

CODE OF ORDINANCES
TOWN OF
CHESAPEAKE, WEST VIRGINIA

Published in 2026 by Order of the Mayor and Town Council



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PREFACE

This Code constitutes a recodification of the general and permanent ordinances of the Town of Chesapeake, West Virginia.

Source materials used in the preparation of the Code were the 2001 Code, as supplemented through October 1, 2001, and ordinances subsequently adopted by the Town Council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 2001 Code, as supplemented, and any subsequent ordinance included herein.

Acknowledgments

This publication was under the direct supervision of Roger D. Merriam, Senior Code Attorney, and Ilana Hoven, Editor, of CivicPlus, LLC, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Melissa J. Hill, Mayor, and Mr. James V. Kelsh Esq., and Ms. Natalie Thomas Esq., Town Attorneys, for their cooperation and assistance during the progress of the work on this publication. It is hoped that their efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the Town readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the Town's affairs.

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CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

- Sec. 1-1. How Code designated and cited.
- Sec. 1-2. Definitions and rules of interpretation.
- Sec. 1-3. Portions of Code not official; Code references.
- Sec. 1-4. Effect of repeal of ordinances.
- Sec. 1-5. Amendments to Code; effect of new ordinances; amendatory language.
- Sec. 1-6. Supplementation of Code.
- Sec. 1-7. General penalty; continuing violations.
- Sec. 1-8. Severability.
- Sec. 1-9. Prior offenses, penalties, contracts, or rights not affected by adoption of Code.
- Sec. 1-10. Provisions deemed continuation of existing ordinances.
- Sec. 1-11. Ordinances not affected by adoption of Code.

Sec. 1-1. How Code designated and cited.

(a) The provisions embraced in this and the following chapters and sections shall constitute and be designated "Code of Ordinances, Town of Chesapeake, West Virginia," and may be so cited. This Code may also be cited as the "Chesapeake Code."

(b) All references to the 2001 Code, or prior Codes, or ordinances in or on all forms, notices, and signs promulgated by the Town shall be deemed to reference successor provisions in this Code.

(Code 2001, § 101.01(a))

Sec. 1-2. Definitions and rules of interpretation.

In the construction of this Code and of all ordinances, the following definitions and rules of construction shall be observed, unless the context requires otherwise:

Generally.

- (1) In the interpretation and application of any provisions of this Code, they shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare.
- (2) Where any provision of this Code imposes greater restrictions upon the subject matter than the general provisions imposed by another provision of this Code, the provision imposing the greater restriction or regulation shall be deemed to be controlling.
- (3) When provisions conflict, the specific shall prevail over the general.
- (4) All provisions shall be liberally construed so that the intent of the Town may be effectuated.
- (5) Words and phrases shall be construed according to the common and approved usage of the language, but technical words, technical phrases and words and phrases that have acquired peculiar and appropriate meanings in law shall be construed according to such meanings.
- (6) Grammatical errors shall not vitiate, and a transposition of words and clauses may be resorted to when the sentence or clause is without meaning as it stands.

Code. The term "Code" means the Code of Ordinances, Town of Chesapeake, West Virginia as designated in Section 1-1. The Code does not consist of appendices, tables that are not a part of a chapter of this Code, or indexes.

Computation of time. When a proceeding or event is directed to take place or any act to be done on any particular day of the month or within any period of time prescribed or allowed, falls on a Saturday, Sunday, or legal holiday, the next day that is not a Saturday, Sunday, or legal holiday shall be deemed to be the one intended.

Corporate limits. The term "corporate limits" means the corporate limits of the Town.

County. The term "County" means Kanawha County, West Virginia.

Delegation of authority. Whenever a provision requires the head of a Town department or a town official to do some act or perform some function, it shall be construed to authorize the head of such department or the official to designate, delegate and authorize subordinates to do the required act or perform the required function.

Gender. Words of gender include all genders.

Joint authority. A joint authority given to any number of persons or officers may be executed by a majority of them.

May. The term "may" is to be construed as permissive.

Month. The term "month" means a calendar month.

Names of officers, departments, etc. References to officers, departments, boards, commissions, or employees are to Town officers, town departments, town boards, town commissions, and town employees.

Number. The singular or plural number shall each include the other.

Oath. The term "oath" includes an affirmation.

Owner. The term "owner," when applied to property, includes any part owner, joint owner or tenant in common of the whole or part of such property.

Person. The term "person" extends and is applied to firms, partnerships, associations, organizations, corporations, and bodies politic, any combination thereof, or any other legal entity, as well as to natural persons.

Preceding, following. The terms "preceding" and "following" mean generally next before and next after.

Premises. The term "premises," as applied to property, includes land and building.

Property. The term "property" includes real and personal property.

Public place. The term "public place" includes any street, sidewalk, park, cemetery, school yard, body of water or watercourse, public conveyance or any other place for the sale of merchandise, public accommodation or amusement.

Shall. The term "shall" is to be construed as mandatory.

State. The term "State" means the State of West Virginia

State statutes, state acts. All references to the State statutes are to such statutes as now or hereafter amended. Any reference to a State act by title is a reference to such act as now or hereafter amended.

Street. The term "street" includes alleys, avenues, boulevards, lanes, roads, highways, viaducts and all other public thoroughfares within the Town.

Tenant or occupant The term "tenant" or "occupant," as applied to premises, includes any person holding a written or oral lease, or who actually occupies the whole or any part of such premises alone or with others.

Town. The term "Town" means the Town of Chesapeake, West Virginia.

Town Council or Council. The term "Town Council" or "Council" means the Town Council of the Town.

Written or in writing. The term "written" or "in writing" includes any representation of words, letters or figures, whether by printing, engraving, writing or otherwise.

Year. The term "year" means a calendar year.
(Code 2001, §§ 101.02, 101.03, 101.06)

Sec. 1-3. Portions of Code not official; Code references.

(a) The following, including when found in subsequent amendments and reenactments, shall have no legal effect:

- (1) Section titles;
- (2) Any or all of the following when they appear in this Code after sections, subsections, or paragraphs, or in footnote form:
 - a. Source notes.
 - b. Editor's notes.
 - c. Cross references.
 - d. State law references.

(b) All references to chapters, articles, divisions, subdivisions or sections are to chapters, articles, divisions, subdivisions or sections of this Code, unless otherwise specified.
(Code 2001, § 101.01(b))

Sec. 1-4. Effect of repeal of ordinances.

(a) Unless specifically provided otherwise, the repeal of an ordinance does not revive any previously repealed ordinance.

(b) The repeal or amendment of an ordinance does not affect any punishment or penalty incurred before the repeal took effect, nor does such repeal or amendment affect any suit, prosecution or proceeding pending at the time of the amendment or repeal.
(Code 2001, § 101.04)

Sec. 1-5. Amendments to Code; effect of new ordinances; amendatory language.

(a) All ordinances passed subsequent to this Code that amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion in this Code. Repealed chapters, sections and subsections or any part thereof, by subsequent ordinances, may be excluded from the Code by omission from

reprinted pages affected thereby. The subsequent ordinances as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of these subsequent ordinances until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new Code.

(b) Amendments to any of the provisions of this Code may be made by amending those provisions by specific reference to the section number of this Code in the following language: "Section ____ of the Code of Ordinances, Town of Chesapeake, West Virginia, is hereby amended to read as follows:" The new provisions may then be set out in full as desired.

(c) If a new section not heretofore existing in the Code is to be added, the following language may be used: "The Code of Ordinances, Town of Chesapeake, West Virginia, is hereby amended by adding a section (or article or chapter) to be numbered ____ which section reads as follows:" The new section may then be set out in full as desired.

(d) All sections, articles, chapters or provisions desired to be repealed should be specifically repealed by section, article or chapter number, as the case may be, or by setting them out at length in the repealing ordinance.

Sec. 1-6. Supplementation of Code.

(a) By contract or by Town personnel, supplements to this Code shall be prepared whenever authorized or directed by the Town Council. A supplement to the Code shall include all substantive, permanent and general parts of ordinances passed by the Town Council during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier (meaning the person authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate subdivisions.
- (2) Provide appropriate section titles, headings and titles for sections and other portions of the Code printed in the supplement, and make changes in such section titles, headings and titles.

- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers.
- (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections ____ to ____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code).
- (5) Make other nonsubstantive changes necessary to preserve the original meanings of ordinance sections inserted into the Code.

Sec. 1-7. General penalty; continuing violations.

(a) In this section, the term "violation of this Code" means:

- (1) Doing an act that is prohibited or made or declared to be an unlawful act, an offense, or a violation of this Code by ordinance or by rule or regulation authorized by ordinance;
- (2) Failure to perform an act that is required to be performed by ordinance, rule, or regulation authorized by ordinance; or
- (3) Failure to perform an act if the failure is prohibited or declared a violation of this Code, an offense, or unlawful by ordinance, rule, or regulation authorized by ordinance.

(b) The term "violation of this Code" does not include the failure of a Town officer or town employee to perform an official duty, unless it is provided that failure to perform the duty is to be punished as provided in this section or it is clear from the context of this Code that it is the intent of the town to impose the penalty provided for in this section upon the town officer or town employee.

(c) Except as otherwise provided, a person convicted of a violation of this Code shall be punished by a fine not to exceed \$500.00, imprisonment for a term not to exceed 30 days, or both such fine and imprisonment, except that the fine for a violation of the Code that is substantially similar to a State statute shall be the fine provided by state law for violations of the statute.

(d) Except as otherwise provided:

- (1) With respect to violations that are continuous with respect to time, each day that the violation continues is a separate offense.
- (2) As to other violations, each act is a separate offense.

(e) Violations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief and by such other means as are provided by law.

(f) The imposition of a penalty does not prohibit equitable relief.

(g) The imposition of a penalty does not prohibit revocation or suspension of a license, permit, or franchise or the imposition of other administrative sanctions.
(Code 2001, § 101.99)

Sec. 1-8. Severability.

The sections, subsections, paragraphs, sentences, clauses, and phrases of this Code are severable and if any phrase, clause, sentence, paragraph, subsection, or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court or agency of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections, and sections of this Code.
(Code 2001, § 101.08)

Sec. 1-9. Prior offenses, penalties, contracts, or rights not affected by adoption of Code.

(a) Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code.

(b) The adoption of this Code shall not be interpreted as authorizing or permitting any use or the continuance of any use of a structure or premises in violation of any ordinance in effect on the date of adoption of this Code.

Sec. 1-10. Provisions deemed continuation of existing ordinances.

The provisions of this Code, insofar as they are substantially the same as legislation previously adopted by the Town relating to the same subject matter, shall be construed as restatement and continuation thereof and not as new enactments.

Sec. 1-11. Ordinances not affected by adoption of Code.

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following:

- (1) Any ordinance describing or altering the boundaries of the Town.
- (2) Administrative ordinances not in conflict or inconsistent with the provisions of this Code.
- (3) Any appropriation or budget ordinance.
- (4) Any ordinance promising or guaranteeing the payment of money for the Town or authorizing the issuance of any bonds of the town or any evidence of the town's indebtedness.
- (5) Any contract, agreement, or obligation assumed by the Town.

- (6) Any ordinance or resolution establishing or fixing the salaries, retirement and pension plans, benefits, personnel policies, and/or administrative procedures for Town officers or employees not otherwise enumerated in this Code.
- (7) Any right or franchise granted by the Town.
- (8) Any ordinance providing for local improvements and assessing taxes therefor.
- (9) Any ordinance dedicating, naming, establishing, locating, relocating, opening, widening, paving, etc., any street or public way.
- (10) Any ordinance establishing or prescribing street grades.
- (11) Any ordinance dedicating or accepting any subdivision plat.
- (12) Any ordinance levying or imposing taxes not included in this Code.
- (13) Any ordinance or regulation prescribing traffic regulations for specific locations, not in conflict or inconsistent with this Code.
- (14) Any other ordinance or resolution, or part thereof, which is not of a general and permanent nature; or which is referred to elsewhere in this Code as continuing in effect.
- (15) Any ordinance that is temporary, although general in effect.
- (16) Any ordinance that is special, although permanent in effect.
- (17) Any ordinance the purpose of which has been accomplished.

Chapter 2

ADMINISTRATION

Article I. In General

- Sec. 2-1. Annexation.
- Sec. 2-2. Town seal.
- Secs. 2-3—2-22. Reserved.

Article II. Town Council

- Sec. 2-23. Meetings.
- Sec. 2-24. Reading of journal.
- Sec. 2-25. Sergeant-at-arms.
- Sec. 2-26. Temporary presiding officer; compelling attendance of absent members.
- Sec. 2-27. Standing committees.
- Sec. 2-28. Mayor and Recorder may vote in Council; tie vote.
- Sec. 2-29. Robert's Rules of Order.
- Sec. 2-30. Recorder.
- Sec. 2-31. Authentication of records.
- Sec. 2-32. Motions and resolutions.
- Sec. 2-33. Demand of previous question.
- Sec. 2-34. Rules of debate.
- Sec. 2-35. Control of rules.
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Article III. Boards and Commissions

Division 1. Generally

- Secs. 2-63—2-82. Reserved.

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- Sec. 2-83. Creation; members; term; vacancies.
- Sec. 2-84. Town officials not eligible.
- Sec. 2-85. Officers of Board.
- Sec. 2-86. Compensation; expenses.
- Sec. 2-87. Supervisory powers by Board.
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- Secs. 2-89—2-119. Reserved.

Article IV. Town Protection Service Fee

- Sec. 2-120. Definitions.
- Sec. 2-121. Establishment and assessment of the protection service fee.
- Sec. 2-122. Payment.

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- Sec. 2-123. Continuation, maintenance and improvement of refuse, fire and police service.
- Sec. 2-124. Legislative intent.
- Sec. 2-125. Use of funds.
- Sec. 2-126. Violation for refusal to pay.
- Sec. 2-127. Penalty.

ARTICLE I. IN GENERAL**Sec. 2-1. Annexation.**

Unincorporated territory may be annexed to and become part of the Town contiguous thereto in accordance with the provisions of W. Va. Code, ch. 8, art. 6.
(Code 2001, § 103.01; Ord. No. 93-1, 5-3-1993)

Sec. 2-2. Town seal.

The seal of the Town consists of an outer border containing at the top thereof the words "Town of Chesapeake" and at the bottom thereof the words "West Virginia." In the center of the seal appears the wording "Corporate Seal" with a star between two dashes.
(Code 1963, § 1-7-1; Code 2001, § 107.01)

Secs. 2-3—2-22. Reserved.**ARTICLE II. TOWN COUNCIL****Sec. 2-23. Meetings.**

The Council shall meet in regular public session at the Council Chamber in the Town Hall at 7:00 p.m. on the first Monday in each month, or at any other time which may be fixed by a proper ordinance of the council. Special meetings may be called by the Mayor, or if the mayor is absent from the town, by the Recorder or by a petition signed by not less than three members of the Council or by any method prescribed by any ordinance hereinafter adopted.
(Code 1963, § 1-11-1; Code 2001, § 111.01)

Sec. 2-24. Reading of journal.

The Mayor or President pro tem of the Council, as the case may be, having assumed the Chair and a quorum being present, the journal of the proceedings of the previous meeting shall be read, or shall have been sent to councilmembers by mail, to the end that any alterations or corrections may be submitted and entered of record.
(Code 1963, § 1-11-2; Code 2001, § 111.02)

Sec. 2-25. Sergeant-at-arms.

The Police Chief shall attend all meetings of the Council in the capacity of Sergeant-at-Arms. The Police Chief shall, under directions of the presiding officer, aid in the enforcement of good order and decorum, together with all such process as shall issue under the authority of the Council.
(Code 1963, § 1-11-3; Code 2001, § 111.03)

Sec. 2-26. Temporary presiding officer; compelling attendance of absent members.

The presiding officer of the Council may call a member to the chair, who shall exercise its functions for the time being. Any number of the Council, less than a quorum, which may meet at any regular or special session, may compel the attendance of absent members of the council.

(Code 1963, § 1-11-4; Code 2001, § 111.04)

Sec. 2-27. Standing committees.

The Council, as a whole, may act as a committee, or the Mayor may appoint any committee the Mayor may deem advisable, and such committee shall have at least three members. The Council may, by ordinance, create any standing committees that may be desirable, and the Mayor is vested with the authority to appoint members of such committees.

(Code 1963, § 1-11-5; Code 2001, § 111.05)

Sec. 2-28. Mayor and Recorder may vote in Council; tie vote.

The Mayor and Recorder shall have votes as members of the Council, and in case of a tie, the presiding officer for the time being, unless the presiding officer has previously voted, shall have the casting vote.

(Code 1963, § 1-11-6; Code 2001, § 111.06)

State law reference—Similar provisions, W. Va. Code § 8-9-2.

Sec. 2-29. Robert's Rules of Order.

The rules of parliamentary usage comprised in Robert's Rules of Order, Newly Revised, 12th Edition by Col. Henry M. Roberts, shall govern the Council in all cases not provided for by the rules of the council.

(Code 1963, § 1-11-7; Code 2001, § 111.07)

Sec. 2-30. Recorder.

The Recorder shall be the Clerk and Custodian of all records and papers of the Council; the Recorder shall be the Custodian of all funds of the Town and shall act as Treasurer of the town.

(Code 1963, § 1-11-8; Code 2001, § 111.08)

State law reference—General powers and duties of recorder, W. Va. Code §§ 8-10-3, 8-10-4.

Sec. 2-31. Authentication of records.

All records of the Council shall be authenticated by the signature of the Mayor, and attested by the signature of the Town Recorder.

(Code 1963, § 1-11-9; Code 2001, § 111.09)

Sec. 2-32. Motions and resolutions.

All motions and resolutions, if desired by the presiding officer, or any member, shall be reduced to writing and shall be read by the Town Recorder before the same shall be debated. (Code 1963, § 1-11-10; Code 2001, § 111.10)

Sec. 2-33. Demand of previous question.

(a) If the previous question is demanded by not less than three members, the presiding officer shall, without debate, put the question: "Shall the main question be now put?"

(b) If this question is decided in the affirmative, all further debate shall cease, and the vote shall be taken at once on the proposition pending before the Council. When the Council refuses to order the main question, the consideration of the subject shall be resumed as if the previous question had not been demanded.

(Code 1963, § 1-11-11; Code 2001, § 111.11)

Sec. 2-34. Rules of debate.

(a) No question shall be debated until it has been propounded by the Chair; then the mover shall have the right to explain said mover's view in preference to any other member.

(b) When two or more members arise at the same time, the Chair shall name the person to speak, but in all cases the member who shall first arise and address the chair shall speak first.

(c) No one shall disturb or interrupt a member who is speaking, without said member's permission, except to call to order, if said member is transgressing the rules.

(Code 1963, § 1-11-12; Code 2001, § 111.12)

Sec. 2-35. Control of rules.

No standing rule or order of the Council shall be rescinded, suspended or changed, except by a majority vote of the members elected to the council.

(Code 1963, § 1-11-13; Code 2001, § 111.13)

Sec. 2-36. Draft of ordinances.

All ordinances introduced in the Council shall be printed on one side only on plain white paper.

(Code 1963, § 1-11-14; Code 2001, § 111.14)

Sec. 2-37. Reports of committees.

All reports from committees shall be delivered to the Clerk of the Council for reading without comment; all statements or arguments shall follow the reading of the same by the clerk.

(Code 1963, § 1-11-15; Code 2001, § 111.15)

Secs. 2-38—2-62. Reserved.

ARTICLE III. BOARDS AND COMMISSIONS

DIVISION 1. GENERALLY

Secs. 2-63—2-82. Reserved.

DIVISION 2. SANITARY BOARD

Sec. 2-83. Creation; members; term; vacancies.

There is hereby created the Sanitary Board of the Town, which Board shall be composed of the Mayor and two persons appointed by the Council, one of whom, during the construction period, must be a registered professional engineer. The engineer member of the Board need not be a resident of the Town. After the construction of the plant has been completed, the engineer member may be succeeded by a person who is not an engineer. Such appointees shall originally be appointed for terms of two and three years, respectively, and upon the expiration of each such term and each succeeding term, an appointment of a successor shall be made in like manner for a term of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment.

(Code 1963, § 9-71-1; Code 2001, § 147.01)

State law reference—Sanitary board membership, W. Va. Code § 16-13-18.

Sec. 2-84. Town officials not eligible.

No officer or employee of the Town, whether holding a paid or unpaid office, shall be eligible to appointment on the Sanitary Board until at least one year after the expiration of the term of said officer or employee's public office.

(Code 1963, § 9-71-2; Code 2001, § 147.02)

State law reference—Similar provisions, W. Va. Code § 16-13-18.

Sec. 2-85. Officers of Board.

The Mayor shall act as Chair of the Sanitary Board, which shall elect a vice-chair from among its members and shall designate a secretary and treasurer (but the secretary and treasurer may be one and the same), who need not be members (or a member) of the Sanitary Board. The Vice-chair, Secretary and Treasurer shall hold office as such at the will of the Sanitary Board. The Sanitary Board shall have power to establish bylaws, rules and regulations for its own government.

(Code 1963, § 9-71-3; Code 2001, § 147.03)

State law reference—Similar provisions, W. Va. Code § 16-13-18.

Sec. 2-86. Compensation; expenses.

The members of the Sanitary Board are entitled to receive compensation for their services, either as a salary or as payments for meetings attended, as the Council determines, and are entitled to payment for their reasonable expenses incurred in the performance of their duties. The Secretary and Treasurer shall be paid such reasonable compensation for services as the Council shall fix, and the treasurer shall give bond in the amount of \$1,000.00 or such other amount as the council subsequently may require. All compensation, together with expenses incurred by the Board, its officers and employees, shall be paid solely from funds provided under the authority of West Virginia Code Ch. 16, Art. 13.

(Code 1963, § 9-71-4; Code 2001, § 147.04)

State law reference—Similar provisions, W. Va. Code § 16-13-18.

Sec. 2-87. Supervisory powers by Board.

The construction, acquisition, improvement, equipment, custody, operation and maintenance of all works for the collection, treatment or disposal of sewage within or without the corporate limits of the Town, the collection of revenues therefrom for the services rendered thereby, and the employment of all engineers, architects, inspectors, superintendents, managers, collectors, attorneys and other employees, as in the judgment of the Board may be necessary in the execution of its powers and duties, shall be under the supervision and control of the Sanitary Board.

(Code 1963, § 9-71-5; Code 2001, § 147.05)

State law reference—Similar provisions, W. Va. Code § 16-13-18.

Sec. 2-88. Powers generally.

The Sanitary Board created by this article shall have, in addition to the powers enumerated herein, all other powers provided for such boards in West Virginia Code Ch. 16, Art. 13.

(Code 1963, § 9-71-6; Code 2001, § 147.06)

Secs. 2-89—2-119. Reserved.**ARTICLE IV. TOWN PROTECTION SERVICE FEE****Sec. 2-120. 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:

Commercial building and/or *institutional building* mean any structure which is used or intended by the nature of its construction and/or occupancy to be used for any purpose other than residential.

Owner means the person who has permanent and absolute tenure of land or property with freedom to dispose of it at will.

Residential building means any structure which is used or intended by the nature of its construction to be used as a single-family dwelling.

Residential rental units means any structure, including mobile homes, which is rented in whole or in part for the purpose of a single- or multiple-family dwelling.
(Ord. of 12-20-2021, § 766.01)

Sec. 2-121. Establishment and assessment of the protection service fee.

In order to continue the necessary service of police protection, fire protection, refuse collection and other services to the citizens of the Town, beginning January 1, 2022, there shall be and is hereby imposed, levied and assessed upon all single-family units, residential buildings, residential rental units and commercial/institutional buildings in the town a service fee in the amount established by the town.
(Ord. of 12-20-2021, § 766.02)

Sec. 2-122. Payment.

The foregoing service fee shall be payable to the Clerk of the Town by the 15th day of the month following the enactment date of the ordinance from which this section is derived, and, therefore, the first payment shall be due on January 1, 2022. Payment must be received in the Clerk's office by 3:00 p.m. on the latest pay date.

(1) Fee establishment:

- a. Where the owner of the property also occupies the property, the Town shall bill the owner for the service fee.
- b. Where the owner of the property is a landlord, the Town will bill the landlord for the service fee but, upon formal notification by the landlord to the town that the property is occupied by a tenant, the town will bill the tenant for the service fee.
- c. Where the owner of the property does not occupy the property and the property sits vacant, the Town shall bill the owner for the service fee.
- d. Vacant lots (no structures) will be excluded from the service fee.

- (2) In the event the Town has an authorized billing company that collects service fees on its behalf, the billing companies' bills for payment, due date and late fees will supersede section 2-121. Fees established in Subsection (1) of this section apply.

(Ord. of 12-20-2021, § 766.03)

Sec. 2-123. Continuation, maintenance and improvement of refuse, fire and police service.

The service of refuse, fire and police protection shall be continued, maintained, and improved by the Town, in part, at the charge and expense of the owners of all buildings of

every kind and nature within the town, which said owners are declared to be users and beneficiaries of such protection. The charges and expenses with respect to each of such users and beneficiaries shall be imposed, assessed, and collected as set out in this article.

(Ord. of 12-20-2021, § 766.04)

Sec. 2-124. Legislative intent.

The imposition of the Town fees under this article is pursuant to authorization set forth in West Virginia Code 8-13-13(a). In accordance with said statute, it is the legislative intent of this article that the fees imposed hereunder are based, in part, upon recognition of the legislative findings.

(Ord. of 12-20-2021, § 766.05)

Sec. 2-125. Use of funds.

The funds, monies and revenues received from the collection of the protection fees herein provided shall be used only for the continuance, maintenance or improvements of the essential services listed.

(Ord. of 12-20-2021, § 766.06)

Sec. 2-126. Violation for refusal to pay.

It shall be unlawful for any person, firm or corporation to refuse to pay the protection fee or charges provided for herein, or to aid or abet another person to avoid the payment of such fees or charges.

(Ord. of 12-20-2021, § 766.07)

Sec. 2-127. Penalty.

(a) When a person/renter is more than three months delinquent, the Town shall send a registered letter to the property owner of record stating the account is in arrears. The Town may at that time proceed with placing a lien on the property in accordance with WV State Code 8-13-13(d).

(b) In the event the Town has an authorized billing company that collects service fees on its behalf, the billing companies' bills for payment, due date and late fees will apply. All other penalties that occur with nonpayment to that company are subject to its company policy.

(Ord. of 12-20-2021, § 766.08(1))

Chapter 3

RESERVED

Chapter 4

ALCOHOLIC LIQUORS

Article I. In General

- Sec. 4-1. Definitions.
- Sec. 4-2. Article not applicable to certain uses by physicians, druggists and others.
- Sec. 4-3. Unlawful purchase of alcoholic liquors from state agency.
- Sec. 4-4. Intoxication or drinking in public places; illegal possession.
- Sec. 4-5. Acts prohibited by nonintoxicating beer licensee.
- Sec. 4-6. Unlawful purchase of nonintoxicating beer.
- Sec. 4-7. Acts prohibited by private club licensee.
- Sec. 4-8. Unlawful purchase from private club.
- Sec. 4-9. Acts prohibited by wine dealers.
- Sec. 4-10. Unlawful purchase of wine.
- Sec. 4-11. Unlawful purchase from retail liquor licensee.
- Secs. 4-12—4-40. Reserved.

Article II. License Fees

- Sec. 4-41. Private club license.

ARTICLE I. IN GENERAL**Sec. 4-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcoholic liquor includes alcohol, beer, wine and spirits, and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer.

Beer means any beverage obtained by the fermentation of barley, malt, hops or any other similar product or substitute, and containing more alcohol than that of nonintoxicating beer.

Intoxicated means having one's faculties impaired by alcohol or other drugs to the point where physical or mental control, or both, are markedly diminished.

Manufacturer means any person engaged in the manufacture of any alcoholic liquor, including, among others, a distiller, rectifier, wine maker and brewer.

Nonintoxicating beer means all natural cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale, and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers with no caffeine infusion or any additives masking or altering the alcohol effect containing at least one-half of one percent alcohol by volume, but not more than 11.9 percent of alcohol by weight, or 15 percent alcohol by volume, whichever is greater.

Liquor does not include or embrace nonintoxicating beer nor any of the beverages, products, mixtures, or preparations included within this section.

Public place means any place, building or conveyance to which the public has or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies and corridors of hotels, and any highway, street, lane, park or place of public resort or amusement. The term "public place" does not mean or include any of the above-named places or any portion thereof which qualify and are licensed under the provisions of West Virginia Code Ch. 60 or the codified ordinances to sell alcoholic liquors for consumption on the premises, provided, however, that the term "public place" does not mean or include any legally demarcated area designated solely for the consumption of beverages and freshly prepared food that directly connects and adjoins any portion or portions of a premise that qualifies and is licensed under the provisions of this chapter to sell alcoholic liquors for consumption thereupon; provided further, that the term "public place" shall not include a facility constructed primarily for the use of a Division I, II, or III college or university that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium which holds a special license to sell wine pursuant to the provisions of W. Va. Code § 60-8-3 in the designated areas of sale and consumption of wine and other restrictions established by that section and the terms of the special license issued thereunder.

Sale means any transfer, exchange or barter in any manner or by any means, for a consideration, and includes all sales made by any principal, proprietor, agent or employee.

Selling includes the solicitation or receipt of orders, possession for sale, and possession with intent to sell.

Wine means any alcoholic beverage obtained by the fermentation of the natural content of fruits or other agricultural products, containing sugar (WVaC 60-1-5).
(Code 2001, § 521.01; Ord. of unknown date(1), § 521.01)

Sec. 4-2. Article not applicable to certain uses by physicians, druggists and others.

The provisions of this article shall not prevent:

- (1) A physician from prescribing the use of alcoholic liquors when necessary for a bona fide patient;
- (2) A druggist from selling, upon a prescription properly issued by a physician, alcoholic liquors for medicinal purposes;
- (3) A physician, dentist or veterinarian, in the legitimate practice of said physician, dentist or veterinarian's profession, from using and administering alcoholic liquors;
- (4) Hospitals, sanitariums or that division of any institution which is regularly conducted as a hospital, dispensary or infirmary from using or administering alcoholic liquors to bona fide patients. Institutions and the divisions thereof provided in this section may carry a stock of alcoholic liquors sufficient for this purpose;
- (5) Religious organizations from using wine for sacramental purposes (WVaC 60-6-5).
(Code 2001, § 521.02; Ord. of unknown date(1), § 521.02)

Sec. 4-3. Unlawful purchase of alcoholic liquors from state agency.

No person shall:

- (1) Being under the age of 21 years, for the purpose of purchasing alcoholic liquors from a State liquor store or an agency, misrepresent said person's age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually said person's own, or illegally attempt to purchase alcoholic liquors from a state liquor store or an agency.
 - (2) Knowingly buy for, give to or furnish to anyone under the age of 21 years to whom they are not related by blood or marriage, any alcoholic liquors from whatever source.
- (Code 2001, § 521.05; Ord. of unknown date(1), § 521.05)

State law reference—Similar provisions, W. Va. Code § 60-3-22a.

Sec. 4-4. Intoxication or drinking in public places; illegal possession.

A person shall not:

- (1) Appear in a public place in an intoxicated condition;
- (2) Drink alcoholic liquor or nonintoxicating beer in a public place;
- (3) Tender a drink of alcoholic liquor nonintoxicating beer to another person in a public place;
- (4) Operate a business without a license issued under W. Va. Code § 60-1-1 et seq., which knowingly facilitates the consumption of alcoholic liquors in a public place by providing for on-site items, such as cups, glasses, ice, and nonalcoholic beverages used to mix with alcoholic liquors, refrigeration, or on-site storage of alcoholic liquors in a lounge area or space for persons to gather, perhaps offering musical entertainment, exotic dancing, or other such nude entertainment, or other similar activity or entertainment. Such business may be commonly known as a "bring your own bottle," "bring your own booze," or "BYOB" establishments;
- (5) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing stamps or seals of the Commissioner, without having first obtained written authority from the commissioner therefor; or
- (6) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of W. Va. Code Ch. 60.

(Code 2001, § 521.06; Ord. of unknown date(1), § 521.06)

State law reference—Similar provisions, W. Va. Code § 60-6-9.

Sec. 4-5. Acts prohibited by nonintoxicating beer licensee.

(a) It is unlawful:

- (1) Except as provided for in W. Va. Code § 7-1-3ss and W. Va. Code Ch. 11, for any licensee, said licensee's servants, agents, or employees to sell, give, or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected thereto, nonintoxicating beer between the hours of 2:00 a.m. and 6:00 a.m., or a Class A retail dealer to sell nonintoxicating beer for on-premises consumption only between the hours of 2:00 a.m. and 6:00 a.m.;
- (2) For any licensee, said licensee's servants, agents, or employees to sell, furnish, or give any nonintoxicating beer, as defined in Section 4-1, to any person visibly or noticeably intoxicated or to any person known to be insane or known to be a habitual drunkard;
- (3) For any licensee, said licensee's servants, agents, or employees to sell, furnish, or give any nonintoxicating beer as defined in Section 4-1 to any person who is less than 21 years of age;
- (4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in Section 4-1, except for cash and a right of action

shall not exist to collect any claims for credit extended contrary to the provisions of this subsection. Nothing contained in this section prohibits a licensee from crediting to a purchasing person the actual price charged for packages or containers returned by the original purchasing person as a credit on any sale, or from refunding to any purchasing person the amount paid or deposited for the containers when title is retained by the vendor; provided that a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor shall initiate the transfer no later than 12:00 noon of one business day after the delivery;

- (5) For any brewer or distributor to give, furnish, rent, or sell any equipment, fixtures, signs, supplies, or services directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift, or other similar inducement, except advertising matter, including indoor electronic or mechanical signs, of nominal value up to \$25.00 per stock keeping unit, to either trade or consumer buyers; provided that a distributor may offer, for sale or rent, tanks of carbonic gas; provided, however, that, in the interest of public health and safety, a distributor may, independently or through a subsidiary or affiliate, furnish, sell, install, or maintain draught line equipment, supplies, and cleaning services to a licensed retailer so long as the furnishing or sale of draught line services may be negotiated at no less than actual cost; provided further, that a distributor may furnish, rent, or sell equipment, fixtures, signs, services, or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail under the conditions and within the limitations as prescribed in this section. Nothing contained in this section prohibits a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any events;
- (6) For any brewer or distributor to sponsor any professional or amateur athletic event or provide prizes or awards for participants and winners when a majority of the athletes participating in the event are minors, unless the event is specifically authorized by the Commissioner;
- (7) For any retail licensee to sell or dispense nonintoxicating beer through draught lines where the draught lines have not been cleaned at least every two weeks in accordance with rules promulgated by the Commissioner, and where written records of all cleanings are not maintained and available for inspection;
- (8) For any licensee to permit in said licensee's premises any lewd, immoral, or improper entertainment, conduct, or practice;
- (9) For any licensee, except the holder of a license to operate a private club issued under the provisions of W. Va. Code § 60-7-1 et seq., or a holder of a license or a private wine

restaurant issued under the provisions of W. Va. Code § 60-8-1 et seq., to possess a federal license, tax receipt, or other permit entitling, authorizing, or allowing the licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

- (10) For any licensee to obstruct the view of the interior of said licensee's premises by enclosure, lattice, drapes, or any means which would prevent plain view of the patrons occupying the premises. The interior of all licensed premises shall be adequately lighted at all times; provided that provisions of this subsection do not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of W. Va. Code § 60-7-1 et seq., or the premises of a private wine restaurant licensed under the provisions of W. Va. Code § 60-8-1 et seq.;
- (11) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in the sale, possession, or consumption of any alcoholic liquors on the premises covered by a license or on premises directly or indirectly used in connection with it; provided that the prohibition contained in this subsection with respect to the selling or possessing or to the acquiescence in the sale, possession, or consumption of alcoholic liquors is not applicable with respect to the holder of a license to operate a private club issued under the provisions of W. Va. Code § 60-7-1 et seq., nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of W. Va. Code § 60-8-1 et seq., insofar as the private wine restaurant is authorized to serve wine;
- (12) For any retail licensee to sell or dispense nonintoxicating beer, as defined in Section 4-1, purchased or acquired from any source other than a distributor, brewer, or manufacturer licensed under the laws of the State;
- (13) For any licensee to permit loud, boisterous, or disorderly conduct of any kind upon said licensee's premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community where the business is located; provided that a licensee may have speaker systems for outside broadcasting as long as the noise levels do not create a public nuisance or violate Town noise ordinances;
- (14) For any person whose license has been revoked, as provided in this article, to obtain employment with any retailer within the period of one year from the date of the revocation, or for any retailer to knowingly employ that person within the specified time;
- (15) For any distributor to sell, possess for sale, transport, or distribute nonintoxicating beer except in the original container;
- (16) For any licensee to knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of the State;
- (17) For any Class B retailer to permit the consumption of nonintoxicating beer upon said retailer's licensed premises;

- (18) For any Class A licensee or said licensee's servants, agents, or employees, or for any licensee by or through any servants, agents, or employees, to allow, suffer, or permit any person less than 18 years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subsection do not apply where a person under the age of 18 years is in or upon the premises in the immediate company of a parent or legal guardian, or where and while a person under the age of 18 years is in or upon the premises for the purpose of and actually making a lawful purchase of any items or commodities sold, or for the purchase of and actually receiving any lawful service rendered in the licensed premises, including the consumption of any item of food, drink, or soft drink lawfully prepared and served or sold for consumption on the premises;
- (19) For any distributor to sell, offer for sale, distribute, or deliver any nonintoxicating beer outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating beer or to sell, offer for sale, distribute, or deliver nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of the nonintoxicating beer; provided that nothing in this section is considered to prohibit sales of convenience between distributors licensed in the State where one distributor sells, transfers, or delivers to another distributor a particular brand for sale at wholesale; and
- (20) For any licensee or any agent, servant, or employee of any licensee to knowingly violate any rule lawfully promulgated by the State Alcohol Beverage Control Administration Commissioner in accordance with the provisions of W. Va. Code Ch. 29A.

(b) Any person who violates any provision of this article, including, but not limited to, any provision of this section, or any rule, or order lawfully promulgated by the State Alcohol Beverage Control Administration Commissioner, or who makes any false statement concerning any material fact in submitting an application for a license or for a renewal of a license or in any hearing concerning the revocation of a license, or who commits any of the acts in this section declared to be unlawful is guilty of a misdemeanor.

- (c) (1) A Class B licensee that has installed a transaction scan device on its licensed premises, and can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer or nonintoxicating craft beer is sold, furnished, or given away by the use of the transaction device is not subject to:
 - a. Any criminal penalties whatsoever, including those set forth in Subsection (b) of this section;
 - b. Any administrative penalties from the State Alcohol Beverage Control Administration Commissioner; or
 - c. Any civil liability whatsoever for the improper sale, furnishing, or giving away of nonintoxicating beer or nonintoxicating craft beer to an individual who is less than 21 years of age by one of said licensee's employees, servants, or agents.

Any agent, servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21 years of age is subject to the criminal penalties of Subsection (b) of this section. Any agent, servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21 years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.

- (2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence:
 - a. That it has developed a written policy which requires each employee, servant, or agent to verify the age of each individual to whom nonintoxicating beer will be sold, furnished, or given away;
 - b. That it has communicated this policy to each employee, servant, or agent; and
 - c. That it monitors the actions of its employees, servants, or agents regarding the sale, furnishing, or giving away of nonintoxicating beer and that it has taken corrective action for any discovered noncompliance with this policy.
- (3) The term "transaction scan" means the process by which a person checks, by means of a transaction scan device, the age and identity of the cardholder, and the term "transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver's license or other governmental identity card.
- (4) Nothing in this chapter shall prevent or be considered to prohibit any licensee from employing any person who is at least 18 years of age to serve in the licensee's lawful employ, including the sale or distribution of nonintoxicating beer. With the prior approval of the Commissioner, a licensee whose principal business is the sale of food or consumer goods, or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons who are less than 18 years of age, but at least 16 years of age; provided that the person's duties may include the sale of nonintoxicating beer or alcoholic liquors only when directly supervised by a person 21 years of age or older; provided, however, that the authorization to employ persons under the age of 18 years shall be clearly indicated on the licensee's license.

(Code 2001, § 521.07; Ord. of unknown date(1), § 521.07)

State law reference—Similar provisions, W. Va. Code § 11-16-18.

Sec. 4-6. Unlawful purchase of nonintoxicating beer.

- (a) (1) Any person under the age of 21 years, who purchases, consumes, sells, possesses or serves nonintoxicating beer is guilty of a misdemeanor.
- (2) Nothing in this article shall prevent or be deemed to prohibit any person who is at least 18 years of age from serving in the lawful employment of any licensee, which

may include the sale or delivery of nonintoxicating beer. Further, nothing in this article shall prevent or be deemed to prohibit any person who is less than 18 but at least 16 years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores; provided that such person shall not sell or deliver nonintoxicating beer.

- (3) Nothing in this subsection shall prohibit a person who is at least 18 years of age from purchasing or possessing nonintoxicating beer when said person is acting upon the request of or under the direction and control of any member of a state, federal or local law enforcement agency or the State Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules of the Commissioner.

(b) Any person under the age of 21 years who, for the purpose of purchasing nonintoxicating beer, misrepresents said person's age or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually said person's own or who illegally attempts to purchase nonintoxicating beer is guilty of a misdemeanor.

(c) Any person who shall knowingly buy for, give to or furnish nonintoxicating beer to anyone under the age of 21 years to whom they are not related by blood or marriage is guilty of a misdemeanor

- (d) (1) Any person who at any one time transports into the state for their personal use, and not for resale, more than 6 75/100 gallons of nonintoxicating beer, upon which the State barrel tax has not been imposed, shall be guilty of a misdemeanor. The untaxed nonintoxicating beer found in the person's possession shall be confiscated.
- (2) If the Congress of the United States repeals the mandate established by the Surface Transportation Assistance Act of 1982 relating to national uniform drinking age of 21, as found in section six of Public Law 98-363, or a court of competent jurisdiction declares the provision to be unconstitutional or otherwise invalid, it is the intent of the Council that the provisions contained in this section and section 4-5 which prohibit the sale, furnishing, giving, purchase or ownership of nonintoxicating beer to or by a person who is less than 21 years of age shall be null and void and the provisions therein shall thereafter remain in effect and apply to the sale, furnishing, giving, purchase or ownership of nonintoxicating beer to or by a person who is less than 19 years of age.

(Code 2001, § 521.08; Ord. of unknown date(1), § 521.08)

State law reference—Similar provisions, W. Va. Code § 11-16-19.

Sec. 4-7. Acts prohibited by private club licensee.

(a) No person licensed under West Virginia Code Art. 60-7, or said person's agent, employee or member thereof, on such licensee's premises shall:

- (1) Sell or offer for sale any alcoholic liquors other than from the original package or container, except as authorized in W. Va. Code § 60-6-8;

- (2) Authorize or permit any disturbance of the peace, obscene, lewd, immoral, or improper entertainment, conduct, or practice. A private resort hotel holding a license issued pursuant to W. Va. Code § 60-7-1 et seq., may sell, tender, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on the premises licensed under W. Va. Code §§ 29-22A-1 et seq., and 29-22C-1 et seq., or W. Va. Code § 29-25-1 et seq., during hours of operation authorized by W. Va. Code §§ 29-22A-1 et seq., and 29-22C-1 et seq., or W. Va. Code § 29-25-1 et seq.
- (3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine or alcoholic liquors on the licensee's premises, by any person less than 21 years of age;
- (4) Sell, give away, or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;
- (5) Sell, give, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on any licensed premises, or in any rooms directly connected therewith between the hours of 3:00 a.m. and 6:00 a.m. on weekdays, Saturdays, and Sundays, or, between the hours of 3:00 a.m. and 1:00 p.m. upon approval as provided for in W. Va. Code § 7-1-3ss on any Sunday; and
- (6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine or alcoholic liquors, covered by this article, to any person who is less than 21 years of age;
- (7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;
- (8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues-paying member in good standing of the private club or a guest of such member;
- (9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium or nitrous oxide for purposes of human consumption except as authorized by the Alcohol Beverage Control Commissioner;
- (10) Employ any person who is less than 16 years of age in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person;
- (11) Employ any person who is between 16 years of age and younger than 21 years of age who is not directly supervised by a person aged 21 years or over in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person; or

(12) Violate any reasonable rule or regulation of the Alcohol Beverage Control Commissioner.

(b) It is lawful for any licensee to advertise price and brand in any news media or other means, outside of the licensee's premises.

(c) Any person who violates any provision of this section is guilty of a misdemeanor. (Code 2001, § 521.09; Ord. of unknown date(1), § 521.09)

State law reference—Similar provisions, W. Va. Code § 60-7-12.

Sec. 4-8. Unlawful purchase from private club.

(a) No person under the age of 21 years shall order, pay for, share the cost of or attempt to purchase any nonintoxicating beer, wine or alcoholic liquors from a licensee or consume any nonintoxicating beer, wine or alcoholic liquors purchased from a private club licensee or possess any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee, provided that nothing in this subsection shall prohibit a person who is at least 18 years of age from purchasing or possessing nonintoxicating beer, wine or alcoholic liquors when said person is acting upon the request of or under the direction and control of any member of a state, federal or local law enforcement agency or the State Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Alcohol Beverage Control Commissioner.

(b) No person under the age of 21 years, for the purpose of purchasing nonintoxicating beer, wine or alcoholic liquors from a private club licensee, shall misrepresent said person's age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually said person's own, or illegally attempt to purchase nonintoxicating beer, wine or alcoholic liquors from a licensee.

(c) No person shall knowingly buy for, give to or furnish to anyone under the age of 21 years any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee. (Code 2001, § 521.10; Ord. of unknown date(1), § 521.10)

State law reference—Similar provisions, W. Va. Code § 60-7-12a.

Sec. 4-9. Acts prohibited by wine dealers.

(a) It is unlawful:

- (1) For a supplier or distributor to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of W. Va. Code § 60-8-6 or for a retailer to sell or deliver wine purchased or acquired from any source other than a licensed distributor or a farm winery as defined in W. Va. Code § 60-1-5a;
- (2) Unless otherwise specifically provided by the provisions of this article, for a licensee under this article to acquire, transport, possess for sale, or sell wine other than in the original package;

- (3) For a licensee or said licensee's servants, agents or employees to sell, furnish or give wine to any person less than 21 years of age, or to a mentally incompetent person or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs; provided that the provisions of W. Va. Code § 60-3A-25a shall apply to sales of wine;
- (4) For a licensee to permit a person who is less than 18 years of age to sell, furnish or give wine to any person, except as provided for in Subsection (7) of this section;
- (5) For a supplier or a distributor to sell or deliver any brand of wine purchased or acquired from any source other than the primary source of supply of the wine which granted the distributor the right to sell the brand at wholesale. For the purposes of this article, the term "primary source of supply" means the vintner of the wine, the importer of a foreign wine who imports the wine into the United States, the owner of a wine at the time it becomes a marketable product, the bottler of a wine or an agent specifically authorized by any of the above-enumerated persons to make a sale of the wine to a State distributor, provided that no retailer shall sell or deliver wine purchased or acquired from any source other than a distributor or farm winery licensed in the State; provided, however, that nothing herein is considered to prohibit sales of convenience between distributors licensed in the state wherein one distributor sells, transfers, or delivers to another distributor a particular brand for sale at wholesale, of which brand the other distributor has been authorized by a licensed supplier to distribute. The Alcohol Beverage Control Commissioner shall promulgate legislative rules necessary to carry out the provision of this subsection;
- (6) For a person to violate any rule promulgated by the Alcohol Beverage Control Commissioner under W. Va. Code Ch. 60, Art. 1.

(b) Nothing in this article, nor any rule or regulation of the Alcohol Beverage Control Commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least 18 years of age to serve in any licensee's lawful employment, including the sale of wine or distribution of wine on behalf of a winery, farm winery, farm entity, supplier, or distributor under the provisions of this article. With the prior approval of the Commissioner, a licensee may employ persons who are less than 18 years of age but at least 16 years of age; provided that the person's duties may include the sale of nonintoxicating beer or wine only when directly supervised by a person 21 years of age or older; provided, however, that the authorization to employ persons under 18 years of age shall be clearly indicated on the licensee's license; provided, further, that nothing in this article shall prevent or be considered to prohibit any licensee from employing any person who is at least 21 years of age for the ordering and delivery of wine when licensed for the ordering and delivery of wine under the provisions of this chapter

(Code 2001, § 521.11; Ord. of unknown date(1), § 521.11)

State law reference—Similar provisions, W. Va. Code § 60-8-20.

Sec. 4-10. Unlawful purchase of wine.

(a) No person under the age of 21 years shall purchase, consume, sell, possess or serve wine or other alcoholic liquor.

- (1) Nothing in this section, nor any rule or regulation of the Alcohol Beverage Control Commissioner, shall prevent or be deemed to prohibit any person who is at least 18 years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of wine. Further, nothing in this section, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is less than 18 but at least 16 years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores; provided that such person shall not sell or deliver wine or alcoholic liquor.
- (2) Nothing in this section shall prohibit a person who is at least 18 years of age from purchasing or possessing wine or alcoholic liquor when said person is acting upon the request of or under the direction and control of any member of a state, federal or local law enforcement agency or the State Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Alcohol Beverage Control Commissioner.

(b) No person under the age of 21 years, for the purpose of purchasing wine or other alcoholic liquors from a licensee, shall misrepresent said person's age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually said person's own, or illegally attempt to purchase wine or other alcoholic liquors.

(c) No person shall knowingly buy for, give to or furnish wine or other alcoholic liquors from any source to anyone under the age of 21 years to whom they are not related by blood or marriage.

(Code 2001, § 521.12; Ord. of unknown date(1), § 521.12)

State law reference—Similar provisions, W. Va. Code § 6-8-20a.

Sec. 4-11. Unlawful purchase from retail liquor licensee.

(a) No person under the age of 21 years shall purchase, consume, sell, serve or possess alcoholic liquor.

- (1) Nothing in this section, nor any rule or regulation of the Alcohol Beverage Control Commissioner, shall prevent or be deemed to prohibit any person who is at least 18 years of age from serving in the lawful employment of a licensee which includes the sale and serving of alcoholic liquor.
- (2) Nothing in this section shall prohibit a person who is at least 18 years of age from purchasing or possessing alcoholic liquor when said person is acting upon the request

of or under the direction and control of any member of a state, federal or local law enforcement agency or the State Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Alcohol Beverage Control Commissioner.

(b) No person under the age of 21 years shall, for the purpose of purchasing liquor from a retail licensee, misrepresent said person's age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually said person's own, or illegally attempt to purchase liquor from a retail licensee.

(c) No person shall knowingly buy for, give to or furnish to anyone under the age of 21 years to whom said person is not related by blood or marriage any liquor from whatever source.

(d) No person while on the premises of a retail outlet shall consume liquor or break the seal on any package or bottle of liquor.

(Code 2001, § 521.13; Ord. of unknown date(1), § 521.13)

State law reference—Similar provisions, W. Va. Code § 60-3A-24.

Secs. 4-12—4-40. Reserved.

ARTICLE II. LICENSE FEES

Sec. 4-41. Private club license.

As authorized and empowered by West Virginia Code 60-7-7, there is hereby levied, upon each and every private club dispensing alcoholic liquors licensed by the State, an annual license fee in the amount established by the Town.

(1) The fee for any such license issued following January 1 of any year and to expire on June 30 of such year shall be one-half of the annual license fee.

(2) All such fees shall be paid to the Recorder of the Town and credited to the general fund of the town.

(3) The failure to pay the annual license fee is a violation of this Code.

(Code 2001, § 723.01; Ord. No. 85-6, 12-2-1985)

Chapter 5

RESERVED

Chapter 6

ANIMALS

- Sec. 6-1. Nuisance conditions prohibited.
- Sec. 6-2. Barking or howling dogs.
- Sec. 6-3. Hunting prohibited.
- Sec. 6-4. Poisoning animals.
- Sec. 6-5. Cats.
- Sec. 6-6. Dogs.
- Sec. 6-7. Farm animals.

Sec. 6-1. Nuisance conditions prohibited.

No person shall keep or harbor any animal or fowl in the Town so as to create noxious, or offensive odors or unsanitary conditions which are a menace to the health, comfort or safety of the public.

(Code 2001, § 505.03)

Sec. 6-2. Barking or howling dogs.

No person shall keep or harbor any dog within the Town which, by frequent and habitual barking, howling or yelping, creates unreasonably loud and disturbing noises of such a character, intensity and duration as to disturb the peace, quiet and good order of the town. Any person who shall allow any dog habitually to remain, be lodged or fed within any dwelling, building, yard or enclosure, which said person occupies or owns, shall be considered as harboring such dog.

(Code 2001, § 505.04)

Sec. 6-3. Hunting prohibited.

No person shall hunt, kill or attempt to kill any animal or fowl by any means within the corporate limits of the Town.

(Code 2001, § 505.05)

Sec. 6-4. Poisoning animals.

No person shall maliciously or willfully, and without the consent of the owner, administer poison, except a licensed veterinarian acting in such capacity to any animal that is the property of another, and no person shall, willfully and without the consent of the owner, place any poisoned food where it may easily be found and eaten by children or domestic animals, either upon said person's own lands or the lands of another.

(Code 1963, § 5-11-3; Code 2001, § 505.07)

Sec. 6-5. Cats.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

At large means off the premises of the owner and not under the control of the owner or an immediate family member, either by leash, cord, chain or other restraining device or mechanism.

Cat means cats of either sex at least three months old, unless otherwise specified.

Owner means the owner, keeper or harbinger of a cat; any person residing in or otherwise inhabiting a house, apartment, trailer or dwelling within the Town, who allows or permits any cat to remain at or about such premises, shall be deemed the owner of such cat.

(b) *Impounding and disposition.*

- (1) The Humane Officer of the Town shall seize and impound any cat running at large within the town.
- (2) If the owner is known, the Humane Officer shall make a reasonable effort to return such cat to its owner. Upon returning the cat as aforesaid, the Humane Officer shall serve or cause to be served upon the owner a citation to appear before the Municipal Court judge at a regular court session. Prior to the time fixed for appearance, the Humane Officer shall deliver to the judge a copy of the citation and shall sign a complaint setting forth the violation.
- (3) If the cat is not returned to the owner pursuant to the provisions of Subsection (b)(2) of this section, the Humane Officer shall impound such cat.
- (4) If the owner desires to redeem such cat within five days from the date the cat was impounded, the owner may pay to the County animal shelter the following costs and fees:
 - a. Impounding and reclamation fees.
 - b. Boarding fees.
 - c. Other fees and costs incurred and/or assessed by the County animal shelter.
 - d. Any Municipal Court fees and costs which must be paid before such animal is redeemed.
 - e. Rabies vaccination and any other requirement.
- (5) No cat shall be released from the shelter until all of the foregoing costs have been paid.
- (6) If the owner of such impounded cat has not redeemed such cat, as provided in this section, within five days from the court session, such cat will be sold at private or public sale, destroyed or otherwise disposed of by the County animal shelter, consistent with law.

(c) *Running at large prohibited.* It shall be an unlawful misdemeanor for the owner, keeper, harbinger or person having charge or control of any cat to permit it to run at large within the Town, except upon the property of the owner.

(d) *Enticing; importing.* No person shall decoy or entice any cat out of the enclosure or house of its owner or possessor, or seize or molest any cat while being held or led by any other person, or bring any cat into the Town for the purpose of impounding or killing the same.

(e) *Squalling or crying cats.* No owner or any other person shall keep or harbor upon or about their premises any cat which shall, by squalling, crying or in any manner whatsoever, disturb the comfort or quiet of any neighborhood within the Town.

(f) *Interference with the Humane Officer.* No person shall interfere with, impede or obstruct the Humane Officer, or the humane officer's agents or employees, from performing the duties imposed or authorized by this section.

(g) *Penalty.*

- (1) Whoever violates any portion of this section shall be guilty of a misdemeanor and fined as follows:
 - a. For the first offense: \$25.00.
 - b. For the second offense within a period of one year: \$50.00.
 - c. For the third offense within a period of one year: \$100.00.
 - d. For the fourth offense within a period of one year: \$300.00.
 - (2) Each day any violation of this section shall continue shall constitute a separate offense.
 - (3) The Humane Officer, any member of the Town Police Department, or an aggrieved individual, may cause a warrant to be issued from Municipal Court to the cat owner or to the person keeping or harboring any cat in violation of this section.
- (Code 2001, § 505.12; Ord. No. 97-1, 7-7-1997)

Sec. 6-6. Dogs.

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Dangerous dog means any dog, other than a police dog, that:

- (1) Without provocation, chases or approaches, in a menacing fashion, any person while on or off the premises of the owner; or
- (2) Without provocation, bites, attempts to bite or causes physical harm to any person while on or off the premises of the owner.

Dog means dogs of either sex at least three months old, unless otherwise specified.

Vicious dog means:

- (1) Any dog other than a police dog that, without provocation, kills or causes serious physical harm to any person;
- (2) Any dog which belongs to or has the appearance and characteristics of being predominantly of the breeds of dogs known as Staffordshire Bull Terrier, American Pit Bull Terrier, American Staffordshire Terrier, Pit Bull Terrier and any other breed of dog commonly known as a pit bull, pit bull dog or pit bull terrier or a combination of those breeds.

(b) Ownership requirements.

- (1) All dogs must be maintained in a closed area, fence or kept in the residence.
- (2) Any person walking a dog, which has to be on a leash, shall clean up behind them and dispose of fecal matter on their own property. If caught not obeying this law, the following fines shall apply:

First offense	Warning
Second offense	\$25.00 fine
Third offense	\$50.00 fine

(3) After a third offense, measures shall be taken to remove the dog from said owner.

(c) As of the date of the ordinance from which this section is derived, dogs described in Subsection (2) of the definition of the term "vicious dog" will not be allowed in the Town.

(d) However, the owner of a vicious dog (limit one per household) must comply with the ordinances that are now on the books.

(e) They must be registered and the owner must pay a license fee of \$50.00, which is to be renewed annually at Town Hall.

(f) The owner must provide proof of liability insurance of \$100,000.00 covering any damage or injury, which may be caused by the vicious dog during the 12-month period covered by license, by a certificate of insurance or copy of the policy to Town Hall.

(g) The owner shall, at the owner's expense, have the vicious dog spayed or neutered and shall present to the Town Hall documentary proof from a licensed veterinarian that this sterilization has been performed.

(h) The owner shall not sell or otherwise transfer the vicious dog to any person except a member of the owner's immediate family who will then become the owner and will be subject to all of the provisions of this section. The owner shall notify Town Hall within five days in the event that the vicious animal is lost, stolen or dies.

(i) If the Town is advised that a citizen has one of these dogs, there will be an investigation to make sure the owner is in compliance.

(j) If the owner is found to not be in compliance, the owner will be fined as follows:

First offense	\$100.00
Second offense	\$200.00
Third offense	\$300.00

(k) After a third offense, the dog will be removed from the household.
(Code 1963, § 5-27; Code 2001, § 505.13; Ord. of unknown date(1), § 505.13)

Sec. 6-7. Farm animals.

No farm animals, such as chickens, turkeys, ducks, geese, live poultry or fowl of any kind, horses, ponies, cows, calves, rabbits, or live animals of any kind except dogs or cats shall be kept in the Town.

(Ord. of unknown date(1), § 505.14)

Chapter 7

RESERVED

Chapter 8

BUILDINGS AND BUILDING REGULATIONS

Article I. In General

- Sec. 8-1. Building Committee.
- Sec. 8-2. Building Official.
- Sec. 8-3. Building Inspector.
- Sec. 8-4. Building Committee powers and duties.
- Sec. 8-5. Permit fees.
- Sec. 8-6. Inspection.
- Sec. 8-7. Placement of structures on lots.
- Secs. 8-8—8-32. Reserved.

Article II. Building Code

- Sec. 8-33. Adoption.
- Sec. 8-34. Definitions.
- Secs. 8-35—8-56. Reserved.

Article III. Unsafe Structures

- Sec. 8-57. Purpose and scope.
- Sec. 8-58. Definitions.
- Sec. 8-59. Closing and removal of unsafe structures.
- Sec. 8-60. Inspection.
- Sec. 8-61. Correction of unsafe conditions.
- Sec. 8-62. Relief from order of corrective action.
- Sec. 8-63. Owner responsibility for costs.
- Sec. 8-64. Civil action for corrective action and recovery of costs.
- Sec. 8-65. Notices.
- Sec. 8-66. Absolute defense.

ARTICLE I. IN GENERAL**Sec. 8-1. Building Committee.**

(a) A Building Committee is hereby created.

(b) The Mayor shall appoint, subject to the approval of the Council, not less than three and not more than five persons to constitute the Building Committee, such persons to serve at the will and pleasure of the Council.

(c) In addition to the appointed members, the Mayor shall be an ex officio member of the Building Committee.

(Code 2001, § 1715.01; Ord. No. 91-1, 11-2-1992)

Sec. 8-2. Building Official.

(a) The Mayor shall appoint, subject to the approval of the Council, one member of the Building Committee as the Building Official, who shall act in the capacity of the term "Building Official," as defined and set out in the State Building Code herein adopted.

(b) The Building Official shall receive applications required by the Building Code, and subject to the approval of the Building Committee shall issue permits and furnish the prescribed certificates; shall issue such notices or orders as may be necessary to enforce compliance with the law, to remove illegal conditions, to secure the necessary safeguards in building and structures. The Building Official shall keep the comprehensive records of applications, of permits issued, of certificates issued, and of notices or orders issued. The Building Official shall retain on file copies of required plans and all documents related to building work so long as any part of the building or structure to which any relate may be in existence. All such records to be open to public inspection for good and sufficient reasons at office hours observed by the Town, but shall not be removed from the Town Hall. When applications for the permits and certificates are received and for any or all other purposes in the discretion of the Building Official, the Building Official shall call meetings of the Building Committee and shall serve as the administrative head of said committee.

(Code 2001, § 1715.02; Ord. No. 91-1, 11-2-1992)

Sec. 8-3. Building Inspector.

(a) The Building Committee shall from time to time appoint one of its members to serve as Building Inspector, whose duties are hereinunder set forth. More than one inspector may be appointed, but no more than one inspector shall be assigned to each project.

(b) The Building Inspector appointed by the Building Committee shall examine premises for which permits have been issued and shall make necessary inspections to see that the provisions of law are complied with and that construction is prosecuted safely. The Building Official shall, when requested by proper authority or when the interest of the Town so

requires, make investigations in connection with matters required under the provisions of this building code. The Building Official shall have authority to enter any building, structure or premises at any reasonable hour.

(c) No member of the Building Committee shall serve as Building Inspector in any matter in which the member is directly or indirectly interested, financially or otherwise.
(Code 2001, § 1715.03; Ord. No. 91-1, 11-2-1992)

Sec. 8-4. Building Committee powers and duties.

(a) The Building Committee shall preserve and protect the public health, safety and welfare by maintaining a high character of community development and by protecting the real estate within the Town from impairment or destruction of value by regulating, according to proper architectural principles, the design, use of materials, building lines, finished grade lines and orientation of all new buildings hereafter erected, and the moving, alteration, improvement, repair, adding to or razing in full or in part, of all existing buildings.

(b) The Building Committee shall exercise those powers and perform its duties for the accomplishment of requiring conformity as to exterior architectural appeal and functional plan, in addition to other powers and duties set out in other provisions of this Code.
(Code 2001, § 1715.04; Ord. No. 91-1, 11-2-1992)

Sec. 8-5. Permit fees.

(a) *Fee payment required.* No permit as required by this building code shall be issued until the prescribed fee shall have been paid. No amendment to a permit shall be approved until the additional fee, if there is a fee increase due to an increase in the square footage of the building or structure, shall have been paid.

(b) *Construction or alteration.* The Town shall establish the fee to be paid for a building permit.

(c) *Removal to another lot.* For a permit for the removal of a building or structure from one lot to another, the fee shall be in the amount established by the Town.

(d) *Moving on same lot.* For a permit for the removal of a building or structure to a new location within the same lot, the fee shall be in the amount established by the Town.

(e) *Demolition.* For a permit for the demolition of a building or structure, the fee shall be in the amount established by the Town.
(Code 2001, §§ 1719.01—1719.05; Ord. No. 91-1, 11-2-1992)

Sec. 8-6. Inspection.

The Building Committee shall have the authority to expend monies, not to exceed 50 percent of the fee paid, to the Building Inspector assigned to the project creating the fee as an inspection service fee.
(Code 2001, § 1719.06; Ord. No. 91-1, 11-2-1992)

Sec. 8-7. Placement of structures on lots.

A single structure or building of any kind built in the Town shall meet all of the requirements as set forth in Subsections (1) through (3) of this section.

- (1) The structure or building shall be so placed that it is ten feet on any side from any other building, structure, dwelling, or mobile home. This includes buildings or structures in adjacent lots.
- (2) The structure shall sit back from the property line facing a street or avenue ten feet or not less than the average setback of adjacent dwellings. When the property line faces an alley the setback shall be three feet. If the adjoining lot is empty or does not have a structure closer to the fence line than five feet, then the setback will be five feet. In any case a structure may not be built closer than ten feet to any other structure.
- (3) This article will not affect any presently completed structures. It will only affect what is built in the Town after being approved by the Town Council. This article is designed to maintain property values for owners and also for health and safety reasons.

(Ord. of 8-1-2005, § 1719.07)

Secs. 8-8—8-32. Reserved.**ARTICLE II. BUILDING CODE****Sec. 8-33. Adoption.**

There is hereby adopted and incorporated by reference as if set out at length herein for the purpose of safeguarding life and property and to ensure the quality of construction of all structures erected or removed throughout the Town that certain code known as the State Building Code as promulgated by the Fire Marshal under West Virginia Code 29-3-5b.

(Code 2001, § 1711.01)

Sec. 8-34. 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:

BOCA refers to the Building Officials and Code Administrators International, 4051 Flossmoor Road, Country Club Hills, Illinois, 60477-5795.

Building code includes all aspects of safe building construction and mechanical operations and all safety aspects related thereto.

CABO refers to the Council of American Building Officials, 5203 Leesburg Pike, Suite 708, Falls Church, Virginia, 22041.

Fire Marshal means the State Fire Marshal and/or said fire marshal's designated representatives.

State Building Code means the entire contents of this article and the referenced national codes.

(Code 2001, § 1711.02)

Secs. 8-35—8-56. Reserved.

ARTICLE III. UNSAFE STRUCTURES

Sec. 8-57. Purpose and scope.

(a) This article provides for a process for the identification, inspection, correction, and removal of unsafe structures within the Town in a manner that provides adequate notice and due process to the owners of such structures while protecting the public from danger due to unsafe or unsanitary conditions.

(b) This article is intended to authorize the Town to exercise, to the fullest extent provided by law, the power and authority provided by W.Va. Code § 8-12-16, subject to the requirements therein.

(c) The powers and duties granted in this article are in addition to those otherwise granted by law and shall not be construed to limit any other lawful powers of the Town, including the power of code enforcement officers to interpret and enforce the building and housing codes of the Town.

(d) This article shall be construed to liberally to promote the purpose of efficiently abating dangerous conditions that are harmful to the community.

(Code 2001, § 1725.01; Ord. No. 99-4, 11-1-1999; Ord. of 6-13-2024(1), § 1725.01)

Sec. 8-58. 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:

Code Enforcement Agency means the certified code enforcement agency official of the Town, singularly or as the head of a code enforcement department as defined by Title 87 West Virginia Code of State Rules § 7-2.

Code Enforcement Agency official means any person employed by the Town who has been delegated the authority from the Code Enforcement Agency to conduct property maintenance inspections.

Owner or landowner means a person who individually or jointly with others:

- (1) Has legal title to the property or structure, dwelling or building with or without actual possession of the property or structure, dwelling or building;

- (2) Has charge, care or control of the property or structure, dwelling or building as owner or designated agent of the owner;
- (3) Is an executor, administrator, trustee or guardian of the estate of the owner;
- (4) Is the designated agent of the owner for the purpose of managing, controlling or collecting rents; or
- (5) May lawfully control or direct the management or disposition of the property or structure, dwelling or building.

Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare means:

- (1) Any door, aisle, passageway, stairway, exit or other means of egress that does not conform to the approved Building or Fire Code of the Town as related to the requirements for existing buildings; or
- (2) The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress; or
- (3) Any portion of a structure, dwelling or building or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to the extent that it is likely to partially or completely collapse, or to become detached or dislodged; or
- (4) Any portion of a structure or building, or any member, appurtenance or ornamentation on the exterior that is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads of 1½ the original designed value; or
- (5) The structure, dwelling, or building, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way; or
- (6) The structure, dwelling, or building, or any portion, is clearly unsafe for its use; or
- (7) The structure, dwelling, or building is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children, becomes a harbor for vagrants, criminals, criminal activity or enables persons to resort to the structure, dwelling, or building for committing a nuisance or an unlawful act; or
- (8) Any structure, dwelling, or building constructed, existing or maintained in violation of any specific requirement or prohibition applicable to any structure, dwelling, or building provided by the approved building or fire code of the Town or of any law or ordinance that presents either a substantial risk of fire, building collapse or any other threat to life and safety; or

- (9) A structure, dwelling, or building, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, contamination by any hazardous substance or material, including, but not limited to, substance resulting from the illegal manufacture of drugs, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the Code Enforcement Agency to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease; or
 - (10) Any structure, dwelling, or building, because of a lack of sufficient or proper fire resistance-rated construction, fire protection system, electrical system, fuel connections, mechanical system, plumbing system or other cause, is determined by the code official to be a threat to life or health; or
 - (11) Any portion of a building that remains on a site after the demolition or destruction of the building or structure, or whenever any building or structure is abandoned.
- (Ord. of 6-13-2024(1), § 1725.02)

Sec. 8-59. Closing and removal of unsafe structures.

(a) The Code Enforcement Agency may order the repair, alteration, improvement, closing, demolition, or removal of any structure, dwelling, or building that is determined by a code official to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare in accordance with the procedures set forth in this article.

(b) In order to make a determination regarding the classification of a structure as unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare pursuant to this article, and to determine and enforce the appropriate remedy for any such structure, code officials shall be entitled to make inspections, perform investigations, issue notices, require corrective measures, obtain search warrants from and/or present complaints to the municipal judge, and exercise all other powers and duties authorized by West Virginia Code § 8-12-16.

(Ord. of 6-13-2024(1), § 1725.03)

Sec. 8-60. Inspection.

For purposes of inspections performed pursuant to this article, the following rules shall apply:

- (1) When a code officer lawfully enters the premises of the property or the structure, dwelling or building for investigating or inspecting any structure, dwelling, or building, the investigation shall be conducted in a way that minimizes the inconvenience to the owner or person in possession.
- (2) Except in exigent circumstances and as may be permitted by law, the Code Enforcement Agency shall provide reasonable notice of the inspection to the owner and request permission from the owner to enter the structure, dwelling, or building.

- (3) If the owner cannot be located after reasonable inquiry by the Code Enforcement Agency, or if the owner refuses entry, the code enforcement agency may obtain an administrative search warrant from either the Municipal Court or the County Magistrate Court. Before issuance of an administrative search warrant, a Code Enforcement Agency officer shall be required to make a sworn statement and prima facia case showing that the code enforcement agency was unable to gain access to the structure, dwelling, or building after reasonable and good faith efforts, and that there is a legitimate and substantial safety concern involving the structure, dwelling, or building that supports the requested entry.
 - (4) If the administrative search warrant is granted by the court, and if the owner can be located by a code officer, the Code Enforcement Agency shall provide the owner a copy of the administrative search warrant five days before entering the structure, dwelling, or building. If there is a tenant or other person in possession of the structure who is not the owner, and if such person can be located, the Code Enforcement Agency shall also provide such person a copy of the administrative search warrant five days before entering the structure, dwelling, or building.
 - (5) Any entry pursuant to this section shall be made for the sole purpose of inspection of the structure, dwelling, or building for unsafe or unsanitary conditions and not for the purpose of gathering evidence for use in any criminal charge or proceeding unrelated to the unsafe or unsanitary condition of the structure, dwelling, or building.
- (Ord. of 6-13-2024(1), § 1725.04)

Sec. 8-61. Correction of unsafe conditions.

Upon a determination by the Code Enforcement Agency that a structure, dwelling, or building is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, the Town may take corrective action by causing it to be vacated, closed, removed, or demolished, either directly or through a third-party agent, in the absence of an owner agreement or a court order, provided the following conditions are met:

- (1) The Code Enforcement Agency undertakes reasonable efforts to locate and seek agreement from the owner prior to taking the corrective action.
- (2) The corrective action may only be taken as to a structure, dwelling, or building that is either:
 - a. Defined in Subsection (3), (5), or (8) of the definition of "Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare" in Section 8-58;
 - b. Defined in Subsection (6), (7), (9), or (11) of the definition of "Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare" in Section 8-58; provided that the structure, dwelling, or building is vacant, abandoned, or has been lawfully declared unfit for human habitation; and the reasonable

estimated cost of repair, rehabilitation, or corrective action exceeds the reasonable estimate of the fair market value of the structure, dwelling, or building.

(3) Prior to undertaking the corrective action, the Town will complete the following procedural requirements:

- a. The Code Enforcement Agency shall produce a written notice containing:
 1. A description of the property and the structure, dwelling, or building sufficient for identification;
 2. The date of the last inspection;
 3. The name of the inspector;
 4. A reasonable description of the unsafe, unsanitary, dangerous, or detrimental condition;
 5. A reasonable description of the corrective measures required;
 6. The allotted time to correct the substandard condition; and
 7. A statement that owner has the right to apply to the Circuit Court for a temporary injunction or other similar relief restraining action by the enforcement agency.
- b. The notice shall be served on the owner or landowner by conspicuously posting and attaching a copy of the notice to the subject property or structure, dwelling, or building, and by serving the notice on the owner or landowner in the same manner as service of a complaint as set forth in Section 8-65(b).
- c. If the Code Enforcement Agency cannot effect personal service on the owner, a Code Enforcement Agency officer shall subscribe a written affidavit, to be maintained by the code enforcement agency for a minimum of two years, that demonstrates the structure, dwelling or building falls within one of the categories set forth in Subsection (2)a or b of this section, sets forth the basis in reasonable detail, including documentation of same, and memorializes the code enforcement agency officer's efforts to contact or get permission for entry and corrective action from the owner; and the code enforcement agency shall publish notice of its intent to enter the property or structure, dwelling, or building for the purpose of demolition or correction, along with the address of the property, the name of the owner and the date of the proposed action, as a Class II legal advertisement, the first of which shall run at least 30 days before the date of the proposed action by the enforcement agency, and the last being no later than 20 days before the date of the proposed action by the enforcement agency.
- d. If there is no response to the notice by the owner or landowner in the time specified in the notice, then the Town shall have the authority to proceed with correction or demolition of the subject structure, dwelling, or building.

(Ord. of 6-13-2024(1), § 1725.05)

Sec. 8-62. Relief from order of corrective action.

(a) Pursuant to W. Va. Code § 8-12-16, the owner of property subject to corrective action shall be given notice of the right to apply to the Circuit Court of the County for a temporary injunction or other similar relief restraining correction or demolition by the Town. Such notice shall be provided in the written notice produced pursuant to Section 8-61(3).

(b) Pursuant to W. Va. Code, § 8-12-16, if such an application is made by the owner to the Circuit Court, a hearing shall be held within 20 days of the application, or as soon as reasonably possible.

(c) Pursuant to W. Va. Code, § 8-12-16, continuances of the hearing provided for in this section may be made for cause only. If a continuance is granted upon request by the owner, the owner is required to pay into court, in the form of a bond, any reasonable and necessary costs related to the structure, dwelling, or building likely to be incurred by the Town during the continuance. This requirement is in addition to any other bond required or authorized by the State Rules of Civil Procedure or other applicable law.

(d) Pursuant to W. Va. Code, § 8-12-16, at the conclusion of a hearing held under this subsection, if the Court finds that the structure, dwelling, or building is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, the court shall make and enter an order granting the relief as requested by the Town.

(Ord. of 6-13-2024(1), § 1725.06)

Sec. 8-63. Owner responsibility for costs.

(a) The owner of any structure, dwelling, or building under order of the Code Enforcement Agency of the Town, shall be required to pay for the costs incurred by Town for repairing, altering, improving, vacating, closing, removing, or demolishing any structure, dwelling, or building.

(b) In addition to any other rights provided by law, the Town may file a lien against the real property in question for an amount that reflects all costs incurred by the town for repairing, altering, improving, vacating, closing, removing, or demolishing any structure, dwelling, or building. Any such lien shall be filed and notices in accordance with applicable State law and this Code.

(Ord. of 6-13-2024(1), § 1725.07)

Sec. 8-64. Civil action for corrective action and recovery of costs.

(a) In addition to any other rights provided in this article and by law, the Town may, in its discretion, institute a civil action in circuit court against the landowner or other responsible party to obtain an order to take corrective action up to and including demolition of any structure, dwelling, or building that is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, and to recover all reasonable costs and expenses incurred by the town with respect to the property or structure, dwelling, or building and for reasonable attorney fees and court costs incurred in the prosecution of the action.

(b) No fewer than ten days before instituting a civil action as provided in this section, the Town shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the Town Council's intention to institute such action.

(c) The notice shall be sent to the most recent address of the landowner of record in the office of the County Assessor and to any other address for the landowner as may exist on record with the Town. If, for any reason, such certified mail is returned without evidence of proper receipt, the Town shall resend the notice by first class mail, postage prepaid, and shall also post notice on the front door or other conspicuous location on the subject property or structure, dwelling, or building.

(Ord. of 6-13-2024(1), § 1725.08)

Sec. 8-65. Notices.

(a) To the extent not otherwise authorized by state law, all notices of violation or correction for violations that fall within one of the categories defined in Subsection (1), (2), (4) or (10) of the definition of "Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare" in Section 8-58 shall be served in accordance with the process set forth in the State Building Code.

(b) Any violation of this article may be prosecuted by the Town consistent with state and local laws. Unless otherwise authorized by state law, prosecution of a violation shall be initiated by a complaint presented to and sworn or affirmed before municipal judge or other Town official with lawful authority to hear and determine violations of this Code. Unless otherwise provided by statute, the presentation and oath or affirmation shall be made by a code enforcement officer or Town Attorney showing reason to have reliable information and belief. If from the facts stated in the complaint the municipal judge or other Town official with lawful authority to hear and determine violations of this Code finds probable cause, the complaint becomes the charging instrument initiating a criminal proceeding. A complaint lawfully authorized by this subsection (b) along with a summons setting forth the date, time and place of appearance before a municipal judge and or other Town official with lawful authority to hear and determine violations of this Code shall be served in accordance with the law of the State concerning the service of process in civil actions, except that personal service of a summons and complaint may be made by a code enforcement agency official. If service is made by certified mail under rule 4(d)(1)(D) of the State Rules of Civil Procedure, and delivery of the summons and complaint is refused, the Code Enforcement Agency Officer, promptly upon the receipt of the notice of the refusal, shall mail to the person or entity being noticed, by first class mail, postage prepaid, a copy of the summons and complaint. If the first class mailing is not returned as undeliverable by the U.S. Postal Service, service of the summons and complaint is presumed to have been effectuated upon service of the summons and complaint consistent with this subsection (b), the violation may be prosecuted consistent with State and local law.

(Ord. of 6-13-2024(1), § 1725.09)

Sec. 8-66. Absolute defense.

It shall be an absolute defense to any civil action by an owner, landowner, or tenant for damages resulting from the closure, demolition, or other corrective action taken by the Town under this article that the town followed the procedures set forth herein, provided that the town acted in good faith, can demonstrate that the structure, dwelling or building falls within one of the categories set forth in Section 8-61(2)a or b, followed the procedures set forth in this article, and had adopted the State Building Code at the time the closure, demolition or other corrective action occurred.

(Ord. of 6-13-2024(1), § 1725.10)

Chapter 9

RESERVED

Chapter 10

BUSINESSES AND BUSINESS REGULATIONS

Article I. In General

- Sec. 10-1. Yard sales; three days only.
Secs. 10-2—10-20. Reserved.

Article II. License Taxes

- Sec. 10-21. Definitions.
Sec. 10-22. License required; license tax levied.
Sec. 10-23. Application and issuance; payment of license tax.
Sec. 10-24. False statements prohibited.
Sec. 10-25. Conditions precedent to doing business.
Sec. 10-26. Licensing not to legalize any act.
Sec. 10-27. License a personal privilege.
Sec. 10-28. Effect of change in partners or name.
Sec. 10-29. Expiration date; annual renewal; fee.
Sec. 10-30. Display of license.
Sec. 10-31. Duplicate licenses.
Sec. 10-32. Collection of back taxes.
Sec. 10-33. Suspension and revocation of licenses; public hearings.

ARTICLE I. IN GENERAL**Sec. 10-1. Yard sales; three days only.**

(a) No person shall conduct a yard sale without a permit from Town Hall. The permit will be issued in the same week as the sale at no cost. Permit will have to be visible during sale.

(b) The sale is to be on the owner's property only within the hours of 7:00 a.m. to 6:00 p.m.

(c) Everything needs to be cleaned up and packed away at the end of final day of the sale.
(Code 2001, § 905.05B)

Secs. 10-2—10-20. Reserved.**ARTICLE II. LICENSE TAXES****Sec. 10-21. 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:

Business means any business, whether a person is engaged expressly or impliedly holds said person's self out as engaged in business or supplying said person's products or a commodity or service to the public as a class or a limited portion of the public or sells any goods, wares, merchandise of any kind or provides a service of any kind; provided, however, that the term "business" shall not include sales of products of the farm, garden or dairy by the producer or grower thereof; occasional sales by societies acting for charitable, religious or benevolent purposes; judicial sales directed by law or court order.

Gross income means the gross receipts of the business received as compensation for personal services and from trade, commerce or sales and the value accruing from the sale of tangible property (real or personal), or service, or both, without any deduction on account of the cost of property sold, materials used, labor costs, taxes or any other expense whatsoever.

Person or company means any individual, firm, co-partnership, joint venture, association, corporation, trust and any other group or combination acting as a unit in the plural, as well as the singular, and when used in connection with the penalties imposed by this article, the term "person" or "company" means the officers, directors, trustees or members of any firm, co-partnership, joint venture, association, corporation, trust or any other groups acting as a unit.

(Code 2001, § 725.01)

Sec. 10-22. License required; license tax levied.

(a) No person shall, without a currently valid Town license, engage in or prosecute within the Town any business activity without first obtaining a business certificate from the Town.

(b) The business license tax levied shall be in the amount established by the Town.
(Code 2001, § 725.02)

Sec. 10-23. Application and issuance; payment of license tax.

(a) The licenses provided for in this article shall be issued in the form of certificates by the Town Recorder to any person making proper application therefor, on forms to be prescribed and furnished by the town recorder, and tendering the license tax for each license certificate requested.

(b) The Town Recorder shall collect in full the proper taxes and fees and determine to the town recorder's satisfaction that all of the conditions precedent to the granting of such license have been fulfilled by the applicant before issuing a certificate of license.
(Code 2001, § 725.03)

Sec. 10-24. False statements prohibited.

No person shall knowingly make any false statement in any application for a Town license, or in any tax return, report or other statement relating to any activity licensed by the Town and which is required to be made to any town officer or agency.
(Code 2001, § 725.04)

Sec. 10-25. Conditions precedent to doing business.

Payment in full of the proper tax as specified in this article, the issuance of a certificate of license under the provisions of Section 10-23 and the fulfillment of all terms and conditions of such grant shall be conditions precedent to the transaction of any business, activity, trade or employment for which a license is required by this article.
(Code 2001, § 725.05)

Sec. 10-26. Licensing not to legalize any act.

Nothing in this article, and no payment of any license tax or the issuance of any certificate of license under the provisions hereof, shall be deemed to legalize any act which otherwise may be in violation of law, or to exempt any person from any penalty prescribed for such violation.
(Code 2001, § 725.06)

Sec. 10-27. License a personal privilege.

Every license issued under the provisions of this article shall confer a personal privilege only to transact the business, activity, trade or employment which may be the subject of the license and shall not be exercised except by the person holding the same and shall not be assignable.
(Code 2001, § 725.07)

Sec. 10-28. Effect of change in partners or name.

No change in the name of the firm, nor the taking in of one or more new partners, nor the withdrawal of one or more members of the firm, so long as at least one member remains the same, shall be considered as terminating the privileges of any license granted to such partners or firm.

(Code 2001, § 725.08)

Sec. 10-29. Expiration date; annual renewal; fee.

(a) Licenses shall expire at 12:00 midnight on June 30, subsequent to the date of issuance and shall be renewable annually.

(b) The license tax or fee for an initial license upon the commencement of business shall be the full amount of the annual tax if issued during the first half of the fiscal year and half the full amount of the annual tax if issued during the last half of the Town's fiscal year.

(Code 2001, § 725.09)

Sec. 10-30. Display of license.

Each person to whom a Town license has been issued shall keep such license conspicuously posted upon or within the premises to which such license relates. Each licensee having no fixed place of business shall carry the license upon said licensee's self at all times while engaging in the licensed business or any transaction incidental thereto, and shall display such license upon request of any person with whom the licensee is transacting business or of any town official.

(Code 2001, § 725.10)

Sec. 10-31. Duplicate licenses.

Any person losing, misplacing or destroying any license issued under the provisions of this article may, by application to the Town Recorder, procure a duplicate thereof, upon satisfactory proof of the loss of the original.

(Code 2001, § 725.11)

Sec. 10-32. Collection of back taxes.

(a) *General provisions.* Any person engaging in or prosecuting any business, activity, trade or employment contrary to the provisions of this article, whether without obtaining a license therefor before commencing the same, or by continuing the same after the termination of the effective period of any such license, shall, in addition to all other penalties provided for in this article, be liable to the payment of all back taxes and penalties for a period not exceeding three years.

(b) *Collection by action or suit.* The Town Recorder may collect any license tax and penalty unpaid under the provisions of this article by civil action or other appropriate proceedings, including suit in the Magistrate Court.

(c) *Collection by distraint.* The Town Recorder or the Town Recorder's agents may distrain upon any personal property, including intangibles, of any person delinquent in the payment of taxes and penalties accrued and unpaid under the provisions of this article.

(Code 2001, § 725.12)

Sec. 10-33. Suspension and revocation of licenses; public hearings.

(a) The Town Recorder, upon reasonable notice to the licensee, may summarily revoke any license issued by the Town Recorder pursuant to the provisions of this Code for any reason which would have been grounds for denial of such license when first issued, for violation of any term or condition of such license, for violation of any pertinent provision of State law, this Code or other ordinance, or for the perpetration or attempted perpetration of fraud, malpractice or malfeasance by the licensee, without prejudice to prosecution of such licensee by the Town.

(b) If a registrant shall at any time knowingly or willfully file false data or information required by Section 10-23, or shall willfully refuse or neglect to file any tax report or to pay the tax, or penalty, or interest on any part thereof, required in this article, the Town Recorder may cancel the registrant's certificate. Before cancelling any such certificate, the Town Recorder shall set a hearing as prescribed in this article and notify the person by certified mail not less than 20 days prior to the hearing date to appear and show cause why such registration certificate should not be canceled.

(Code 2001, § 725.14)

Chapter 11

RESERVED

Chapter 12

ELECTIONS

- Sec. 12-1. Election date, Town officials and terms of office.
- Sec. 12-2. Qualifications.
- Sec. 12-3. Filing of candidates.
- Sec. 12-4. Filing fees.
- Sec. 12-5. Political parties.
- Sec. 12-6. Wards established; Councilperson-at-Large.
- Sec. 12-7. Vacancies.
- Sec. 12-8. Registration books.
- Sec. 12-9. Expenses of elections.
- Sec. 12-10. Registrars.
- Sec. 12-11. Election Commission; duties.
- Sec. 12-12. Appointment of precinct election officials.
- Sec. 12-13. Compensation of election officials.
- Sec. 12-14. Registration records, election supplies and the return of ballots.
- Sec. 12-15. Canvass of the election.
- Sec. 12-16. Conduct of the election.
- Sec. 12-17. Contested elections.
- Sec. 12-18. Absentee voting.
- Sec. 12-19. State election laws.

Sec. 12-1. Election date, Town officials and terms of office.

A Town general election shall be held on the second Tuesday in June 1991, and the same day every fourth year thereafter, for the purpose of electing a Mayor, Recorder, municipal judge and members of the Town Council. The Town officials shall be elected by voters whose names are currently registered with the Registrar of the County and who reside within the corporate boundaries of the Town. The term of office for all elected Town officials shall be four years, beginning on July 1 following the election or until their successors shall be elected and qualified. Such elections shall be held in conformity with W. Va. Code Chs. 3 and 8.

(Code 2001, § 105.01; Ord. No. 90-3, 7-2-1990)

State law reference—Elections generally, W. Va. Code § 8-5-5.

Sec. 12-2. Qualifications.

(a) Any elective officer who is at least 18 years of age and will have continuously resided in the corporate limits of the Town for at least 30 days prior to the election, or in case of a ward Councilperson, has resided in the particular ward of their candidacy for at least 30 days prior to the election for Council in that ward shall be eligible to run for and hold such office.

(b) Eligibility to run for or hold such office shall lapse and terminate in the event any candidate or office holder shall establish a residency outside the corporate limits or outside of their particular ward. In the case of an office holder, a vacancy is created in the office which shall be filled by appointment of the Mayor with the approval of the Council.

(Code 2001, § 105.02; Ord. No. 90-3, 7-2-1990)

Sec. 12-3. Filing of candidates.

(a) Any person who is eligible and seeks to hold an office or political party position to be filled by election in any primary or general election shall file a certificate of announcement declaring the person's candidacy for the nomination or election to the office.

(b) The certificate of announcement shall be filed with the Recorder.

(c) The certificate of announcement shall be filed with the proper officer not earlier than the second Monday in January before the primary election day and not later than the last Saturday in January before the primary election day and must be received before 12:00 midnight, eastern standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service before that hour.

(d) The certificate of announcement shall be on a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to administer oaths, containing the following information:

- (1) The date of the election in which the candidate seeks to appear on the ballot;
- (2) The name of the office sought; the district, if any; and the division, if any;

- (3) The legal name of the candidate and the exact name the candidate desires to appear on the ballot, subject to limitations prescribed in W. Va. Code § 3-5-13;
 - (4) A statement that the candidate is a legally qualified voter of the Town;
 - (5) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and town, state, and zip code;
 - (6) A statement that the person filing the certificate of announcement is a candidate for the office in good faith; and
 - (7) The words "subscribed and sworn to before me this ____ day of _____, 20____" and a space for the signature of the officer giving the oath;
- (e) A person may not be a candidate for more than one office or office division at any election.
- (f) A candidate who files a certificate of announcement for more than one office and does not withdraw, as provided by W. Va. Code § 3-5-11, from all but one office prior to the close of the filing period may not be certified or placed on the ballot for any office.

(Code 2001, § 105.03; Ord. No. 90-3, 7-2-1990)

State law reference—Similar provisions, W. Va. Code § 3-5-7.

Sec. 12-4. Filing fees.

The filing fee for the office of Mayor shall be \$50.00, Recorder \$25.00, municipal judge \$25.00, and Councilmembers \$10.00, which shall be paid to the Town Recorder upon filing the statement of the candidate.

(Code 2001, § 105.04; Ord. No. 90-3, 7-2-1990)

Sec. 12-5. Political parties.

There shall be no political parties in the Town. All persons filing for any elective office in the Town shall run on a general non-partisan ballot.

(Code 2001, § 105.05; Ord. No. 90-3, 7-2-1990)

Sec. 12-6. Wards established; Councilperson-at-Large.

(a) The Town shall be divided into three wards with two councilpersons representing each ward. There shall also be elected a member of the Council who shall be a Councilperson-at-Large who shall be elected by a vote of the whole Town. The three wards and the corresponding voting districts shall be as follows:

Ward I	Precinct No. 149	Chesapeake Elementary School
Ward II	Precinct No. 150	Chesapeake Town Hall
Ward III	Precinct No. 151	Chesapeake Town Hall

(b) Whenever it is deemed necessary, the Council may, by ordinance, increase the number of wards and change the boundaries thereof, such wards to be made nearly equal as may be in territory and population. In fixing ward boundaries, the Council shall take into consideration the boundaries of the voting precincts as determined by the County Commission.

(Code 2001, § 105.06; Ord. No. 90-3, 7-2-1990)

Sec. 12-7. Vacancies.

(a) *Vacancy in the office of Mayor.* In the case of death, conviction, impeachment, failure to qualify, resignation, absence, incapability, disability or other reason of vacancy of the Mayor, the Recorder shall act as mayor until the next election or until the disability is removed. If the Recorder shall decline or for any of the causes named in this subsection not be able or become incapable of performing the duties of Mayor, the same shall devolve upon the Councilperson-at-Large and, in all cases, where there is no one to act as Mayor, one shall be chosen by nomination and vote of the Council.

(b) *Vacancy in the offices of Recorder, municipal judge or Council.* In the case of a vacancy in the office of Recorder, municipal judge or Town Council, that office shall be appointed by the Mayor to the approval of the council.

(Code 2001, § 105.07; Ord. No. 90-3, 7-2-1990)

Sec. 12-8. Registration books.

The County registration books shall be the registration books for all municipal elections, and any person so registered on election day as heretofore provided may vote.

(Code 2001, § 105.08; Ord. No. 90-3, 7-2-1990)

State law reference—Similar provisions, W. Va. Code § 3-5-11.

Sec. 12-9. Expenses of elections.

The expenses of conducting municipal elections shall be paid by the Town.

(Code 2001, § 105.09; Ord. No. 90-3, 7-2-1990)

Sec. 12-10. Registrars.

The Uniform Election Board appointed by the Council to serve in each precinct or voting place shall on election day be ex officio Town Registrars and shall on said election day validate the name of any person as a qualified voter in the municipal election held on that day, provided that the name of that person appears on the County registration books as a registered and qualified voter for the precinct in which that person seeks to vote.

(Code 2001, § 105.10; Ord. No. 90-3, 7-2-1990)

State law reference—Voter registration, W. Va. Code § 3-2-1 et seq.

Sec. 12-11. Election Commission; duties.

(a) The Town Recorder being the Chief Election Official of the Town, while holding such office, and two qualified electors appointed by the Council, shall constitute the Election Commission of the Town. The Council shall make its appointments to the Election Commission not less than 45 or more than 60 days before the election to be held under this article. The Election Commission so appointed shall hold office at the will and pleasure of the Council. It shall be the duty of the Election Commission to prepare the ballot for the election and to cause the same and all other election supplies and materials to be made available for the election.

(b) The facsimile sample ballot shall be published as follows:

- (1) If there are two or more qualified newspapers in the County, publish a daily newspaper, not more than 26 nor less than 20 days preceding the primary election, the Recorder shall publish each sample official primary election ballot as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of W. Va. Code § 59-3-1 et seq.
- (2) If the County has no more than one daily newspaper, or has only one or more qualified newspapers which publish weekly, not more than 26 nor less than 20 days preceding the primary election, the Recorder shall publish the sample official primary election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of W. Va. Code § 59-3-1 et seq.; and
- (3) Each facsimile sample ballot shall be a photographic reproduction of the official sample ballot or ballot pages and shall be printed in a size no less than 65 percent of the actual size of the ballot, at the discretion of the Recorder, provided that in, if an electronic voting system has been adopted, the facsimile sample ballot may be a photographic reproduction of the absentee ballot. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the Recorder for approval prior to publication.

(c) The members of the Election Commission shall receive such compensation as may be determined by the Council but not to exceed \$25.00 for each election.

(Code 2001, § 105.11; Ord. No. 90-3, 7-2-1990)

State law references—Election commission, W. Va. Code § 3-1-29 et seq.; publication of sample ballots, W. Va. Code § 3-5-10.

Sec. 12-12. Appointment of precinct election officials.

The Council shall meet in special session not less than 20 days prior to the holding of any election and fix the place within the Town where such elections shall be held and at such meeting shall appoint the Uniform Election Board consisting of three commissioners and two

clerks to serve in each voting precinct of the Town during a municipal election. In the event the Council shall determine that any person is not qualified to serve as an election official, or in the event that any person shall refuse to serve as an election official, the Council shall proceed to fill the vacancy with a qualified person. At such meeting, the Council shall approve the qualifications of all candidates filing for election.

(Code 2001, § 105.12; Ord. No. 90-3, 7-2-1990)

Sec. 12-13. Compensation of election officials.

The commissioners and clerks that make up the Uniform Election Board shall receive such compensation as may be determined by the Council, not to exceed the compensation payable under general law to precinct election officials.

(Code 2001, § 105.13; Ord. No. 90-3, 7-2-1990)

Sec. 12-14. Registration records, election supplies and the return of ballots.

At least three days before the date of a municipal election the Town Recorder shall procure from the County Commission the necessary registration records and shall deliver them, together with the ballots and other election supplies, to designated election officials in each precinct. The election officials shall, as soon as possible after the closing of the polls on election day, return to the Town Recorder the ballots, tally sheets, certificates of the election, registration records, poll books, ballot boxes and other election supplies. The three-member Uniform Election Board will then escort the ballots to the County Commission's office for tabulation.

(Code 2001, § 105.14; Ord. No. 90-3, 7-2-1990)

Sec. 12-15. Canvass of the election.

On the first Monday following the election, the Council shall canvass the returns of the election and declare and certify by minutes of the meeting and publicly posting the results at the Town Hall within five days thereafter.

(Code 2001, § 105.15; Ord. No. 90-3, 7-2-1990)

Sec. 12-16. Conduct of the election.

The present Council shall be the judge of the election, the returns, the qualifications of the Mayor, its own members and any other persons elected to office in the Town. The Council may determine the conduct of the election and the results thereof, so long as such acts are consistent with the general law of the State. Qualifications of voters shall be determined by the Council under the general law of the State.

(Code 2001, § 105.16; Ord. No. 90-3, 7-2-1990)

Sec. 12-17. Contested elections.

All contested elections shall be heard and determined by the Council in existence at the time the election is held, and contest shall be made and conducted in the manner as provided

for in contests for County and district officers, and the Council by its proceedings in such cases shall, as nearly as practicable, conform with like proceedings of the County Commission in such cases.

(Code 2001, § 105.17; Ord. No. 90-3, 7-2-1990)

State law reference—Contested election, W. Va. Code § 8-5-17.

Sec. 12-18. Absentee voting.

Absentee voting in a municipal election shall be permitted in accordance with the provisions of the State code.

(Code 2001, § 105.18; Ord. No. 90-3, 7-2-1990)

State law reference—Absentee voting, W. Va. Code § 3-3-1 et seq.

Sec. 12-19. State election laws.

All municipal elections, except as otherwise provided herein, shall be conducted in accordance with the laws of the State.

(Code 2001, § 105.19; Ord. No. 90-3, 7-2-1990)

State law reference—Elections generally, W. Va. Code §§ 3-1-1 et seq., 8-5-1 et seq.

Chapter 13

RESERVED

Chapter 14

FIRE PREVENTION AND PROTECTION

Article I. In General

Secs. 14-1—14-18. Reserved.

Article II. Volunteer Fire Department

Sec. 14-19. Town Fire Department created.
Sec. 14-20. Composition of department; Fire Chief.
Sec. 14-21. Duties and powers of Fire Chief.
Sec. 14-22. Duties of firefighters.
Sec. 14-23. Refusal to obey Fire Chief; interference with duties of Fire Department.
Secs. 14-24—14-49. Reserved.

Article III. State Fire Code

Sec. 14-50. Adoption of code.
Sec. 14-51. New materials, processes or occupancies which may require permits.
Secs. 14-52—14-75. Reserved.

Article IV. Fireworks

Sec. 14-76. Definitions.
Sec. 14-77. Enforcement.
Sec. 14-78. Use regulations.
Sec. 14-79. Consumer fireworks.
Sec. 14-80. Display fireworks.
Sec. 14-81. License, registration, etc., requirement.
Sec. 14-82. Sale of fireworks.
Sec. 14-83. Storage.
Sec. 14-84. Seizure of fireworks.

ARTICLE I. IN GENERAL

Secs. 14-1—14-18. Reserved.

ARTICLE II. VOLUNTEER FIRE DEPARTMENT

Sec. 14-19. Town Fire Department created.

There is created a Town Fire Department, which shall be a municipally supported volunteer fire department established pursuant to the laws of the State. The Town Fire Department shall be responsible for the prevention and extinguishment of all fires upon all property, public or private, within the Town.

(Code 1963, § 1-29-1; Code 2001, § 141.01)

Sec. 14-20. Composition of department; Fire Chief.

The Town Fire Department shall consist of the Town Fire Chief and a minimum of 20 firefighters. The Town Fire Chief shall be appointed by the Mayor upon the advice and consent of the Council, and shall receive the salary authorized by the council. Firefighters shall be recruited by the Town Fire Chief and shall be appointed as firefighters by the Mayor upon the advice and recommendation of the Town Fire Chief.

(Code 1963, § 1-29-2; Code 2001, § 141.02)

Sec. 14-21. Duties and powers of Fire Chief.

The Town Fire Chief shall be responsible for the organization, equipment, government and discipline of the Town Fire Department and for the maintenance of its equipment. The Town Fire Chief shall enforce the ordinances of the Town for the prevention of fires and shall have such additional authority as is delegated by the laws of the State with regard to the prevention of fires. The Town Fire Chief shall be in command of all firefighting efforts, including persons and equipment, at all fires within the Town, and shall have the power and authority to give any orders necessary in effectively combating such fires, including orders for the pulling down or destroying of any fence, house or other thing, if deemed necessary to prevent the spreading of the fire. The Town Fire Chief shall devote as much time as necessary to accomplish the town fire chief's duties and shall be on call at all times but shall not be considered a full-time employee of the town.

(Code 1963, § 1-29-3; Code 2001, § 141.03)

Sec. 14-22. Duties of firefighters.

Firefighters shall be volunteers but shall be on call at all times and shall, upon any alarm of fire, attend according to the ordinances of the Town and the regulations of the department

and endeavor to extinguish such fire. They shall be required to attend weekly meetings for their organization, and training and maintenance of equipment, and semi-annual meetings for the examination of the state of equipment as required by law.

(Code 1963, § 1-29-4; Code 2001, § 141.04)

Sec. 14-23. Refusal to obey Fire Chief; interference with duties of Fire Department.

All persons refusing to obey any lawful order or direction of the Town Fire Chief or disrupting or hindering the efforts of the Town Fire Department in the prevention and extinguishment of fires shall be deemed guilty of a misdemeanor.

(Code 2001, § 141.99)

Secs. 14-24—14-49. Reserved.

ARTICLE III. STATE FIRE CODE

Sec. 14-50. Adoption of code.

(a) There is hereby adopted and incorporated by reference as if set out at length herein, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosions, that certain code known as the State Fire Code.

(b) The Fire Marshal and other sworn officers of the Fire Department, as appointed by the Fire Chief, are hereby empowered to enforce the fire code and to issue summonses to violators of its provisions.

(Code 2001, § 1509.01)

Sec. 14-51. New materials, processes or occupancies which may require permits.

The Mayor, the Chief of the Fire Department and the Chief of the Bureau of Fire Prevention shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies which shall require permits, in addition to those now enumerated in the State Fire Code. The Chief of the Bureau of Fire Prevention shall post such list in a conspicuous place in the Chief of the Bureau of Fire Prevention's office, and distribute copies thereof to interested persons.

(Code 2001, § 1509.04)

Secs. 14-52—14-75. Reserved.

ARTICLE IV. FIREWORKS

Sec. 14-76. Definitions.

The terms used in this article, including "fireworks", "consumer fireworks" and "display fireworks," shall have such meaning as defined in West Virginia Code Section 29-3E-2. The

term "fireworks" includes consumer fireworks, display fireworks and special effects. The term "fireworks" does not include sparkling devices, novelties, toy caps or model rockets. Any reference to the use of any fireworks in this section includes the ignition, discharge, firing and other use of such fireworks.

(Code 2001, § 545.10(a); Ord. No. 545.10, § 545.10(a))

Sec. 14-77. Enforcement.

The provisions of this article shall be enforced by the Fire Chief or designees thereof.
(Code 2001, § 545.10(i); Ord. No. 545.10, § 545.10(i))

Sec. 14-78. Use regulations.

A person using fireworks:

- (1) Shall not do so while that person is under the influence of alcoholic liquor or controlled substance or a combination of both;
 - (2) Shall be 18 years of age or older or shall be under the direct supervision of said person's parent, guardian or other adult person having the care and custody of the minor;
 - (3) Shall be responsible for the removal of all debris accumulated within 24 hours of such fireworks use and be financially responsible for all cleanup costs and damages due to the use of such fireworks;
 - (4) Shall be responsible for all costs and expenses associated with emergency response efforts, including, but not limited to, fire suppression efforts, related to such fireworks; and
 - (5) Shall abide by all legal requirements concerning such fireworks use.
- (Code 2001, § 545.10(b); Ord. No. 545.10, § 545.10(b))

Sec. 14-79. Consumer fireworks.

A person using consumer fireworks:

- (1) Shall not do so within 100 feet of any building or structure;
- (2) Shall not do so except between 7:00 p.m. and 10:00 p.m. on Memorial Day, Independence Day, Labor Day or corresponding holiday weekends or between 9:00 p.m. on December 31 and 12:30 a.m. on January 1;
- (3) Shall not do so from any motor vehicle or boat;
- (4) Shall ensure that such consumer fireworks do not travel through, come in contact with or discharge or explode onto any public street, highway or sidewalk, in or upon any building at or near any person or within 500 feet of any location posing a special fire danger, such as a gas station or chemical storage area;

- (5) Shall not do so during periods of very high or extreme fire danger as determined by the Town Fire Department or the State Division of Forestry or while wind conditions are such that proper fireworks control cannot be exercised; and
 - (6) Shall do so in accordance with the fireworks manufacturer's printed instructions.
- (Code 2001, § 545.10(c); Ord. No. 545.10, § 545.10(c))

Sec. 14-80. Display fireworks.

Display fireworks shall be used by a competent operator licensed or certified as to competency by the State Fire Marshal and shall be of such composition and character and so located and used so as to be safe in the opinion of the Fire Chief and Police Chief. The use of display fireworks is conditioned on compliance with the provisions of this section, West Virginia Code Ch. 29, Art. 3E and the regulations of the State Fire Marshal. The operator shall provide proof of insurance coverage to the Mayor in the amount of \$1,000,000.00 or more and of a character and form as the mayor determines to be necessary for the protection of the public, with the Town being a named insured to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of the operator or an employee thereof. After such privilege shall have been granted, the sale, possession, use and distribution of display fireworks shall be lawful for that purpose only. No privilege granted hereunder shall be transferable.

(Code 2001, § 545.10(d); Ord. No. 545.10, § 545.10(d))

Sec. 14-81. License, registration, etc., requirement.

No person or entity may manufacture, wholesale, distribute, import, sell or store for the purpose of resale, fireworks, sparkling devices, novelties or toy caps without a license, registration, certificate or permit from the State Fire Marshal and the Town.

(Code 2001, § 545.10(e); Ord. No. 545.10, § 545.10(e))

Sec. 14-82. Sale of fireworks.

The sale of fireworks shall be under the direct supervision and control of a competent person at least 21 years of age and duly qualified and responsible for the enforcement of all safety measures. Smoking, matches and open flames shall not be permitted within 50 feet of fireworks being sold. Signs shall be posted in conspicuous places in, on and around all fireworks being displayed for sale with the words "FIREWORKS—NO SMOKING" in letters of not less than four inches in height. Fire extinguishing equipment shall be kept and maintained upon the sale premises and shall include, but not be limited to, a ten-pound A.B.C. fire extinguisher. All electrical fixtures contained upon the sale premises shall be dust-ignition proof. No fewer than two unobstructed exits shall be maintained upon the fireworks sale premises at all times. No fireworks shall be offered for sale within 300 feet of the property line of any church, hospital or school, or within 50 feet of the property line of any lot upon which any flammable liquid dispensers or flammable liquid storage areas are

located. Any outdoor fireworks sales shall be located not less than 25 feet from any building, structure and all rights of way, including, but not limited to, highways, streets, alleys, and sidewalks. Fireworks shall not be sold to any person under the age of 18 years.

(Code 2001, § 545.10(f); Ord. No. 545.10, § 545.10(f))

Sec. 14-83. Storage.

Fireworks shall be stored in a manner to be fire resistant from any external or internal source, weather-resistant and theft-resistant. Fireworks storage shall be under the direct supervision and control of a competent person at least 18 years of age. Consumer fireworks shall be stored in accordance with the manufacturer's printed instructions.

(Code 2001, § 545.10(g); Ord. No. 545.10, § 545.10(g))

Sec. 14-84. Seizure of fireworks.

The Town may seize, take, remove and dispose of at public auction or destroy, or cause to be seized, taken or removed and disposed of at public auction, or destroyed at the expense of the owner, all fireworks or combustibles offered for sale, stored or held in violation of this section, West Virginia Code Ch. 29, Art. 3E or an emergency or legislative rule promulgated thereunder,

(Code 2001, § 545.10(h); Ord. No. 545.10, § 545.10(h))

Chapter 15

RESERVED

Chapter 16

FLOODS

Article I. In General

Secs. 16-1—16-18. Reserved.

Article II. Flood Damage Control

- Sec. 16-19. General provisions.
- Sec. 16-20. Definitions.
- Sec. 16-21. Establishment of the floodplain area.
- Sec. 16-22. Utilization of the floodplain area.
- Sec. 16-23. Criteria for building and site plan approval.
- Sec. 16-24. Specific requirements.
- Sec. 16-25. Administration.
- Sec. 16-26. Appeals and penalties.
- Sec. 16-27. Town liability.

ARTICLE I. IN GENERAL

Secs. 16-1—16-18. Reserved.

ARTICLE II. FLOOD DAMAGE CONTROL

Sec. 16-19. General provisions.

(a) *Intent.* The intent of this article is to:

- (1) Promote the general health, welfare, and safety of the community.
- (2) Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- (3) Minimize danger to public health and safety by protecting water supply, sanitary sewage disposal, and natural drainage.
- (4) Reduce financial burdens imposed on the community, its governmental units and its residents, by preventing the unwise design and construction of development in areas subject to flooding.

(b) *Abrogation and greater restrictions.* This article supersedes any ordinances currently in effect in floodprone areas. However, any ordinance shall remain in full force and effect to the extent that its provisions are more restrictive.

(c) *Applicability.*

- (1) It shall be unlawful for any person, partnership, business, or corporation to undertake or cause to be undertaken, any development or the new construction, substantial improvement, the placement or relocation of any structure (including manufactured homes) within the floodplain area, unless a permit has been obtained from the Permit Officer. In addition, where land is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a site plan must be submitted to, and approved by, the Permit Officer prior to any development.
- (2) Provisions of all other codes, ordinances, and regulations shall be applicable insofar as they are consistent with the provisions of this article and the community's need to minimize the hazards and damage resulting from flooding.

(Code 2001, § 1727.01; Ord. of 7-6-1992)

Sec. 16-20. 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:

100-year flood means a flood that has one chance in 100 or a one percent chance of being equaled or exceeded in any given year.

Base flood means the flood which has been selected to serve as the basis upon which the floodplain management provisions for this article and other ordinances have been prepared, for purposes of this article, the 100-year flood.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Development means any human-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Flood means a general and temporary inundation of normally dry land areas.

Floodplain means:

- (1) A relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation;
- (2) An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

Floodproofing means any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

Floodway means the channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the base flood without increasing the water surface elevation of that flood more than one foot at any point.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this article.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New construction means structures for which the start of construction as herein defined commenced on or after the effective date of the ordinance from which this article is derived.

Principally above ground means where at least 51 percent of the actual cash value of a structure, less land value, is above ground.

Start of construction means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Structure means a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial improvement.

- (1) The term "substantial improvement" means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:
 - a. Before the improvement or repair is started; or
 - b. If the structure has been damaged, and is being restored, before the damage occurred.
- (2) For the purposes of this definition, the term "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.
- (3) The term "substantial improvement" does not, however, include either:
 - a. Any project for improvement of a structure to comply with existing State or local health, sanitary or safety code specifications which are solely necessary to ensure safe living conditions or
 - b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(Code 2001, § 1727.02; Ord. of 7-6-1992)

Sec. 16-21. Establishment of the floodplain area.

(a) *Identification.* The identified floodplain area shall be those areas of the Town, which are subject to the 100-year flood, as shown on the Flood Boundary and Floodway Map (FBFM) and/or Flood Insurance Rate Map (FIRM) which accompanies the Flood Insurance Study (FIS) prepared for the town by the Federal Emergency Management Agency (FEMA) dated December 1, 1981, or the most recent revision thereof.

(b) *Description of floodplain areas.* The identified floodplain area shall consist of the following three specific areas:

- (1) The floodway area shall be those areas identified as such in the FIS and as shown on the FBFM. The term includes floodway areas identified in other studies for the approximated area discussed in Subsection (b)(3) of this section.
- (2) The floodway fringe area shall be those areas for which specific 100-year flood elevations have been provided in the FIS, but which lie beyond the floodway area. These areas are shown on the FBFM.
- (3) The approximated area shall be those areas identified as an A Zone on the FBFM or FIRM and for which no 100-year flood elevations have been provided. For these areas, elevation and floodway information from other federal, state or other acceptable sources shall be used when available. Where other acceptable information is not available, the elevation shall be determined by using the elevation of a point on the boundary of the identified floodplain area which is nearest the construction site. The Town may require the applicant to determine the elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Town.

(c) *Changes in designation of area.* The delineation of the identified floodplain area may be revised by the Town where natural or human-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, a river basin commission or other qualified agency or individual document the necessity for such changes. However, prior to any such change, approval must be obtained from the Federal Insurance Administration (FIA).

(d) *Boundary disputes.* Should a dispute concerning any district boundary arise, an initial determination shall be made by the Permit Officer and any party aggrieved by this decision may appeal to the Council. The burden of proof shall be on the appellant.

(Code 2001, § 1727.03; Ord. of 7-6-1992)

Sec. 16-22. Utilization of the floodplain area.

(a) In the floodplain area, any development and/or use of land may be permitted, provided that all such uses, activities, and/or development shall be undertaken in strict compliance with the floodproofing and related provisions contained herein and in all other applicable codes, ordinances, and regulations.

(b) Within any floodway area, no development shall be permitted that would cause any increase in the 100-year flood elevation.

(c) Whenever a developer intends to alter or relocate a watercourse within the floodplain area, the developer shall notify in writing by certified mail all adjacent communities and the State coordinating office of all such intended activities prior to any alteration or relocation of the watercourse, and shall submit copies of such notification to the Federal Insurance Administrator. The developer shall also assure the Town in writing, that the flood carrying capacity within the altered or relocated portion of the watercourse in question will be maintained.

(Code 2001, § 1727.04; Ord. of 7-6-1992)

Sec. 16-23. Criteria for building and site plan approval.

(a) *General.* Building permits are required in order to determine whether all new construction or substantial improvements are:

- (1) Designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- (2) Constructed with materials and utility equipment resistant to flood damage.
- (3) Constructed by methods and practices that minimize flood damage.
- (4) Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(b) *Basic format.* The basic format of the building permit shall include the following:

- (1) Name and address of applicant.
- (2) Name and address of owner of land on which proposed construction is to occur.
- (3) Name and address of contractor.
- (4) Site location.
- (5) Brief description of proposed work and estimated cost.
- (6) A plan of the site showing the exact size and location of the proposed construction, as well as any existing buildings or structures.

(c) *Elevation and floodproofing information.* Depending on the type of structures involved, the following information shall also be included in the application for work within the floodplain area:

- (1) For structures to be elevated to the base flood elevation:
 - a. A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.

- b. A determination of elevations of the existing ground, proposed finished ground and lowest floor, certified by a registered professional engineer, surveyor or architect.
 - c. Plans showing the method of elevating the proposed structure, includes details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc. When required by the Permit Officer, these plans shall be prepared by a registered professional engineer or architect.
 - d. Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to the base flood elevation at the building site.
- (2) For structures to be floodproofed to the base flood elevation (nonresidential structures only):
- a. Plans showing details of all floodproofing measures, prepared by a registered professional engineer or architect, and showing the size of the proposed structure and its relation to the lot where it is to be constructed.
 - b. A determination of elevations of existing ground, proposed finished ground, lowest floor, and floodproofing limits; certified by a registered professional engineer, surveyor, or architect.
 - c. A certificate prepared by the registered professional engineer or architect who prepared the plans in Subsection (c)(2)a of this section, that the structure in question, together with attendant utility and sanitary facilities is designed so that:
 - 1. Below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - 2. The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact, and other forces resulting from the flood depths, velocities, pressures, and other factors associated with the base flood.
- (d) *Site plan criteria.* The owner or developer of any proposed subdivision, manufactured home park or subdivision or other development shall submit a site plan to the Permit Officer which includes the following information:
- (1) Name of engineer, surveyor, or other qualified person responsible for providing the information required in this section.
 - (2) A map showing the location of the proposed subdivision and/or development with respect to the Town's floodplain areas, proposed lots and sites, fills, flood or erosion protective facilities and areas subject to special deed restriction. In addition, it is required that all subdivision proposals and other proposed new developments greater than 50 lots or five acres, whichever is the lesser, shall include base flood elevation data.

- (3) Where the subdivision and/or development lies partially or completely in the floodplain areas, the plan map shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of two or five feet depending upon the slope of the land and identify accurately the boundaries of the floodplain areas.

(Code 2001, § 1727.05; Ord. of 7-6-1992)

Sec. 16-24. Specific requirements.

In order to prevent excessive damage to buildings, structures and related utilities and facilities, the following restrictions apply to all development, subdivision proposals, manufactured home parks, new construction and to construction of substantial improvements to existing structures occurring in the floodplain area:

- (1) *Basements and lowest floors.*
 - a. All new construction and substantial improvements of residential structures must have the lowest floor (including basement) elevated to or above the base flood elevation. All new construction and substantial improvements of nonresidential structures must have the lowest floor (including basement) elevated to or above the base flood elevation, or, together with attendant utility and sanitary facilities, be designed so that below the base flood elevation the structure is floodproofed in accordance with Section 16-23(c)(2).
 - b. For all new construction and substantial improvements, those fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
 1. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 2. The bottom of all openings shall be no higher than one foot above grade.
 3. Openings may be equipped with screens, louvers, valves, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
 - c. Manufactured homes shall be elevated on a permanent foundation so that the lowest floor of the manufactured home will be at or above the base flood elevation.
- (2) *Fill.* If fill is used to raise the finished surface of the lowest floor to the base flood elevation:
 - a. Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally 15 feet

beyond the building line from all points. For nonresidential structures, fill shall be placed to provide access acceptable for intended use. At-grade access, with fill extending laterally 15 feet beyond the building line, shall be provided to a minimum of 25 percent of the perimeter of a nonresidential structure.

- b. Fill shall consist of soil or rock materials only. Sanitary landfills shall not be permitted.
 - c. Fill materials shall be compacted to provide the necessary stability and resistance to erosion, scouring, or settling.
 - d. Fill slopes shall be no steeper than one vertical on two horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Permit Officer.
 - e. Fill shall be used only to the extent to which it does not adversely affect adjacent properties.
- (3) *Placement of buildings.* All buildings and structures shall be constructed and placed on the lot so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of floodwater.
- (4) *Anchoring.*
- a. All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse and lateral movement, thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse.
 - b. All air ducts, large pipes and storage tanks located at or below the base flood elevation shall be firmly anchored to resist flotation.
 - c. All manufactured homes shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, the over-the-top and frame ties to ground anchors, such as the following:
 - 1. Over-the-top ties shall be provided at each of the four corners of the manufactured home, with two additional ties per side for manufactured homes less than 50 feet long.
 - 2. Frame ties shall be provided at each corner of the home with five additional ties per side at intermediate points, with manufactured homes less than 50 feet long requiring four additional ties per side.
 - 3. All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.
 - 4. Any additions to a manufactured home shall be similarly anchored.

This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

- (5) *Storage.* No materials that are buoyant, flammable, explosive or in times of flooding could be injurious to human, animal or plant life, shall be stored below base flood elevation.
- (6) *Utility and facility requirements.*
 - a. All new or replacement water systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
 - b. All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
 - c. All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.
 - d. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (7) *Drainage.* Adequate drainage shall be provided to reduce exposure to flood hazard.
(Code 2001, § 1727.06; Ord. of 7-6-1992)

Sec. 16-25. Administration.

(a) *Building permits and site plan approvals required.* It shall be unlawful for any person, partnership, business, or corporation to undertake, or cause to be undertaken, any development or the new construction, substantial improvement, the placement or relocation of any structure (including manufactured homes) within the floodplain area, unless a permit has been obtained from the Permit Officer. In addition, where land is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a site plan must be submitted to, and approved by, the Permit Officer prior to any development.

(b) *Approval of permits and plans.*

- (1) All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of the State and all other applicable codes and ordinances.
- (2) The Permit Officer shall require copies of all necessary permits from those governmental agencies from which approval is required by federal or State law.
- (3) A record of all information supplied to the Permit Officer shall be kept on file by the Town.

(c) *Application procedures.* Application for building permit and site plan approvals shall be made, in writing, to the Permit Officer, and shall include all information stipulated under Section 16-23.

(d) *Changes.* After the issuance of a building permit or site plan approval by the Permit Officer, no changes of any kind shall be made to the application, permit, or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the permit officer.

(e) *Placards.* In addition to the building permit, the Permit Officer shall issue a placard which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the building permit, the date of its issuance and be signed by the permit officer.

(f) *Start of construction.* Work on the proposed construction shall begin within six months after the date of issuance of the building permit or the permit shall expire unless a time extension is granted, in writing, by the Permit Officer.

(g) *Inspection and revocation.* During the construction period, the Permit Officer or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable laws and ordinances. In the event a Permit Officer discovers that the work does not comply with the permit application or any applicable laws and ordinances or that there has been a false statement or misrepresentation by any applicant, the Permit Officer shall revoke the building permit and report such fact to the Town for whatever action it considers necessary.

(h) *Fees.* Application for a building permit shall be accompanied by a fee in the amount established by the Town, payable to the town, based upon the estimated cost of the proposed construction as determined by the Permit Officer.

(Code 2001, § 1727.07; Ord. of 7-6-1992)

Sec. 16-26. Appeals and penalties.

(a) *Appeals to the Council.* Whenever any person is aggrieved by a decision of the Permit Officer with respect to the provisions of this article, it is the right of that person to appeal to the Council which shall be known as the Appeals Authority. Such appeal must be filed, in writing, within 30 days after the determination by the Permit Officer. Upon receipt of such appeal, the Appeals Authority shall set a time and place not less than ten nor more than 30 days for the purpose of hearing the appeal. Notice of the time and place of the hearing shall be given to all parties at which time they may appear and be heard. The determination by the Appeals Authority shall be final in all cases.

(b) *Appeal review criteria.* All appeals contesting only the permit fee established by the Permit Officer may be handled at the discretion of the Appeals Authority. All decisions on appeals to all other provisions of this article shall adhere to the following criteria:

- (1) Affirmative decisions shall only be issued by the Appeals Authority upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the appeal would result in exceptional hardship to the applicant; and

- c. A determination that the granting of an appeal will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (2) An affirmative decision shall be issued only upon determination that it is the minimum necessary, considering the flood hazard, to afford relief.
- (3) The Appeals Authority shall notify the applicant in writing over the signature of a community official that:
 - a. The issuance of a decision to allow construction of a structure below the base flood elevation may result in increased premium rates for flood insurance;
 - b. Such construction below the base flood elevation increases risk to life and property.

Such notifications shall be maintained with a record of all decisions as required in Subsection (b)(4) of this section.

- (4) The Appeals Authority shall:
 - a. Maintain a record of all decisions, including justification for its issuance, and
 - b. Report such decisions issued in its biennial report submitted to the Federal Insurance Administration.
- (5) No variance shall be granted for any construction, development, use or activity within any floodway area that would cause any increase in the 100-year flood elevation.

(c) *Penalties.* Any person who fails to comply with any or all of the requirements or provisions of this article or direction of the Permit Officer or any other authorized employee of the Town shall be guilty of an offense. The imposition of a fine or penalty for any violation of, or noncompliance with, this article shall not excuse the violation or noncompliance with this article or permit it to continue; and all such persons shall be required to correct or remedy such violations or noncompliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the Town to be a public nuisance and abateable as such.

(Code 2001, § 1727.08; Ord. of 7-6-1992)

Sec. 16-27. Town liability.

The granting of a permit or approval of a subdivision or development plan in an identified floodprone area shall not constitute a representation, guarantee, or warranty of any kind by the Town or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the town.

(Code 2001, § 1727.09; Ord. of 7-6-1992)

Chapter 17

RESERVED

Chapter 18

MANUFACTURED HOMES AND TRAILERS

- Sec. 18-1. Keeping, maintaining, placing or parking of a mobile home.
- Sec. 18-2. Owner or tenant of land responsible for violation.
- Sec. 18-3. Definitions.
- Sec. 18-4. Requirements as to the structure and value.
- Sec. 18-5. Liability of persons moving a mobile home.
- Sec. 18-6. Sewage collection line.
- Sec. 18-7. Permit required.
- Sec. 18-8. Exemption.

Sec. 18-1. Keeping, maintaining, placing or parking of a mobile home.

(a) It shall be unlawful for any person, firm, or corporation to keep, maintain, place or park a mobile home in the Town, except as specially permitted by the provisions of this article and by the terms of a permit issued. A person, firm or corporation may be guilty of a violation, notwithstanding the fact that the title to the mobile home maintained, placed, or parked in violation of this article shall be in the name of others.

(b) As of December 7, 1998, it shall be unlawful to move any mobile home into the Town. No permits will be written except by a grandfather clause. Double-wide homes will be permitted to move into the Town, if set up in the manner of a house as a permanent dwelling.

(c) (1) As of December 7, 1998, all mobile home lots that are recognized as such will be grandfathered spots that have trailers, that are plumbed, underpinned and are currently inhabited or are presently or rent with immediately occupancy will be grandfathered. Mobile homes may be brought into the Town that occupy such a lot.

(2) If any mobile home lot shall be used for any other purpose, the grandfathered status is immediately removed from that mobile home lot. No mobile home shall be used for any purpose other than as a household dwelling. The Town will make a list of grandfathered spots and addresses, and these shall be true spots without exception. All trailers, whether grandfathered or not, must be compliant with this article within 30 days.

(Code 2001, § 1723.01; Ord. No. 85-4, 12-7-1998)

Sec. 18-2. Owner or tenant of land responsible for violation.

It shall be unlawful for the owners or tenants, or any one owner or tenant, of any parcel of land in the Town, knowingly to permit any person, firm or corporation to keep, maintain or place a mobile home, except as specifically permitted by the provisions of this article.

(Code 2001, § 1723.02; Ord. No. 85-4, 12-7-1998)

Sec. 18-3. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Mobile home means a structure or enclosure which is used, or which is designed for use for living or sleeping purposes for human beings. There are expressly excepted from the definition of the term "mobile home" as herein used, automobiles, trucks and mall mobile camping units known by the name of "camper" or by similar names so long as they are not used for permanent living or sleeping purposes within the Town.

(Code 2001, § 1723.03; Ord. No. 85-4, 12-7-1998)

Sec. 18-4. Requirements as to the structure and value.

A single mobile home, to be lawfully kept in the Town, shall with respect to its structure and value and the method and condition of its keeping meet all the requirements set forth in Subsections (1) through (8) of this section:

- (1) The mobile home shall be of dimensions of not less than ten feet in width and 40 feet in length with the tongue included.
- (2) The mobile home shall be so placed that it is ten feet on any side from any other mobile home, residential building, or business establishment on the adjoining lot. The only exception to this is if a person, firm, or corporation owns a 25-foot lot, then ten feet and not more than 12-foot wide trailers can be placed on the lot and centered so that there are equal sides. This will be the only exception for a 25-foot lot.
- (3) The mobile home must sit back from the property line facing street or avenue ten feet or not less than the average setback of adjacent homes. Where a lot line borders on an alley, then the setback from the alley shall be three feet. If the surrounding lot is empty, then when placing the mobile home, it must be five feet from the property line; and then when there is another mobile home placed on the adjoining lot, the mobile home has to be placed with a ten-inch clearance.
- (4) If the lot is large enough to accommodate two mobile homes, then it is considered a mobile home park and, therefore, must go by the mobile home park regulations adopted by the State Board of Health. These are found in booklets EG-3 and SG-93 of the State Board of Health.
- (5) The mobile home shall be affixed to the land by sturdy underpinning made of durable material. All mobile homes must be plumbed for utilities and underpinned and ready for habitation within 30 days of receiving a permit.
- (6) There shall be constructed and maintained a walkway, built of hard surface material extending from the mobile home to the sidewalk, street, or highway upon which it faces.
- (7) The mobile home must appraise for an amount not less than \$35,000.00, be not older than five years and must be placed on the property within 60 days of the previous trailer being removed or the grandfather clause is removed from that piece of property.
- (8) If a mobile home is set upon a mobile home lot it shall be plumbed, underpinned and ready for habitation within 30 days.

(Code 2001, § 1723.04; Ord. No. 85-4, 12-7-1998; Ord. of 3-21-2022)

Sec. 18-5. Liability of persons moving a mobile home.

Any person, firm or corporation bringing or causing to be brought into the Town a mobile home shall be liable in damages to any owner or tenant of real or personal property and to the town for damage caused to publicly owned town property.

(Code 2001, § 1723.05; Ord. No. 85-4, 12-7-1998)

Sec. 18-6. Sewage collection line.

All sewage collection lines shall be in trenches of sufficient depth to be free of breakage from traffic or other movements and shall be separated from the water supply system at a safe distance of at least ten feet. The line shall have sufficient slope for adequate drainage. All joints shall be watertight.

(Code 2001, § 1723.06; Ord. No. 85-4, 12-7-1998)

Sec. 18-7. Permit required.

(a) Any person, firm or corporation shall obtain a permit to keep, maintain or place a mobile home before it is moved within the Town from outside or from one lot to another inside the Town. The cost of the permit shall be in the amount established by the Town, which cost shall be paid prior to issuance.

(b) Before issuing such a permit, it shall be determined that the mobile home structure, and the value, the method and condition of being kept, maintained, or placed in the Town, comply in all respects with the requirements of this article.

(Code 2001, § 1723.07; Ord. No. 85-4, 12-7-1998)

Sec. 18-8. Exemption.

This article will not affect any presently inhabited mobile homes. It will only affect what is placed in the town limits after it is approved by the Council. This article is designed to maintain property value for owners and for health and safety reasons.

(Code 2001, § 1723.99; Ord. No. 85-4, 12-7-1998)

Chapter 19

RESERVED

Chapter 20

NUISANCES

Article I. In General

- Sec. 20-1. Conflict.
- Sec. 20-2. Nuisances prohibited.
- Sec. 20-3. Certain nuisances prohibited.
- Sec. 20-4. Liability of owner for condition of leased premises.
- Sec. 20-5. Inspections, investigations and complaints.
- Sec. 20-6. Right to enter upon private premises; duty of occupants.
- Sec. 20-7. Actions and reports by inspecting and investigating officers.
- Sec. 20-8. Order to remedy activity or condition; public hearing; action by Mayor.
- Sec. 20-9. Conduct of public hearing.
- Sec. 20-10. Remedy by Town.
- Sec. 20-11. Apportionment of cost of abatement.
- Sec. 20-12. Arrest.
- Secs. 20-13—20-42. Reserved.

Article II. Weeds and Grass

- Sec. 20-43. Definitions.
- Sec. 20-44. Growth of weeds over one foot.
- Sec. 20-45. Growth on sidewalk or lot.
- Sec. 20-46. Disposal.
- Sec. 20-47. Removal of weeds by owner or occupant; five days' notice.
- Sec. 20-48. Removal of weeds and grasses by Town.
- Sec. 20-49. Assessment of costs by Town.

ARTICLE I. IN GENERAL**Sec. 20-1. Conflict.**

Various nuisances are defined and prohibited in other Town ordinances and it is the intent of the Council in enacting this article to make it supplemental to those other ordinances in which nuisances are defined and prohibited; and the provisions of this article relating to the abatement of nuisances shall be regarded as alternative methods and procedures for the abatement of nuisances in those instances where other methods and procedures for abatement are provided.

(Code 2001, § 1101.01; Ord. No. 99-3, 12-6-1999)

Sec. 20-2. Nuisances prohibited.

No person shall cause, harbor, commit or maintain, or suffer to be caused, harbored, committed or maintained, any nuisance as defined by the statute or common law of the State or as defined by this Code or other ordinance of the Town at any place within the town limits when such nuisance constitutes a hazard to the health, safety or good order of the town or its inhabitants.

(Code 2001, § 1101.02; Ord. No. 99-3, 12-6-1999)

Sec. 20-3. Certain nuisances prohibited.

The following acts when committed, or conditions when existing, 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 substances, 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, safety or good order.
- (2) All buildings, bridges or other structures of whatever character kept or maintained or which are permitted by any person owning or having control thereof to be kept or maintained in a condition unsafe, dangerous, unhealthy, injurious or annoying to the public.
- (3) All trees and other appendages of or realty kept or maintained or which permitted by any person owning or having control thereof be kept or maintained in a condition unsafe, dangerous, unhealthy, injurious or annoying to the public.
- (4) All ponds or pools of putrid or stagnant water, and all foul or dirty water or liquid found or discharged into or upon any street, public place or lot to the injury or annoyance of the public.
- (5) All obstructions caused or permitted on any street or sidewalk to the danger or annoyance 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 or annoyance to the public or which may be a hazard to the public health or safety.

- (6) All sidewalks, gutters or curbstones permitted to remain in an unsafe condition, or out of repair.
- (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 competent authority.
- (8) Any unclean, stinking, foul, defective or filthy drainpipe, tank or gutter, or any leaking or broken slop, garbage or manure box or receptacle of like character.
- (9) Any dirt gathered in cleaning yards, waste of factories, of any rags, damaged merchandise, wet, broken or leaking containers, or any materials which are offensive or tend, by decay, to become putrid, or render the atmosphere impure or unwholesome.
- (10) Any business, trade or activity whereby noisome stench and odors or noxious gases arise or are generated.
- (11) Whenever in any cellar, basement or part thereof, or any house or building water pipes, sewer pipes, cisterns, wells, gutters, drains, running spouts or seepage from the surrounding earth, or whenever the walls of any cause named in this subsection, then such water, leakage, seepage, or moisture shall be deemed a nuisance.
- (12) Every act or thing done or which may be permitted allowed or continued by the owner, agent, assignee, occupant or tenant of any premises, property or structure, which act or thing done relates to the location, construction, repair, maintenance, use, emptying and cleaning of all water closets, privies, sinks, plumbing, drains, yards, lots, areaways, pens, stables and other places where offensive unsightly, unwholesome, objectionable or dangerous substance or liquids are or may be accumulated, to the damage or injury of any of the inhabitants of the Town, and not hereinbefore specified.
- (13) All open, unguarded or unprotected excavations, refrigerators with intact doors, swimming pools or buildings which, when abandoned or left open or otherwise unprotected, will likely prove dangerous to life or limb, or abandoned, open, uncovered, or otherwise unprotected wells, cesspools, cisterns or catchbasins.
- (14) All emissions of dense smoke from the smokestack of any stationary engine, steam roller, steam derrick, pile driver, tar kettle or other similar machine or contrivance, or from the smokestack or chimney of any building or premises, except for a period aggregating not to exceed seven minutes in any one hour, during which period the fire box is being cleaned or a new fire is being built therein. All emissions of dense smoke from the stack of any locomotive for a period of more than 75 seconds except for a period aggregating not to exceed 12 minutes in any one hour, during which period the fire box is being cleaned or a new fire is being built therein. For the

purpose of grading the density of smoke, the Ringleman's smoke chart is published and used by the Federal Bureau of Mines, a copy of which is on file in the office of the Town Clerk and which is hereby incorporated in and made a part of this subsection, shall be the standard of comparison. Smoke shall be considered dense when it is greater than number 3 of such chart.

- (15) All infected or infested bedding or clothing, or any putrid or unsound meat, beef, pork, fish, hides, or skins of any kind, decayed or sound vegetables or fruit, or any other articles which are dangerous to the health of the inhabitants of the Town.
- (16) The storing or parking of any unlicensed automobile or other type of vehicle on private or public property. Fork trucks, small cranes, etc., which are not normally licensed are exempted, provided that they are able to do their respective tasks otherwise they are considered as a nuisance. This shall not apply where the vehicle is properly garaged, unless the storage in such garage violates other provisions of the Town ordinances and to creating a condition unsafe, dangerous, unhealthy, injurious, or annoying to the public.
- (17) The storing of items on private or public property which should commonly be referred to as junk, or any discarded appliances or other items unless they are stored in a proper building and as to such storage do not constitute a nuisance under other provisions of Town ordinances.

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 is hereby declared to constitute a nuisance.

(Code 2001, § 1101.03; Ord. No. 99-3, 12-6-1999)

Sec. 20-4. Liability of owner for condition of leased premises.

(a) Whenever any owner or agent of any building in the Town shall rent, lease or hire out to be occupied any building or part thereof as a home or residence of more than two families living independently of one another, or a building, giving to each family or person the common right to halls, yards, water closets, privies or some of them, then such owner or agent shall be liable for the condition of such hall, yards, water closets and privies so that they do not constitute a nuisance or hazard to the health or safety of the public or of any person, and the owner or agent may also be made a defendant in a prosecution for the violation of any of the provisions of this article and be subject to penalty, the same as the occupant of the premises, and any prosecution for the violation of this article may be maintained against the owner, occupant or agent of the premises, or either or all of those parties.

(b) Owners or agents shall only be held responsible under the provisions of this section where buildings are rented to different persons as described herein.

(Code 2001, § 1101.04; Ord. No. 99-3, 12-6-1999)

Sec. 20-5. Inspections, investigations and complaints.

Town officers and employees designated by the Mayor shall make inspections and investigations or cause inspections and investigations to be made from time to time to determine whether any condition exists or any activity is being engaged in which constitutes a nuisance and such officer shall make or cause to be made an inspection and investigation upon a valid complaint being made by any responsible person.

(Code 2001, § 1101.05; Ord. No. 99-3, 12-6-1999)

Sec. 20-6. Right to enter upon private premises; duty of occupants.

Each town officer mentioned in Section 20-5 shall have the right to enter upon private premises for the purposes specified in that section, upon properly providing identification and upon compliance with all applicable provisions of law. No owner, occupant or person in charge of any premises shall prevent or hinder any such entry which is sought to be made in compliance with law. No entry shall be made without notification to owner and occupant.

(Code 2001, § 1101.06; Ord. No. 99-3, 12-6-1999)

Sec. 20-7. Actions and reports by inspecting and investigating officers.

(a) If, at any time, any officer mentioned in Section 20-5 finds a condition to exist or an activity being engaged in which constitutes a nuisance, the officer shall warn any person who may be responsible therefor and who is present or readily on call that the nuisance must be abated without delay and that failure so to do may result in appropriate action against said person and that said person will be subject to all expenses incurred by the Town as well as to a possible criminal penalty; and if it appears to such officer that the nuisance constitutes an imminent health, fire, or safety hazard to any person, the officer shall forthwith take such lawful action within the officer's capabilities as may be necessary to negate the hazard, or else to clear the endangered area of persons, and the officer shall notify the Mayor or official acting in that capacity promptly by the most expeditious means of communication.

(b) All Town officers mentioned in Section 20-5, and all police officers of the Town, shall report through proper administrative channels to the Mayor the facts as to any nuisance found by them upon investigation and the action, if any, taken pursuant to Subsection (a) of this section, together with recommendations as to the manner of abatement, the time limit for abatement, and such other professional recommendations and comment as they may deem pertinent.

(Code 2001, § 1101.07; Ord. No. 99-3, 12-6-1999)

Sec. 20-8. Order to remedy activity or condition; public hearing; action by Mayor.

(a) The Mayor, upon the report and the recommendation of any Town officer mentioned in Section 20-5 that an activity is being engaged in or a condition exists which constitutes a nuisance, shall issue an order in writing to the owner, occupant or person in charge of the premises where the activity is being engaged in or the condition exists, stating therein the activity or condition which constitutes the nuisance, and directing such addressee to remedy

the activity or condition within the time stated in such order, which shall be not less than ten days; and no such owner, occupant or person in charge shall fail to comply with the terms of such order, provided that the owner, occupant or person in charge of the premises may, within ten days of being served with such order, apply to the mayor for a public hearing on the matter, in which case the terms of such order shall be stayed pending action by the mayor subsequent to the hearing; provided, further, that if the mayor shall state in such order that the activity or 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 such emergency order shall be effective immediately; provided, however, that any person to whom such an emergency order is directed shall be afforded a hearing upon petition to the mayor, but if such petition is not filed within 24 hours of that person being served with such an emergency order, the person to whom such an emergency order is directed shall comply therewith by the end of such 24-hour period.

(b) The written orders herein required may be served in any manner authorized by the laws of the State concerning the service of process in civil actions. No person shall violate or fail to comply with the terms of any such order as issued by the Mayor initially, or as issued by the mayor following application for a public hearing, as the case may be.

(c) Upon receipt of a proper application for a public hearing under this article, the Mayor shall fix a place and specify a time not less than ten days after receipt of the application at which the public hearing shall be held, and the mayor shall give prompt notice thereof to all parties having an interest therein; and further, the mayor shall publish an appropriate notice of such hearing on the bulletin board of the Town Hall.

(Code 2001, § 1101.08; Ord. No. 99-3, 12-6-1999)

Sec. 20-9. Conduct of public hearing.

(a) At any public hearing held pursuant to Section 20-8, the applicant therefor may appear in person or by counsel, either or both, and the applicant may have process for the attendance of witnesses and the production of pertinent books and papers, if such there is in any case; and other parties in interest may also appear and be heard under oath.

(b) After hearing all the facts in the case, if, in the opinion of the Mayor, no good and sufficient cause is shown why such nuisance should not be abated, discontinued or remove the nuisance within the time allotted which shall be in the discretion of the mayor, but it shall in no case be less than ten days of being served with such order; provided, however, that if the initial order issued pursuant to Section 20-8 was an emergency order, then the nuisance shall be abated, discontinued or removed immediately upon the responsible party being served with the order.

(Code 2001, § 1101.09; Ord. No. 99-3, 12-6-1999)

Sec. 20-10. Remedy by Town.

(a) If any owner, occupant or person in charge of any premises to whom an order to abate a nuisance has been issued as provided in Section 20-8 fails to comply with the terms of such order, or within the terms imposed by the Mayor after a public hearing, as the case may be,

the mayor may have such nuisance abated or the provisions of such order, carried out, after giving notice to such owner, occupant or person in charge of the premises of the mayor's intention so to do, and collect the expenses thereof with one percent per month interest added from the date of the notice, from the owner, occupant or person in charge, in the same manner in which any other accounts for the benefit of the Town are authorized to be collected. The written notice herein requested may be served in any manner authorized by the laws of the State concerning services of process in civil actions.

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

(Code 2001, § 1101.10; Ord. No. 99-3, 12-6-1999)

Sec. 20-11. Apportionment of cost of abatement.

The cost of abating a nuisance on private property shall be apportioned to each lot in proportion to the amount of work done and material used in abating the nuisance located on such lot, or if this apportionment is impracticable in any case, then such cost shall be apportioned upon such a basis as will be fair and equitable.

(Code 2001, § 1101.11; Ord. No. 99-3, 12-6-1999)

Sec. 20-12. Arrest.

Nothing in this article shall be construed to prohibit any police officer from arresting any person for committing or maintaining a nuisance when such arrest is made pursuant to law as provided in other provisions in the statutes and ordinances of the Town.

(Code 2001, § 1101.13; Ord. No. 99-3, 12-6-1999)

Secs. 20-13—20-42. Reserved.

ARTICLE II. WEEDS AND GRASS

Sec. 20-43. 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:

Weeds includes all rank vegetable growths which exhale unpleasant and noxious odors, and all high and rank vegetable growth that may conceal filthy deposits.

(Code 1963, § 5-99-1; Code 2001, § 549.01; Ord. of unknown date(1), § 549.01)

Sec. 20-44. Growth of weeds over one foot.

No person having control of any lot or ground, or any part of any lot, shall allow or maintain on any such lot, any growth of weeds to the height of over one foot.

(Code 1963, § 5-99-2; Code 2001, § 549.02; Ord. of unknown date(1), § 549.02)

Sec. 20-45. Growth on sidewalk or lot.

No person shall allow on the sidewalk abutting and in front of any lot of ground or any part of any lot of which said person may have control any growth of weeds or grass whatsoever.

(Code 1963, § 5-99-3; Code 2001, § 549.03; Ord. of unknown date(1), § 549.03)

Sec. 20-46. Disposal.

All weeds, when cut down, must be removed and disposed of in such manner as not to create a nuisance.

(Code 1963, § 5-99-4; Code 2001, § 549.04; Ord. of unknown date(1), § 549.04)

Sec. 20-47. Removal of weeds by owner or occupant; five days' notice.

The owner, occupant or person having charge or management of any lot or parcel of land situated within the corporate limits whether the same is improved or unimproved, vacant or occupied, within five days after written notice to do so, served upon the owner, occupant or person by the Town Recorder upon the direction of the Mayor, shall cut or destroy or cause to be cut or destroyed any noxious or poisonous weeds or vines growing upon any such lot or parcel of land, and prevent the same from blooming or going to seed or exceeding a height of 12 inches.

(Code 1963, § 5-99-5; Code 2001, § 549.05; Ord. of unknown date(1), § 549.05)

Sec. 20-48. Removal of weeds and grasses by Town.

In the event the owner does not remove grass and weeds in accordance with the provisions of this article, then the Mayor is authorized, and it shall be the mayor's duty to have enforced the provisions of this article, and to cause to be trimmed or removed all grass and weeds.

(Code 1963, § 5-99-6; Code 2001, § 549.06; Ord. of unknown date(1), § 549.06)

Sec. 20-49. Assessment of costs by Town.

Whenever any weeds and grass are growing in any street or public place, or upon private property contiguous to a street or sidewalk, or public place, and are trimmed or removed by the Town, then, after the work is done, the Town shall give five days' notice by regular mail, to the owner of such lot or parcel of land, at said owner's last known address, to pay the cost of such trimming or removal of grass or weeds, or parts thereof, which notice shall be accompanied by a statement of the amount of cost incurred, and in the event the same is not paid within 30 days after the mailing of said notice, then such claim shall be turned over to the Town Attorney, who shall proceed to collect the same or to obtain judgment.

(Code 1963, § 5-99-7; Code 2001, § 549.07; Ord. of unknown date(1), § 549.07)

Chapter 21

RESERVED

Chapter 22

OFFENSES AND MISCELLANEOUS PROVISIONS

Article I. In General

- Sec. 22-1. State criminal code and controlled substances law adopted.
- Sec. 22-2. Citation in lieu of arrest; failure to appear.
- Sec. 22-3. Offensive odors.
- Sec. 22-4. Improper drainage.
- Sec. 22-5. Diverting watercourse.
- Sec. 22-6. Deposit of offensive garbage or refuse matter.
- Sec. 22-7. Spitting or urinating.
- Sec. 22-8. Invasion of privacy.
- Sec. 22-9. Controlled substances.
- Sec. 22-10. Tampering with and theft of cable service.
- Sec. 22-11. Advertising; billposting and handbills.
- Sec. 22-12. Signs and advertising.
- Secs. 22-13—22-42. Reserved.

Article II. Offenses Against Public Authority

- Sec. 22-43. Impersonating an official or law enforcement officer.
- Sec. 22-44. False report.
- Secs. 22-45—22-61. Reserved.

Article III. Offenses Involving Public Peace and Order

- Sec. 22-62. Disturbing the peace.
- Sec. 22-63. Noise control.
- Secs. 22-64—22-84. Reserved.

Article IV. Offenses Involving Public Safety

- Sec. 22-85. Dangerous conditions or dangerous nuisances.
- Sec. 22-86. Openings; protective covers.
- Sec. 22-87. Electrically charged fence.
- Sec. 22-88. Barbed wire fence.
- Sec. 22-89. Barricades and warning lights; abandoned excavations.
- Sec. 22-90. Discharging firearms.
- Sec. 22-91. Throwing or shooting missiles.
- Secs. 22-92—22-110. Reserved.

Article V. Offenses Involving Underage Persons

- Sec. 22-111. Tobacco usage restrictions.
- Sec. 22-112. Curfew.
- Secs. 22-113—22-137. Reserved.

CHESAPEAKE CODE

Article VI. Administration and Law Enforcement

Sec. 22-138. Obstructing officer; fleeing from officer.

ARTICLE I. IN GENERAL**Sec. 22-1. State criminal code and controlled substances law adopted.**

The provisions of W. Va. Code Chs. 60A and 61 are hereby adopted by reference as if set out in this chapter in full.

Sec. 22-2. Citation in lieu of arrest; failure to appear.

A police officer may issue a citation instead of making an arrest for the following offenses, if there are reasonable grounds to believe that the person being cited will appear to answer the charge:

- (1) Any misdemeanor, not involving injury to the person, committed in a police officer's presence; provided that the officer may arrest the person if the officer has reasonable grounds to believe that the person is likely to cause serious harm to self or others; and
- (2) When any person is being detained for the purpose of investigating whether such person has committed or attempted to commit shoplifting.
- (3) The citation shall provide that the defendant shall appear within a designated time.
- (4) If the defendant fails to appear in response to the citation, or if there are reasonable grounds to believe that said person will not appear, a complaint may be made and a warrant shall issue. When a physical arrest is made and a citation is issued in relation to the same offense, the officer shall mark on the citation, in the place specified for the court appearance date, the term "arrested" in lieu of the date of court appearance. (WVaC 62-1-5a)

(Code 2001, § 501.07)

Sec. 22-3. Offensive odors.

(a) It shall be unlawful for any person to erect, use, maintain or occupy any dwelling, building, structure or place which, because of such place's noxious, noisome or offensive smell, becomes injurious to the health, comfort or property of individuals or the public.

(b) No person shall cause or allow to exist on said person's premises any offensive odors or substances.

(Code 1963, § 5-43-1; Code 2001, § 515.01; Ord. of unknown date(1), § 515.01)

Sec. 22-4. Improper drainage.

(a) It shall be unlawful at any time for the owner, occupant or person in charge of any lot or parcel of ground to cause or permit water to accumulate thereon or in the abutting gutter and sidewalk area and become stagnant, to permit culverts, drains or natural watercourses thereon to become obstructed, or to cause or permit any putrid or unsanitary substances to accumulate thereon.

(b) It shall also be unlawful for any person to enclose or encase a natural watercourse within 20 feet of any other person's property without first obtaining a permit from the Town Recorder.

(Code 1963, § 5-43-2; Code 2001, § 515.02; Ord. of unknown date(1), § 515.02)

Sec. 22-5. Diverting watercourse.

No person shall divert the surface water flowing over any land or permit the same to be diverted to and upon any land belonging to said person, from its natural or usual course in such a way that such surface water will be caused to flow in unnatural or unusual quantities, or in an unnatural or unusual manner upon any public street or alley within the Town, unless permission to do so shall be granted by the Council by an order entered upon its records or minute book.

(Code 1963, § 5-43-3; Code 2001, § 515.03; Ord. of unknown date(1), § 515.03)

Sec. 22-6. Deposit of offensive garbage or refuse matter.

No person shall deposit or permit to be deposited any garbage, refuse matter, offal or animal carcass, paper or any flammable material which may become offensive, noxious or dangerous to the public health, on said person's own premises or any premises under said person's control, or deposit such garbage or refuse matter in any back lot, public ground, vacant lot, park, alley, street or areaway, or in any other place within the Town, except as is otherwise provided by law. It shall be the responsibility of any violator of this section to remove such matter immediately.

(Code 1963, § 5-43-4; Code 2001, § 515.04; Ord. of unknown date(1), § 515.04)

Sec. 22-7. Spitting or urinating.

No person shall expectorate, spit or urinate upon another person, in or upon any sidewalks or other public property, or in or upon any taxicab or other public vehicle carrying passengers for hire.

(Code 1963, § 5-43-5; Code 2001, § 515.05; Ord. of unknown date(1), § 515.05)

Sec. 22-8. Invasion of privacy.

(a) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Intimate areas means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view.

Photographs or films means the making of a photograph, motion picture film, videotape, digital image, or any other recording or transmission of the image of a person.

Place where a person would have a reasonable expectation of privacy means:

- (1) A place where a reasonable person would believe that the person could disrobe in privacy, without being concerned that the person's undressing was being photographed or filmed by another; or
- (2) A place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance.

Surveillance means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person.

Views means the intentional looking upon of another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or with a device designed or intended to improve visual acuity.

(b) It is unlawful for any person to intentionally view, photograph or film another person without that person's knowledge and consent, and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

(Code 2001, § 517.08; Ord. of unknown date(1), § 517.08)

Sec. 22-9. Controlled substances.

(a) Except as authorized by West Virginia Code Ch. 60A, no person shall manufacture, deliver or possess with intent to manufacture or deliver, a controlled substance classified in Schedule V under W. Va. Code § 60A-2-211 or 60A-2-212.

(b) Except as authorized by West Virginia Code Ch. 60A, no person shall create, deliver or possess with intent to deliver a counterfeit substance classified in Schedule V under W. Va. Code § 60A-2-211 or 60A-2-212.

(c) No person shall knowingly or intentionally possess a controlled substance as defined in West Virginia Code § 60A-1-101, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of said person's professional practice, or except as otherwise authorized by West Virginia Code Ch. 60A.

(d) No person shall knowingly or intentionally:

- (1) Create, distribute or deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or
- (2) Create, possess or sell or otherwise transfer any equipment with the intent that such equipment shall be used to apply a trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance or the container or label of a counterfeit substance or an imitation controlled substance. The provisions of Subsection (d)(1) of this section shall not apply to a practitioner who administers or dispenses a placebo.

(Code 2001, § 529.03; Ord. of unknown date(1), § 529.03)

State law reference—Similar provisions, W. Va. Code § 60A-4-401.

Sec. 22-10. Tampering with and theft of cable service.

(a) No person shall make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a CATV system within the Town for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound or other transmission, without payment for the service.

(b) No person, without the consent of the owner, shall willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, sounds or other transmissions.

(Code 2001, § 533.06; Ord. of unknown date(1), § 533.06)

Sec. 22-11. Advertising; billposting and handbills.

(a) *Advertising on private property.* No person shall stick or post any advertisement, poster, sign or handbill or placard of any description upon any building, vehicle or upon any tree, post, fence, billboard or any other structure or thing whatever, the private property of another, without permission of the occupant or owner of the same, nor paint, mark, write, print or impress, or in any manner attach any notice or advertisement or the name of any commodity or thing or any trade mark, symbol or figure of any kind upon anything whatever the property of another without first obtaining permission of the owner of such thing on which said person's desires to place such notice, advertisement, name, mark or figure.

(b) *Advertising on public property.* It shall be unlawful for any person to stick, post or attach any advertisement, poster, sign, handbill or placard of any kind or description upon any telegraph, telephone, railway or electric light pole within the corporate limits or upon any public building, vehicle, voting booth, flagging, curb, tree lawn, walk, step, stone or sidewalk, or to write, print or impress or in any manner attach any notice or advertisement of any kind upon any public building, voting booth, flagging, curb, tree lawn, step, stone, or sidewalk, the property of the Town or within the street lines of the town or over which the town or the Council thereof has the care, custody or control, except such as may be required by the laws of the State, or upon written permission of the Mayor or Recorder.

(Code 1963, § 5-3; Code 2001, § 533.10; Ord. of unknown date(1), § 533.10)

Sec. 22-12. Signs and advertising.

(a) *Restriction of on-premise signs and advertising.* It shall be unlawful to erect any sign or advertising within the corporate limits of the Town that is higher than five feet above the roof of the business building that sits on the same parcel of land. Appurtenances or projections such as antennas (et al) are not counted as part of the height of the building.

(b) *Grandfathering present on-premise signs.* All on-premise signs or advertising that are within the corporate limits of the Town as of July 1, 2001, are hereby grandfathered. If present signs or advertising that are more than five feet above the roof of the business building are removed, the grandfathering provision is lifted and the sign or advertising may not be replaced.

(c) *Building permits.* Building permits shall be required to erect or place any signs or advertising within the Town.

(Code 2001, § 533.11; Ord. 2001-2, 10-1-2001.; Ord. of unknown date(1), § 533.11)

Secs. 22-13—22-42. Reserved.

ARTICLE II. OFFENSES AGAINST PUBLIC AUTHORITY

Sec. 22-43. Impersonating an official or law enforcement officer.

No person shall falsely identify to be an officer or employee of the Town, or exercise or attempt to exercise any of the duties, functions or powers of a Town officer. No person, not a member of the Fire Department, for the purpose of such false representation, shall wear a uniform or part thereof similar to the uniform worn by a member of the fire department.

(Code 2001, § 501.05)

Sec. 22-44. False report.

No person shall make or give a false report or false information to any police officer or firefighter of the Town.

(Code 2001, § 501.09)

Secs. 22-45—22-61. Reserved.

ARTICLE III. OFFENSES INVOLVING PUBLIC PEACE AND ORDER

Sec. 22-62. Disturbing the peace.

No person shall:

- (1) On any street, highway, public building, in or on a public or private conveyance, or public place, engage in conduct having a direct tendency to cause acts of violence by the person at whom, individually, such conduct is directed.
- (2) Willfully, or being intoxicated, whether willfully or not, disrupt any meeting of the Town Council of any political subdivision of the State or a division or agency thereof, or of any school, literary society or place of religious worship, or any other meeting open to the public, if such disruption prevents or interferes with the orderly conduct of such meeting or has a direct tendency to cause acts of violence by the person at whom, individually, such disruption is directed.

(Code 2001, § 509.04)

Sec. 22-63. Noise control.

(a) Declaration of policy. This section is enacted to prevent excessive sound that may jeopardize the health, welfare or safety of the citizens of the Town or degrade the quality of life. It is not the intent of this section to interfere unduly with the freedoms of speech or religion.

(b) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Continuous sound means and denotes a sound, the intensity of which remains constant during a given period of time, such as generators used between 11:00 p.m. and 7:00 a.m., unless due to a power outage in the Town, as indicated by the electric company.

Dwelling means a residence or abode, including, but not limited to, a house, mobile home, condominium, apartment or other structure used as a home.

Dynamic braking system means a device used primarily on trucks for the conversion of the engine from an internal combustion engine to an air compressor for the purpose of braking without the use of wheel brakes, which devices are commonly referred to as "Jacob's brakes."

(c) No person in actual physical control of a motor vehicle within the Town shall use a dynamic braking system unless use is necessary to prevent or avoid an accident that may cause property damage, injury, or loss of life. This subsection shall not apply to fire trucks or other emergency vehicles equipped with a dynamic braking system.

(d) Noise prohibited; motor vehicles, motorcycles.

- (1) All motor vehicles and motorcycles shall be operated as quietly as possible at all times within the Town.
- (2) No person shall operate any motor vehicle or motorcycle in such a manner so as to disturb a reasonable person of ordinary sensibilities;
- (3) No person shall operate, or permit the operation within the Town of any motor vehicle or motorcycle without factory installed mufflers or their equivalent, provided that if no factory installed or equivalent muffler was present at the time of manufacture of the motor vehicle or motorcycle, then sound emanating from the motor vehicle or motorcycle shall be effectively muffled in a reasonable manner by equipment so constructed and used to muffle sound.
- (4) No person shall use a muffler cutout, bypass, or similar device upon a motor vehicle or motorcycle operated within the Town.

(e) No person operating or occupying a motor vehicle on a street or highway shall amplify from within the motor vehicle the sound produced by a radio, CD player or other mechanical sound-making device or instrument used for entertainment, so that the sound is plainly audible at a distance of 25 feet or more from the motor vehicle.

(f) No person shall engage in fighting, or threaten to harm persons or property unlawfully.

(g) No person shall make offensively coarse utterance, gesture or display, or communicate unwarranted and grossly abusive language to any person, which by its very utterance or usage inflicts injury or tends to incite an immediate breach of the peace.

(h) No person shall insult, taunt or challenge another under circumstances in which such conduct is likely to provoke a violent response.

(i) No person shall hinder or prevent the movement of persons or vehicles on a public street, road, highway right-of-way or to, from, within or upon public or private property, so as to interfere with the rights of others, by any act which serves no lawful and reasonable purpose.

(j) No person shall create a condition which presents a risk of physical harm to persons or property.

(k) No person shall urinate or defecate in any public place or upon the property of any other person, except this section shall not apply to the use of restrooms and/or bathrooms.

(l) Nothing described herein shall be interpreted or construed to prevent any constitutionally protected activity, including, but not necessarily limited to, exercise of one's constitutionally guaranteed rights of freedom of speech or assembly. No person may be convicted under this section when said person's sole intent for engaging in the activities for which said person was arrested was to exercise one or more of the rights guaranteed under the Constitution of the United States or the State Constitution or to exercise any other rights guaranteed to that person by law.

(Code 2001, § 509.04; Ord. of unknown date(1), § 509.04; Ord. of unknown date(2))

Secs. 22-64—22-84. Reserved.

ARTICLE IV. OFFENSES INVOLVING PUBLIC SAFETY

Sec. 22-85. Dangerous conditions or dangerous nuisances.

(a) No property owner, tenant or person having control of property within the Town, directly or indirectly, shall create or allow dangerous conditions, or any nuisance condition which might constitute a hazard to life or property, to exist on said property owner, tenant or person's premises.

(b) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Conditions which might constitute a hazard to life or property means any unprotected, dangerous area which will likely prove dangerous to life or limb, or would likely cause damage to the property of others.

Dangerous conditions means any open, unguarded or unprotected excavation, high wall, swimming pool or building which, when abandoned or left open or otherwise unprotected, will likely prove dangerous to life or limb, or an abandoned, open, uncovered or otherwise unprotected well, cesspool, cistern or catchbasin.

(Code 1963, § 5-75-2; Code 2001, § 515.07; Ord. of unknown date(1), § 515.07)

Sec. 22-86. Openings; protective covers.

(a) No person or property owner shall have or maintain in the Town any basement opening, stairway or any other opening for like purpose in the sidewalk or street, which opening is not protected by a grating provided with a limiting device. Such limiting device shall prohibit the cover of any such opening from raising to an angle greater than 85 degrees and shall so function that such opening cannot willfully or negligently be left open. It shall be unlawful to detach the limiting device so as to permit the cover of such opening to be propped open or left open, unless an attendant is stationed on the street level to warn pedestrians or vehicles of the opening and to protect them from falling or stepping therein. When any such opening is to be left uncovered for any length of time and it is not practicable to station an attendant thereat, the opening shall be substantially fenced or barricaded off in such manner that pedestrians or vehicles shall not fall or step therein.

(b) No person shall allow any obstruction, uneven surface, or smooth surface dangerous to life or limb to exist within the corporate limits.

(Code 1963, § 5-75-3; Code 2001, § 515.08; Ord. of unknown date(1), § 515.08)

Sec. 22-87. Electrically charged fence.

No person shall construct, erect, maintain or use, for any purpose, any fence charged with electrical current, within the corporate limits.

(Code 1963, § 5-75-4; Code 2001, § 515.09; Ord. of unknown date(1), § 515.09)

Sec. 22-88. Barbed wire fence.

(a) No person shall construct or maintain on any premises adjoining streets of the Town any barbed wire or barbed wire fences.

(b) No person shall construct, cause to be constructed, or have upon said person's property any fence on or within which any barbed wires are placed at a height of less than 72 inches from the ground.

(Code 1963, § 5-75-5; Code 2001, § 515.10; Ord. of unknown date(1), § 515.10)

Sec. 22-89. Barricades and warning lights; abandoned excavations.

(a) No person shall abandon or knowingly permit to remain on public or private property, any excavation, well, cesspool or structure which is in the process of construction, reconstruction, repair or alteration, unless the same is adequately protected by suitable barricades and guarded by warning devices or lights at night so that the condition will not reasonably prove dangerous to life or limb.

(b) No person shall destroy, remove, damage or extinguish any barricade or warning light that is placed for the protection of the public so as to prevent injury to life or limb.

(c) Any owner or agent in control of a premises upon which a basement, cellar, well or cistern has been abandoned due to demolition, failure to build or any other reason shall cause the same to be filled to the ground surface with rock, gravel, earth or other suitable material.

(Code 2001, § 533.08; Ord. of unknown date(1), § 533.08)

Sec. 22-90. Discharging firearms.

(a) No person shall discharge any air gun, rifle, shotgun, revolver, pistol or other firearm within the corporate limits of the Town.

(b) This section does not apply when firearms are used in self defense, in the discharge of official duty or when otherwise lawfully authorized.

(Code 2001, § 545.11; Ord. of unknown date(1), § 545.11)

Sec. 22-91. Throwing or shooting missiles.

No person shall throw, shoot or propel an arrow, missile, pellet, stone, metal or other similar substance capable of causing physical harm to persons or property, in or on any public place, in or on the property of another, or from any private property into or onto any public place or the property of another. This section does not apply to supervised archery ranges or instruction nor when otherwise lawfully authorized.

(Code 2001, § 545.12; Ord. of unknown date(1), § 545.12)

Secs. 22-92—22-110. Reserved.

ARTICLE V. OFFENSES INVOLVING UNDERAGE PERSONS

Sec. 22-111. Tobacco usage restrictions.

(a) A person, firm, corporation, or business entity may not sell, give or furnish, or cause to be sold, given or furnished, any tobacco product, in any form, to any person younger than 21 years of age, which shall be verified by a valid driver's license, State identification card, or any valid and unexpired federally issued identification card, such as a passport or military identification card.

(b) A person charged with a violation of Subsection (a) of this section, as the result of an inspection under W. Va. Code § 16-9A-3 has a complete defense if, at the time the tobacco product was sold, delivered, bartered, furnished, or given, the person carefully checked a driver's license or an identification card issued by the State or another state of the United States, a passport, or a United States Armed Services identification card presented by the

buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 years of age or older.

(Code 2001, § 525.05; Ord. of unknown date(1), § 525.05)

State law reference—Similar provisions, W. Va. Code §§ 16-9A-3, 16-9A-7(b).

Sec. 22-112. Curfew.

(a) *Hours of restriction.* It shall be unlawful for any child under the age of 16 years to be upon the streets or in other public places of the Town unless accompanied by a parent, guardian or some adult person lawfully in charge of such child between 10:00 p.m. and 5:00 a.m.

(b) *Parent, guardian responsibility.* It shall be unlawful for any parent, guardian or other person having the custody of a child under the age of 16 years, to violate the provisions of Subsection (a) of this section.

(c) *Exceptions.* It is a defense to prosecution under Subsection (a) or (b) of this section that the child under the age of 16 years was engaged in activities allowed in W. Va. Code § 27B-2-3a (d)(2)(A) and (d)(2)(B).

(d) *Disposition of child.* Any child found in violation of this section shall be taken to the Town Hall and the parent, guardian or person in loco parentis shall be notified to come to the town hall and take personal charge of the child. The child shall be released only to such parent, guardian or person in loco parentis, or to the juvenile authorities. Any child found in violation of this section who has once before been held by the authorities for violation of this section shall be held for the juvenile authorities for proper disposition.

(Code 1963, § 5-67; Code 2001, § 525.06; Ord. of unknown date(1), § 525.06)

Secs. 22-113—22-137. Reserved.

ARTICLE VI. ADMINISTRATION AND LAW ENFORCEMENT

Sec. 22-138. Obstructing officer; fleeing from officer.

No person shall refuse or fail to comply with any lawful order, direction or signal of a police officer.

(Code 2001, § 501.02)

Chapter 23

RESERVED

Chapter 24

SOLID WASTE

Article I. In General

- Sec. 24-1. Littering and deposit of garbage, rubbish, junk, etc.
- Sec. 24-2. Unauthorized use of dumpsters.
- Secs. 24-3—24-22. Reserved.

Article II. Collection and Disposal

- Sec. 24-23. Definitions.
- Sec. 24-24. Town to collect garbage and refuse.
- Sec. 24-25. Charges for refuse service.
- Sec. 24-26. Payment of service charges.
- Sec. 24-27. Power to revise rates.
- Sec. 24-28. Failure to pay a lien; action by Town.
- Sec. 24-29. Littering.
- Sec. 24-30. Storing refuse or garbage.

ARTICLE I. IN GENERAL**Sec. 24-1. Littering and deposit of garbage, rubbish, junk, etc.**

(a) No person shall, without lawful authority, place or dispose of in any manner, upon any public property or upon the premises of another, any paper, trash, garbage, waste, rubbish, refuse, junk or any substance or material which is or may become noxious, offensive, injurious or dangerous to the public health, comfort or safety.

(b) No person shall cause or allow trash, garbage, waste, rubbish, refuse or any other noxious or offensive materials or substances to be collected or remain in any place to the damage or prejudice of others or of the public, or unlawfully obstruct, impede, divert, corrupt or render unwholesome or impure, any natural watercourse.

(Code 2001, § 533.07; Ord. of unknown date(1), § 533.07)

Sec. 24-2. Unauthorized use of dumpsters.

No person, without authorization, shall dump garbage or trash, or assist in the unauthorized dumping of garbage or trash, in a dumpster or other solid waste container which is located on the property of another person and leased or otherwise owned or maintained by another person. The act of throwing isolated objects into a dumpster or other solid waste container in the prevention or elimination of litter is specifically excepted from any penalties under this section. (WVaC 61-3-53)

(Code 2001, § 533.09; Ord. of unknown date(1), § 533.09)

Secs. 24-3—24-22. Reserved.**ARTICLE II. COLLECTION AND DISPOSAL****Sec. 24-23. 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:

Garbage means waste material from kitchens, dining rooms and similar places, including organic wastes of animals, fowl, fish, fruits or vegetables.

Garbage container means a container made of metal, leakproof and watertight. It shall have a capacity of approximately 15 gallons and shall be equipped with an adequate carrying bail and tightfitting metal cover.

Refuse means all sweepings, cleanings, trash, rubbish, litter and accumulated waste material not containing putrid matter or organic wastes.

Refuse container means any substantial container which will hold and prevent refuse placed therein from scattering.

(Code 1963, §§ 9-11-1—9-11-5; Code 2001, § 937.01)

Sec. 24-24. Town to collect garbage and refuse.

The Town shall cause all refuse and garbage to be collected, removed and disposed of either by its own employees or agents or by an independent contractor, pursuant to a contract entered into by the Town and such contractor. Weekly collections shall be made at all family residences and retail stores and daily collections at hotels, restaurants and such other places as may from time to time be designated by the Council.

(Code 1963, § 9-13-1; Code 2001, § 937.02)

Sec. 24-25. Charges for refuse service.

The charges to be paid to the Town for the service provided by the town pursuant to the provisions of this article shall be established by the town; provided, however, that:

- (1) The town shall not collect, remove or dispose of the following types of refuse: swill, offal, sewage, animal excreta, the carcasses of animals, tree or shrub trimmings, or material resulting from the demolition, repair, alternation or erection of buildings or structures.
- (2) All requests for picking up bulk trash must be called in to Town Hall by Monday at 3:00 p.m. for pickup during the same week by Friday close of business. All charges must be paid in advance of pick up and are for bulk trash only, subject to adjustment for excessive amounts above normal. The following items are considered bulk trash: furniture, appliances, mattress and box springs, electronics, large household items, metal items, large plastic items, tires, and wastes generated by households and individuals during their daily activities.

(Code 2001, § 937.04; Ord. No. 79-2; Ord. of 6-13-2024(2), § 937.04)

Sec. 24-26. Payment of service charges.

The Recorder shall promptly collect all charges for the services provided for in this article and shall keep in the Recorder's office proper records showing all collections made and received by the Recorder and all charges which are in default with the respective amounts due thereon and the person by whom the same are payable. The system of accounting used by the Recorder shall show the amount of revenue received and the application of the same, and the Mayor shall, at least once each year, cause such account to be audited properly by a competent auditor, and the report of such auditor shall be open for inspection at all times to any taxpayer or citizen of the Town, or any person receiving services under the provisions of this chapter acting for or on behalf of such taxpayer, citizen or bond holder. The Recorder shall have the authority, by and with the consent and approval of the Mayor, to appoint collectors to collect all charges for services hereunder. Such collectors shall furnish bond in the penal sum required by the Council and shall receive ten percent of the amounts collected as a fee for services.

(Code 1963, § 9-13-4; Code 2001, § 937.05; Ord. of 6-13-2024(2), § 937.05)

Sec. 24-27. Power to revise rates.

The Council shall have the right to revise the schedule of rates and to adjust them so that costs will be distributed as equitably as possible among all citizens of the Town on the basis of benefits received. At no time, however, shall rates be continued which are disclosed to be producing less revenue than is required to meet the costs involved in rendering the refuse and garbage collection service to the public.

(Code 1963, § 9-13-5; Code 2001, § 937.06)

Sec. 24-28. Failure to pay a lien; action by Town.

If the fee, rate or charge for any of the foregoing services shall not be paid within 30 days after the same is due, the amount thereof shall be in default and may be recovered by the Town in any appropriate action. The fees, rates and charges for the service mentioned in this article shall, if not paid when due, constitute a lien upon the premises served, which lien may be foreclosed against the lot or parcel of land on which the building is located, in accordance with the laws of the State relating to the foreclosure of liens on real property. The Town shall file in the office of the County Commission a statement of all unpaid fees, charges and liens, executed on its behalf and duly verified by the Town Collector, showing therein the kind and nature of the service, the period covered, the amount of the charges therefor due and unpaid for a period of more than 30 days, the description or designation of the premises to which services are chargeable, and the name of the owner thereof. Further, the statement shall show an additional fee in the amount established by the Town to reimburse the Town for its costs in preparing such statement and for the fee paid by it to the County Commission for the recordation of such lien statement, which statement when so filed of record shall be and constitute notice of a first and prior lien upon the property and premises therein referred to, subordinate only to liens for taxes and liens in favor of the United States of America and of the State.

(Code 1963, § 9-13-7; Code 2001, § 937.08)

Sec. 24-29. Littering.

It shall be unlawful for any person to throw, place or scatter any refuse or garbage over or upon any premises or street, either public or private, or adjacent thereto either with or without the intent later to remove or burn it; or to suffer or permit the accumulation of such on any premises owned, occupied or controlled by such person to become or remain offensive, unsanitary, unsightly, unsafe to the public health or a fire hazard.

(Code 1963, § 9-15-1; Code 2001, § 937.09)

Sec. 24-30. Storing refuse or garbage.

It shall be unlawful for any person to store or permit the storage of refuse or garbage on or about said person's premises or the premises occupied by said person, unless the same is kept separately in refuse or garbage containers.

(Code 1963, § 9-15-2; Code 2001, § 937.10)

Chapter 25

RESERVED

Chapter 26

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

Article I. In General

- Sec. 26-1. Placing injurious material in street.
- Sec. 26-2. Repair of sidewalk or driveway entrance; assessment.
- Sec. 26-3. Sidewalks to be cleaned of snow and ice.
- Sec. 26-4. Unloading on street, sidewalk.
- Sec. 26-5. Materials on street or sidewalk.
- Sec. 26-6. Merchandise displays.
- Sec. 26-7. Removal of lanterns and warning barricades.
- Sec. 26-8. Curb service on public areas.
- Sec. 26-9. Approval required for construction.
- Secs. 26-10—26-36. Reserved.

Article II. Trees and Shrubbery

- Sec. 26-37. Planting tree or shrub on Town property.
- Sec. 26-38. Tree, hedge and shrub trimming.
- Secs. 26-39—26-64. Reserved.

Article III. Excavations

- Sec. 26-65. Permit required.
- Sec. 26-66. Application for permit.
- Sec. 26-67. Application fee and related costs.
- Sec. 26-68. Determining whether to issue permit.
- Sec. 26-69. Permit fee; deposit.
- Sec. 26-70. Inspection by the Mayor or Engineer.
- Sec. 26-71. Precautions for trees; backfill.

ARTICLE I. IN GENERAL**Sec. 26-1. Placing injurious material in street.**

No person shall throw, place or deposit upon any street or highway any material, article or substance which injures or damages, or is likely to injure or damage, the street or highway. (Code 2001, § 311.01)

Sec. 26-2. Repair of sidewalk or driveway entrance; assessment.

(a) It shall be the duty of the owners of real estate abutting on any sidewalk to keep the sidewalk and driveway entrance or apron adjacent to their properties in good repair. Any property owner failing to keep the sidewalk or driveway area adjacent to said owner's property in repair shall be liable to reimburse the Town for all loss that it may sustain, or any damage, cost, or expenses that may be imposed upon it by reason of the failure of the property owner to perform such duty.

(b) In the event any sidewalk or driveway entrance shall become out of repair, and the property owner has not upon said owner's own initiative repaired it, the Mayor may serve a notice upon the owner of the property adjacent to the sidewalk or driveway entrance so out of repair, if said owner is a resident, or upon said owner's agent if said owner is a nonresident, requiring the owner to repair or rebuild, where necessary, any such sidewalk or driveway entrance within a time stated in the notice. In the event of the failure of the property owner, or said property owner's agent, to rebuild or repair the sidewalk or driveway entrance within the specified time, the Mayor may have said work done and may assess the cost thereof against the abutting landowner, and the amount thereof may be collected by the Treasurer by distress and sale, or otherwise as provided by law for the collection of taxes, and it may be docketed in the office of the County Commission as a lien against the property in the same manner as an original sidewalk assessment, provided that where a dangerous condition exists in such sidewalk or driveway, the property owner shall not be required to begin such repair or rebuilding within less than ten days from the receipt of such notice. (Code 1963, § 5-79-1; Code 2001, § 905.01)

Sec. 26-3. Sidewalks to be cleaned of snow and ice.

Every person or public institution using or occupying in any manner or for any purpose whatsoever any house, store, shop, garage, tenement or building of any kind, or any vacant lot, and all persons having charge of churches and public buildings of every description, and the owners of unoccupied houses and unimproved or unoccupied lots abutting on a sidewalk in the Town, and their agents, shall within three hours after the fall of any snow or the formation of any ice on the sidewalk on which the property abuts, remove and clear, or cause to be removed and cleared, such snow and ice in such manner as to leave the sidewalk free and clear of such deposits, and in such manner as not to obstruct the passage of water in the gutter adjacent to the sidewalk, provided that, if snow falls or ice forms between the hours of 6:00 p.m. and 6:00 a.m. the following morning, such snow or ice shall be removed before 11:00 a.m. It shall be the further duty of the persons herein before mentioned and their

agents to keep the gutters, downspouts and drains serving their properties so located and in such a state of repair that water, snow or ice shall not fall, flow or escape therefrom on to the adjacent sidewalk.

(Code 1963, § 5-79-2; Code 2001, § 905.02)

Sec. 26-4. Unloading on street, sidewalk.

It shall be unlawful for any person to unload any heavy material in the streets of the Town by throwing or letting the same fall upon the pavement of any street, sidewalk or other public way, without first placing some sufficient protection over the pavement.

(Code 1963, § 5-79-3; Code 2001, § 905.03)

Sec. 26-5. Materials on street or sidewalk.

It shall be unlawful for any person to encumber any street or sidewalk or, being the owner, occupant or person having care of any building or lot of land bordering on any street or sidewalk, to permit the same to be encumbered with barrels, boxes, cans, wrecked cars, articles or substances of any kind, so as to interfere with the free and unobstructed use thereof, without a permit to do so.

(Code 1963, § 5-79-5; Code 2001, § 905.05)

Sec. 26-6. Merchandise displays.

No person shall use any street or sidewalk area, including the lateral strip area between the street and sidewalk, for the display of merchandise or for any advertising display without the written permission of the Mayor.

(Code 1963, § 5-79-6; Code 2001, § 905.06)

Sec. 26-7. Removal of lanterns and warning barricades.

The removal of red lanterns, barricades or other means placed on the streets and on construction projects, public or private, in the Town as a warning or protection for the public by persons unauthorized to remove the same, or the willful, careless or negligent destruction of said lanterns or barricades is prohibited.

(Code 1963, § 5-79-7; Code 2001, § 905.07)

Sec. 26-8. Curb service on public areas.

It shall be unlawful for druggists, merchants and other persons to sell, deliver or serve articles of food or drink to customers in parked motor vehicles on public streets or areas, a service commonly known as curb service.

(Code 1963, § 5-79-8; Code 2001, § 905.08)

Sec. 26-9. Approval required for construction.

Before any person shall construct any sidewalk, curb or gutter in the Town in, on or adjacent to any public street or other public right-of-way or public property, application shall

be made by such person to the Town Engineer for approval of such proposed construction. The application shall include a profile, cross section and the specifications for such sidewalk, curb or gutter. The construction thereof shall not commence until the Town shall have provided the applicant with the grade level for the construction and shall have approved the profile, cross section and specifications.

(Code 1963, § 9-3-1; Code 2001, § 917.01)

Secs. 26-10—26-36. Reserved.

ARTICLE II. TREES AND SHRUBBERY

Sec. 26-37. Planting tree or shrub on Town property.

It shall be unlawful for any person to plant any tree or shrub in any parkway, street, alley or other property owned or held by the Town without having first obtained the written consent of the Mayor or Town Recorder.

(Code 1963, § 5-83-1; Code 2001, § 909.01)

Sec. 26-38. Tree, hedge and shrub trimming.

(a) It shall be the duty of every owner, controller and manager of lots bounding and abutting on street areas, including sidewalks of the Town, for the distance which their lots so abut and border, to take the following steps for the protection of the public:

- (1) To cut away and remove all trees, parts of trees and limbs which are dead or which because of decay or other causes, threaten the safety of persons using the streets and sidewalks.
- (2) To trim, cut away and remove overhanging limbs of trees and shrubs so that no part thereof shall be lower than seven feet from a sidewalk or ten feet from the surface of a street over which they hang.
- (3) To cut and remove all weeds and bushes which grow or encroach upon a sidewalk or street.
- (4) To keep all hedges so trimmed that they will not extend over any part of a street or sidewalk and will not be of greater height than three feet.
- (5) To cut down and remove any tree, plant or shrubbery, or any part thereof, as may be necessary to provide a clear and unobstructed view of traffic from all directions at any street intersection, or to abate any nuisance necessary to protect life, limb or property of persons, drivers of any vehicles, or pedestrians using said street or sidewalk.

(b) The requirements of this section shall apply to trees, shrubs, hedges, weeds and bushes growing either upon the lots or upon parkways and portions of the street adjacent to such lots.

(c) In the event of the failure of such owner, controller or manager to perform any service required by Subsection (a)(1), (2), (3), (4) or (5) of this section, then the Mayor may have such work done by Town employees or by an independent contractor, at the expense of the owner, controller or manager of such lot.

(Code 1963, § 5-83-2; Code 2001, § 909.02)

Secs. 26-39—26-64. Reserved.

ARTICLE III. EXCAVATIONS

Sec. 26-65. Permit required.

No excavation or other opening shall be made in any street or other public place within the Town by any person without first obtaining a permit therefor in accordance with the provisions of this article.

(Code 1963, § 9-1-1; Code 2001, § 913.01)

Sec. 26-66. Application for permit.

Any person desiring to make an excavation or other opening in any street or other public place within the Town shall make application therefor in writing to the Town Recorder. Such application shall be filed with the Recorder and shall state the name and address of the person proposing to make such excavation or opening, the purpose for which the same is to be made, the location thereof and the time within which the street or public place will be restored to its former condition. In the event that such excavation or opening is for the purpose of placing any pipe, conduit or other construction in such street or other public place, such application shall be accompanied with an accurate plat or blueprint showing such construction in detail, together with its proposed connection, if any, with existing construction.

(Code 1963, § 9-1-2; Code 2001, § 913.02)

Sec. 26-67. Application fee and related costs.

Except in cases in which such excavation or opening is intended as a part of the work under a franchise heretofore or hereafter granted, such application shall be accompanied with a fee in the amount established by the Town, with such further sum as the Town Engineer may specify as necessary to defray the cost and expense of investigation and inspection of the work by the Town Engineer, as provided in this article, and to restore the surface of the street to its former condition after the making of such excavation or opening, where applicable.

(Code 1963, § 9-1-3; Code 2001, § 913.03)

Sec. 26-68. Determining whether to issue permit.

After the filing of such application with the Recorder, together with the fees specified in Section 26-67, the Town Engineer shall investigate the advisability of issuing such permit and is hereby authorized to issue such permit if the Town Engineer deems the same advisable. Should the Town Engineer not deem it advisable to issue such permit, the town engineer shall transmit such application to the Council, together with the Town Engineer's report and the Town Engineer's reasons for not issuing the permit, and the Council at its next meeting shall determine whether such permit shall be issued, and its action in such respect shall be final.

(Code 1963, § 9-1-4; Code 2001, § 913.04)

Sec. 26-69. Permit fee; deposit.

If no permit shall be issued pursuant to any such application, the fees made with such application shall be returned to the applicant, less the cost and expense of the investigation by the Town Engineer. If a permit is issued, the fee shall be paid as a fee for issuing such permit. The balance of the deposit shall be held until the street or other public place is restored to its former condition to the approval of the Town Engineer, after which the balance of the deposit, less the cost of inspection of work, if any, shall be returned to the applicant. In case such restoration is not made within the time specified in the permit, the work shall be done by the Town, and the expense thereof shall be charged against such deposit, and the balance, if any, returned to the applicant. In case the amount deposited is not sufficient either to pay the cost and expense of the investigation and inspection by the Town Engineer or to restore the street or other place so excavated or opened, the additional amount required therefor shall be paid to the Town by such applicant upon receipt of a statement therefor.

(Code 1963, § 9-1-5; Code 2001, § 913.05)

Sec. 26-70. Inspection by the Mayor or Engineer.

In case such excavation or opening is made for the purpose of installing any construction in such street or public place, the work shall be subject to the inspection of the Mayor or Town Engineer. No construction shall be covered until the Town Engineer shall have ascertained that such work conforms to the plans submitted.

(Code 1963, § 9-1-6; Code 2001, § 913.06)

Sec. 26-71. Precautions for trees; backfill.

In the making of any such excavation or opening, all work in connection herewith shall be done in such a manner as not to injure or destroy the roots, trunk or branches of any tree and all directions given by the Town Engineer or Mayor as to the manner of performing the work, in order to avoid such injury or destruction, shall be fully and completely complied with. All backfills in openings shall be compacted to the satisfaction of the Mayor or Town Engineer.

(Code 1963, § 9-1-7; Code 2001, § 913.07)

Chapter 27

RESERVED

Chapter 28

TAXATION

Article I. In General

Secs. 28-1—28-18. Reserved.

Article II. Business and Occupation Tax

- Sec. 28-19. Producer or manufacturer shipping or transporting products out of Town without sale.
- Sec. 28-20. Sales wherein gross proceeds not indicative of true value.
- Sec. 28-21. Adding to or deducting from gross income.
- Sec. 28-22. Producers or manufacturers selling at retail.
- Sec. 28-23. Manufacturers selling products for delivery outside Town.
- Sec. 28-24. Producing coal, oil, gas, etc., and using same in producer's business.
- Sec. 28-25. Producers of natural resource products.
- Sec. 28-26. Manufacturers or preparers for sale of commodities or electric power.
- Sec. 28-27. Sellers of tangible property and stocks, bonds, etc.
- Sec. 28-28. Public service or utility business.
- Sec. 28-29. Contractors.
- Sec. 28-30. Banking and other financial business.
- Sec. 28-31. Theaters and other places of amusement.
- Sec. 28-32. Service business or calling.
- Sec. 28-33. Collecting rentals, royalties, etc.
- Sec. 28-34. Surtaxes; business exempt.
- Sec. 28-35. Exemptions.
- Sec. 28-36. When and how taxes payable; estimate and remittance.
- Sec. 28-37. Annual return and remittance.
- Sec. 28-38. Correction of errors.
- Sec. 28-39. Failure or refusal to make return; deficient return.
- Sec. 28-40. Hearing before the Council.
- Sec. 28-41. Tax year.
- Sec. 28-42. Tax additional to all others.
- Sec. 28-43. How remittances to be made.
- Sec. 28-44. Lien for unpaid taxes; penalties.
- Sec. 28-45. Powers of collection; injunction.
- Sec. 28-46. Selling out or quitting business.
- Sec. 28-47. Gross income derived from interstate or foreign commerce.
- Sec. 28-48. Duty of officers and agents making contracts on behalf of Town.
- Sec. 28-49. Filing copy of assessment with County Commission; release of lien.
- Sec. 28-50. Distress.
- Sec. 28-51. Offenses.
- Sec. 28-52. Administration and enforcement of article.
- Sec. 28-53. When first tax assessed.
- Secs. 28-54—28-79. Reserved.

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Article III. Public Utilities Tax

- Sec. 28-80. Definitions.
- Sec. 28-81. Imposition of tax; notice to utility of effective date.
- Sec. 28-82. Collection; time of payment; effective date; proration.
- Sec. 28-83. Maintenance and inspection of records.
- Sec. 28-84. Exemptions.
- Sec. 28-85. Nonliability of utility for erroneous collections, etc.
- Sec. 28-86. Additional remedies for collection of tax.

ARTICLE I. IN GENERAL

Secs. 28-1—28-18. Reserved.

ARTICLE II. BUSINESS AND OCCUPATION TAX

Sec. 28-19. Producer or manufacturer shipping or transporting products out of Town without sale.

If any person liable for any tax under Section 28-24 or 28-25 shall ship or transport said person's products, or any part thereof, out of the Town without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the town shall be the basis for the assessment of the tax imposed in said sections. The Collector shall prescribe equitable and uniform rules for ascertaining such value.

(Code 2001, § 705.03)

Sec. 28-20. Sales wherein gross proceeds not indicative of true value.

In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relations between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the Collector shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

(Code 2001, § 705.04)

Sec. 28-21. Adding to or deducting from gross income.

Gross income included in the measure of the tax under Section 28-24 or 28-25, except in the case of production of natural gas, shall neither be added nor deducted in computing the tax levied under the other sections of this article.

(Code 2001, § 705.05)

Sec. 28-22. Producers or manufacturers selling at retail.

A person exercising any privilege taxable under Section 28-24 or 28-25 and engaging in the business of selling said person's natural resources or manufactured products at retail in the Town shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in Section 28-26 for the privilege of engaging in the business of selling such natural resources or manufactured products at retail in the Town. But any persons exercising any privilege taxable under Section 28-24 or 28-25 and engaging in the business of selling said person's natural resources or manufactured products to manufacturers,

wholesalers or jobbers, and in the case of limestone, sand, gravel or other mineral products, to commercial consumers, shall not be required to pay the tax imposed in Section 28-26 for the privilege of selling such natural resources, products or manufactured products at wholesale.

(Code 2001, § 705.06)

Sec. 28-23. Manufacturers selling products for delivery outside Town.

Manufacturers exercising any privilege taxable under Section 28-25 shall not be required to pay the tax imposed in Section 28-26 for the privilege of selling their manufactured products for delivery outside of the Town, but the gross income derived from the sale of such manufactured products outside of the Town shall be included in determining the measure of the tax imposed on such manufacturer in Section 28-25.

(Code 2001, § 705.07)

Sec. 28-24. Producing coal, oil, gas, etc., and using same in producer's business.

A person exercising privileges taxable under this article, producing coal, oil, natural gas, minerals, timber or other natural resource products the production of which is taxable under Section 28-28 and using or consuming the same in said person's business, shall be deemed to be engaged in the business of mining and producing coal, oil, natural gas, minerals, timber or other natural resource products, for sale, profit or commercial use, and shall be required to make returns on account of the production of the business showing the gross proceeds or equivalent in accordance with uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers, which rules the Collector shall prescribe.

(Code 2001, § 705.08)

Sec. 28-25. Producers of natural resource products.

Upon every person engaging in or continuing within the Town in the business of producing for sale, profit or commercial use any natural resource product, the amount of such tax to be equal to the value of the articles produced and shown by the gross proceeds derived from the sale thereof by the producer, except as hereinafter provided, multiplied by the respective rates as follows: coal, one percent; limestone or sandstone, quarried or mined, 1½ percent; oil, 1½ percent; natural gas, in excess of the value of \$5,000.00 dollars, six percent; blast furnace slag, 1½ percent; sand, gravel or other mineral product, not quarried or mined, 1½ percent; timber, 1½ percent; other natural resource products, two percent. The measure of this tax is the value of the entire production in the Town, regardless of the place of sale or the fact that delivery may be made to points outside of the Town.

(Code 2001, § 705.09)

Sec. 28-26. Manufacturers or preparers for sale of commodities or electric power.

Upon every person engaging or continuing within the Town in the business of manufacturing, compounding or preparing for sale, profit or commercial use, either directly or through the activity of others in whole or in part, any article, substance, commodity or electric power not produced by public utilities taxable under other provisions of this article, the amount of the tax to be equal to the value of this article, substance, commodity or electric power manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or persons compounding or preparing the same, except as hereinafter provided, multiplied by a rate of three tenths of one percent. The measure of this tax is the value of the entire product manufactured, compounded or prepared in the Town for sale, profit or commercial use, regardless of the place or the fact that deliveries may be made to points outside the State.

(Code 2001, § 705.10)

Sec. 28-27. Sellers of tangible property and stocks, bonds, etc.

Upon every person engaging or continuing within the Town in the business of selling any tangible property whatsoever real or personal, including sale of food and services incident to the sale of food in hotels, hotel restaurants, cafeterias, confectioneries and other public eating houses, except sales by any person engaging or continuing in the business of horticulture, agriculture or grazing, or of selling stocks, bonds or other evidence of indebtedness, there is likewise hereby levied, and shall be collected, a tax equivalent to one-half of one percent of the gross income of the business except that in the case of a wholesaler or jobber, the tax shall be equal to 0.15 of one percent of the gross income of the business.

(Code 2001, § 705.11)

Sec. 28-28. Public service or utility business.

Upon any person engaging or continuing within the Town in any public service or utility business, except railroad, railroad car, express, pipe line, telephone and telegraph companies, water carriers by steamboat or steamship and motor vehicle carriers, there is likewise hereby levied and shall be collected taxes on account of the business engaged in equal to the gross income of the business multiplied by the respective rates as follows: Street and interurban and electric railways, one percent; water companies, four percent, except as to income from municipally-owned water plants; electric light and power companies, four percent on sales and demand charges for domestic purposes and commercial lighting and three percent on sales and demand charges for all other purposes, except as to income from municipally-owned plants producing or purchasing electricity and distributing the same; natural gas companies, three percent on the gross income, said gross income for this purpose to be determined by deducting from gross income, from all sales to consumers, the amount of the tax paid by the taxpayers under Section 28-24; toll bridge companies, three percent; and

upon all other public service or utility business, two percent. The measure of the tax shall not include gross income derived from commerce between the Town and other states of the United States or between the town and foreign countries.

(Code 2001, § 705.12)

Sec. 28-29. Contractors.

Upon every person engaging or continuing within the Town in the business of contracting, the tax shall be equal to two percent of the gross income of the business.

(Code 2001, § 705.13)

Sec. 28-30. Banking and other financial business.

(a) Upon every person engaging or continuing within the Town in the business of banking or financial business, from and after July 1, 1975, the tax shall be equal to one percent of the gross income received from interest, premiums, discounts, dividends, service fees or charges, commissions, fines, rents from real or tangible personal property, however denominated, royalties, charges for bookkeeping or data processing, receipts from check sales, charges or fees, and receipts from the sale of tangible personal property; provided, however, that gross income shall not include:

- (1) Interest received on the obligations of the United States, its agencies and instrumentalities;
- (2) Interest received on the obligations of this or any other state, territory or possession of the United States, or any political subdivision of any of the foregoing or of the District of Columbia; or
- (3) Interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by nontransients.

(b) Provided, however, that all interest derived on activities exempt under Subsection (a)(1) of this section, shall be reported, as to amounts, on the return of a person taxable under the provisions of this section.

(c) Persons taxed pursuant to the provisions of this section shall not be taxed under any other section of this article.

(Code 2001, § 705.14)

Sec. 28-31. Theaters and other places of amusement.

Upon every person engaging or continuing within the Town in the business of operating a theatre, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, racetrack, radio broadcasting station or any other place at which amusements are offered to the public, the tax shall be equal to one-half of one percent of the gross income of the business.

(Code 2001, § 705.15)

Sec. 28-32. Service business or calling.

Upon every person engaging or continuing within the Town in any service business or calling not otherwise specifically taxed under this article, there is likewise hereby levied and shall be collected a tax equal to one percent of the gross income of any such business.

(Code 2001, § 705.16)

Sec. 28-33. Collecting rentals, royalties, etc.

Upon every person or corporation engaging or continuing within the Town in the business of collecting incomes from the use of real or personal property or of any interest therein, whether by leases, conveyance or otherwise, and whether the return be in the form of rentals, royalties, fees, interest, or otherwise, the tax shall be one percent of the gross income of any such activity.

(Code 2001, § 705.17)

Sec. 28-34. Surtaxes; business exempt.

(a) Every person taxable under Sections 28-24 to 28-28 and section 28-31 shall pay in addition to that tax, and all other taxes, an additional surtax of three tenths of each tax imposed by such sections.

(b) This surtax shall not apply to:

(1) Water companies;

(2) Privileges taxed under Section 28-27, except in the case of wholesalers or jobbers.

(Code 2001, § 705.18)

Sec. 28-35. Exemptions.

(a) There shall be an exemption in every case of \$50.00 in the amount of tax computed under the provisions of this article. A person exercising a privilege taxable hereunder for a fractional part of a tax year shall be entitled to an exemption of the sum bearing the proportion to \$50.00 that the period of time the privilege is exercised bears to a whole year. Only one exemption shall be allowed to any one person, whether said person exercises one or more privileges taxable hereunder.

(b) The provisions of this article shall not apply to:

(1) Insurance companies which pay the State a tax upon premiums; provided, however, that such exemption shall not extend to that part of the gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office in the Town, whether such income is in the form of rentals or royalties;

(2) Nonprofit cemetery companies organized and operated for the exclusive benefits of their members;

- (3) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not-for-profit;
 - (4) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes;
 - (5) Production credit associations organized under the provisions of the Federal Farm Credit Act of 1933; provided, however, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of West Virginia Code, Ch. 19, Art. 4;
 - (6) Building and loan associations and federal savings and loan associations;
 - (7) Persons engaged in conducting the business of industrial loans under authority granted them by West Virginia Code, Ch. 31, Art. 7; provided, however, that such exemption shall not extend to that part of the gross income of such persons which is received from the use of real property owned, other than the business house or building in which the business of the industrial loan company is transacted, whether such income is in the form of rentals or royalties.
- (Code 2001, § 705.19)

Sec. 28-36. When and how taxes payable; estimate and remittance.

The taxes levied under this article shall be payable in quarterly installments on or before the expiration of 30 days from the end of the quarter in which they accrue. The taxpayer shall, within 30 days from the expiration of each quarter, make out an estimate of the tax for which said taxpayer is liable for such quarter, verify the same by oath, and mail the same, together with a remittance in the form required by Section 28-43 for the amount of the tax to the office of the Collector. The Collector, if the collector deems it necessary to ensure payment of the tax, may require return and payment under this section for other than a quarter-year period.

(Code 2001, § 705.20)

Sec. 28-37. Annual return and remittance.

On or before 30 days after the end of the tax year, each person liable for the payment of a tax under this article shall make a return showing the gross proceeds of sales of gross income of business, trade or calling and compute the amount of tax chargeable against said person in accordance with the provisions of this article, and transmit with said person's report a remittance in the form required by Section 28-43 covering the residue of the tax chargeable against said person in the office of the Collector. Such return shall be verified by the oath of the taxpayer, if made by an individual, or by the oath of the president, vice-president, secretary or treasurer of a corporation, if made on behalf of the corporation. If made on behalf of a partnership, joint venture, association, trust or any other group or combination acting as a unit, an individual delegated by such firm, co-partnership, joint venture,

association acting as a unit shall make the oath on behalf of the taxpayer. If, for any reason it is not practicable for the individual taxpayer to make the oath, the same shall be made by any duly authorized agent.

(Code 2001, § 705.21)

Sec. 28-38. Correction of errors.

(a) If the taxpayer shall make any error in computing the tax assessable against said taxpayer, the Collector shall correct the error or reassess the proper amount of taxes and notify the taxpayer of the collector's action by mailing to said taxpayer, promptly, a copy of the corrected assessment, and any additional tax for which such taxpayer may be liable shall be paid within ten days after the receipt of such statement.

(b) If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be immediately refunded to the taxpayer upon the requisition of the Collector, and shall be payable out of any funds available for the purpose. The taxpayer may, at said taxpayer's election, apply an overpayment credit to taxes subsequently accruing hereunder.

(Code 2001, § 705.22)

Sec. 28-39. Failure or refusal to make return; deficient return.

If any person fails or refuses to make a return, either in whole or in part, or if the Collector has reasonable ground to believe that any return made is so deficient as not to form the basis of a satisfactory assessment of the tax, the Collector may proceed as the Collector deems best to obtain information on which to base the assessment of the tax. The Collector or the Collector's duly appointed agent may make an examination of the books, records and papers, and audit the accounts of any such person, and may take the evidence on oath, administered by the Collector or the Collector's agent, or any person who the Collector may believe shall be in possession of any relevant information. As soon as possible after procuring such information as the Collector may be able to obtain as to any person failing or refusing to make a return, the Collector shall proceed to assess the tax and shall notify the person assessed of the amount of the tax. The assessment of the tax by the Collector shall be final as to any person who refuses to make a return.

(Code 2001, § 705.23)

Sec. 28-40. Hearing before the Council.

If any person, having made the return and paid the tax as provided by this article, feels aggrieved by the assessment so made upon said person for any year by the Collector, the Collector shall apply to the Council by petition, in writing, within 30 days after notice is mailed to said person by the Collector, for a hearing and a correction of the amount of the tax so assessed upon said person by the Collector, in which petition shall be set forth the reasons why such hearing should be granted and the amount of such tax should be reduced. The Council shall promptly consider such petition, and may grant such hearing or deny the same. If denied, the petitioner shall be forthwith notified thereof; if granted, the Council shall

notify the petitioner of the time and place fixed for such hearing. After such hearing, the Council may make such order in the matter as may appear to be just and lawful, and shall furnish a copy of such order to the petitioner. Any person improperly charged with any tax, and required to pay the same, may recover the amount paid, together with interest, in such proper action of suit against the Collector, as may be authorized by law.

(Code 2001, § 705.24)

Sec. 28-41. Tax year.

The assessment of taxes herein made and the return required therefor shall be for the year ending on December 31. If the taxpayer, in exercising a privilege taxable under this article, keeps the books reflecting the same on a basis other than the calendar year, the taxpayer may, with the assent of the Collector, make said taxpayer's annual returns and pay taxes for the year covering said taxpayer's accounting period as shown by the method of keeping said taxpayer's books.

(Code 2001, § 705.25)

Sec. 28-42. Tax additional to all others.

The tax imposed by this article shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business, trade or calling. A person exercising a privilege taxable under this article, subject to the payment of all licenses and charges which are the condition precedent to exercising the privilege taxes, may exercise the privilege for the current tax year upon the condition that said person shall pay the tax accruing under this article.

(Code 2001, § 705.26)

Sec. 28-43. How remittances to be made.

All remittances of taxes imposed by this article shall be made to the Collector in lawful money of the United States or by bank draft, certified check, cashier's check, money order, or certificate of deposit. The Collector shall issue the collector's receipts therefor to the taxpayers and shall pay the monies into the Town Treasury, to be kept and accounted for as provided by law.

(Code 2001, § 705.27)

Sec. 28-44. Lien for unpaid taxes; penalties.

A tax due and unpaid under this article shall be a debt due the Town. It shall be a personal obligation of the taxpayer, and shall be a lien upon all property used in the business or occupation upon which such tax is imposed, and said lien shall have priority over all other liens and obligations, except those due to the State and the United States. A penalty of five percent of the tax shall be added for any default for 30 days or less, and for each succeeding 30 days elapsing before payment, there shall be an additional penalty of one percent.

(Code 2001, § 705.28)

Sec. 28-45. Powers of collection; injunction.

The Collector or the Collector's duly appointed agent may collect taxes due and unpaid under this article, together with all accrued penalties, under the power conferred on the Collector in this Code. After delinquency shall have continued 60 days, the Collector or the Collector's duly appointed agent may proceed in the Circuit Court of the County to obtain an injunction restraining the further exercise of the privilege, until further payment shall have been made of all taxes and penalties due under this article. In any proceedings under this section, upon judgment or decree for the plaintiff, the plaintiff shall be awarded the plaintiff's costs.

(Code 2001, § 705.29)

Sec. 28-46. Selling out or quitting business.

The tax imposed by this article shall be a lien upon the property of any person subject to the provisions hereof who shall sell out said person's business or stock of goods, or shall quit the business, and such person shall be required to make the return provided for under Section 28-37 within 30 days after the date said person sold out said person's business or stock of goods, or quit the business, and said person's successor in business shall be required to withhold sufficient amounts of the purchase money to cover the amount of such taxes due and unpaid until such time as the former owner shall produce a receipt from the Collector showing that the taxes have been paid. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above-provided, and the taxes shall be due and unpaid after the 30-day period allowed, the purchaser shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner.

(Code 2001, § 705.30)

Sec. 28-47. Gross income derived from interstate or foreign commerce.

The measure of the tax assessed in this article shall not include gross income derived from commerce between the State and other states of the United States or between the State and foreign countries.

(Code 2001, § 705.31)

Sec. 28-48. Duty of officers and agents making contracts on behalf of Town.

All officers and agents making contracts on behalf of the Town shall withhold payment in the final settlement of such contracts until the receipt of a certificate from the Collector to the effect that all taxes levied or accrued under this article against the contractor, with respect to such contracts, have been paid.

(Code 2001, § 705.32)

Sec. 28-49. Filing copy of assessment with County Commission; release of lien.

The Collector, for the more effective collection of the tax, may file with the County Commission a certified copy of the assessment of taxes under this article, for recordation,

which shall thereafter constitute binding notice of the lien created by this article upon all lands of the taxpayer located within the Town as against all parties whose interest arose after such recordation. Upon payment of the taxes delinquent under this article, the lien of which shall have been recorded, the Collector may certify in duplicate the fact and amount of payment and balance due, if any, and shall forward the certificates, one to the taxpayer and one to the County Commission. The County Commission shall record such certificates in the book in which releases are recorded. From the date such a certificate is admitted to record, the land of the taxpayer in the Town shall be free from any lien for taxes under this article accrued to the date that the certificate was issued.

(Code 2001, § 705.33)

Sec. 28-50. Distress.

The Collector may distrain upon any goods, chattels or intangibles represented by negotiable evidences of indebtedness of any taxpayer delinquent under this article for the amount of all taxes and penalties accrued and unpaid hereunder.

(Code 2001, § 705.34)

Sec. 28-51. Offenses.

It shall be unlawful for any person to refuse to make the return provided to be made in Section 28-37 or to make any false or fraudulent return or false statement in any return, with the intent to defraud the Town, or to evade the payment of the tax, or any part thereof, imposed by this article; or for the president, vice-president, secretary or treasurer of any corporation to make or permit to be made for any corporation or association any false return, or any false statement in any return required in this article with the intent to evade the payment of any tax hereunder. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and in addition, any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of false swearing, and, on conviction thereof, shall be punished in the manner provided by law. Any corporation for which a false return, or a return containing a false statement, as aforesaid, shall be made, shall be guilty of a misdemeanor.

(Code 2001, § 705.35)

Sec. 28-52. Administration and enforcement of article.

The administration of this article is vested in, and shall be exercised by the Collector, who shall prescribe forms and reasonable rules of procedure in conformity with this article for the making of returns and for the ascertainment, assessment and collection of the taxes imposed hereunder; and the enforcement of any of the provisions of this article in any of the courts of the State, shall be under the exclusive jurisdiction of the Collector, who shall require the assistance of, and act through, the Town Solicitor or the Assistant Town Solicitor.

(Code 2001, § 705.36)

Sec. 28-53. When first tax assessed.

The first tax assessed under this article shall be upon the last half of the calendar year 1952.

(Code 2001, § 705.37)

Secs. 28-54—28-79. Reserved.**ARTICLE III. PUBLIC UTILITIES TAX****Sec. 28-80. 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:

Public utility service means all services and tangible personal property purchased within the Town from a seller, as hereinafter defined, namely, telephone service, electric service, gas service, including bottled and liquid gas, if the seller thereof is classified as a public utility subject to the jurisdiction of the Public Service Commission of the State, and water service, if purchased, used or consumed within the corporate limits.

Purchaser means every person who purchases, uses or consumes a public utility service.

Seller means every person, whether a public service corporation, a municipality or private corporation, classified as a public utility and subject to the jurisdiction of the Public Service Commission of the State, who sells, furnishes or supplies a public utility service.

User means the owner or tenant of private residential property or the owner or tenant of property used for commercial or industrial purposes and every combination thereof, of every kind and description.

(Code 2001, § 711.01; Ord. No. 86-2, 12-1-1986)

Sec. 28-81. Imposition of tax; notice to utility of effective date.

There is hereby imposed and levied by the Town, upon every purchaser of a public utility service, an excise tax upon the privilege of purchasing, using or consuming, within the corporate limits, such public utility service. Such tax shall be in the amount of two percent of the gross amount of each periodic statement rendered such purchasers or consumers by such public utility, which tax in every case shall be collected by the seller and paid by the purchaser upon the amount of each gross periodic statement rendered such purchaser by the seller, and shall be paid by the purchaser to the seller at the time the purchase price or such charge shall become due and payable under the agreement between the purchaser and the seller, provided that pursuant to West Virginia Code 8-13-5(a), the percentage rate of two percent shall not take effect until the Town gives 60 days' notice by certified mail to the utility doing business therein of the effective date.

(Code 2001, § 711.02; Ord. No. 86-2, 12-1-1986)

Sec. 28-82. Collection; time of payment; effective date; proration.

It shall be the duty of every seller in acting as the tax collecting medium or agency for the Town to collect from each purchaser for the use of the Town the tax hereby imposed and levied at the time of collecting the purchase price charged for its public utility service. The amount of tax actually collected during each calendar month shall be reported by each seller to the Town, and each seller shall remit the amount of tax shown by such report to have been collected to the Town on or before the last day of the first calendar month following the month in which collected, together with the names and addresses of any purchaser who has failed or refused to pay the tax so imposed and levied. The tax imposed and levied by this article shall apply to periodic statements rendered after March 1, 1987, for public utility service rendered subsequent to March 1, 1987, and when any such periodic statement covers public utility service rendered both before and after this date, only that portion of the charge for public utility service rendered after this date shall be subject to such tax, and the portion subject to such tax shall be such portion of the total charge as the number of days after March 1, 1987, within the period covered by such periodic statement, bear to the total number of days covered by such periodic statement. The required reports shall be in the form prescribed by the Town Recorder.

(Code 2001, § 711.03; Ord. No. 86-2, 12-1-1986)

Sec. 28-83. Maintenance and inspection of records.

Every seller shall keep and maintain complete records showing all purchases of public utility service within the corporate limits, which records shall show the charge made against each purchaser, the date such public utility service was furnished, the date of payment therefor and the amount of tax imposed hereunder. Such records shall be kept open for inspection by the duly authorized agents of the Town, and they shall have the right, power and authority to make, at the expense of the town, such transcripts thereof during such times as they may desire.

(Code 2001, § 711.04; Ord. No. 86-2, 12-1-1986)

Sec. 28-84. Exemptions.

The tax hereby imposed and levied shall not apply to the following transactions, which transactions are hereby exempted from the tax:

- (1) Purchases of public utility service for resale.
- (2) Purchases of public utility service by the United States of America, the State and the political subdivisions, municipalities, boards, commissions, authorities and public corporations thereof.
- (3) Purchases of tangible personal property, such as appliances or the like, as distinguished from the public service supplied.

- (4) Charges for telephone services which are paid by the insertion of coins into coin-operated telephones and specific charges for measured rate, message rate, toll or long distance telephone calls.
 - (5) Nonrecurring or one-time charges incidental to the furnishing of public utility service.
 - (6) Television cable charges.
 - (7) Sanitary charges or fees.
- (Code 2001, § 711.05; Ord. No. 86-2, 12-1-1986)

Sec. 28-85. Nonliability of utility for erroneous collections, etc.

(a) There shall be no liability upon the seller for erroneously collecting the tax hereby imposed and levied or for erroneously failing to bill for such tax as a result of a good faith mistake on the part of the seller. When any purchaser contends that such tax is not owed by such purchaser on the ground that the public utility service was not furnished, used or consumed within the corporate limits, the seller shall refer the question to the Town Recorder, and such seller shall thereafter collect or refrain from collecting such tax from such purchaser for such public utility service as instructed in writing by the town recorder. All claims for refunds of any such tax shall be presented to the Town and not to the seller.

(b) The Town Recorder shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this article.

(Code 2001, § 711.06; Ord. No. 86-2, 12-1-1986)

Sec. 28-86. Additional remedies for collection of tax.

Any amount of tax due and unpaid under this article shall be a debt due the Town. In addition to all other methods set forth and prescribed in this article for the collection of taxes due hereunder, the Town, through its Town Recorder, is authorized and empowered to collect the same, in the same manner as other similar taxes are collected, and may impose and collect the same in the same manner and by the same remedies as are now, or may hereafter be, provided by law for the enforcement of liens and levies for State, County and town taxes.

(Code 2001, § 711.07; Ord. No. 86-2, 12-1-1986)

Chapter 29

RESERVED

Chapter 30

TRAFFIC AND VEHICLES

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- Sec. 30-2. Statutes adopted.
- Sec. 30-3. Eluding or fleeing police.
- Sec. 30-4. Hazardous driving.
- Sec. 30-5. Obstructing intersection or crosswalk.
- Sec. 30-6. Turning into private driveway, alley or building.
- Sec. 30-7. Play streets.
- Sec. 30-8. Toy vehicles on streets.
- Sec. 30-9. Parades and assemblages.
- Sec. 30-10. Opening door of vehicle on traffic side.
- Sec. 30-11. Boarding or alighting from vehicle.
- Sec. 30-12. Unlawful riding.
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- Sec. 30-112. Vehicles laden with explosives or flammable materials.
- Sec. 30-113. Storing vehicle on street.

ARTICLE I. IN GENERAL**Sec. 30-1. Definitions.**

The definitions in W. Va. Code Chs. 17A—17H apply to this chapter.
(Code 2001, § 301.01)

Sec. 30-2. Statutes adopted.

The provisions of W. Va. Code Chs. 17A—17H are hereby adopted by reference as if set out in this chapter in full.

Sec. 30-3. Eluding or fleeing police.

No person shall operate a vehicle so as to willfully elude or flee a police officer or special officer after receiving a visible or audible signal from such an officer to bring said person's vehicle to a stop.
(Code 2001, § 303.03)

Sec. 30-4. Hazardous driving.

- (a) No person shall operate a motor vehicle or motorcycle without exercising reasonable and ordinary control over such vehicle.
 - (b) No person shall operate a motor vehicle or motorcycle in a weaving or zigzag course unless such irregular course is necessary for safe operation or in compliance with law.
 - (c) No person shall operate a motor vehicle or motorcycle without giving said person's full time and attention to the operation of such vehicle.
- (Code 2001, § 333.03)

Sec. 30-5. Obstructing intersection or crosswalk.

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle said driver is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.
(Code 2001, § 343.09)

Sec. 30-6. Turning into private driveway, alley or building.

The driver of a vehicle intending to turn into a private road or driveway, alley or building from a public street or highway shall be governed by the following rules:

- (1) Approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.
- (2) Upon a roadway where traffic is proceeding in opposite directions, approach for a left turn and a left turn shall be made from that portion of the right half of the roadway nearest the centerline thereof.

- (3) Upon a roadway where traffic is restricted to one direction, approach for a left turn and a left turn shall be made as close as practicable to the left-hand curb or edge of the roadway.

It shall be the duty of the driver of any vehicle entering a private road or driveway, alley or building to yield the right-of-way to pedestrians lawfully using the sidewalk or sidewalk area extending across any alleyway, private road, driveway or building.

(Code 2001, § 341.06)

Sec. 30-7. Play streets.

(a) No person shall use the public streets, highways, alleys, thoroughfares, roads or avenues of the Town for the purpose of engaging in or playing any games or athletic activities, except public ways specifically set aside for such purposes.

(b) When authorized signs are erected indicating any street or part thereof as a play street, no person shall drive a vehicle upon any such street or highway or portion thereof except drivers of vehicles having business or whose residence is within such closed area, and then any such driver shall exercise the greatest care in driving upon any such street or highway or portion thereof.

(Code 2001, § 311.02)

Sec. 30-8. Toy vehicles on streets.

No person on roller skates or riding in or by means of any sled, toy vehicle, skateboard or similar device shall go upon any roadway except while crossing a street on a crosswalk and except on streets set aside as play streets.

(Code 2001, § 311.03)

Sec. 30-9. Parades and assemblages.

(a) No person, group of persons or organization shall conduct or participate in any parade, assemblage or procession other than a funeral procession upon any street or highway, or block off any street or highway area, without first obtaining a permit from the Police Chief.

(b) Applications for such permit shall be made on such forms as may be prescribed and shall contain such information as is reasonably necessary to a fair determination of whether a permit should be issued. Applications shall be filed not less than five days before the time intended for such parade, procession or assemblage.

(c) The permit may be refused or canceled if:

- (1) The time, place, size or conduct of the parade, including the assembly areas and route of march would unreasonably interfere with the public convenience and safe use of the streets and highways.
- (2) The parade would require the diversion of so great a number of police officers to properly police the line of movement, assembly area and areas contiguous thereto so as to deny normal police protection to the Town.

- (3) The parade route of march or assembly areas would unreasonably interfere with the movement of police vehicles, firefighting equipment or ambulance service to other areas of the Town.
- (4) The parade would unreasonably interfere with another parade for which a permit has been issued.
- (5) The information contained in the application is found to be false, misleading or incomplete in any material detail.
- (6) An emergency, such as a fire or storm would prevent the proper conduct of the parade.

The permit, or any order accompanying it, may limit or prescribe reasonable conditions, including the hours, the places of assembly and of dispersal, the route of march or travel and the streets, highways or portions thereof which may be used or occupied.

(Code 2001, § 311.04)

Sec. 30-10. Opening door of vehicle on traffic side.

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open on the side of a motor vehicle available to moving traffic for a period of time longer than is necessary to load or unload passengers.

(Code 2001, § 349.09)

Sec. 30-11. Boarding or alighting from vehicle.

No person shall board or alight from any vehicle while such vehicle is in motion.

(Code 2001, § 349.10)

Sec. 30-12. Unlawful riding.

No person shall ride on any vehicle, or upon any portion thereof, not designated or intended for the use of passengers when the vehicle is in motion. This provision shall not apply to an employee engaged in the necessary discharge of a duty or to persons riding within truck bodies in space intended for merchandise.

(Code 2001, § 349.11)

Sec. 30-13. Squealing tires, cracking exhaust noises.

No person shall unnecessarily race the motor of any vehicle and no person shall operate any motor vehicle, except in an emergency, in such a manner that the vehicle is so rapidly accelerated or started from a stopped position that the exhaust system emits a loud, cracking or chattering noise unusual to its normal operation, or whereby the tires of such vehicle squeal or leave tire marks on the roadway, commonly called peeling.

(Code 2001, § 349.12)

Sec. 30-14. Driving upon sidewalk, street lawn or curb.

(a) No person shall drive any vehicle, other than a bicycle, upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway.

(b) No person shall drive a vehicle on a street lawn area or the curb of a street, except upon a permanent or duly authorized temporary driveway or when otherwise lawfully authorized.

(Code 2001, § 349.14)

Sec. 30-15. Shortcutting; avoiding traffic control devices.

(a) No person shall operate a motor vehicle across public or private property marked with signs "No Through Traffic" or words of similar import for the purpose of passing from one roadway to another.

(b) No person shall operate a motor vehicle across public or private property for the purpose of avoiding compliance with a traffic control device.

(c) It shall be prima facie evidence of a violation of this section for the operator of a motor vehicle to cross public or private property as provided herein without using the service of such property, stopping the engine or both.

(Code 2001, § 349.15)

Sec. 30-16. Driving through safety zone.

No operator of a vehicle shall drive the same over or through a safety zone.

(Code 2001, § 349.17)

Sec. 30-17. Driving upon street posted as closed for repair.

No person shall drive upon, along or across a street or highway, or any part thereof, which has been closed in the process of its construction, reconstruction or repair, and posted with appropriate signs by the authority having jurisdiction to close such street or highway.

(Code 2001, § 349.18)

Sec. 30-18. Obstruction of traffic.

No person shall operate, stop, stand or park any motor vehicle on any street or alley within the Town so as to obstruct or hinder the free flow of motor vehicle traffic, except in compliance with a lawful order of a police officer or in compliance with a traffic control sign, signal or marking.

(Code 2001, § 349.19)

Secs. 30-19—30-39. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT**DIVISION 1. GENERALLY****Sec. 30-40. Authority of Police and Fire Department officials.**

(a) It shall be the duty of the officers of the Police Department to enforce all street traffic laws of the Town and all of the State vehicle laws applicable to street traffic in the Town.

(b) Officers of the Police Department are hereby authorized to direct all traffic by voice, hand or signal in conformance with traffic laws, provided that in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the Police Department may direct traffic as conditions may require notwithstanding the provisions of the traffic laws.

(c) Officers of the Fire Department, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity.

(Code 2001, § 303.01)

Sec. 30-41. Impounding of vehicles; redemption.

Police officers are authorized to provide for the removal and impounding of a vehicle under the following circumstances:

- (1) When any vehicle is left unattended upon any street, bridge or causeway and is so illegally parked so as to constitute a hazard or obstruction to the normal movement of traffic, or so as to unreasonably interfere with street cleaning or snow removal operations.
- (2) When any vehicle has been abandoned or junked on private or public property as provided in West Virginia Code Ch. 17, Art. 24a.
- (3) When any vehicle has been stolen or operated without the consent of the owner.
- (4) When any vehicle displays illegal license plates or fails to display the current lawfully required license plates.
- (5) When any vehicle has been used in or connected with the commission of a felony.
- (6) When any vehicle has been damaged or wrecked so as to be inoperable or violates equipment provisions of this chapter or West Virginia Code Ch. 17C, Art. 15 whereby its continued operation would constitute a condition hazardous to life, limb or property.
- (7) When any vehicle is left unattended due to the removal of an ill, injured or arrested operator.
- (8) When any vehicle has been operated by any person who has failed to stop in case of an accident or collision.

- (9) When any vehicle has been operated by any person who is driving without a lawful license or while said person's license has been suspended or revoked.
- (10) When any vehicle is found for which two or more citation tags for violations of this chapter have been issued and the owner or operator thereof has failed to respond to such citation tags as lawfully required.

Any vehicle removed under authority of Subsection (2) of this section hereof shall be disposed of as provided under West Virginia Code Ch. 17, Art. 24a. Any other vehicle removed under authority of this section shall be ordered into storage and the Police Department shall forthwith notify the registered vehicle owner of the fact of such removal and impounding, reasons therefor and the place of storage. Any person desiring to redeem an impounded vehicle shall appear at the Police Department to furnish satisfactory evidence of identity and ownership or right to possession. Prior to issuance of a release form, the claimant, owner or operator shall either pay the amount due for any fines for violations on account of which such vehicle was impounded or, as the court may require, post a bond in an amount set by the court, to appear to answer to such violations. The impound operator shall release such vehicle upon the receipt of the release form and payment of all towage and storage charges. (Code 2001, § 303.07)

Secs. 30-42—30-70. Reserved.

DIVISION 2. TRAFFIC CONTROL MAP AND FILE

Sec. 30-71. Map.

(a) There is hereby established a traffic control map to show, at all times, the Town's current:

- (1) Through streets.
- (2) Stop intersections.
- (3) Yield right-of-way intersections.
- (4) One-way streets and alleys.
- (5) Loading zones.
- (6) Prohibited and limited parking areas.
- (7) Angle parking areas.
- (8) Streets where certain trucks are prohibited.

(b) The traffic control map shall be prepared and kept on file in the Police Department and it shall be maintained by the police department. A copy of the traffic control map existing as of the date of passage of the ordinance from which this chapter is derived shall be attached to and is incorporated as a part of this traffic code.

(Code 1963, § 3-5-1; Code 2001, § 305.01)

Sec. 30-72. File.

(a) There is hereby established a traffic control file which shall be prepared and kept to date by the Police Department and maintained in the Police Department office. The file shall constitute the permanent and official record of:

- (1) Through streets.
- (2) Stop intersections.
- (3) Yield right-of-way intersections.
- (4) One-way streets and alleys.
- (5) Loading zones.
- (6) Prohibited and limited parking areas.
- (7) Angle parking areas.
- (8) Streets where certain trucks are prohibited.

(b) The traffic control file existing as of the date of passage of the ordinance from which this chapter is derived is incorporated as part of this chapter.

(c) The traffic control file shall include the following information:

- (1) Type of traffic control designation.
 - (2) Complete description of the street or area affected.
 - (3) Effective date of the Council action authorizing designation.
 - (4) Date proper signs and markings were erected.
 - (5) Date recorded upon traffic control map.
- (Code 1963, § 3-5-2; Code 2001, § 305.02)

Sec. 30-73. Amendments.

(a) Amendments to the traffic control map and the traffic control file shall be made by one of the following two methods:

- (1) Ordinance, resolution or motion of the Council.
- (2) Recommendation of the Chief of Police, subject to the approval of the Mayor and confirmation by the Council at its next ensuing regular meeting.

(b) Upon any amendment of the traffic control map and traffic control file by the Chief of Police in conformity with Subsection (a)(2) of this section, the Chief of Police shall obtain the written approval of the Mayor to such change immediately; upon such approval, the Chief of Police shall cause proper signs or markings designating such amendment, if the same is required by this chapter, to be installed and thereupon such amendment shall be in effect. The amendment shall be brought before the Council at its next regular meeting for confirmation or rejection. In the event that the Council rejects the amendment of the Chief

of Police, signs and markings for the proposed amendment shall be removed at once, and from and after such rejection only, such amendment shall be void and the prior provision shall be in effect.

(Code 1963, § 3-5-3; Code 2001, § 305.03)

Secs. 30-74—30-104. Reserved.

ARTICLE III. STOPPING, STANDING AND PARKING

Sec. 30-105. Manner of parking.

(a) Upon streets where angle parking is permitted, no person shall stop, stand or park a vehicle other than at the angle to the curb or edge of the roadway as is indicated by appropriate signs or marks.

(b) No vehicle shall be stopped or parked on a road or street with the vehicle facing in a direction other than the direction of travel on that side of the road or street.

(Code 2001, § 361.05)

Sec. 30-106. Parking for certain purposes prohibited.

No person shall park any vehicle upon any street within the Town for the principal purpose of:

- (1) Displaying such vehicle for sale.
- (2) Displaying advertising.
- (3) Washing, greasing or repairing such vehicle, except repairs made necessary by an emergency.
- (4) Relieving the crowded condition of any parking lot, used car lot, automobile sales lot, repair garage, automobile sales agency or used car sales agency.

(Code 2001, § 361.08)

Sec. 30-107. Truck loading zones.

No person shall stop, stand or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivering or pick up and loading of materials in any place marked as a truck loading zone during hours when the provisions applicable to such zones are in effect. In no case shall the stop for loading and unloading of materials exceed 30 minutes.

(Code 2001, § 361.09)

Sec. 30-108. Bus stops and taxicab stands.

(a) No person shall stop, stand or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand when any such stop or stand has been officially designated and appropriately posted, except that the driver of a passenger vehicle may temporarily stop

therein for the purpose of and while actually engaged in loading or unloading passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone, and then only for a period not to exceed three minutes, if such stopping is not prohibited therein by posted signs.

(b) The operator of a bus shall not stop, stand or park such vehicle upon any street at any place for the purpose of loading or unloading passengers or their baggage other than at a bus stop so designated and posted as such, except in case of an emergency.

(c) The operator of a bus shall enter a bus stop on a public street in such a manner that the bus when stopped to load or unload passengers or baggage shall be in a position with the right front wheel of such vehicle not further than 18 inches from the curb and the bus approximately parallel to the curb so as not to unduly impede the movement of other vehicular traffic.

(d) The operator of a taxicab shall not stand or park such vehicle upon any street at any place other than in a taxicab stand so designated and posted as such. This provision shall not prevent the operator of a taxicab from temporarily stopping in accordance with other stopping or parking provisions at any place for the purpose of and while actually engaged in the expeditious loading or unloading of passengers.

(Code 2001, § 361.10)

Sec. 30-109. Parking in alleys and narrow streets; exceptions.

(a) No person shall stop, stand or park any vehicle upon a street, other than an alley, in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for free movement of vehicular traffic, except that a driver may stop temporarily during the actual loading or unloading of passengers or when directed to by a police officer or traffic control signal.

(b) Except as otherwise provided by law, no person shall stop, stand or park a vehicle within an alley except while actually loading and unloading, and then only for a period not to exceed 30 minutes.

(Code 2001, § 361.11)

Sec. 30-110. Registered owner prima facie liable for unlawful parking.

In any hearing on a charge of illegally parking a motor vehicle, testimony that a vehicle bearing a certain license plate was found unlawfully parked as prohibited by the provisions of this chapter, and further testimony that the records of the Department of Motor Vehicles shows that the license plate was issued to the defendant, shall be prima facie evidence that the vehicle which was unlawfully parked was so parked by the defendant. A certified copy of registration from the Department of Motor Vehicles shall be proof of such ownership.

(Code 2001, § 361.12)

Sec. 30-111. Parking heavy vehicles along State Route 61.

No vehicle with a gross vehicle weight of 10,000 pounds or greater shall be parked or left unattended along State Route 61 within the corporate limits of the Town.

(Code 2001, § 361.13; Ord. No. 92-1, 3-2-1992)

Sec. 30-112. Vehicles laden with explosives or flammable materials.

It shall be unlawful for any person to park a vehicle, motor-driven or otherwise, on any street or alley within the corporate limits that is laden with dynamite, nitroglycerin, monobell, gun powder, or any other such explosives, ammunition, fireworks, or any flammable or combustible liquids or materials such as gasoline or naphtha.

(Code 1963, § 3-61-5; Code 2001, § 361.14)

Sec. 30-113. Storing vehicle on street.

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Store means:

- (1) To leave a vehicle on a street, sidewalk or public alley unattended for a period longer than 24 hours;
- (2) To stop or park a vehicle on a street, sidewalk or public alley for the purpose of making repairs or adjustments thereon by a garage or mechanic, other than emergency repairs necessary to move a vehicle which has been temporarily stopped by a mechanical failure;
- (3) The placing on a street, sidewalk or public alley, of a vehicle constituting a part of the inventory or stock of, or under the control of, a person in the business of dealing or trading in vehicles, for longer than one hour, or
- (4) The placing on a street, sidewalk or public alley of any disabled or wrecked vehicle, or any vehicle not self-propelled and not actually in use, for a period of longer than one hour.

(b) It shall be unlawful for any person to store any vehicle on the streets, sidewalks or public alleys within the Town, providing nothing in this section shall prohibit the owner of a passenger automobile from leaving the same in front of said person's residence as a part of the normal use thereof so long as it shall not be in violation of this chapter.

(c) Any vehicle stored in violation of this section may, at the discretion of the Chief of Police, be removed from such streets, sidewalks or public alleys and impounded in conformity with the provisions of Section 30-41.

(Code 1963, § 3-61-7; Code 2001, § 361.15)

Chapter 31

RESERVED

Chapter 32

UTILITIES

Article I. In General

Secs. 32-1—32-18. Reserved.

Article II. Sewers and Sewage Disposal

Sec. 32-19. Saved from repeal.

ARTICLE I. IN GENERAL

Secs. 32-1—32-18. Reserved.

ARTICLE II. SEWERS AND SEWAGE DISPOSAL

Sec. 32-19. Saved from repeal.

Nothing in this Code or the ordinance adopting this Code shall repeal article 933 of the Town's 2001 Code. Such provisions continue in full force and effect as if set out at length in this Code.

CODE COMPARATIVE TABLE

2001 CODE

The following table gives the location within the Code of sections of the 2001 Code, as supplemented through October 1, 2001.

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***Note**—The adoption, amendment, repeal, omissions, effective date, explanation of numbering system and other matters pertaining to the use, construction and interpretation of this Code are contained in the adopting ordinance and preface which are to be found in the preliminary pages of this volume.

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Y	
YARDS AND OPEN SPACES	
Businesses and business regulations	
Yard sales; three days only	10-1

