to this ordinance serves to protect the public health, safety, and welfare, and therefore the Town Council hereby amends the Town Code by adding §§ 30-5.1, 30-5.2, 30-5.3, and 30-5.4 as follows:

Sec. 30-5.1 – Designation of Chief of Police and designees as “persons lawfully in charge of property” for the purposes of enforcing laws prohibiting trespassing.

The owner of any real property used for commercial or residential purposes in the Town, or any person legally authorized to act for the owner of such property, or the lessee, custodian, or other person lawfully in charge as those terms are used in §18.2-119, *Code of Virginia*, may designate the Chief of Police or designees as agents of the property owner and as “persons lawfully in charge of the property” for the purposes of forbidding another to go or remain upon the lands, buildings, or premises of the owner as specified in the designation, for enforcing any and all state and local laws prohibiting trespassing against such persons should they observe such persons going or remaining on such lands, buildings or premises after having been forbidden to do so. Such designations must be made in accordance with the procedure established in section 30-5.2, and are subject to the condition and limitations established by sections 30-5.3 and 30-5.4.

Sec. 30-5.2 – Procedure for designating the Chief of Police and designees as “persons lawfully in charge” of the owner’s property for purposes of enforcing laws prohibiting trespassing.

The owner of any real property used for commercial or residential purposes, or any person legally authorized to act for the owner of such property, or the lessee, custodian, or other person lawfully in charge as those terms are used in § 18.2-119, *Code of Virginia*, wishing to designate the Chief of Police as “a person lawfully in charge of the property” for the purposes set forth in section 30-5.1 must:

(1) File a written application, in a form to be established by the Chief of Police, with the Chief's office, stating the owner's intent to designate the Chief of Police for these purposes, describing the real property covered by the designation, stating whether the property owner wishes the Chief of Police to enforce the trespassing laws against individuals identified in the application, against any individual found on the property engaging in suspicious or unlawful activity in the opinion of the Chief of Police or his or her designees, against any individual to be identified in future by the property owner, or against any combination of these groups of people. The written application must be signed by a person who can demonstrate that he or she is the owner of the property, or is legally authorized to act for the property owner.

(2) Execute a written power of attorney, in a form approved by the Chief of Police and the Town Attorney, designating the Chief of Police and his or her designees as persons lawfully in charge of the property for the following purposes:

a. To orally or in writing forbid any person identified by the property owner or applicant, or any person who, in the opinion of the Chief of Police or his designees, should be forbidden to go or remain upon the lands, buildings, or premises covered by the application;

b. To initiate criminal process for trespassing and take any and all other appropriate action to enforce state and local laws prohibiting trespassing if a person returns to or remains on the property after having been forbidden to do so by the owner, lessee, custodian, or other person lawfully in charge of the property; and

c. To testify on behalf of the owner, lessee, custodian, or other person lawfully in charge of the property, as a person lawfully in charge of the property, in any criminal prosecutions arising out of any trespass notices or complaints described in this subsection.

Sec. 30-5.3 – Acceptance of designation by Chief of Police required; other conditions.

- (a) A designation of the Chief of Police and his or her designees as agent and a person lawfully in charge of the property becomes complete when the Chief of Police mails a written notification to the applicant that the application and power of attorney have been received, reviewed, and accepted, and the Chief of Police consents to being designated as a person lawfully in charge of the property for the purposes set forth in section 30-5.1. The decision whether to accept any designation is solely within the discretion of the Chief of Police, who may base his or her decision on such factors as resource levels of the police department, overall benefit to public safety, and the proper allocation of police resources.
- (b) The Chief of Police may rescind his acceptance at any time, by mailing written notification of his rescission of acceptance to the applicant. The decision to rescind any acceptance of designation is solely within the discretion of the Chief of Police, who may base his or her decision on such factors as resource levels of the police department and the proper allocation of those resources.
- (c) The Chief of Police and his designees will make reasonable efforts to issue no trespassing notices to persons specifically identified by the applicant.
- (d) The decision of whether to issue no trespassing notices to persons who have not been specifically identified by the applicant, but who are observed on the property by the Chief of Police or his or her designees are solely within the discretion of the Chief of Police and his or her designees.
- (e) The Chief of Police and his or her designees will provide written notifications to the applicant whenever they give an oral or written no trespassing notice to a person, identifying the person with reasonable specificity.
- (f) The Chief of Police will maintain on file in the police department all applications and powers of attorney in cases in which he or she has accepted designation as “a person lawfully in charge of the property”, as well as records of all no trespassing notices issued by employees of the police department acting in that capacity.

Sec. 30-5.4 – Temporary or partial suspensions or rescissions of no trespassing notices.

The property owner or applicant may temporarily or partially suspend, or rescind, a notice of no trespassing issued by the Chief of Police or his or her designees to any person, provided that the property owner or applicant first provides a written notification to the Chief of Police of the temporary or partial suspension or rescission, and sufficiently identifying the person. If a trespassing notice is to be temporarily or partially suspended, the property owner or applicant must provide, in the written notice, a reasonable specific description of the times and circumstances under which the person is authorized to be on the property.

A property owner or other applicant considering a person’s request to modify or rescind a no trespassing notice issued to him or her may request the Chief of Police or his or her designees to perform a local criminal record check. The Chief of Police may disclose the results of that local record check to the property owner for the property owner’s purposes in considering the person’s request for modification or rescission of the not trespassing notice.

THIS ORDINANCE IS EFFECTIVE UPON ADOPTION.

Done this ____ day of _____, 2015.
TOWN OF HAYMARKET, VIRGINIA

ATTEST:

Jennifer Preli, Town Clerk

Motion to approve:

Second:

Voting Aye:

Voting Nay:

Absent:

Abstaining: