

PEACE AND GOOD ORDER

Chapter 71

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[HISTORY: Adopted by the Council of the Town of Middleburg. Art. I, as Ch. 2, Art. I, Secs. 2, 3, 4, 5, 6, 8, and 9 of the 1961 Code; Art. II, 7-10-1969; Art. III, 7-10-1975. Amendments noted where applicable.]

GENERAL REFERENCES

Gambling - See Ch. 48.

Noise - See Ch. 63.

Obscenity - See Ch. 68.

ARTICLE I**Miscellaneous Provisions**

[Adopted as Ch. 2, Art. I, Secs. 2, 3, 4, 5, 6, 8, and 9, of the 1961 Code]

§ 71-1. Assault and Battery.

Any person who commits an assault or battery upon another shall be fined not less than five dollars (\$5.) nor more than one hundred dollars (\$100.) or confined in jail for a period not to exceed six (6) months.

§ 71-2. Trespassing. [Amended 3/14/02]

- A. If any person shall without authority of law go upon or remain upon the lands, buildings or premises of another, or any part, 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 on such lands, buildings, premises or part, portions or area thereof at a place or places where it or they may be reasonably seen, he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars (\$1,000.) or by confinement in jail not exceeding twelve (12) months, or by both such fine and imprisonment.
- B. The owner of real property, by writing filed with the Middleburg Police Department may designate the Police Department 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 of the owner as specified in the designation.

§ 71-3. Public intoxication. [Amended 7-11-68]

Any person who shall be found drunk upon the street or in any place in public view within the town shall be taken into custody until sober and shall be fined not less than twenty-five dollars (\$25.) nor more than one hundred dollars (\$100.). Any person

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previously convicted under this section within the preceding year, upon conviction of a subsequent offense, shall be fined not less than twenty-five dollars (\$25.) nor more than one hundred dollars (\$100.) and/or confined in jail for a period not to exceed six (6) months.

§ 71-4. Indecent conduct or exposure.

Any person who shall be guilty of any indecent act, conduct or exposure of person in a place exposed to public view within the town shall pay a fine of not less than one dollar (\$1.) nor more than one hundred dollars (\$100.) for each offense.

§ 71-5. Peeping through windows.

If any person shall unlawfully enter upon the property of another in the nighttime or secretly or furtively peep through or attempt to so peep into, through or spy through a window, door or other aperture of any building, structure or enclosure of any nature occupied or intended for occupation as a dwelling, whether or not such building, structure or enclosure be permanently situated or transportable and whether or not such occupancy be permanent or temporary, such person shall be guilty of a misdemeanor.

§ 71-6. Mendicants and vagrants.

- A. It shall be unlawful for mendicants or vagrants to frequent any depot, store, theater, street, alley, sidewalk, park or other place publicly frequented in the town.
- B. Any person found sleeping in any such place and who has no established domicile or residence shall be considered to be a vagrant, and the offense shall be punished as a misdemeanor.

§ 71-7. Interfering with law officers.

It shall be unlawful for any person to intimidate or interfere with any officer of the law or to attempt to intimidate or interfere with any officer of the law in the performance of his duties. Each violation of this section shall be punished by a fine not exceeding five hundred dollars (\$500.) or confinement in jail not exceeding twelve (12) months or both.

ARTICLE II
Disorderly Behavior
[Adopted 7-10-69]

§ 71-8. Public Conveyance.

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If any person, whether a passenger or not, shall, while in or on any public conveyance in the Town of Middleburg, Virginia, behave in a riotous or disorderly manner, he shall be guilty of a misdemeanor.

§ 71-9. Streets and other public places.

If any person behaves in a riotous or disorderly manner in any street, highway, public building or other public place other than those mentioned in the preceding section or causes any running through it, climbing through windows or upon the seats, failing to move to another seat when lawfully requested to so move by the operator or otherwise annoying passengers or employees therein, he shall be guilty of a misdemeanor.

§ 71-9.1. Skateboarding, roller blading, roller skating or bicycling prohibited on public sidewalks. [Added 8-10-95.]

It shall be unlawful for any person to operate a skateboard, roller skates, roller blades, or a bicycle on the public sidewalks.

§ 71-10. Violations and penalties.

Anyone violating this Article shall be punished by a fine not exceeding one thousand dollars (\$1,000.) or confinement in jail not exceeding twelve (12) months, in the discretion of the jury or of the court trying the case without a jury.

**ARTICLE III
Public Conduct
[Adopted 7-10-1975]**

§ 71-11. Definitions.

As used in the Article, the following terms shall have the meanings indicated:

LOITER - To stand around or remain, or to park or remain parked in a motor vehicle at a public place or place open to the public and to engage in any conduct prohibited under this Article. "Loiter" also means to collect, gather, congregate, to be a member of a group or a crowd or people who are gathered together in any public place or place open to the public and to engage in any conduct prohibited under this Article.

PLACE OPEN TO THE PUBLIC - Any place open to the public or any place to which the public is invited, and in, on or around any privately owned place of business, private parking lot or private institution, including places of worship, cemetery or any place of amusement and entertainment, whether or not a charge of admission or entry thereto is

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made. It includes the elevator, lobby, halls, corridors and areas open to the public of any store, office or apartment building.

PUBLIC PLACE - Any public street, road or highway, alley, lane, sidewalk, crosswalk or other public way, or any public resort, place of amusement, park, playground, public building or grounds appurtenant thereto, school building or school grounds, public parking lot or any vacant lot.

§ 71-12. Loitering.

A. Prohibited conduct.

- (1) It shall be unlawful for any person to loiter at, on or in a public place or place open to the public in such manner:
 - (a) To interfere, impede or hinder the free passage of pedestrian or vehicular traffic.
 - (b) To interfere with, obstruct, harass, curse or do physical harm to another member or members of the public.
 - (c) That by words, acts or other conduct it is clear that there is a reasonable likelihood to result in a breach of the peace or disorderly conduct.
- (2) It shall be unlawful for any person to loiter, as defined in §§ 71-11, at a public place or place open to the public and to fail to obey the direction of a uniformed police officer or the direction of a properly identified police officer or the direction of a properly identified police officer not in uniform, to move on, when not to obey such direction shall endanger the public peace.

B. Identification. It shall be unlawful for any person, at a public place or place open to the public to refuse to identify himself by name and address at the request of the uniformed police officer or of a properly identified police officer not in uniform if the surrounding circumstances are such as to indicate to a reasonable man that the public safety requires such identification.

C. Lawful assembly. Nothing herein shall be construed to prohibit orderly picketing or other lawful assembly.

D. Violations.

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- (1) Any police officer witnessing a violation of this section may, as an alternative to making an arrest, issue to the violator a notice of violation, which notice, in addition to such factors as shall be required by such form of notice as may be approved by the Chief of Police, shall specify the violation with which the violator is charged, and shall set forth the hour, date and location that such violator is summoned to appear before the Judge of the General District Court to answer such charge.
- (2) No person shall be charged with a violation of this section unless and until the arresting officer has first warned the person of the violation and such person has failed or refused to stop such violation.

§ 71-13. Obstruction of free passage; riot or unlawful assembly.

- A. Obstructing free passage of others. Any person or persons who in any public place or on any private property open to the public unreasonably or unnecessarily obstructs the free passage of other persons to and from or within such public place or private property and who shall fail or refuse to cease such obstruction or move on when requested to do so by the owner or lessee or agent or employee of such owner or lessee or by a duly authorized law enforcement officer shall be guilty of a misdemeanor. Nothing in this section shall be construed to prohibit lawful picketing.
- B. What constitutes a riot or unlawful assembly. As used in this section:
 - (1) Any unlawful use, by three (3) or more persons acting together, of force or violence which seriously jeopardize the public safety, peace or public order is a "riot".
 - (2) Whenever, three (3) or more persons assembled share the common intent to advance some lawful or unlawful purpose by the commission of an act or acts of unlawful force or violence likely seriously to jeopardize public safety, peace or ordinary courage with well-grounded fear of serious and immediate breaches of public safety, peace or order; then such assembly is an "unlawful assembly".
- C. Participating in riot. Every person convicted of participating in any riot shall be punished as follows:
 - (1) If such person carried, at the time of such riot, any firearm or other deadly or dangerous weapon, by imprisonment in the penitentiary for not less than one (1) year nor more than ten (10) years; or in the discretion of the jury or Judge trying the

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case without a jury, by confinement in jail not to exceed one (1) year or by fine not to exceed one thousand dollars (\$1,000.), either or both.

(2) In all other cases, in the same manner as for a misdemeanor.

- D. Participating in unlawful assembly. Every person who participates in any unlawful assembly shall be guilty of a misdemeanor.
- E. Remaining at place of riot or unlawful assembly after warning to disperse. Every person, except public officers and persons assisting them, remaining present at the place of any riot or unlawful assembly after having been lawfully warned to disperse shall be guilty of a misdemeanor.
- F. Conspiracy. Any person who conspired with others to cause or produce a riot, or directed, incited or solicited other persons who participated in the riot to acts of force or violence, shall be punished by imprisonment in the penitentiary for not less than one (1) nor more than ten (10) years; or in the discretion of the jury or Judge trying the case without a jury, by confinement in jail not to exceed one (1) year or by fine not to exceed one thousand dollars (\$1,000.), either or both.
- G. Dispersal of unlawful or riotous assemblies. When any number of persons whether armed or not, unlawfully or riotously are assembled, the police officials of the municipality or any of them shall go among the persons assembled or as near to them as possible and command them in the name of the state immediately to disperse. If, upon command, the persons unlawfully assembled do not disperse immediately, the officer may use such force as is necessary to either disperse them or to arrest those who fail or refuse to disperse or both. To this end the law enforcement officer may seek and use the assistance and services of private citizens. Any private citizen, who by request seeks to or assists the law enforcement officer or officers in dispersing persons unlawfully or riotously assembled, shall be immune from civil or criminal liability for using such reasonable force as may be necessary to arrest or disperse those persons who fail to disperse as ordered.
- H. Duty of officers dispersing rioters; killing or injuring rioters. Every endeavor must be used, both by the officers and by the officer commanding any other force, which can be made consistently with the preservation of life, to induce or force the rioters to disperse before an attack is made upon them by which their lives may be endangered. If any of the persons so riotously or unlawfully assembled shall be killed, maimed or otherwise injured, in consequence of resisting the officer or others in dispersing and apprehending them or in attempting to disperse and apprehend them, such officers and others acting by their authority, or the authority of any of them shall be held guiltless, provided that such killing, maiming or injury shall take place in

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consequence of the use of necessary and proper means to disperse or apprehend any such persons so riotously or unlawfully assembled.

§ 71-14. Abusive language. [Amended 3-8-1990]

If any person within the municipality shall, in the presence or hearing of another, curse or abuse such person or use any violent, abusive language to such person concerning himself or any of his female relations or otherwise use such language, under circumstances reasonably calculated to provoke a breach of the peace, he shall be guilty of a misdemeanor, and on conviction fined in any sum not less than twenty dollars (\$20.) nor more than five hundred dollars (\$500.).

§ 71-15. Violations and penalties. [Amended 3-8-1990]

Anyone violating § 71.12 shall be punished by a fine not exceeding one thousand dollars (\$1,000.) or confinement in jail not exceeding twelve (12) months, in the discretion of the jury or of the court trying the case without a jury.

Article IV [Added 11/13/03]

Curfew for Minors; Halloween Trick-or-Treat Visitations

§71-16. Purpose. [Added 11/13/03]

The purpose of this ordinance is to: (i) promote the general welfare and protect the general public through the reduction of juvenile violence and crime within the Town; (ii) promote the safety and well-being of the Town's youngest citizens, persons under the age of eighteen (18) whose inexperience renders them particularly vulnerable to becoming participants in unlawful activities, particularly unlawful drug activities, and to being victimized by older perpetrators of crime; and (iii) foster and strengthen parental responsibility for children.¹

§71-17. Definitions. [Added 11/13/03]

As used in this ordinance, the following words and phrases shall have the meanings ascribed to them below:

¹ *Va. Code* § 15.2-926. Prohibiting loitering; curfew for minors; penalty.

Any locality may by ordinance prohibit loitering in, upon or around any public place, whether on public or private property. Any locality may by ordinance also prohibit minors who are not attended by their parents from frequenting or being in public places, whether on public or private property, at such times, between 10:00 p.m. and 6:00 a.m., as the governing body deems proper.

A violation of such ordinances by a minor shall be disposed of as provided in §§ 16.1-278.4 and 16.1-278.5.

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Curfew hours refers to the hours of 11:00 p.m. through 6:00 a.m. Monday through Friday and 11:00 p.m. through 6:00 a.m. on Saturday and Sunday.

Emergency refers to unforeseen circumstances, or the status or condition resulting therefrom, requiring immediate action to safeguard life, limb or property. The term includes, but is not limited to, fires, natural disasters, automobile accidents, or other similar circumstances.

Establishment refers to any privately-owned place of business within the Town operated for a profit, to which the public is invited, including, but not limited to, any place of amusement or entertainment. With respect to such establishment, the term “operator” shall mean any person, and any firm, association, partnership (and the members or partners thereof) and/or any corporation (and the officers thereof) conducting or managing that establishment.

Minor refers to any person under eighteen (18) years of age who has not been emancipated by court order entered pursuant to Section 16.1-333 of the Code of Virginia (1950) as amended.

Officer refers to a police or other law enforcement officer charged with the duty of enforcing the laws of the Commonwealth of Virginia and/or the ordinances of the Town of Middleburg.

Parent refers to:

- (i) A person who is a minor’s biological or adoptive parent and who has legal custody of a minor (including either parent, if custody is shared under a court order or agreement);
- (ii) A person who is the biological or adoptive parent with whom a minor regularly resides;
- (iii) A person judicially appointed as a legal guardian of the minor; and/or
- (iv) A person eighteen (18) years of age or older standing in loco parentis to a minor (as indicated by the authorization of an individual listed in subparts (i), (ii) and (iii) of this definition above, for the person to assume the care or physical custody of the minor, or as indicated by any other circumstances).

Person refers to an individual, not to any association, corporation, or any other legal entity.

Public place refers to any place to which the public or a substantial group of the public has access, including, but not limited to: streets, highways, roads, sidewalks, alleys,

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avenues, parks, and/or the common areas of schools, hospitals, apartment houses, office buildings, transportation facilities and shops.

Remain refers to the following actions;

- (i) To linger or stay at or upon a place; and/or
- (ii) To fail to leave a place when requested to do so by an officer or by the owner, operator or other person in control of that place.

Temporary care facility refers to a non-locked, non-restrictive shelter at which minors may wait, under visual supervision, to be retrieved by a parent. No minors waiting in such facility shall be handcuffed an/or secured (by handcuffs or otherwise) to any stationary object.

§71-18. Prohibited conduct by a minor. [Added 11/13/03]

It shall be unlawful for a minor, during curfew hours, to remain in or upon any public place within the Town, to remain in any motor vehicle operating or parked within the Town, or to remain in or upon the premises of any establishment within the Town unless:

- (a) The minor is accompanied by a parent; or
- (b) The minor is involved in an emergency; or
- (c) The minor is engaged in an employment activity, or is going to or returning home from such activity, without detour or stop; or
- (d) The minor is on the sidewalk directly abutting a place where he or she resides with a parent; or
- (e) The minor is attending an activity sponsored by a school, religious or civic organization, by a public organization or agency, or by another similar organization or agency, which activity is supervised by adults, and/or the minor is going to or returning from such activity without detour or stop; or
- (f) The minor is on an errand at the direction of a parent, and the minor has in his or her possession a writing signed by the parent containing the following information: the name, signature, address and telephone number of the parent authorizing the errand, the telephone number where the parent may be reached during the errand, the name of the minor, and a brief description of the errand, the minor's destination(s) and the hours the minor is authorized to be engaged in the errand; or
- (g) The minor is involved in interstate travel through, or beginning or terminating in, the Town; or

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- (h) The minor is exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly.

§71-19. Other prohibited conduct. [Added 11/13/03]

The following conduct is prohibited and shall be unlawful:

- (a) For a minor's parent to knowingly permit, allow or encourage such minor to violate the provisions of section 71-18.
- (b) For a person who is the owner or operator of any motor vehicle to knowingly permit, allow or encourage a violation of section 71-18.
- (c) For the operator of any establishment, or for any person who is an employee thereof, to knowingly permit, allow or encourage a minor to remain upon the premises of the establishment during curfew hours. It shall be a defense to prosecution under this subsection that the operator or employee of an establishment promptly notified an officer that a minor was present at the establishment during curfew hours and refused to leave.
- (d) For any person (including any minor) to give a false name, address, or telephone number to any officer investigating a possible violation of this ordinance.

§71-20. Enforcement. [Added 11/13/03]

- (a) *Violation by minors.* Before taking any enforcement action hereunder, an officer shall make an immediate investigation for the purpose of ascertaining whether or not the presence of a minor in a public place, motor vehicle and/or establishment within the Town during curfew hours is in violation of section 71-18.
 - (1) If such investigation reveals that the presence of such minor is in violation of section 71-18, then the officer may charge the minor with a violation of this ordinance and may issue a summons requiring the minor to appear in court. (Ref. Va. Code section 16.1-260(H)(1)); and
 - (2) As soon as practicable, the officer shall:
 - (i) Release the minor to his or her parent(s) or other responsible person willing to assume supervision of the minor until expiration of curfew hours; or

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- (ii) Place the minor in a temporary care facility for a period not to exceed the remainder of the curfew hours, so that his or her parent(s) may retrieve the minor; or
 - (iii) If a minor refuses to give an officer his or her name and address, refuses to give the name and address of his or her parent(s), or if no parent can be located prior to the end of the applicable curfew hours, or if located, no parent appears to accept custody of the minor, the minor may be taken to a nonsecure crisis center or juvenile shelter and/or may be taken to a judge or intake officer of the juvenile court to be dealt with in the manner and pursuant to such procedures as required by law. (Ref. Va. Code sections 16.1-260(H)(1); 16.1-278.6; 16.1-241(A)(1)).
- (b) *Violation by others.* If an investigation by an officer reveals that a person has violated the provisions of section 71-19 the officer may charge the person with a violation and shall issue a summons directing the person to appear in court.
- (c) Each violation of this ordinance shall constitute a Class 4 misdemeanor.

§71-21. Trick or treat visitations; Halloween curfew. [Added 11/13/03]

- (a) It shall be unlawful for any person to appear on or in the streets, highways, public buildings, private homes or public places in the municipality to make trick or treat visitations. This subsection shall not apply to children 12 years of age and under on Halloween night.
- (b) A special curfew hour of 9:00 p.m. on Halloween evening is hereby established for the trick or treat visitations permitted by subsection (a) above.
- (c) Any person violating the provisions of this section shall, in the discretion of the court trying the case, be subject to a fine of not less than \$1.00 nor more than \$10.00, or, if such person is under 14 years of age, such other punishment as the juvenile court shall deem proper.