

ORDINANCE NO. 10-10(1)

AN ORDINANCE TO AMEND CHAPTER 10, OFFENSES – MISCELLANEOUS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 10, Offenses – Miscellaneous, is hereby amended and reordained as follows:

By Amending:

- Sec. 10-100 Assault; assault and battery.**
- Sec. 10-102 Damaging signs, markers, etc., on highways.**
- Sec. 10-103 Disorderly conduct in public places.**
- Sec. 10-104 Drinking alcoholic beverages or offering alcoholic beverages to another in public places; possession of open alcoholic beverage containers in public places.**
- Sec. 10-105 Drinking or possessing alcoholic beverages in or on public school grounds.**
- Sec. 10-106 Drunkenness in public, profane swearing.**
- Sec. 10-107 Firearms--Discharging within residential districts.**
- Sec. 10-109 Standing or walking with loaded rifle or shotgun.**
- Sec. 10-110 Hunting; prohibited with firearms near highways generally.**
- Sec. 10-111 Shooting in, or along or near road or in street.**
- Sec. 10-115 Obstructing justice by threats or force.**
- Sec. 10-117 Peeping or spying into structure occupied as dwelling.**
- Sec. 10-119 Trees, shrubs, etc.--Unlawful destruction, injury, etc.**
- Sec. 10-120 Trespass--After having been forbidden to do so.**
- Sec. 10-121 Trespass--At night, upon church or school property.**

By Adding:

- Sec. 10-124 Urinating or Defecating in Public**

By Repealing:

- Sec. 10-118 Sunday closings--Applicability of state law within county.**

CHAPTER 10

OFFENSES--MISCELLANEOUS

State law reference--Crimes and offenses generally, Tit. 18.2, Code of Virginia.

Sec. 10-100 Assault; assault and battery.

A. It shall be unlawful for any person to commit a simple assault or an assault and battery upon any other person. Any person violating the provisions of this section shall be guilty of a class 1 misdemeanor.

B. In addition, if any person commits a battery against another knowing or having reason to know that such other person is a full-time or part-time teacher, principal, assistant principal, or guidance counselor of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he shall be guilty of a class 1 misdemeanor and the sentence of such person upon conviction shall include a sentence of 15 days in jail, two days of which shall be a mandatory minimum term of confinement. However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to Virginia Code § 18.2-308.1, the person shall serve a mandatory minimum sentence of six months.

C. As used herein, “simple assault” or “assault and battery” shall not be construed to include the use of, by any teacher, teacher aide, principal, assistant principal, guidance counselor, school security officer, school bus driver or school bus aide, while acting in the course and scope of his official capacity, any of the following:

1. incidental, minor or reasonable physical contact or other actions designed to maintain order and control;

2. reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property;
3. reasonable and necessary force to prevent a student from inflicting physical harm on himself;
4. reasonable and necessary force for self-defense or the defense of others; or
5. reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control.

In demonstrating whether a person was acting within the exceptions provided in this subsection, due deference shall be given to reasonable judgments that were made by a teacher, teacher aide, principal, assistant principal, guidance counselor, school security officer, school bus driver, or school bus aide at the time of the event.

(Code 1967, § 13-3; Code 1988, § 13-1; Ord. 98-A(1), 8-5-98)

State law reference--Similar provisions, Va. Code § 18.2-57.

Sec. 10-102 Damaging signs, markers, etc., on highways.

It shall be unlawful for a person to willfully or maliciously displace, remove, destroy or injure any milestone, guide sign or other highway sign or signal or any historical marker or any inscription thereon lawfully within a highway.

(Code 1967, § 16-1; Code 1988, § 13-6; Ord. 98-A(1), 8-5-98)

State law reference--Similar provisions, Va. Code § 33.1-345.

Sec. 10-103 Disorderly conduct in public places.

A. It shall be unlawful for any person who, with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. in any street, highway, public building, or while in or on a public conveyance, or public place, engages in conduct having a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct is directed; provided, however, such conduct shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this chapter; or

2. willfully, or being intoxicated whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts any funeral, memorial service, or meeting of the governing body of the county or a division or agency thereof, or of any school, literary society or place of religious worship, if the disruption (i) prevents or interferes with the orderly conduct of the funeral, memorial service, or meeting or (ii) has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed; provided, however, such conduct shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this chapter; or

3. willfully, or while intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts the operation of any school or activity conducted or sponsored by a school, if the disruption (i) prevents or interferes with the orderly conduct of the operation or activity or (ii) has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed.

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

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

(4-21-76; Code 1988, § 13-7; Ord. 98-A(1), 8-5-98)

State law reference--Authority of county to adopt, Va. Code § 18.2-415.

Sec. 10-104 Drinking alcoholic beverages or offering alcoholic beverages to another in public places; possession of open alcoholic beverage containers in public places.

A. It shall be unlawful for any person to take a drink of alcoholic beverages or offer a drink thereof to another person, whether accepted or not, in any public place. Any person violation this section shall be guilty of a class 4 misdemeanor.

B. It shall be unlawful for any person to possess an open or opened container, can, cup, glass or bottle containing an alcoholic beverage in any public park or playground, on county-owned property or on any public street or sidewalk adjoining a public street in the county. Any person violating this section shall be guilty of a class 4 misdemeanor.

C. Nothing in this section shall prevent any person from drinking alcoholic beverages or offering a drink thereof in any public place, or from possessing an open or opened container, as described above in paragraph (A), in any area for any purpose approved and licensed by the Virginia Alcoholic Beverage Control (“ABC”) Board pursuant to Virginia Code §§ 4.1-308 (B), (C) and (D). The types of ABC licenses referred to herein include, but are not limited to:

1. retail restaurant ABC licenses;
2. banquet-special event ABC licenses; and
3. private banquet ABC licenses.

D. As used herein, “alcoholic beverage” and “public place” shall have the same meanings and definitions set forth in Virginia Code § 4.1-100.

(Ord. 98-A(1), 8-5-98)

State law reference--Authority of county to adopt, Va. Code § 4.1-128(B); similar provisions, Va. Code § 4.1-308.

Sec. 10-105 Drinking or possessing alcoholic beverages in or on public school grounds.

It shall be unlawful for any person to possess or drink any alcoholic beverage in or upon the grounds of any public elementary or secondary school during school hours or school or student activities. In addition, no person shall drink and no organization shall serve any alcoholic beverage in or upon the grounds of any public elementary or secondary school after school hours or school or student activities, except for religious congregations using wine for sacramental purposes only. Any person violating this section shall be guilty of a class 2 misdemeanor.

(Ord. 98-A(1), 8-5-98)

State law reference--Authority of county to adopt, Va. Code § 4.1-128(B); similar provisions, Va. Code § 4.1-309.

Sec. 10-106 Profane swearing and intoxication in public.

It shall be unlawful for any person to profanely curse or swear in public, or to be intoxicated in public, whether such intoxication results from alcohol, narcotic drug or other intoxicant or drug of whatever nature. A law-enforcement officer may authorize the transportation, by police or otherwise, of public inebriates to a court-approved detoxification center in lieu of arrest; however, no person shall be involuntarily detained in such center. Any person who engages in such conduct shall be deemed guilty of a class 4 misdemeanor.

(Code 1967, § 13-9; 4-13-88; Code 1988, § 13-8; Ord. 98-A(1), 8-5-98)

State law reference--Similar provision, Va. Code § 18.2-388.

Sec. 10-107 Firearms--Discharging within residential districts.

A. It shall be unlawful for any person to discharge any firearm within the boundaries of any residential district within the county. The provisions of this section shall not apply to:

1. a law-enforcement officer, as defined by Virginia Code § 9.1-101, in the performance of his official duties, or an animal control officer, as defined by Virginia Code § 3.2-6555, in the performance of his official duties;

2. any person whose discharge of a firearm is justifiable or excusable at law in the protection of life or as otherwise permitted by law;

3. any person discharging a firearm or starter gun with a blank cartridge or other ammunition not resulting in the expulsion of a projectile or projectiles.

B. Any person violating this section shall be liable for a penalty of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000.00) for each such violation.

C. For purposes of this section, "residential district" shall mean any district described as Village Residential - VR, Residential R-1, Residential R-2, Residential R-4, Residential R-6, Residential R-10, Residential R-15, Neighborhood Model - NMD, Planned Unit Development - PUD or Planned Residential Development - PRD on the official zoning map of the county.

(9-19-74; 6-10-81; Code 1988, § 13-9; Ord. 98-A(1), 8-5-98)

State law reference--For state law as to authority of county to adopt this section, see Va. Code § 15.2-1209.

Sec. 10-109 Standing or walking with loaded firearm.

A. It shall be unlawful for any person to carry or have in his possession, for the purpose of hunting, while on any part of a public highway within the county a loaded firearm when such person is not authorized to hunt on the private property on both sides of the highway along which he is standing or walking.

B. Any person violating this section shall be liable to a fine not to exceed one hundred dollars (\$100.00) for each such violation.

C. All law-enforcement officers authorized to act as such within the county shall have the power to enforce this section, including but not limited to all duly appointed and acting game wardens.

D. "Loaded firearm," as used in this section, is defined as a firearm with ammunition within the action chamber, magazine or clip which is within or on the firearm. "Firearm" means any weapon that will or is designed to or may readily be converted to expel single or multiple projectiles by the action of an explosion of a combustible material; or the frame or receiver of any such weapon.

E. The provisions of this section shall not apply to persons carrying loaded firearms in moving vehicles or for purposes other than hunting, or to persons acting at the time in defense of persons or property.

(3-11-81; Ord. of 9-15-93; Code 1988, § 13-9.2; Ord. 98-A(1), 8-5-98)

State law reference--State law as to authority of county to adopt this section, Va. Code § 15.2-1209.

Sec. 10-110 Hunting; prohibited with firearms near highways generally.

It shall be unlawful for any person to be engaged in the hunting or attempting to hunt with a firearm of any game bird or game animal within one hundred (100) feet of any primary or secondary highway in the county. Any person violating the provisions of this section shall be guilty of a class 3 misdemeanor. For the purpose of this section, the term "hunt" shall not include the necessary crossing of highways for the bona fide purpose of going into or leaving a lawful hunting area.

(Code 1967, § 13-10; Code 1988, § 13-11; Ord. 98-A(1), 8-5-98)

State law reference--State law authorizing county prohibit hunting with firearms within one hundred yards of highways and defining the term "hunt," see Va. Code § 29.1-526.

Sec. 10-111 Shooting in or across road or in street.

No person shall discharge any firearm, crossbow or bow and arrow in or across any road or within the right-of-way thereof, or in a street of any town, whether the town is incorporated or not. Any person violating the provisions of this section shall be guilty of a class 4 misdemeanor. The provisions of this section shall not apply to firing ranges or shooting matches maintained, and supervised or approved, by law-enforcement officers and military personnel in performance of their lawful duties.

(Code 1967, § 13-21; Ord. of 5-4-94; Code 1988, § 13-18; Ord. 98-A(1), 8-5-98)

State law reference--For similar state law, see Va. Code § 18.2-286.

Sec. 10-115 Obstructing justice by threats or force.

A. If any person without just cause knowingly obstructs a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer, or animal control officer employed pursuant to Virginia Code § 3.2-6555 in the performance of his duties as such or fails or refuses without just cause to cease such obstruction when requested to do so by such judge, magistrate, justice, juror, attorney for the Commonwealth, witness, law-enforcement officer, or animal control officer, he shall be guilty of a class 1 misdemeanor.

B. If any person, by threats or force, knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer, or any animal control officer employed pursuant to Virginia Code § 3.2-6555 lawfully engaged in his duties as such, or to obstruct or impede the administration of justice in any court, he shall be guilty of a class 1 misdemeanor.

C. Any person who knowingly and willfully makes any materially false statement or representation to a law-enforcement officer or an animal control officer employed pursuant to Virginia Code § 3.2-6555 who is in the course of conducting an investigation of a crime by another is guilty of a class 1 misdemeanor.

(4-13-88; Code 1988, § 13-15; Ord. 98-A(1), 8-5-98)

State law reference--Similar provisions, Va. Code § 18.2-460.

Sec. 10-117 Peeping or spying into dwelling or enclosure.

A. No person shall unlawfully enter upon the property of another and secretly or furtively peep or attempt to so peep, into or through or spy through a window, door or other aperture of any building, structure or other enclosure of any nature occupied or intended for occupancy as a dwelling, whether or not such building, structure or enclosure is permanently situated or transportable and whether or not such occupancy is permanent or temporary, or to do the same, without just cause, upon property owned by him and leased or rented to another under circumstances that would violate the occupant's reasonable expectation of privacy.

B. No person shall use a peephole or other aperture to secretly or furtively peep, spy or attempt to peep or spy into a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth, bedroom or other location or enclosure for the purpose of viewing any nonconsenting person who is totally nude, clad in undergarments, or in a state of undress exposing the genitals, pubic area, buttocks or female breast and the circumstances are such that the person would otherwise have a reasonable expectation of privacy.

C. The provisions of this section shall not apply to a lawful criminal investigation or a correctional official or local or regional jail official conducting surveillance for security purposes or during an investigation of alleged misconduct involving a person committed to the Department of Corrections or to a local or regional jail.

D. As used in this section, "peephole" means any hole, crack or other similar opening through which a person can see.

E. A violation of this section is a class 1 misdemeanor.

(Code 1967, § 13-17; Code 1988, § 13-17; Ord. 98-A(1), 8-5-98)

State law reference--For similar state law, see Va. Code § 18.2-130.

Sec. 10-118 Repealed

Sec. 10-119 Trees, shrubs, etc.--Unlawful destruction, injury, etc.

It shall be unlawful for any person to pick, pull, pull up, tear, tear up, dig, dig up, cut, break, injure, burn or destroy, in whole or in part, any tree, shrub, vine, plant, flower or turf found being or growing upon the land of another, or upon any land reserved, set aside or maintained by the Commonwealth as a public park or as a refuge or sanctuary for wild animals, birds or fish, without having previously obtained the permission, in writing, of such other person or his agent or of the superintendent or custodian of such park, refuge or sanctuary to do so, unless the same is done under the personal direction of such owner or his agent, tenant or lessee or superintendent or custodian of such park, refuge or sanctuary. Any person violating the provisions of this section shall be guilty of a class 3 misdemeanor; provided, that the approval of the owner, his agent, tenant or lessee, or the superintendent or custodian of such park or sanctuary afterwards given in writing or in open court shall be a bar to further prosecution or suit.

(Code 1967, § 13-22; 4-13-88; Code 1988, § 13-20; Ord. 98-A(1), 8-5-98)

State law reference--For similar state law, Va. Code § 18.2-140.

Sec. 10-120 Trespass--After having been forbidden to do so.

If any person, without authority of law, goes upon or remains upon the lands, buildings or premises of another, or any portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted by such persons or by the holder of any easement or other right-of way authorized by the instrument creating such interest to post such signs on such lands, structures, premises or portion or area thereof at a place or places where it or they may be reasonably seen, or if any person, whether he is the owner, tenant or otherwise entitled to the use of such land, building or premises, goes upon, or remains upon such land, building or premises after having been prohibited from doing so by a court of competent jurisdiction by an order issued pursuant to Virginia Code §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.2 through 16.1-278.6, 16.1-278.8, 16.1-278.14, 16.1-278.15, 16.1-279.1, 19.2-152.8, 19.2-152.9 or 19.2-152.10 or an ex parte order issued pursuant to Virginia Code § 20-103, and after having been served with such order, he shall be guilty of a class 1 misdemeanor. This section shall not be construed to affect in any way the provisions of Virginia Code §§ 18.2-132 through 18.2-136.

(Code 1967, § 13-23; 4-13-88; Code 1988, § 13-21; Ord. 98-A(1), 8-5-98)

State law references--For similar state law, Va. Code § 18.2-119; as to authority of county to prevent trespass, Va. Code § 15.2-1218.

Sec. 10-121 Trespass--At night, upon church or school property.

A. It shall be unlawful for any person who, without the consent of some person authorized to give such consent, goes or enters upon, in the nighttime, the premises or property of any church or upon any school property for any purpose other than to attend a meeting or service held or conducted in such church or school property. Any person violating the provisions of this section shall be guilty of a class 3 misdemeanor.

B. It shall be unlawful for any person, whether or not a church member or student, to enter upon or remain upon any church or school property in violation of (i) any direction to vacate the property by a person authorized to give such direction or (ii) any posted notice which contains such information, posted at a place where it reasonably may be seen. Each time such person enters upon or remains on the posted premises or after such direction that person refuses to vacate such property, it shall constitute a separate offense. Any person violating the provisions of this section shall be guilty of a class 1 misdemeanor.

C. For purposes of this section: (i) "school property" includes a school bus as defined in Virginia Code § 46.2-100 and (ii) "church" means any place of worship and includes any educational building or community center owned or leased by a church.

(Code 1967, § 13-24; Code 1988 § 13-22; Ord. 98-A(1), 8-5-98)

State law reference--Similar provisions, Va. Code § 18.2-128.

Sec. 10-124 Urinating or Defecating in Public.

A. It shall be unlawful for any person to urinate or defecate within public view upon any street, highway, sidewalk, ground, public place or place where others are present, except in a bathroom, restroom or other facility designed for such purposes.

B. Any person violating the provisions of this section shall be guilty of a class 4 misdemeanor.

State Law References—Authority to enact section, Va. Code § 15.2-1200.

I, Ella W. Jordan, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of ____ to ____, as recorded below, at a regular meeting held on _____.

Clerk, Board of County Supervisors

	Aye	Nay
Mr. Boyd	_____	_____
Mr. Dorrier	_____	_____
Ms. Mallek	_____	_____
Mr. Rooker	_____	_____
Mr. Snow	_____	_____
Mr. Thomas	_____	_____