Codified Ordinances of the City of Chesapeake West Virginia

Complete to October 1, 2001

CERTIFICATION

I, Damron B. Bradshaw, Mayor of Chesapeake, West Virginia, pursuant to West Virginia Code 8-11-4(b), hereby certify that the general and permanent ordinances of the City of Chesapeake, West Virginia, as revised, rearranged, compiled, numbered as to sections, recodified and printed herewith in component codes are correctly set forth and constitute the 2001 Codified Ordinances of the City of Chesapeake, West Virginia.

/s/ Damron B. Bradshaw
Mayor

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CITY OF CHESAPEAKE

ROSTER OF OFFICIALS

(2001)

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The publisher expresses
his appreciation to

DAMRON B. BRADSHAW
Mayor

and

SUE HATFIELD
City Clerk

and all other officers and employees who
gave time and counsel in the preparation
of the 2000 recodification of the
City's ordinances.

CONTENTS

Preliminary Unit
General Index
Comparative Section Table

CODIFIED ORDINANCES OF CHESAPEAKE, WEST VIRGINIA

PART ONE - Administrative Code

PART THREE - Traffic Code

PART FIVE - General Offenses Code

PART SEVEN - Business and Taxation Code

PART NINE - Streets, Utilities and Public Services Code

PART ELEVEN - Health and Sanitation Code

PART THIRTEEN - Planning and Zoning Code

PART FIFTEEN - Fire Prevention Code

PART SEVENTEEN - Building and Housing Code

EDITOR'S NOTE

The arrangement and numbering of the Codified Ordinances into component codes, chapters, articles and sections are based on an adoption of the decimal numbering system which is in accord with the best accepted practice in instituting a codification. Each section is self-identifying as to code, article and section number. For example, 305.06 indicates that the code number is 3, the article number is 305 (or the 5th article within code 3), and the section number is .06. The code and article numbers appear left of the decimal, with the code number preceding the first two digits left of the decimal, and the article number being all digits left of the decimal. The section number appears right of the decimal. As another example, 113.10 indicates the code number is 1, the article number is 113 (or the 13th article within code 1), and the section number is.10.

This numbering system has the advantage of inherent flexibility in allowing for an almost endless amount of expansion. Codes, chapters, and articles initially are odd-numbered, thus reserving the use of even numbers for future legislation. Sections within articles are consecutively numbered, except that penalty provisions are usually assigned the number .99. Newly created sections subsequent to the original codification may be indicated by three digits right of the decimal in the event the law properly belongs between two consecutively numbered sections. For example, newly created 575.061, 575.062 and 575.063 follow 575.06 and precede 575.07 to be placed in their logical position.

Section histories enable a user to trace the origin of the law contained in the section. The history indicates the derivation by reference to either its passage date and the ordinance number originally assigned to it at that time, or to its inclusion in any prior code. Sections without histories indicate that the section contains new matter which was ordained by the Adopting Ordinance which enacts the Codified Ordinances.

The Comparative Section Table is included to show the disposition of every ordinance included in the Codified Ordinances. It indicates whether a given ordinance was consolidated with another into one section or split into two or more sections. Cross references direct the user to subject matter reasonably related to material contained within a given article.

GENERAL INDEX

EDITOR'S NOTE: References are to individual code sections. As additional aids for locating material, users are directed to:

(a) The comparative Section Table which indicates in the Codified Ordinances the disposition of the ordinances or resolutions integrated therein.

(b) The table of contents preceding each component code, and the sectional analysis preceding each chapter.

(c) The cross references to related material following each chapter analysis.

ABANDONMENT
- animal 505.01, 505.02
- dangerous conditions 515.07
- excavations 533.08
- junk motor vehicle 361.07
- penalty 515.99
- refrigerator, airtight container 515.06, 525.04

ACCIDENT
- collision; fixtures upon street or highway 331.05
- death or personal injury
  - duty to stop 331.01
  - information; aid 331.03
- impounding vehicle 303.07
- injurious material on street 311.01
- property damage 331.05
- reports
  - driver unable 331.07
  - garage to report bullet damage 331.08
  - immediate 331.06

ACCIDENT (Cont.)
- unattended vehicle 331.04
- vehicle damage
  - duty to stop 331.02
  - garage to report bullet damage 331.08
  - information; aid 331.03
  - unattended vehicle 331.04

ADOPTION BY REFERENCE
- State Building Code 1711.01
- State Fire Code 1509.01

ADVERTISING
- private clubs 521.09(b)
- private, public property 533.10, 533.11
- traffic control device, on 313.06

AIRTIGHT CONTAINER
- abandoned 515.06, 525.04
- nuisance condition 1101.03(m)
- penalty 525.99

ALARMS (see FALSE REPORTS)

ALCOHOL (see INTOXICANTS; INTOXICATION)

ALLEY
defined 301.40
entering 341.06
parking in 361.11
vehicle leaving, right of way 343.06
ALL-TERRAIN VEHICLES
defined 375.02
penalty 375.99
unlawful operation 375.01
ANIMAL-DRAWN VEHICLES
lights required 345.08
Traffic Code applicable 303.06
ANIMALS
at large 505.06
carcass, deposit of 515.04
cats; impounding 505.12
cattle at large; impounding 505.10
cruelty 505.01, 505.02
dogs
barking or howling 505.04
license, impounding 505.13
muzzling 505.13(g)
enclosure; permit, condition, location 505.09
health and safety penalty 515.99
hogs, keeping 505.08
hunting prohibited 505.05
manure or refuse 505.11
nuisance 505.03
odors 515.01
poisoning 505.07
ANNEXATION 103.01
ARREST
citation in lieu of 501.07
ASSAULT AND BATTERY
penalty 529.99
physical harm 529.01
school employees, on 529.02
ASSEMBLY
street, on; permit 311.01
ATTEMPT, OFFENSE 501.06
BARRICADES AND WARNING LIGHTS
openings, uncovered 515.08
removal prohibited 905.07
required 533.08
BEER, NONINTOXICATING (see also INTOXICANTS)
defined 521.01
BEER, NONINTOXICATING (Cont.)
licensee, prohibited acts 521.07
open container in public 521.06
unlawful purchase 521.08
BETTING (see GAMBLING)
BICYCLE (see also MOTORCYCLE)
bell, signal device 373.07
brakes 373.07
carrying articles on 373.06
defined 301.03
helmets, children 373.09
lights 373.07
motorized (see MOTORIZED BICYCLE)
number of riders 373.03
reckless operation 373.06, 373.08
reflector 373.07
riding abreast 373.05
riding paths, use 373.05
right side of street, use 373.05
seat, use 373.03
speed 373.08
Traffic Code application 373.01
traffic rules, obedience 373.02
vehicle, attaching to 373.04
BLIND PERSON
right of way 371.08
BOCA CODES ADOPTED 1711.01
BOMB (see EXPLOSIVES)
BOND
fireworks display 545.10(b)
BOUNDARIES
monuments, destruction 533.05
penalty 533.99
BRAKES (see VEHICLE EQUIPMENT)
BRIDGE
parking on 361.03(a)(13)
BUILDING
advertising on 533.10
dangerous conditions 515.07
demolition
permit fee 1719.05
regulations 1725.01
moving; permit fee 1719.03, 1719.04
nuisance conditions (see NUISANCE)

BUILDING CODE, STATE
additions, insertions, changes 1711.04
adoption 1711.01
conflicts 1711.03
definitions 1711.02
BUILDING COMMITTEE
created; members 1715.01
powers and duties 1715.04
BUILDING INSPECTOR
appointment; duties 1715.03
inspection fee 1719.06
nuisance conditions
inspections 1101.05
right of entry 1101.06
BUILDING OFFICIAL
appointment; duties 1715.02
BUILDING PERMIT
fees
construction or alteration 1719.02
demolition 1719.05
inspection 1719.06
moving on same lot 1719.04
payment required 1719.01
removal to another lot 1719.03
required 1711.04
BUMPERS 345.33
BUS (see also COMMERCIAL AND HEAVY VEHICLE)
defined 301.04
passenger van transporting children
defined 301.201
signs, warning lights 343.08(a)
stopping for 343.08(b)
railroad crossing, stopping at 343.03
safety glass 345.26
school bus
defined 301.34
discharging children 343.07
sale of 343.07
signs; warning lights 343.07
stopping for 343.07
spitting or urinating 515.05
stops, parking in 361.10

BUSINESS AND OCCUPATION TAX
additional to all others 705.26
administration, enforcement 705.36
assessment copy, filing 705.33
banking, financial business 705.14
collecting rentals, royalties 705.17
collection powers; injunction 705.29
commodities or electric power, manufacturers or preparers of 705.10
contractors 705.13
correction of errors 705.22
definitions 705.01
distress 705.34
exemptions 705.19
gross income, adding to or deducting from 705.05
hearing before Council 705.24
interstate or foreign commerce, gross income from 705.31
levy 705.02
natural resource products, producers of 705.09
offenses 705.35
officer and agent duty making City contracts 705.32
payment
correction of error; refund 705.22
estimate, remittance 705.20
how remittance to be made 705.27
lien release 705.33
unpaid; lien; penalties 705.28
when and how payable 705.20
producer or manufacturer
selling at retail 705.06
selling products for delivery outside City 705.07
sending out of City without sale 705.03
producing coal, oil, gas; using same in producer's business 705.08
public service or utility business 705.12

BUSINESS AND OCCUPATION TAX (Cont.)
returns
annual; remittance 705.21
deficient 705.23
failure or refusal to make 705.23
sales wherein gross proceeds not indicative of true value 705.04
selling out, quitting business 705.30
service business or calling 705.16
surtaxes; business exempt 705.18
tangible property, stocks, bonds; sellers of 705.11
tax year 705.25
theaters, places of amusement 705.15
when first tax assessed 705.37
BUSINESS DISTRICT
defined 301.05
CAR SEATS, CHILDREN'S 345.31
CAT (see ANIMALS)
CATV
unauthorized connection 533.06
CHAUFFEUR'S LICENSE (see COMMERCIAL DRIVERS)
CHEATING 513.07
CHILD (see MINORS)
CHILD RESTRAINT SYSTEM 345.31
CIGARETTE (see TOBACCO PRODUCTS)
CITY
seal 107.01
CODIFIED ORDINANCES
agent or deputy, acts by 101.06
conflicting provisions 101.07
definitions, general 101.02
designation; citation; headings 101.01
joint authority 101.03
penalty, general 101.99
repeals 101.04
rules of construction 101.03
section references 101.05
separability 101.08
time computation 101.03
COMMERCIAL AND HEAVY VEHICLE
brakes 345.19
explosives, transporting 345.27
farm and road equipment exceptions 345.01(c)
height, maximum 347.03
length, maximum 347.03
lights (see VEHICLE LIGHTS)
loads (see VEHICLE LOADS)
local streets, use 347.01
parking (see PARKING)
permit, special 347.01
railroad crossing, moving across 343.04
safety glass 345.26
semitrailer defined 301.36
slow-moving, lights 345.08
State route, use 347.01
towing requirements 347.05
truck defined 301.46
width, maximum 347.03
COMMERCIAL DRIVERS
alcohol prohibited 353.06
definitions 353.01
employers 353.03
license
exemptions 353.05
number 353.02
required 353.04
penalty 353.99
CONSTRUCTION
lantern or barricade removal prohibited 905.07
permit (see BUILDING PERMIT)
CONTROLLED SUBSTANCES 529.03
COUNCIL (see also PUBLIC SERVANT)
authentication of records 111.09
committees
reports of 111.15
standing 111.05
Mayor as member: voting 111.06
meetings
compelling attendance 111.04
control of rules 111.13

COUNCIL (Cont.)
meetings (Cont.)
demand of previous question 111.11
motions and resolutions 111.10
order of business 111.16
place, time 111.01
reading of journal 111.02
Robert's Rules of Order 111.07
rules of debate 111.12
ordinances (see ORDINANCES AND RESOLUTIONS)
President Pro Tem 111.04
recall of elected officials 113.02
Recorder
as member; voting 111.06
duties 111.08
Sergeant-at-Arms 111.03
tie votes 111.06
vacancy 105.07
wards; at large 105.06
CRIME (see OFFENSE)
CROSSWALK
defined 301.07
obstructing 343.09
parking in 361.03(a)(5)
pedestrian right of way 371.02
CRUELTY
animals 505.01, 505.02
children 525.02
CURB OR GUTTER
construction
approval required 917.01
penalty 917.99
requirements for approval 917.02
curb service prohibited 905.08
driving over 349.14
nuisance condition 1101.03(f)
CURFEW
minors 525.06
DEFINITIONS (see also specific subject involved)
general 101.02
Traffic Code Ch. 301
DEMOLITION
permit fee 1719.05
regulations 1725.01
DISORDERLY CONDUCT
disturbing others 509.01, 509.04
DISTURBING THE PEACE (see also DISORDERLY CONDUCT)
carrying weapon 545.02
generally 509.04
muffler noise 345.12
racing vehicle motor 349.12
squealing tires, peeling 349.12
vehicle exhaust noise 349.12
DOG (see ANIMALS)
DRAG RACING (see SPEED)
DRAINAGE
improper 515.02
DRIVER'S LICENSE (see also COMMERCIAL DRIVERS)
display 351.08
exemptions 351.07
prohibited acts 351.09
required 351.06
revoked or suspended, driving 351.10
DRIVEWAY
defined 301.25
duty to repair entrance; assessment 905.01
entering 341.06
parking in front of 361.03
right of way from 341.04
vehicle leaving, right of way 343.06
DRIVING
accident (see ACCIDENT)
allowing another to drive illegally 351.11
backing vehicle 349.02
certificate of title required 351.01
change of course 339.08 et seq.
closed road, on 349.18
coasting down grade 349.16
control of vehicle 333.04
crosswalk, obstructing 343.08
curb or street lawn, over 349.14
divided street 337.11
driver's view
load obstructing 349.03
rear view mirror 345.23
television set in 345.28

DRIVING (Cont.)
drunk or drugged 333.01
exhaust noises 349.12
fire hose, over 349.07
following emergency vehicle 349.06
following too closely 337.10
full time and attention 333.04
grade crossing 343.01 et seq.
hazardous zones 337.07
intersection
obstructing 343.08
right of way 341.01, 341.03
shortcutting 349.15
turning at 339.05
lanes, within 337.09
left side of street 337.06
one-way street 337.08
passengers
driver, on seat with 349.04
obstructing driver's view 349.03
running board, on 349.05
passing
left of center 337.05, 337.06
left side 337.03
no passing zones 337.07
right side 337.02, 337.04
pedestrians, due care for 371.04
railroad grade crossing
driving across 343.01
stopping at 343.02, 343.03
reckless 333.02, 333.03
registration of vehicle required 351.01
right of way
driving onto roadway 341.04, 343.06
emergency vehicle 341.05
funeral procession 349.08
intersection, at 341.01, 341.03
left turn 341.02
street maintenance workers 371.07
right side of street 337.01
right turn on red 313.03(c)(2)
rotary traffic island, around 337.08
safety zone, through 349.17
school bus, stopping for 343.07
DRIVING (Cont.)
shortcutting 349.15
sidewalk
driving on 349.14
stopping at 343.06
signals for turning or stopping 339.08 et seq.
speed (see SPEED)
squealing tires 349.12
starting vehicle 339.07
stopping at 343.06
stop signs
emergency vehicle at 303.05(b)
operation at 341.03, 343.05
street under repair 349.18
traffic, obstructing 349.19
turning
conformity required 339.01
intersection, at 339.05
left 339.03, 339.04
right 339.02
right of way 341.02
right on red 313.03(c)(2)
signals 339.08 et seq.
U turn 339.06
unsafe vehicle 345.01
weaving 333.04
DRUG ABUSE (see also CONTROLLED SUBSTANCES)
driving under influence 333.01
DRUNK DRIVING 333.01
DUI 333.01
DUMPSTER
unauthorized used 533.09
ELECTIONS
absentee voting 105.18
ballots, return of 105.14
canvass of 105.15
conduct of 105.16
contested 105.17
date 105.01
Election Commission 105.11
expenses 105.09
filing fees 105.04
filing of candidates 105.03

ELECTIONS (Cont.)
officials elected 105.01
place set by Council 105.12
political parties 105.05
Precinct Election Officials
appointment 105.12
compensation 105.13
qualifications 105.02
recall of elected officials 113.02
registrars 105.10
registration books 105.08
registration records 105.14
State laws 105.19
supplies 105.14
terms of office 105.01
wards established 105.06
EMERGENCY
false report 501.08
EMERGENCY VEHICLE (see also PUBLIC SAFETY VEHICLE)
authorized operation 303.05
defined 301.02
flashing lights 345.18(d)
following, parking near 349.06
right of way 341.05
siren, whistle, bell 345.21(c)
EMPLOYEE, MUNICIPAL
impersonating 501.05
EXCAVATIONS
abandoned, protection 533.08
backfill 913.07
dangerous conditions 515.07, 515.99
inspection by Mayor or Engineer 913.06
lantern or barricade
removal prohibited 905.07
nuisance condition 1101.03(m)
parking near 361.01(a)(11)
penalty 913.99
permit
application 913.02
deposit 913.05
fee 913.03, 913.05
issuance determined 913.04
required 913.01
precautions for trees 913.07
EXPLOSIVES (see also FIREWORKS)
defined 301.09
false report 501.04
transporting
fire extinguishers 345.27(b)
railroad crossings, at 343.03
vehicle marked 345.27(a)
vehicle laden with 361.14
FALSE REPORTS
bombs; explosives 501.04
emergency incident 501.08
fire alarms 501.03
police or fire officer, to 501.09
FALSIFICATION
driver's license application 351.09(e)
FEES
elections; candidate filing 105.04
license
dog tag 505.13
private club 723.01
permit
building (see BUILDING PERMIT)
commercial and
heavy vehicle 347.01
excavations 913.03, 913.05
mobile home 1723.07
FENCES
advertising on 533.10
prohibited
barbed wire 515.10
electrical 515.09
penalty 515.99
FIRE
false alarm 501.03
FIREARM (see WEAPONS)
FIRE CHIEF
appeals from
application denials 1509.03
appointment 141.02
disobeying; penalty 141.99
Fire Code modifications 1509.02
powers and duties 141.03
FIRE CODE
adoption by reference 1509.01
appeals from Fire Chief 1509.03

FIRE CODE (Cont.)
modifications 1509.02
new materials, processes, occupancies 1509.04
penalty 1509.99
FIRE DEPARTMENT
composition 141.02
created 141.01
disrupting or hindering; penalty 141.99
false reports to 501.09
firemen
duties 141.04
recruitment 141.02
former companies dissolved 141.05
FIRE HOSE
driving over 349.07
FIRE HYDRANT
parking near 361.03(a)(4)
FIREMAN
directing traffic 303.01
impersonating 501.05
FIRE PROTECTION SERVICE CHARGE
application to governmental property 717.09
assessment 717.07
City Recorder to administer 717.04
continuation, maintenance, improvement of service 717.02
definitions 717.01
effective date 717.05
legislative intent 717.03
payment schedule; additions to charge 717.05
rates a debt in addition to other taxes 717.08
rules and regulations 717.04
use of funds 717.06
violation
continuing as separate offense 717.11
penalty 717.99
refusal to pay 717.10
FIRE STATION
parking near 361.03(a)(10)
FIRE TRUCK
following, parking near 349.06
FIREWORKS
sale; discharge 545.04
vehicle laden with 361.14
FLAMMABLE LIQUID
defined 301.10
vehicle laden with 361.14
FLOOD DAMAGE CONTROL
administration 1727.07
appeals 1727.08
building and site plan approval criteria 1727.05
definitions 1727.02
flood plain area
established 1727.03
utilization 1727.04
general provisions 1727.01
municipal liability 1727.09
penalties 1727.08
specific requirements 1727.06
FOWL (see ANIMALS)
FREEWAY (see STREET)
FUNERAL PROCESSION
driving in 349.08
GAMBLING
apparatus
hotels; public places 513.04
keeping; exhibiting 513.01
lookout or guard for keeper 513.03
permitting on premises 513.02
cheating 513.07
lotteries; raffles 513.09
penalty 513.99
pool room defined 513.08
pool tickets 513.08
public places 513.04, 513.06
wages 513.05
GARAGE OR REPAIR SHOP
bullet damage to vehicle reported 331.08

GARBAGE AND RUBBISH (see also SOLID WASTE)
collection
charges for refuse service 937.04
City to collect 937.02
failure to pay a lien; City action 937.08
illegal 937.03
payment of service charges 937.05
power to revise rates 937.06
special rates authorized by Council 937.07
definitions 937.01
deposits prohibited 515.04
dumpster, unauthorized use 533.09
health and safety penalty 515.99
littering 937.09
nuisance condition 1101.03(h)(i)(o)(q)
offensive, dangerous 515.04
penalty 937.99
storing 937.10
GUN (see WEAPONS)
GUTTER (see CURB OR GUTTER)
HANDICAPPED PERSON
blind, right of way 371.08
parking areas 361.06
HEALTH AND SAFETY INSPECTOR
nuisance conditions
inspections 1101.05
right of entry 1101.06
HEALTH OFFICER
designated 143.01
duties 143.02
HIGHWAY (see STREET)
HITCHHIKING 371.06
HOODS
wearing 509.03
HORN 345.21
HORSE (see ANIMALS)
HUNTING
prohibited 505.05
IDENTIFICATION
nonoperator's; prohibited acts with 351.09
IMPERSONATION
public servant 501.05
IMPOUNDING
animals
cats 505.12
cattle 505.10
dogs 505.13
vehicle, traffic violation 303.07
INDECENCY (see OBSCENITY; SEXUAL OFFENSES)
INSURANCE
motor vehicle 303.07
INTERSECTION
defined 301.12
left turns 339.03, 339.04
obstructing 343.09
parking in 361.03(a)(3)(19)
right of way 341.01 et seq.
right turn 339.02
shortcutting 349.15
specified turns 339.05
stop signs 343.05
turning at 339.05
INTOXICANTS (see also INTOXICATION)
definitions 521.01
drugs (see DRUG ABUSE)
illegal possession 521.06
licensee
prohibited acts 521.03
unlawful sale or possession 521.04
manufacture; prohibited acts; license 521.03
minors, sales to or consumption by
private clubs, in 521.09(a)(3)(6), 521.10
prohibited 521.04(d), 521.05
wine 521.11(c)
nonintoxicating beer (see BEER, NONINTOXICATING)
penalty 521.99
private club license; fees 723.01
private clubs (see PRIVATE CLUBS)

INTOXICANTS (Cont.)
prohibited acts
generally 521.03
nonintoxicating beer licensee 521.07
private club 521.09
wine dealers 521.11
sale or possession
license required 521.03
private clubs, in 521.09
unlawful 521.04, 521.05
tax 723.02
unlawful purchase 521.05, 521.08, 521.10, 521.13
uses exempt from regulations 521.02
wine dealers (see WINE DEALERS)
INTOXICATION (see also INTOXICANTS)
alcohol sale to intoxicated person
beer, nonintoxicating 521.07(b)
private club, in 521.09(a)(4)
prohibited 521.04(d)
wine 521.11(c)
driving while intoxicated 333.01
penalty 521.99
public drunkenness 517.05
public places 521.06
violation 521.06
JAYWALKING 371.03
JUDGE, MUNICIPAL
vacancy 105.07
JUNK MOTOR VEHICLE
abandoned 361.07
impounding 303.07
KEYS
motor vehicle parking, removal 349.01
KNIFE (see WEAPONS)
LARCENY (see THEFT)
LAW ENFORCEMENT (see specific subject involved)
LAW ENFORCEMENT OFFICER (see also POLICE OFFICER)
fleeing 303.03, 501.02
impersonating 501.05(a)
obedience to orders 303.03
LAW ENFORCEMENT OFFICER (Cont.)
obstructing 501.02
refusal to aid 501.01
LICENSE (see also PERMIT)
dog tag 505.13
driving (see DRIVER'S LICENSE)
fees (see FEES)
generally
application, issuance 725.03
conditions precedent to doing business 725.05
definitions 725.01
display 725.10
duplicate 725.11
effect of change in partners or name 725.08
expiration date; renewal 725.09
false statements prohibited 725.04
license a personal privilege 725.07
license not to legalize any act 725.06
penalty 725.99
required 725.02
suspension, revocation; hearings 725.14
violation prosecution; injunctions 725.13
private club 723.01
taxes
back tax collection 725.12
levied 725.02
payment 725.03
renewal fee 725.09
weapon, carrying 545.01
LICENSE PLATES (see REGISTRATION, MOTOR VEHICLE)
LIGHTS, VEHICLE (see VEHICLE LIGHTS)
LIQUOR (see INTOXICANTS; INTOXICATION)
LITTERING 533.07, 937.09
LOADS, VEHICLE (see VEHICLE LOADS)
LOITERING
penalty 509.99

LOITERING (Cont.)
school property 509.02
LOTS
drainage required 515.02
weeds on 549.03
LOTTERY 513.09
MAIL BOX
parking near 361.03(a)(15)
MAPS
Traffic Control Map 305.01
MASK
wearing 509.03
MAYOR (see also PUBLIC SERVANT)
Council member, as 111.06
nuisance conditions; actions 1101.08
Sanitary Board chairman, as 147.03
vacancy 105.07
MEETINGS
Council (see COUNCIL)
MINORS
alcohol sales or consumption
private clubs, in 521.09(a)(3)(6)
prohibited 521.04(d)
wine 521.11(c)(d)
beer, nonintoxicating
loitering on premises 521.07(q)
sale of 521.07(c)
bicycle helmets 373.09
car seats 345.31
cruelty 525.02
curfew 525.06
delinquency, contributing to 525.01
intoxicant purchase, unlawful
alcoholic liquor 521.05, 521.13
nonintoxicating beer 521.08
private clubs 521.10
wine 521.12
neglect 525.01
obscene matter distributed to 517.09
parental liability 525.03
passenger van transportation
defined 301.201
signs, warning lights 343.08(a)
stopping for 343.08(b)
tobacco usage restrictions 525.05
MISSILES 545.12
MOBILE HOMES
definition 1723.03
keeping, maintaining, placing, parking 1723.01
land owner or tenant responsibility 1723.02
moving; liability 1723.05
penalty 1723.99
permit required 1723.07
requirements as to structure and value 1723.04
sewage collection line 1723.06
MOPED (see also MOTORIZED BICYCLE)
defined 301.14
MOTORCYCLE
accident (see ACCIDENT)
brakes
inspection 345.20
required; performance 345.19
defined 301.15
handle bars 345.29
helmets; safety glasses 345.29
license 351.06
lights 345.15
muffler 345.22
rear-view mirror 345.29
seat, use 345.29
windshield 345.29
MOTORIZED BICYCLE
brakes
inspection 345.20
required; performance 345.19
certification label 345.30
equipment 345.29
handle bars 345.29
helmets; safety glasses 345.29
lights 345.15
rear-view mirror 345.29
MOTOR VEHICLE
abandoned 361.07
accident (see ACCIDENT)
advertising on 533.10
alcohol consumption; open container 521.06(c)

MOTOR VEHICLE (Cont.)
certificate of title 351.01
damaged (see ACCIDENT)
damaging; tampering 349.13
definitions 301.17, 301.47
driving (see DRIVING)
dropping or tracking substances 905.04
entering or leaving moving vehicle 349.10
equipment (see VEHICLE EQUIPMENT)
explosives, flammable liquid on 361.14
impounding, traffic violation 303.07
inspection certificate 345.32
insurance required 349.20
junk (see JUNK MOTOR VEHICLE)
key removal 349.01
license plates (see REGISTRATION, MOTOR VEHICLE)
lights (see VEHICLE LIGHTS)
loads (see VEHICLE LOADS)
operation (see DRIVING)
passengers
driver, on seat with 349.04
obstructing driver's view 349.03
running board, on 349.05
passenger van; child transporting
defined 301.201
signs, warning lights 343.08(a)
stopping for 343.08(b)
riding on outside 349.11
running board, on 349.05
running board, riding on 349.05
security 349.20
slow-moving (see COMMERCIAL AND HEAVY VEHICLE)
storing on street 361.15
taking 349.13
tampering or injuring 349.13
Traffic Code application 303.02
trespass 533.02(b)
unattended
illegally stopped; removal 361.02
removing key, setting brake 349.01
MOTOR VEHICLE (Cont.)
unsafe 345.01
wrecked (see JUNK MOTOR VEHICLE)
MUFFLER (see VEHICLE EQUIPMENT)
NOISE (see DISTURBING THE PEACE)
NUISANCE
actions and reports of inspecting and investigating officers 1101.07
acts or conditions declared 1101.03
animals 505.03
apportionment of cost of abatement 1101.11
arrest 1101.13
City employees nonliability 1101.12
conflict with other laws 1101.01
dangerous 515.07
injunctive relief 1101.12
inspections, investigations, complaints 1101.05
Mayor, action by 1101.08
occupant duty 1101.06
order to remedy 1101.08
owner liability for leased premises 1101.04
penalty 1101.99
prohibited 1101.02
public hearing 1101.08, 1101.09
remedy by City 1101.10
right of entry 1101.06
OBSCENITY
obscene material
distributing to minors 517.09
sale or display 517.10
penalty 519.99
profane swearing 517.05
telephone harassment 517.06
OBSTRUCTIONS
intersection or crosswalk 343.09
nuisance condition 1101.03(e)
railroad crossing 541.01
OCCUPATION TAX (see BUSINESS AND OCCUPATION TAX)

ODORS
nuisance condition 1101.03(j)
offensive 515.01
OFFENSE (see also specific subject involved)
attempt 501.06
penalty 501.99
OFFENSES AGAINST PERSONS (see specific subject involved)
OFFENSES AGAINST PROPERTY (see specific subject involved)
OFFICER (see LAW ENFORCEMENT OFFICER)
OFFICIALS, MUNICIPAL (see PUBLIC SERVANT)
OFFICIAL STANDARDS
City seal 107.01
ONE-WAY STREET (see STREET)
OPERATOR'S LICENSE (see DRIVER'S LICENSE)
ORDINANCES AND RESOLUTIONS
Codified (see CODIFIED ORDINANCES)
draft of ordinances 111.14
initiative and referendum 113.01
read at Council meeting 111.10
PARADE 311.04
PARKING
alleys and narrow streets, in 361.11
angle 361.05
brake, setting 349.01
bus stop, in 361.10
defined 301.19
double 361.03(a)(12)
emergency vehicle
exemptions for 303.05(b)
near 349.06
explosives, vehicle laden with 361.14
handicapped, places for 361.06
heavy vehicle on St.Rt.61 361.13
impounding vehicle 303.07
key removal 349.01
lights 345.07
loading zone 361.09
PARKING (Cont.)
opening door on traffic side 349.09
owner prima-facie liable 361.12
parallel 361.05
private property 361.04
prohibited
places 361.03
purposes 361.08
removal of vehicle
illegally stopped 361.02
unattended 351.01
selling, washing or repairing vehicle 361.08
stopping engine 349.01
streets or highways, prohibited on 361.01
taxicab stand, in 361.10
truck loading zones, in 361.09
vehicle storage on street, sidewalks 361.15
PEDESTRIAN
blind person 371.08
compliance with regulations 371.01
crosswalk
right half, use 371.05
right of way in 371.02
defined 301.21
hitchhiking 371.06
jaywalking 371.03
right of way, yielding 371.03
sidewalk
right of way on 343.06
use required 371.06
soliciting ride 371.06
street or highway, on 371.06
traffic control signal 313.04
PEEPING TOM 517.08
PENALTY (see also specific subject involved)
Fire Code 1509.99
general 101.99
General Offenses Code 501.99
Traffic Code 303.99

PERMIT (see also LICENSE)
animal enclosure 505.09
commercial and heavy vehicle use 347.01
excavations 913.01
fees (see FEES)
Fire Code 1509.04
fireworks display 545.10(b)
mobile home 1723.07
parades; street assembly 311.04
watercourse, enclosing 515.02(b)
POISONING
animals 505.07
POLICE CHIEF
nuisance conditions inspections 1101.05
right of entry 1101.06
POLICE DEPARTMENT
accident notification, immediate 331.06
false reports to 501.09
Traffic Code enforcement 303.01
vehicle impounding 303.07
POLICE OFFICER (see also LAW ENFORCEMENT OFFICER)
defined 301.24
fleeing 303.03, 501.02
impersonating 501.05
obstructing 501.02
traffic order, compliance with 303.01, 303.03
PONDS
nuisance condition 1101.03(d)
PORNOGRAPHY (see OBSCENITY)
PRIVATE CLUB
license; fees 723.01
PRIVATE CLUBS
prohibited acts 521.09
sale to or for minor 521.10
unlawful purchase from 521.10
PRIVATE ROAD
defined 301.25
right of way leaving 341.04, 343.06
PROCURING (see PROSTITUTION)
PROPERTY
advertising on private or public 533.10
PROPERTY (Cont.)
dangerous conditions or nuisances 515.07
rights of owners 303.08
stolen, dealing with 533.04
PROPERTY DESTRUCTION
monument, boundary 533.05(b)
penalty 533.99
traffic signals 313.07
unlawful 533.05
vehicle collision with property 331.05
PROSTITUTION
detaining person 517.02
operating place of 517.01
pandering 517.03
penalty 517.99
pimping 517.04
PUBLIC SAFETY VEHICLE (see also EMERGENCY VEHICLE)
following, parking near 349.06
PUBLIC SERVANT (see also specific official involved)
elections (see ELECTIONS)
impersonating 501.05
qualifications 105.02
recall of elected officials 113.02
terms of office 105.01
vacancies 105.07
PUBLIC UTILITIES TAX
additional remedies for collection 711.07
collection; payment 711.03
definitions 711.01
effective date 711.03
erroneous collections, nonliability of utility 711.06
exemptions 711.05
imposition 711.02
notice to utility of effective date 711.02
proration 711.03
records maintenance and inspection 711.04
RADAR
evidence of speed 335.05

RAILROAD
- definitions 301.26 et seq.
- grade crossing
  - dangerous 343.02
  - driving across 343.01
  - moving heavy equipment over 343.04
  - parking near 361.03(a)(9)
  - stopping at 343.03
- obstructing crossings 541.01
- sign or signal, unauthorized 313.06
- speed 541.03
- tampering with sign or signal 313.07
- trespassing
  - penalty 541.99
  - prohibited 541.02

RECKLESS DRIVING 333.03
RECORDER (see also PUBLIC SERVANT)
- Council member, as 111.06
- duties in Council 111.08
- fire protection service charge administration 717.04
- vacancy 105.07

RECORDS AND REPORTS
- accident, vehicle (see ACCIDENT)
- bullet damaged vehicle 331.08

REGISTRATION, MOTOR VEHICLE
- card 351.02
- improper use 351.05
- operation without 351.04
- operator or chauffeur license (see DRIVER'S LICENSE)
- plates
  - display 351.03
  - rear, illumination 345.05
- required 351.01
- temporary facsimile 351.04
- title certificate required 351.01

RESIDENCE DISTRICT
- defined 301.29
- speed in 335.01

RESTAURANT
- curb service prohibited 905.08

RIGHT OF WAY (see DRIVING)
RIGHT TURN ON RED 313.03(c)(2)
SAFETY BELT 345.35
SAFETY ZONE
- defined 301.33
- driving through 349.17
- parking in 361.03(a)(8)

SALES
- curb service prohibited 905.08
- fireworks 545.10
- merchandise displays on street or sidewalk 905.06

SANITARY BOARD
- creation 147.01
- members
  - City officials not eligible 147.02
  - compensation; expenses 147.04
  - composition; appointments 147.01
  - term; vacancies 147.01
- Officers 147.03
- powers generally 147.06
- sewers regulations 933.07
- supervisory powers 147.05

SCHOOL
- assaulting school employees 529.02
- loitering near 509.02
- speed restrictions near 335.01(b)

SCHOOL BUS (see BUS)
SEMITRAILER (see COMMERCIAL AND HEAVY VEHICLE)
SEWERS
- definitions 933.01
- discharge
  - prohibited wastes 933.04
  - sanitary sewage to sanitary sewers 933.02
- mobile home collection line 1723.06
- nuisance condition 1101.03(k)(l)
- penalty 933.99
- rates and charges
  - billing and collection 933.09
  - failure to pay timely; lien and penalty 933.06
  - paid by City 933.08
  - schedule of 933.05
  - Sinking Fund created 933.10

SEWERS (Cont.)
Sanitary Board, regulation by 933.07
storm water runoff excluded 933.03
SEXUAL OFFENSES
indecent exposure 517.07
prostitution (see PROSTITUTION)
voyeurism 517.08
SHOPLIFTING 533.01
SHORTCUTTING 349.15
SHRUBBERY (see TREES)
SIDEWALKS
advertising on 533.10
construction
approval required 917.01
penalty 917.99
requirements for approval 917.02
defined 301.37
driving on 349.14
duty to repair; assessment 905.01
materials on 905.05
merchandise displays on 905.06
nuisance condition 1101.03(f)
openings; protective cover 515.08
parking on 361.03(a)(1)
penalty 905.99
required use by pedestrian 371.06
snow and ice removal 905.02
spitting or urinating 515.05
unloading on 905.03
vehicle storage on 361.15
vehicle to stop at 331.23
weeds on 549.03
SIGNS
regulations 533.11
traffic (see TRAFFIC CONTROL DEVICE)
SIREN
prohibited on bicycle 373.07
vehicle 345.21
SKATEBOARDS (see TOY VEHICLES)
SMOKING
minors, tobacco usage restrictions 525.05
SNOW AND ICE
sidewalks, removal from 905.02
SOLICITING
prohibited on highway 371.06
SOLID WASTE (see also GARBAGE AND RUBBISH)
deposits on public or private property 533.07
dumpster, unauthorized use 533.09
SPEED
construction zones 313.08
limitations 335.03
locomotives 541.03
maximum limits 335.01
racing prohibited 335.04
radar, use of 335.05
slow 335.02
SPITTING 515.05
STEALING (see SHOPLIFTING; THEFT)
STOP SIGN (see TRAFFIC CONTROL DEVICE)
STREET LAWN
driving over 349.14
STREETS
abandoned or junk motor vehicle on 361.07
alley (see ALLEY)
animal on 303.06
closed for repair, driving on 349.18
commercial or heavy vehicle on 347.01
controlled-access
defined 301.06
entering and leaving 337.12
parking on 361.03(a)(16)
defined 301.06, 301.40
divided, driving procedure 337.11
excavations (see EXCAVATIONS)
expressway
defined 301.06
entering and leaving 337.12
injurious material, placing on 311.01
load, dropping on 347.04, 905.04
maintenance workers 371.07
materials on 905.05
merchandise displays on 905.06
motor vehicle storage on 361.15

STREETS (Cont.)
obstruction 349.19
one-way
driving on 337.08
left turn on red 313.03(c)(3)
openings; protective cover 515.08
parades; assembly on 311.04
parking on (see PARKING)
parking prohibitions 361.03
pedestrian on 371.06
penalty 905.99
play, designating 311.02
speed limits (see SPEED)
St.Rt.61, parking on 361.13
through
right of way 341.03
stop signs 343.05
toy vehicles 311.03
unloading on 905.03
SUBDIVISIONS
approval of plat 1315.02
penalty 1315.99
plat submission 1315.01
SWIMMING POOLS
dangerous conditions 515.07
nuisance condition 1101.03(m)
TAKING VEHICLE 349.13
TAMPERING
motor vehicle 349.13
traffic control device 313.07
utilities 533.06
TAXATION
business and occupation (see BUSINESS AND OCCUPATION TAX)
intoxicating liquor tax 723.02
utilities (see PUBLIC UTILITIES TAX)
TAXICAB
spitting or urinating 515.05
stands, parking in 361.10
TELEPHONE
harassment 517.06
TELEVISION
cable (see CATV)
receiver in driver's view 345.28
THEFT
dealing with stolen goods 533.04
THEFT (Cont.)
petty 533.03
shoplifting 533.01
utilities 533.06
vehicle alarm signal 345.21
THROUGH STREET (see STREET)
TIRES (see VEHICLE EQUIPMENT)
TOBACCO PRODUCTS
minors, usage restrictions 525.05
TOWING
requirements 347.05
TOY VEHICLES
play streets designated 311.02
streets, on 311.03
vehicle, attaching to 373.04
TRAFFIC CODE
applicable to
animals 303.06
bicycles 373.01
government vehicles 303.04
vehicles on streets, highways 303.02
definitions Ch. 301
emergency vehicle exceptions 303.05
enforcement 303.01
File (see TRAFFIC CONTROL FILE)
Map (see TRAFFIC CONTROL MAP)
penalty for violation 303.99, 305.99
TRAFFIC CONTROL DEVICE
advertising on 313.06
alteration; removal 313.07
avoiding 349.15
damaging 313.07
defined 301.43
flashing signal 313.05
hidden 313.06
lights, description 313.03
obedience required 313.01
parking near 361.03(a)(7)
pedestrian control signal 313.04
signal terms 313.03
stop sign or signal defined 301.44
street construction site 313.02
through street, signs at 343.05
unauthorized 313.06

TRAFFIC CONTROL FILE
amendments 305.03
established; contents 305.02
penalty 305.99
TRAFFIC CONTROL MAP
amendments 305.03
established; maintained 305.01
penalty 305.99
TRAFFIC SIGNAL (see TRAFFIC CONTROL DEVICE)
TRAILER
defined 301.23, 301.45
TRAIN (see RAILROAD)
TREES
advertising on 533.10
nuisance condition 1101.03(c)
penalty 909.99
planting on City property 909.01
trimming 909.02
TRESPASS
land or premises 533.02
railroad cars 541.02
vehicles 533.02(b)
voyeurism 517.08
TRUCK (see COMMERCIAL AND HEAVY VEHICLE)
UTILITIES
poles, advertising on 553.10
tampering; theft 533.06
U TURN 339.06
VAN, PASSENGER (see MOTOR VEHICLE)
VEHICLE (see MOTOR VEHICLE)
VEHICLE EQUIPMENT
brakes 345.19
child restraint system 345.31
exceptions 345.01(c)
exhaust noise 349.12
farm, road machinery 345.01
horn, siren 345.21
lights (see VEHICLE LIGHTS)
motorized bicycle 345.29
muffler
exhaust noise 349.12
regulations 345.22
VEHICLE EQUIPMENT (Cont.)
rear-view mirror 345.23
red flag or light on load 345.06
safety belt 345.35
safety glass 345.26
suspension system 345.33
theft alarm signal 345.21
tires
peeling 349.12
regulations 345.25
windshield regulations 345.24
VEHICLE LIGHTS
auxiliary driving lights 349.09
back-up 345.11
bicycle 373.07
distance, height measurement 345.03
fender or cowl 345.11
hazard lights 345.11
headlights
multiple-beam 345.12
required 345.04
single-beam 345.14
use of beams 345.13
license plate illuminated 345.05(c)
lighted, time 345.02
motorcycle, motorized bicycle 345.15
number permitted 345.17
parked or stopped vehicle 345.07
slow-moving vehicle
less intensity 345.16
requirements 345.08
special restrictions 345.18
spotlight 345.09
stop lights 345.10
tail light 345.05
turn signals 345.10
two displayed 345.17
VEHICLE LOADS
axle load limits 347.07, 347.08
explosives, transporting 345.27
extension on left side 347.02
gross weight 347.09
leaking or dropping 347.04, 905.04
local control 347.12
obstructing driver's view 349.03
penalty 347.99
projecting
passenger vehicle, on 347.02
red flag or light 345.06

VEHICLE LOADS (Cont.)
signal weight limitations 347.01
special load limits 347.06
streets or sidewalks, unloading on 905.03
truck loading zones 361.09
weighing vehicles 347.10
VEHICLE SECURITY 349.20
VOYEURISM 517.08
WATERCOURSE
diverting 515.03
enclosing; permit 515.02(b)
solid waste corrupting 533.07
WEAPONS
brandishing 545.08
bullet damage to vehicle, garage to report 331.08
carrying concealed 545.02, 545.03
definitions 545.01
discharging 545.11
display or sale 545.07
machine guns 545.06
missiles, shooting 545.12
possession by minors 545.05
possession generally 545.04
WEEDS
definition 549.01
disposal 549.04
growth
over one foot 549.02
sidewalk or lot, on 549.03
penalty 549.99
removal
City, by 549.06
costs assessed 549.07
owner or occupant 549.05
WELL
dangerous conditions 515.07
WINE (see INTOXICANTS)
WINE DEALERS
prohibited acts 521.11
unlawful purchase 521.12
YIELD SIGNS (see TRAFFIC CONTROL DEVICE)

COMPARATIVE SECTION TABLE

EDITOR'S NOTE: Source material for the Codified Ordinances of Chesapeake was either ordinances or resolutions enacted by Council, or new matter ordained by the Adopting Ordinance. Sections of the Codified Ordinances without any history indicate that such sections contain new matter ordained by the Adopting Ordinance. In the following table, the disposition of all source material in the Chesapeake Codified Ordinances is indicated.

1963 Code Section #	C.O. Section
1-7-1	107.01
1-11-1 to 16	111.01 to 111.16
1-29-1 to 5	141.01 to 141.05
1-33-1, 2	143.01, 143.02
3-5-1 to 3-5-99	305.01 to 305.03, 305.99
3-61-5	361.14
3-61-7	361.15
5-3	533.10
5-11-1 to 7	505.06 to 505.11
5-27	505.13
5-43-1 to 5	515.01 to 515.05
5-67	525.06
5-71	541.03
5-75-1 to 5	515.06 to 515.10
5-75-99	515.99
5-79-1 to 8	905.01 to 905.08
5-83-1,2	909.01, 909.02
5-99-1 to 7	549.01 to 549.07
9-1-1 to 7, 99	913.01 to 913.07, 913.99
9-3-1, 2, 99	917.01, 917.02, 917.99
9-11-1 to 5	937.01
9-13-1, 2, 4 to 7	937.02, 937.03, 937.05 to 937.08
9-15-1, 2	937.09, 937.10
9-71-1 to 6	147.01 to 147.06
9-73-1 to 10, 99	933.01 to 933.04, 933.06 to 933.10, 933.99

Ord. No.	Date	C.O. Section
1979-2		937.04
1980-8		113.01, 113.02
83-5	11-7-83	717.01 to 717.11, 717.99
85-4	12-7-98	1723.01 to 1723.07, 1723.99
85-6	12-2-85	723.01
86-2	12-1-86	711.01 to 711.07
87-1	9-14-87	723.02
90-3	7-2-90	105.01 to 105.19
91-1	11-2-92	1711.04, 1715.01 to 1715.04, 1719.01 to 1719.06
91-2	3-4-91	347.04
92-1	3-2-92	361.13
	7-6-92	1727.01 to 1727.09
93-1	5-3-93	103.01
94-1	9-147-94	933.05
97-1	7-7-97	505.12
9-3	12-6-99	1101.01 to 1101.13, 1101.99
99-4 Adopting Ordinance	11-1-99	1725.01
		101.01 to 101.08, 101.99, 141.99, 301.01 to 301.47, 303.01 to 303.08, 303.99, 311.01 to 311.04, 313.01 to 313.08, 313.99, 331.01 to 331.08, 331.99, 333.01 to 333.03, 333.99,

Ord. No.	Date	C.O. Section
Adopting Ordinance (Cont.)		335.01 to 335.05, 335.99, 337.01 to 337.12, 337.99, 339.01 to 339.10, 339.99, 341.01 to 341.06, 341.99, 343.01 to 343.09, 343.99, 345.01 to 345.35, 345.99, 347.01 to 347.05, 349.01 to 349.20, 349.99, 351.01 to 351.11, 351.99, 353.01 to 353.06, 353.99, 361.01 to 361.12, 361.99, 371.01 to 371.08, 371.99, 373.01 to 373.09, 373.99, 501.01 to 501.09, 501.99, 505.01 to 505.05, 505.99, 509.01 to 509.04, 509.99, 513.01 to 513.09, 513.99, 517.01 to 517.10, 517.99, 521.01 to 521.13, 521.99, 525.01 to 525.05, 525.99, 529.01 to 529.03, 529.99, 533.01 to 533.09, 533.99, 541.01, 541.02, 541.99, 545.01 to 545.12, 549.99, 705.01 to 705.37, 725.01 to 725.14, 725.99, 905.99, 909.99, 937.99, 1509.01 to 1509.04, 1509.99, 1711.01 to 1711.03
99-1	3-1-99	347.01, 347.06 to 347.12, 347.99
01-1	10-1-01	375.01, 375.02, 375.99
01-2	10-1-01	533.11, 533.99(c)

ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

PART I. PURPOSE AND SHORT TITLE.

§8-1-1. Purpose and short title.

The purpose of this chapter is to effect a recodification of the basic municipal law of this state and of various statutory provisions relating to certain intergovernmental relations involving municipalities, counties and other units of government, to provide as much uniformity as possible between the powers, authority, duties and responsibilities of special legislative charter municipalities and all other municipalities, and to give effect to the "Municipal Home Rule Amendment" to the constitution of this state, being section thirty-nine-(a), article six of said constitution.

For convenience of reference, this chapter may be known and cited as the "Municipal Code of West Virginia."

PART II. DEFINITIONS.

§8-1-2. Definitions of terms.

(a) For the purpose of this chapter:

(1) "Municipality" is a word of art and shall mean and include any Class I, Class II and Class III city and any Class IV town or village, heretofore or hereafter incorporated as a municipal corporation under the laws of this state;

(2) "City" is a word of art and shall mean, include and be limited to any Class I, Class II and Class III city, as classified in section three of this article (except in those instances where the context in which used clearly indicates that a particular class of city is intended), heretofore or hereafter

incorporated as a municipal corporation under the laws of this state, however created and whether operating under (i) a special legislative charter, (ii) a home rule charter framed and adopted or revised as a whole or amended under the provisions of former chapter eight-a of this code or under the provisions of article three or article four of this chapter, (iii) general law, or (iv) any combination of the foregoing; and

"Hesperus is a Town, not City"

(3) "Town or village" is a term of art and shall, notwithstanding the provisions of section ten, article two, chapter two of this code, mean, include and be limited to any Class IV town or village, as classified in section three of this article, heretofore or hereafter incorporated as a municipal corporation under the laws of this state, however created and whether operating under (i) a special legislative charter, (ii) general law, or (iii) a combination of the foregoing.

(b) For the purpose of this chapter, unless the context clearly requires a different meaning:

(1) "Governing body" shall mean the mayor and council together, the council, the board of directors, the commission, or other board or body of any municipality, by whatever name called, as the case may be, charged with the responsibility of enacting ordinances and determining the public policy of such municipality; and in certain articles dealing with intergovernmental relations shall also mean the county court of any county or governing board of other units of government referred to in said articles;

(2) "Councilmen" shall mean the members of a governing body, by whatever name such members may be called;

(3) "Mayor" shall mean the individual called mayor unless as to a particular municipality a commissioner (in a commission form of government) or the city manager (in a manager form of government) is designated or constituted by charter provision as the principal or chief executive officer or chief administrator thereof, in which event the term "mayor" shall mean as to such municipality such commissioner or city manager unless as to any particular power, authority, duty or function specified in this chapter to be exercised, discharged or fulfilled by the mayor it is provided by charter provision or ordinance that such particular power, authority, duty or function shall be exercised, discharged or fulfilled by the individual called mayor and not by a commissioner or city manager, in which event such particular power, authority, duty or function shall in fact be exercised, discharged or fulfilled in and for such municipality by the individual

called mayor: Provided, That in the exercise and discharge of the ex officio justice of the peace, conservator of the peace and mayor's court functions specified in this chapter, the term "mayor" shall always mean the individual called mayor;

(4) "Recorder" shall mean the recorder, clerk or other municipal officer, by whatever name called, charged with the responsibility of keeping the journal of the proceedings of the governing body of the municipality and other municipal records;

(5) "Treasurer" shall mean the treasurer or other municipal officer, by whatever name called, exercising the power and authority commonly exercised by a treasurer;

(6) "Administrative authority" shall mean the officer, commission or person responsible for the conduct and management of the affairs of the municipality in accordance with the charter, general law and the ordinances, resolutions and orders of the governing body thereof;

(7) "Charter" shall mean, except where specific reference is made to a particular type of charter, either a special legislative charter (whether or not amended under the provisions of former chapter eight-a of this code or under article four of this chapter, and although so amended, such special legislative charter shall, for the purposes of this chapter, remain a special legislative charter), or a home rule charter framed and adopted or revised as a whole or amended by a city under the provisions of former chapter eight-a of this code or under the provisions of article three or article four of this chapter;

(8) "Ordinance" shall mean the ordinances and laws enacted by the governing body of a municipality in the exercise of its legislative power, and in one or more articles of this chapter, ordinances enacted by a county court;

(9) "Inconsistent or in conflict with" shall mean that a charter or ordinance provision is repugnant to the constitution of this state or to general law because such provision (i) permits or authorizes that which the constitution or general law forbids or prohibits, or (ii) forbids or prohibits that which the constitution or general law permits or authorizes;

(10) "Qualified elector," "elector," "qualified voter" or "legal voter" shall mean any individual who, at the time he offers to vote or at the time he participates in any event or activity (such as signing a petition) under the provisions of this chapter for which he must be a qualified elector, elector, qualified voter or legal voter, is a resident within the corporate limits of the municipality or within the boundaries of a territory referred to in this chapter, as the case may be, and who (i) has been a resident of the state for one year and of the municipality or territory in question for at least sixty days next preceding such election or date pertinent to any such event or activity, and (ii) in the case of a regular municipal election, special municipal election, municipal public question election or any such municipal event or activity, is duly registered on the municipal registration books set up in the office of the clerk of the county court of the county in which the municipality or the major portion of the territory thereof is located under the integration of the municipal registration of voters with the "permanent registration system" of the state, or, in the event there be no such integration of the municipal registration of voters, is duly registered in the county in which he resides to vote in state-county elections, or (iii) in the case of a territory election, general election or any such territory event or activity, is duly registered in the county in which he resides to vote in state-county elections; and any charter provision or ordinance establishing a voting residency requirement different than that in this definition provided shall be of no force and effect; and in any case where a particular percentage of the qualified electors, electors, qualified voters or legal voters is required under the provisions of this chapter in connection with any such event or activity as aforesaid, the percentage shall be determined on the basis of the number of qualified electors, electors, qualified voters or legal voters, as of the time of such event or activity, unless it is impracticable to determine such percentage as of such time and it is provided by ordinance, resolution or order that the percentage shall be determined on the basis of the number of qualified electors, electors, qualified voters or legal voters, as of the date of the last preceding election (whether a general election, regular municipal election or special municipal election and whether or not they voted at such election) held in such municipality or territory, as the case may be;

(11) "Public question" shall mean any issue or proposition required to be submitted to the qualified voters of a municipality or of a territory referred to in this chapter for decision at an election, as the case may be;

(12) "Inhabitant" shall mean any individual who is a resident within the corporate limits of a municipality or within the boundaries of a territory referred to in this chapter, as the case may be;

(13) "Resident" shall mean any individual who maintains a usual and bona fide place of abode within the corporate limits of a municipality or within the boundaries of a territory referred to in this chapter, as the case may be;

(14) "Freeholder" shall mean any person (and in the case of an individual one who is sui juris and is not under a legal disability) owning a "freehold interest in real property";

(15) "Freehold interest in real property" shall mean any fee, life, mineral, coal or oil or gas interest in real property, whether legal or equitable, and whether as a joint tenant or a tenant in common, but shall not include a leasehold interest (other than a mineral, coal or oil or gas leasehold interest), a dower interest, or an interest in a right-of-way or easement, and the freehold interest of a church or other unincorporated association shall be considered as one interest and not as an individual interest of each member thereof;

(16) "County court" shall mean the governmental body created by section twenty-two, article eight of the constitution of this state, or any existing tribunal created in lieu of a county court;

(17) "Code" shall mean the code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereafter amended; and

(18) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint-stock association, or any other entity or organization of whatever character or description.

(c) The term "intergovernmental relations" is used in this chapter to mean undertakings and activities which may be undertaken or engaged in by two or more units of government acting jointly, and in certain headings in this chapter to call attention to the fact that the provisions under such headings apply to units of government in addition to municipalities.

(d) For the purpose of this chapter, unless the context clearly indicates to the contrary, words importing the masculine gender shall include both the masculine and feminine gender, and the

phrase "charter framed and adopted or revised as a whole or amended (or words of like import) under the provisions of former chapter eight-a of this code" shall include a charter framed and adopted or revised as a whole or amended under the provisions of former article two of former chapter eight of this code.

PART III. GENERAL PROVISIONS.

§8-1-3. Classification of municipal corporations.

Pursuant to the mandate of the "Municipal Home Rule Amendment" to the constitution of this state, all municipal corporations are hereby classified by population into four classes, as follows:

(1) Every municipal corporation with a population in excess of fifty thousand shall be a Class I city;

(2) Every municipal corporation with a population in excess of ten thousand but not in excess of fifty thousand shall be a Class II city;

(3) Every municipal corporation with a population in excess of two thousand but not in excess of ten thousand shall be a Class III city; and

(4) Every municipal corporation with a population of two thousand or less shall be a Class IV town or village. 2010 CENSUS - 1554 POP.
2013 1532

Transition from one to another class shall occur automatically when the requisite population qualification has been met, effective as of the effective date of the census, as specified in section four of this article.

The Legislature hereby declares its interpretation of the said "Municipal Home Rule Amendment" to be that a single classification by population of municipal corporations in this

state is required which shall exclude any other classification of municipal corporations by population for any purpose. It is, therefore, the intention of the Legislature that the classification established in this section shall give effect to the constitutional mandate and shall be the only classification by population applying to municipal corporations in this state. It is the further intention of the Legislature that subsequent legislation affecting municipal corporations in this state shall treat municipal corporations differently upon the basis of population, only in accordance with the general classification established in this section.

§8-1-4. How population determined.

For any purpose pertinent to the provisions of this chapter, population shall be determined by reference to the last preceding census taken under the authority of the United States or of the Legislature of West Virginia or by the municipality pursuant to an ordinance adopted thereby, the adoption of any such ordinance being hereby expressly authorized.

§8-1-5. Existing status of municipalities confirmed; powers, authority, duties and responsibilities conferred by law.

The corporate being of every municipality now existing is hereby confirmed and validated. Except as otherwise provided in section six of this article, any municipality shall have all of the powers, authority, duties and responsibilities conferred by law upon a municipality of the class to which it belongs.

PART V. OATH OF OFFICE; TERMS OF OFFICE; FILLING VACANCIES.

§8-5-8. Oath of office.

Every person elected or appointed to an office in any municipality shall, unless otherwise provided in the charter thereof, within twenty days after his election or appointment and before he shall enter upon the duties of his office, take and subscribe to the oath of office prescribed for district officers, which may be done before any person authorized by law to administer oaths, or before the mayor or recorder of such municipality. The oath, together with the certificate of the officer administering the same, shall be filed, recorded and preserved in the office of the recorder of the municipality, and a certified copy of such oath and certificate shall be filed and recorded in the office of the clerk of the county court of the county in which the municipality or the major portion of the territory thereof is located.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

PART I. MAYOR.

§8-10-1. Powers and duties of mayor.

When not otherwise provided by charter provision or general law, the mayor of every municipality shall be the chief executive officer of such municipality, shall have the powers and authority granted in this section, and shall see that the ordinances, orders, bylaws, acts, resolutions, rules and regulations of the governing body thereof are faithfully executed. He shall have jurisdiction to hear and determine any and all alleged violations thereof and to convict and sentence persons therefor. He shall also, until the first day of January, one thousand nine hundred seventy-seven, be ex officio a justice and conservator of the peace within the municipality, and shall, within the same, have and exercise all of the powers, both civil and criminal, and perform all duties vested by law in a justice of the peace, except that he shall have no jurisdiction in civil cases or causes of action arising without the corporate limits of the municipality. He shall have, until the first day of January, one thousand nine hundred seventy-seven, the same power to issue attachments in civil suits as a justice of his county has, though the cause of action arose without the corporate limits of his municipality, but he shall have no power to try the same and such attachments shall be returnable and be heard before some

MAYOR IS NOT A JUDGE AFTER 1977

(4) Every municipal corporation with a population of two thousand or less shall be a Class IV town or village. CHESAPEAKE IS A TOWN NOT CITY

Plan I -- "Mayor-Council Plan." Under this plan:

(1) There shall be a city council, elected at large or by wards, or both at large and by wards, by the qualified voters of the city; a mayor elected by the qualified voters of the city; and such other elective officers as the charter may prescribe; and

(2) The mayor and council shall be the governing body and administrative authority.

Plan II -- "Strong-Mayor Plan." Under this plan:

(1) There shall be a mayor elected by the qualified voters of the city; and a city council elected at large or by wards, or both at large and by wards, by the qualified voters of the city;

(2) The council shall be the governing body;

(3) The mayor shall be the administrative authority; and

(4) Other officers and employees shall be appointed by the mayor or by his order in accordance with this chapter, but such appointments by the mayor or by his order may be made subject to the approval of the council.

justice of his county. Upon compiaint he shall have authority to issue a search warrant in connection with the violation of a municipal ordinance. Any search warrant, warrant of arrest or other process issued by him may be directed to the chief of police or any member of the police department or force of the municipality, and the same may be executed at any place within the county or counties in which the municipality is located. He shall have control of the police of the municipality and may appoint special police officers whenever he deems it necessary, except when otherwise provided by law, and subject to the police civil service provisions of article fourteen of this chapter if such civil service provisions are applicable to his municipality, and it shall be his duty especially to see that the peace and good order of the municipality are preserved, and that persons and property therein are protected; and to this end he may cause the arrest and detention of all riotous and disorderly individuals in the municipality before issuing his warrant therefor. He shall have power to issue executions for all fines, penalties and costs imposed by him, or he may require the immediate payment thereof, and in default of such payment, he may commit the party in default to the jail of the county or counties in which such municipality is located, or other place of imprisonment within the corporate limits of such municipality, if there be one, until the fine or penalty and costs shall be paid, but the term of imprisonment in such case shall not exceed thirty days. He shall, from time to time, recommend to the governing body such measures as he may deem needful for the welfare of the municipality. The expense of mair taining any individual committed to a county jail by him, except it be to answer an indictment, or, until the first day of January, one thousand nine hundred seventy-seven, be under the provisions of sections eight and nine, article eighteen, chapter fifty of this code, shall be paid by the municipality and taxed as part of the costs of the proceeding.

§8-10-1a. Authority to hire special counsel; consent to other representation.

Notwithstanding any charter provision to the contrary, the governing body of every municipality shall have plenary power and authority by ordinance to authorize the mayor to employ within the limit of funds available for such purpose, in lieu of or in addition to the municipal attorney or municipal solicitor and any assistant municipal attorneys or assistant municipal solicitors, an attorney or firm of attorneys as special municipal counsel to represent the municipality in connection with any legal matter or matters. The ordinance authorizing such employment shall be the consent on behalf of the municipality to such attorney or firm of attorneys to represent other clients in other legal matters involving such municipality, but at the time of representation of any such other client in any such other legal matter in controversy directly involving such municipality, such attorney or firm of attorneys shall file with the recorder as a public record a statement of disclosure identifying such other client and the nature of the

matter in controversy directly involving such municipality.

§8-10-1b. Authority to appoint police chief; reinstating to previous rank.

(a) Unless otherwise provided by charter, the mayor of a Class III city or Class IV town or village that has a paid police department that is not subject to the civil services provisions set out in article fourteen of this chapter, may appoint a chief of police.

(b) A Class III city or Class IV town or village may provide by ordinance whether the individual appointed chief of police who held a position as a member of the paid police department prior to his or her appointment as chief of police shall be reinstated to the officer's previous rank following his or her term as chief of police.

§8-10-2. Municipal court for municipalities.

(a) Notwithstanding any charter provision to the contrary, any city may provide by charter provision and any municipality may provide by ordinance for the creation and maintenance of a municipal court, for the appointment or election of an officer to be known as municipal court judge and for his or her compensation, and authorize the exercise by the court or judge of the jurisdiction and the judicial powers, authority and duties set forth in section one of this article and similar or related judicial powers, authority and duties enumerated in any applicable charter provisions, as set forth in the charter or ordinance. Additionally, any city may provide by charter provision and any municipality may provide by ordinance, that in the absence of or in the case of the inability of the municipal court judge to perform his or her duties, the municipal court clerk or other official designated by charter or ordinance may act as municipal court judge: Provided, That the municipal court clerk or other official designated by charter or ordinance to act as municipal court judge shall comply with the requirements set forth in subsections (b) and (c) of this section, as well as any other requirements that the city by charter provision or the municipality by ordinance may require.

(b) Any person who makes application for appointment to, or who files to become a candidate in any election for municipal judge, shall first submit to a criminal background check, to be conducted by the State Police. The cost of the criminal background check shall be paid by the applicant or candidate. The result of each background check conducted in accordance with this

section shall be forwarded to the municipal court clerk or recorder whose duty it is to review the results and confirm the eligibility of the applicant or candidate to serve as a municipal judge. No person convicted of a felony or any misdemeanor crime set forth in articles eight, eight-a, eight-b, eight-c or eight-d, chapter sixty-one, of this code is eligible to become a municipal judge.

(c) Any person who assumes the duties of municipal court judge who has not been admitted to practice law in this state shall attend and complete the next available course of instruction in rudimentary principles of law and procedure. The course shall be conducted by the municipal league or a like association whose members include more than one half of the chartered cities and municipalities of this state. The instruction must be performed by or with the services of an attorney licensed to practice law in this state for at least three years. Any municipal court judge shall, additionally, be required to attend a course, on an annual basis for the purpose of continuing education: Provided, That the forgoing additional education requirement does not apply to municipal judges who are attorneys admitted to practice in this state. The cost of any course referred to in this section shall be paid by the municipality that employs the municipal judge.

(d) Only a defendant who has been charged with an offense for which a period of confinement in jail may be imposed is entitled to a trial by jury. If a municipal court judge determines, upon demand of a defendant, to conduct a trial by jury in a criminal matter, it shall follow the procedures set forth in the rules of criminal procedure for magistrate courts promulgated by the Supreme Court of Appeals, except that the jury in municipal court shall consist of twelve members.

§8-10-2a. Payment of fines by credit cards or payment plan; suspension of driver's license for failure to pay motor vehicle violation fines or to appear in court.

(a) A municipal court may accept credit cards in payment of all costs, fines, forfeitures or penalties. A municipal court may collect a substantial portion of all costs, fines, forfeitures or penalties at the time such amount is imposed by the court so long as the court requires the balance to be paid within one hundred eighty days from the date of judgment and in accordance with a payment plan: Provided, That all costs, fines, forfeitures or penalties imposed

by the municipal court upon a nonresident of this state by judgment entered upon a conviction for a motor vehicle violation defined in section three-a, article three, chapter seventeen-b of this code must be paid within eighty days from the date of judgment. The payment plan shall specify: (1) The number of additional payments to be made; (2) the dates on which such payments and amounts shall be made; and (3) amounts due on such dates.

(b) If costs, fines, forfeitures or penalties imposed by the municipal court for motor vehicle violations as defined in section three-a, article three, chapter seventeen-b of this code are not paid within the time limits imposed pursuant to subsection (a) of this section, or if a person fails to appear or otherwise respond in court when charged with a motor vehicle violation as defined in section three-a, article three, chapter seventeen-b of this code, the municipal court must notify the Commissioner of the Division of Motor Vehicles of such failure to pay or failure to appear: Provided, That notwithstanding any other provision of this code to the contrary, the municipal court shall wait at least ninety days from the date that all costs, fines, forfeitures or penalties are due in full or, for failure to appear or otherwise respond, ninety days from the date of such failure before notifying the Division of Motor Vehicles thereof.

§8-10-2b. Suspension of licenses for failure to pay fines and costs or failure to appear in court.

(a) If costs, fines, forfeitures or penalties imposed by the municipal court upon conviction of a person for a criminal offense as defined in section three-c, article three, chapter seventeen-b of this code are not paid in full within one hundred eighty days of the judgment, the municipal court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Division of Motor Vehicles of the failure to pay: Provided, That notwithstanding any other provision of this code to the contrary, for residents of this state, the municipal court shall wait at least ninety days from the date that all costs, fines, forfeitures or penalties are due in full before notifying the Division of Motor Vehicles thereof: Provided, however, That at the time the judgment is imposed, the judge shall provide the person with written notice that failure to pay the same as ordered may result in the withholding of any income tax refund due the licensee and shall result in the suspension of the person's license or privilege to operate a motor vehicle in this state and that the suspension could result in the cancellation of, the failure to renew or the failure to issue an automobile insurance policy providing coverage for the person or the person's family: Provided further, That the failure of the judge to provide notice does not affect the validity of any suspension of the person's license or privilege to operate a motor vehicle in this state. For purposes of this section, payment shall be stayed during any period an appeal from the conviction which resulted in the imposition of costs, fines, forfeitures or penalties is pending.

Upon notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the costs, fines, forfeitures or penalties are paid.

(b) Notwithstanding the provisions of this section to the contrary, the notice of the failure to pay costs, fines, forfeitures or penalties may not be given where the municipal court, upon application of the person upon whom the costs, fines, forfeitures or penalties were imposed filed prior to the expiration of the period within which these are required to be paid, enters an order finding that the person is financially unable to pay all or a portion of the costs, fines, forfeitures or penalties: Provided, That where the municipal court, upon finding that the person is financially unable to pay a portion of the costs, fines, forfeitures or penalties, requires the person to pay the remaining portion, the municipal court shall notify the Division of Motor Vehicles of the person's failure to pay if not paid within the period of time ordered by the court.

(c) If a person charged with a criminal offense fails to appear or otherwise respond in court, the municipal court clerk shall notify the Division of Motor Vehicles of the failure to appear: Provided, That notwithstanding any other provision of this code to the contrary, for residents of this state, the municipal court clerk shall wait at least ninety days from the date of the person's failure to appear or otherwise respond before notifying the Division of Motor Vehicles thereof. Upon notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the person appears as required.

(d) On and after July 1, 2008, if the licensee fails to respond to the Division of Motor Vehicles order of suspension within ninety days of receipt of the certified letter, the municipal court of original jurisdiction shall notify the Tax Commissioner that the licensee has failed to pay the costs, fines, forfeitures or penalties assessed by the court or has failed to respond to the citation. The notice provided by the municipal court to the Tax Commissioner must include the licensee's Social Security number. The Tax Commissioner, or his or her designee, shall withhold from any personal income tax refund due and owing to a licensee the costs, fines, forfeitures or penalties due to the municipality, the Tax Commissioner's administration fee for the withholding and any and all fees that the municipal court would have collected had the licensee appeared: Provided, That the Tax Commissioner's administration fee may not exceed $25: Provided, however, That the Tax Commissioner may change this maximum amount limitation for this fee for fiscal years beginning on or after July 1, 2008, by legislative rule promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code: Provided

further, That the administrative fees deducted shall be deposited in the special revolving fund hereby created in the State Treasury, which shall be designated as the Municipal Fines and Fees Collection Fund, and the Tax Commissioner shall make such expenditures from the fund as he or she deems appropriate for the administration of this subsection. After deduction of the Tax Commissioner's administration fee, the Tax Commissioner shall remit to the municipality all remaining amounts withheld pursuant to this section and the municipal court shall distribute applicable costs, fines, forfeitures or penalties owed to the municipality, the Regional Jail Authority Fund, the Crime Victims Compensation Fund, the Community Corrections Fund, the Governor's subcommittee on law- enforcement training or any other fund or payee that may be applicable. After the costs, fines, forfeitures or penalties are withheld, the Tax Commissioner shall refund any remaining balance due the licensee. If the refund is not sufficient to cover all the costs, fines, forfeitures or penalties being withheld pursuant to this section, the Tax Commissioner's administration fee shall be retained by the Tax Commissioner and the remaining money withheld shall be remitted by the Tax Commissioner to the municipality. The municipality shall then allocate the money so remitted to the municipality in the following manner: (1) Any costs, fines, forfeitures or penalties due to the municipality; (2) seventy-five percent of the remaining balance shall be paid to the appropriate Regional Jail Authority Fund; (3) fifteen percent of the remaining balance shall be paid to the Crime Victims Compensation Fund; (4) six percent of the remaining balance shall be paid into the Community Corrections Fund; and (5) the final four percent shall be paid to the Governor's subcommittee on law-enforcement training. When the costs, fines, forfeitures or penalties exceed the licensee's income tax refund, the Tax Commissioner shall withhold the remaining balance in subsequent years until such time as the costs, fines, forfeitures or penalties owed are paid in full. The Tax Commissioner shall remit the moneys that he or she collects to the appropriate municipality no later than July 1, of each year. If the municipal court or the municipality subsequently determines that any such costs, fines, forfeitures or penalties were erroneously imposed, the municipality shall promptly notify the Tax Commissioner. If the refunds have not been withheld and remitted, the Tax Commissioner may not withhold and remit payment to the municipality and shall so inform the municipality. If the refunds have already been withheld and remitted to the municipality, the Tax Commissioner shall so inform the municipality. In either event, all refunds for erroneously imposed costs, fines, forfeitures or penalties shall be made by the municipality and not by the Tax Commissioner.

(e) Rules and effective date. -- The Tax Commissioner may promulgate such rules as may be useful or necessary to carry out the purpose of this section and to implement the intent of the Legislature, to be effective on July 1, 2008. Rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(f) On or before July 1, 2005, the municipal court may elect to reissue notice as provided in subsections (a) and (c) of this section to the Division of Motor Vehicles for persons who remain noncompliant: Provided, That the person was convicted or failed to appear on or after January 1, 1993. If the original notification cannot be located, the Division of Motor Vehicles shall accept an additional or duplicate notice from the municipal court clerk.

PART III. RECORDER AND MUNICIPAL CLERK.

§8-10-3. Powers and duties of recorder.

It shall be the duty of the recorder of every municipality to keep the journal of the proceedings of the governing body thereof, and he shall have charge of and preserve the records of the municipality. Unless otherwise provided by charter provision or general law, whenever the mayor is unable because of illness or absence from the municipality to perform the duties of his office, and during any vacancy in the office of mayor, the recorder shall perform the duties of the mayor and be invested with all of his power and authority.

§8-10-4. Powers and duties of recorder or clerk relating to warrants, oaths, sureties and bonds.

Any municipality may provide by charter provision and ordinance, or notwithstanding a charter provision to the contrary, a municipality may provide by ordinance, that the governing body may vest in the recorder, assistant recorder, municipal clerk or deputy municipal clerk, the authority to issue warrants for arrest, to administer oaths, and to accept and approve sureties and bonds, and any such ordinance shall provide for the appointment of such person by confirmation of the governing body and for the removal of such authority by action of the governing body: Provided, That such person may only issue warrants, administer oaths, or accept and approve sureties and bonds, in the absence of the mayor, or if there be a police court or municipal judge, in the absence of such police court or municipal judge.

§8-11-4. Ordinance procedures.

(a) Notwithstanding any charter provision to the contrary, which charter provision was in effect on the effective date of this section, it shall not be necessary, except where otherwise provided in this code, for the governing body of any municipality to publish in a newspaper any proposed ordinance prior to the adoption thereof or any enacted ordinance subsequent to the adoption thereof, and any and all ordinances of every municipality shall be adopted in accordance with the following requirements, except where different or additional requirements are specified in other provisions of this code, in which event such other different or additional requirements shall be applicable:

(1) A proposed ordinance shall be read by title at not less than two meetings of the governing body with at least one week intervening between each meeting, unless a member of the governing body demands that the ordinance be read in full at one or both meetings. If such demand is made, the ordinance shall be read in full as demanded.

(2) At least five days before the meeting at which a proposed ordinance, the principal object of which is the raising of revenue for the municipality, is to be finally adopted, the governing body shall cause notice of the proposed adoption of said proposed ordinance to be published as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality. The notice shall state the subject matter and general title or titles of such proposed ordinance, the date, time and place of the proposed final vote on adoption, and the place or places within the municipality where such proposed ordinance may be inspected by the public. A reasonable number of copies of the proposed ordinance shall be kept at such place or places and be made available for public inspection. Said notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(3) A proposed ordinance shall not be materially amended at the same meeting at which finally adopted.

(b) Notwithstanding any charter provision to the contrary, which charter provision was in effect on the effective date of this section, the governing body of any municipality may adopt, by ordinance, building codes, housing codes, plumbing codes, sanitary codes, electrical codes, fire prevention codes, or any other technical codes dealing with general public health, safety or welfare, or a combination of the same, or a comprehensive code of ordinances, in the manner prescribed in this subsection (b). Before any such ordinance shall be adopted, the code shall be

either printed or typewritten and shall be presented in pamphlet form to the governing body of the municipality at a regular meeting, and copies of such code shall be made available for public inspection. The ordinance adopting such code shall not set out said code in full, but shall merely identify the same. The vote on adoption of said ordinance shall be the same as on any other ordinance. After adoption of the ordinance, such code or codes shall be certified by the mayor and shall be filed as a permanent record in the office of the recorder, who shall not be required to transcribe and record the same in the ordinance book as other ordinances are transcribed and recorded. Consistent with the provisions of subsection (a) of this section, it shall not be necessary that any such ordinance, either as proposed or after adoption, be published in any newspaper, and it shall not be necessary that the code itself be so published, but before final adoption of any such proposed ordinance, notice of the proposed adoption of such ordinance and code shall be given by publication as herein provided for ordinances the principal object of which is the raising of revenue for the municipality, which notice shall also state where, within the municipality, the code or codes will be available for public inspection.

(c) By a charter framed and adopted, revision of a charter as a whole, or a charter amendment or amendments, as the case may be, subsequent to the effective date of this section, a city may require any or all ordinances to be published in a newspaper prior to the adoption thereof, may expressly adopt the provisions of this section, may specify other additional requirements for the enactment of ordinances, or may prescribe a procedure for the enactment of ordinances in greater detail than prescribed in this section, but a city shall not, except in an emergency as specified in subsection (d) of this section or except as otherwise provided in this code, have the power and authority to lessen or reduce the requirements of this section.

(d) The governing body of a municipality may enact an ordinance without complying with the rules prescribed in this section only (1) in the case of a pressing public emergency making procedure in accordance with the provisions of this section dangerous to the public health, safety or morals, and by affirmative vote of two thirds of the members elected to the governing body, or (2) when otherwise provided in this code. The nature of any such emergency shall be set out in full in the ordinance.

CODIFIED ORDINANCES OF CHESAPEAKE

PART ONE - ADMINISTRATIVE CODE

CHAPTER ONE - General Provisions

Art. 101. Codified Ordinances.
Art. 103. Boundaries.
Art. 105. Elections.
Art. 107. Official Standards.

CHAPTER THREE - Legislative

Art. 111. Council.
Art. 113. Ordinances and Resolutions.

CHAPTER FIVE - Administrative

Art. 131. Mayor.
Art. 133. Recorder.
Art. 137. City Attorney.
Art. 139. Police Department.
Art. 141. Fire Department.
Art. 143. Health Services.
Art. 145. Employment Provisions.
Art. 147. Sanitary Board

CHAPTER SEVEN - Judicial

Art. 171. Municipal Court

CODIFIED ORDINANCES OF CHESAPEAKE

PART ONE - ADMINISTRATIVE CODE

CHAPTER ONE - General Provisions

Art. 101. Codified Ordinances.
Art. 103. Boundaries.
Art. 105. Elections.
Art. 107. Official Standards.

ARTICLE 101
Codified Ordinances

101.01 Designation; citation; headings.
101.02 General definitions.
101.03 Rules of construction.
101.04 Repeal of repealing act; effect of repeal.
101.05 Construction of section references.
101.06 Acts by agent or deputy.
101.07 Conflicting provisions.
101.08 Separability.
101.99 General penalty.

CROSS REFERENCES
See sectional histories for similar State law
Maximum penalty permitted - see W. Va. Code 8-11-1, 8-12-5(57)
Authority to impose penalties - see W. Va. Code 8-11-1, 8-12-2(11)
Codification of ordinances - see W. Va. Code 8-11-4(b)

101.01 DESIGNATION; CITATION; HEADINGS.

(a) All ordinances of a permanent and general nature of the Municipality as revised, recodified, rearranged, renumbered and consolidated into component codes, chapters, articles and sections shall be known and designated as the Codified Ordinances of Chesapeake, West Virginia, 2001, for which designation "Codified Ordinances" may be substituted. Code, chapter, article and section headings do not constitute any part of the law as contained in the Codified Ordinances.

(b) All references to codes, chapters, articles and sections are to such components of the Codified Ordinances unless otherwise specified. Any component code may be referred to and cited by its name, such as the "Traffic Code". Sections may be referred to and cited by the designation "Section" followed by the number, such as "Section 101.01".

101.02 GENERAL DEFINITIONS.

As used in the Codified Ordinances, unless otherwise expressly provided or the context otherwise requires:

(a) Council means the legislative authority of the Municipality.

(b) County means Kanawha County, West Virginia.

(c) Land or lands and real estate or real property include lands, tenements and hereditaments, and all rights thereto and interests therein except chattel interests.

(d) Laws of the State includes the Constitution of the State and the Constitution of the United States, and treaties and laws made in pursuance thereof. (WVaC 2-2-10)

(e) Municipality or City means the City of Chesapeake, West Virginia.

(f) Offense includes every act or omission for which a fine, forfeiture or punishment is imposed by law. (WVaC 2-2-10)

(g) Owner, when applied to property, includes any part owner, joint owner or tenant in common of the whole or part of such property.

(h) Person or whoever includes corporations, societies, associations and partnerships.

(i) Personal estate or personal property includes goods, chattels, real and personal, money, credits, investments and the evidences thereof.

(j) Preceding, succeeding or following used in reference to any section or sections of an article means next preceding, next succeeding or next following that in which such reference is made. (WVaC 2-2-10)

(k) Premises, as applied to property, includes land and building.

(l) Property or estate embraces both real and personal estate. (WVaC 2-2-10)

(m) 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.

(n) Registered mail includes certified mail.

(o) State means the State of West Virginia or any department, division, commission, board, educational or other institution of the State.

(p) Street includes alleys, avenues, boulevards, lanes, roads, highways, viaducts and all other public thoroughfares within the Municipality.

(q) 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.

(r) Written or in writing includes any representation of words, letters or figures, whether by printing, engraving, writing or otherwise. But when the signature of any person is required, it must be in his own proper handwriting, or his mark, attested, proved or acknowledged. (WVaC 2-2-10)

101.03 RULES OF CONSTRUCTION.

(a) General Rule. All words and phrases shall be construed and understood according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

(b) Gender and Plural. A word importing the singular number only may be applied to several persons or things, as well as to one person or thing; a word importing the plural number only may be applied to one person or thing as well as to several; and a word importing the masculine gender only may be applied to females as well as males.
(WVaC 2-2-10)

(c) Computation of Time. The time within which an act is to be done shall be computed by excluding the first day and including the last, or if the last be a Saturday, Sunday or legal holiday it shall also be excluded.
(WVaC 2-2-3)

(d) Joint Authority. Words purporting to give a joint authority to three or more persons confer such authority upon a majority of them, and not upon any less number.
(WVaC 2-2-10)

(e) Exceptions. The rules of construction shall not apply to any law which contains any express provision excluding such construction, or when the subject matter or context of such law may be repugnant thereto.

101.04 REPEAL OF REPEALING ACT; EFFECT OF REPEAL.

(a) When a law which has repealed another is itself repealed, the former law shall not be revived without express words for that purpose.
(WVaC 2-2-9)

(b) The repeal of a law, or its expiration by virtue of any provision contained therein, shall not affect any offense committed, or penalty or punishment incurred, before the repeal took effect or the law expired, save only that the proceedings thereafter shall conform as far as practicable to the laws in force at the time such proceedings take place, unless otherwise specially provided; and that if any penalty or punishment be mitigated by the new law, such new law may, with the consent of the part affected thereby, be applied to any judgment pronounced after it has taken effect.
(WVaC 2-2-8)

(c) The repeal by any provision of the Codified Ordinances of an ordinance validating previous acts, contracts or transactions shall not affect the validity of such acts, contracts or transactions, but the same shall remain as valid as if there had been no such repeal, but no further.
(WVaC 2-2-11)

101.05 CONSTRUCTION OF SECTION REFERENCES.

When reference is made to any section or group of sections of the Codified Ordinances, such reference shall extend to and include any amendment of or supplement to the section or group of sections so referred to or any section or sections hereafter enacted in lieu thereof; and unless otherwise provided, whenever a reference to a section or group sections is made in any amendment or supplement to any section of the Codified Ordinances hereafter enacted, such reference shall be deemed to refer to the section or sections as the same shall then stand or as thereafter amended.

Whenever in a penalty section reference is made to a violation of a section or an inclusive group of sections, such reference shall be construed to mean a violation of any provision of the section or sections included in such reference.

References in the Codified Ordinances to action taken or authorized under designated sections of the Codified Ordinances include, in every case, action taken or authorized under the applicable legislative provision which is superseded by the Codified Ordinances.

If a section refers to a series of numbers or letters, the first and the last number or letters in the series are deemed to be included.

101.06 ACTS BY AGENT OR DEPUTY.

When a section requires that an act be done by an officer or person, it shall be sufficient if it be done by his agent or deputy, unless it be such as cannot lawfully be done by deputation. (WVaC 2-2-5)

101.07 CONFLICTING PROVISIONS.

If the provisions of different codes, articles or sections of the Codified Ordinances conflict with or contravene each other, the provisions bearing the latest passage date shall prevail. If the conflicting provisions bear the same passage date, the conflict shall be construed so as to be consistent with the meaning or legal effect of the questions of the subject matter taken as a whole.

101.08 SEPARABILITY.

Each section of the Codified Ordinances and every part of each section is an independent section and part of a section, and the holding of any section or a part thereof to be unconstitutional, void or ineffective for any cause does not affect the validity or constitutionality of any other section or part thereof.

101.99 GENERAL PENALTY.

Whenever, in the Codified Ordinances or in any ordinance of the Municipality, any act is prohibited or is made or declared to be unlawful or an offense, or whenever the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is otherwise provided, whoever violates any such provision shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than thirty days, or both. Each day any such violation continues shall constitute a separate offense.

ARTICLE 103
Boundaries

103.01 Annexation.

CROSS REFERENCES
Court order declaring boundaries - see W.Va. Code 8-2-7
Annexation - see W. Va. Code Art. 8-6
Decrease of corporate limits - see W.Va. Code Art. 8-7

103.01 ANNEXATION.

Unincorporated territory may be annexed to and become part of the City contiguous thereto in accordance with the provisions of West Virginia Code Article 8-6.
(Ord. 93-1. Passed 5-3-93.)

ARTICLE 105
Elections

105.01 Election date, City officials and terms of office.
105.02 Qualifications.
105.03 Filing of candidates.
105.04 Filing fees.
105.05 Political parties.
105.06 Wards established; Council at large.
105.07 Vacancies.
105.08 Registration books.
105.09 Expenses of elections.
105.10 Registrars.
105.11 Election Commission; duties.
105.12 Appointment of precinct election officials.
105.13 Compensation of election officials.
105.14 Registration records, election supplies and the return of ballots.
105.15 Canvass of the election.
105.16 Conduct of the election.
105.17 Contested elections.
105.18 Absentee voting.
105.19 State election laws.

CROSS REFERENCES

Municipal elections - see W. Va. Code 3-1-2a
Municipal voting precincts - see W. Va. Code 3-1-6
Municipal precinct registration records - see W. Va. Code 3-1-27
Absentee voting in municipal elections - see W. Va. Code 3-3-13
Integration of municipal elections with systems of permanent registration - see W. Va. Code 8-5-13
Special elections - see W. Va. Code 8-5-15a

105.01 ELECTION DATE, CITY OFFICIALS AND TERMS OF OFFICE.

A municipal 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 Common Council of the City. The municipal officials of the City shall be elected by voters whose names are currently registered with the Registrar of Kanawha County and who reside within the corporate boundaries of the City. The term of office for all elected municipal officials shall be four years, beginning on the first day of July following the election or until their successors shall be elected and qualified. Such elections shall be held in conformity with West Virginia Code Chapters 3 and 8.
(Ord. 90-3. Passed 7-2-90.)

105.02 QUALIFICATIONS.

at Least 24 Hrs

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

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 Council.
(Ord. 90-3. Passed 7-2-90.)

And

105.03 FILING OF CANDIDATES.

Any qualified person may become a candidate for any office in the election by filing therefore with the City Recorder, before midnight Eastern Prevailing (Standard or Daylight) Time, not earlier than ninety days prior to the election nor later than sixty days prior to the election.

In the event that no one files for an office, the new Mayor will appoint a qualified person at the first Council meeting after the new term begins with the approval of Council to fill the vacancy in that office. (Ord. 90-3. Passed 7-2-90.)

STATEMENT OF CANDIDATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, To-Wit:

I, _____, being first duly sworn, say that I reside at _____ Street, in the _____ Ward of the City of Chesapeake, County of Kanawha, State of West Virginia; that at the date of the forthcoming election, I will have lived at this address for a period of at least thirty days prior to the said election, and if a candidate for a Ward Councilperson, I will have resided in the said ward for a period of thirty days prior to the said election) that I am a candidate for the office of _____ to be voted for at the election to be held on the second Tuesday of June, 20___, and I hereby request that my name be printed upon the official ballot at such election for such office.

_____
Signature of Candidate

Subscribed and sworn to before me by _____ on this _____ day of _____, 20 ____.

_____
Notary Public, City Recorder, City Clerk or any other officer authorized to take oaths under the laws of the State of West Virginia.

Title _____

105.04 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 City Recorder upon filing the statement of the candidate. (Ord. 90-3. Passed 7-2-90.)

105.05 POLITICAL PARTIES.

There shall be no political parties in the City. All persons filing for any elective office in the City shall run on a general non-partisan ballot. (Ord. 90-3. Passed 7-2-90.)

105.06 WARDS ESTABLISHED; COUNCIL AT LARGE.

The City shall be divided into three wards with two Councilpersons representing each ward. There shall also be elected a member of Council who shall be a Councilperson-at-Large who shall be elected by a vote of the whole City. 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 City Hall
Ward III	Precinct No. 151	Chesapeake City Hall

Whenever it is deemed necessary 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 Council shall take into consideration the boundaries of the voting precincts as determined by the County Court of Kanawha County.
(Ord. 90-3. Passed 7-2-90.)

105.07 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 above named causes 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 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 City Council, that office shall be appointed by the Mayor to the approval of Council. (Ord. 90-3. Passed 7-2-90.)

and council

105.08 REGISTRATION BOOKS.

The Kanawha 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.
(Ord. 90-3. Passed 7-2-90.)

105.09 EXPENSES OF ELECTIONS.

The expenses of conducting municipal elections shall be paid by the City.
(Ord. 90-3. Passed 7-2-90.)

105.10 REGISTRARS.

The Uniform Election Board appointed by Council to serve in each precinct or voting place shall on election day be ex officio municipal 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 Kanawha County Registration Books as a registered and qualified voter for the precinct in which that person seeks to vote.
(Ord. 90-3. Passed 7-2-90.)

105.11 ELECTION COMMISSION: DUTIES.

The City Recorder being the Chief Election Official of the City, while holding such office, and two qualified electors appointed by Council, shall constitute the Election Commission of the City. Council shall make its appointments to the Election Commission not less than forty-five nor more than sixty days before the election to be held under this Article. The Election Commission so appointed shall hold office at the will and pleasure of 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.

Not less than ten days prior to the election, the City Recorder shall cause a sample ballot showing the names of all candidates seeking election to any office to be published in two newspapers of opposite political affiliation having general circulation in the City.

The members of the Election Commission shall receive such compensation as may be determined by Council but not to exceed $25.00 for each election. (Ord. 90-3. Passed 7-2-90.)

105.12 APPOINTMENT OF PRECINCT ELECTION OFFICIALS.

Council shall meet in special session not less than twenty days prior to the holding of any election and fix the place or places within the City 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 City during a municipal election. In the event 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, Council shall proceed to fill the vacancy with a qualified person. At such meeting Council shall approve the qualifications of all candidates filing for election. (Ord. 90-3. Passed 7-2-90.)

105.13 COMPENSATION OF ELECTION OFFICIALS.

The commissioners and clerks that make up the Uniform Election Board shall receive such compensation as may be determined by Council, not to exceed the compensation payable under general law to precinct election officials. (Ord. 90-3. Passed 7-2-90.)

105.14 REGISTRATION RECORDS, ELECTION SUPPLIES AND THE RETURN OF BALLOTS.

At least three days before the date of a municipal election the City Recorder shall procure from the Clerk of the Kanawha County Court 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 City Recorder the ballots, tally sheets, certificates of the election, registration records, poll books, ballot boxes and other election supplies. The three member Election Commission will then escort the ballots to the County Clerk's office for tabulation. (Ord. 90-3. Passed 7-2-90.)

105.15 CANVASS OF THE ELECTION.

On the first Monday following the election, Council shall canvass the returns of the election and declare and certify by minutes of the meeting and publicly posting the results at the City Hall within five days thereafter. (Ord. 90-3. Passed 7-2-90.)

105.16 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 City. Council may determine the conduct of the election and the results thereof, so long as such acts are consistent with the general law of West Virginia. Qualifications of voters shall be determined by Council under the general law of West Virginia. (Ord. 90-3. Passed 7-2-90.)

105.17 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 Council by their proceedings in such cases shall, as nearly as practicable, conform with like proceedings of the County Court in such cases. (Ord. 90-3. Passed 7-2-90.)

105.18 ABSENTEE VOTING.

Absentee voting in a municipal election shall be permitted in accordance with the provisions of the West Virginia Code. (Ord. 90-3. Passed 7-2-90.)

105.19 STATE ELECTION LAWS.

All municipal elections, except as otherwise provided herein, shall be conducted in accordance with the laws of the State of West Virginia. (Ord. 90-3. Passed 7-2-90.)

ARTICLE 107
Official Standards

107.01 City seal.

CROSS REFERENCES
Legal holidays - see W. Va. Code 2-2-1
Daylight savings time - see W. Va. Code 5-1-25
Computation of time - see ADM. 101.03(c)
Seal - see W. Va. Code 8-12-1 (1)

107.01 CITY SEAL.

The seal of the City 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.
(1963 Code 1-7-1)

CHAPTER THREE - Legislative

Art. 111. Council.
Art. 113. Ordinances and Resolutions.

ARTICLE 111
Council

111.01 Meetings.
111.02 Reading of journal.
111.03 Sergeant-at-arms.
111.04 President pro tem; compelling attendance.
111.05 Standing committees.
111.06 Mayor and Recorder may vote in Council; tie vote.
111.07 Robert's Rules of Order.
111.08 Recorder.
111.09 Authentication of records.
111.10 Motions and resolutions.
111.11 Demand of previous question.
111.12 Rules of debate.
111.13 Control of rules.
111.14 Draft of ordinances.
111.15 Reports of committees.
111.16 Order of business.

CROSS REFERENCES
Open meeting law - se W. Va. Code Art. 6-9A
Composition - see W. Va. Code 8-5-7
Oath - see W. Va. Code 8-5-8
Term - see W. Va. Code 8-5-9
Vacancies - see W. Va. Code 8-5-10
Proceedings - see W. Va. Code Art. 8-9
General powers - see W. Va. Code Art. 8-12
Adoption of rules - see W. Va. Code 8-12-5(45)
Extraterritorial exercise of powers - see W. Va. Code 8-12-19

111.01 MEETINGS.

Council shall meet in regular public session at the Council Chamber in the City 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 Council. Special meetings may be called by the Mayor, or if he is absent from the City, by the Recorder or by a petition signed by not less than three members of Council or by any method prescribed by any ordinance hereinafter adopted.
(1963 Code 1-11-1)

111.02 READING OF JOURNAL.

The Mayor or President pro tem of 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 Council members by mail, to the end that any alterations or corrections may be submitted and entered of record.
(1963 Code 1-11-2)

111.03 SERGEANT-AT-ARMS.
The Police Chief shall attend all meetings of the Council in the capacity of sergeant-at-arms. He 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 authority of Council.
(1963 Code 1-11-3)

111.04 PRESIDENT PRO TEM; COMPELLING ATTENDANCE.
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 Council, less than a quorum, which may meet at any regular or special session, may compel the attendance of absent members of Council.
(1963 Code 1-11-4)

111.05 STANDING COMMITTEES.
The Council as a whole may act as a committee, or the Mayor may appoint any committee he may deem advisable, and such committee shall have at least three members. 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.
(1963 Code 1-11-5)

111.06 MAYOR AND RECORDER MAY VOTE IN COUNCIL; TIE VOTE.
The Mayor and Recorder shall have votes as members of Council, and in case of a tie, the presiding officer for the time being, unless he has previously voted, shall have the casting vote.
(1963 Code 1-11-6)

111.07 ROBERT'S RULES OF ORDER.
The rules of parliamentary usage comprised in "Robert's Rules of Order" by Col. Henry M. Roberts, shall govern Council in all cases not provided for by the rules of Council. In any case not governed by such manual or rules, the City shall be governed by the practice in the House of Delegates of the State. (1963 Code 1-11-7)

111.08 RECORDER.
The Recorder shall be the clerk and custodian of all records and papers of Council; he shall be the custodian of all funds of the City and shall act as treasurer of the City.
(1963 Code 1-11-8)

111.09 AUTHENTICATION OF RECORDS.
All records of Council shall be authenticated by the signature of the Mayor, and attested by the signature of the City Recorder. (1963 Code 1-11-9)

111.10 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 City Recorder before the same shall be debated.
(1963 Code 1-11-10)

111.11 DEMAND OF PREVIOUS QUESTION.

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?"

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 Council. When Council refuses to order the main question, the consideration of the subject shall be resumed as if the previous question had not been demanded. (1963 Code 1-11-11)

111.12 RULES OF DEBATE.

No question shall be debated until it has been propounded by the chair; then the mover shall have the right to explain his view in preference to any other member.

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.

No one shall disturb or interrupt a member who is speaking, without his permission, except to call to order, if he is transgressing the rules. (1963 Code 1-11-12)

111.13 CONTROL OF RULES.

No standing rule or order of Council shall be rescinded, suspended or changed, except by a majority vote of the members elected to Council. (1963 Code 1-11-13)

111.14 DRAFT OF ORDINANCES.

All ordinances introduced in Council shall be typewritten on one side only of plain white paper. (1963 Code 1-11-14)

111.15 REPORTS OF COMMITTEES.

All reports from committees shall be delivered to the Clerk of Council for reading without comment; all statements or argument shall follow the reading of same by the Clerk. (1963 Code 1-11-15)

111.16 ORDER OF BUSINESS.

The order of business for each meeting shall be:

(a) Roll call.
(b) To read, correct and approve the minutes of previous meetings.
(c) To receive and dispose of communications.
(d) To receive resolutions and petitions.
(e) To receive reports of standing committees and other officers.
(f) To receive reports of special committees.
(g) Ordinances introduced and referred to appropriate committees.
(h) Unfinished and miscellaneous business. Public Comment
(i) Roll call and adjournment.

(1963 Code 1-11-16)

ARTICLE 113
Ordinances and Resolutions

113.01 Initiative and referendum.

113.02 Provisions for the recall of elected officials.

CROSS REFERENCES
To make powers effective - see W. Va. Code 8-11-1
Delegating discretion - see W. Va. Code 8-11-2
Action required to be by ordinance - see W. Va. Code 8-11-3, 8-5-12
Procedures - see W. Va. Code 8-11-4
Penalty limitations - see W. Va. Code 8-12-5(57); 8-11-1

113.01 INITIATIVE AND REFERENDUM.

(a) The people may propose and enact laws by the initiative, and approve or reject acts of Council by the referendum.

(b) An initiative or referendum is proposed by an application containing the act to be initiated or the act to be referred. The application shall be signed by not less than ten per cent of the registered voters of the City, and shall be filed with the Recorder. If the Recorder finds it in proper form, the Recorder shall so certify within thirty days after its receipt. Denial of certification shall be subject to judicial review.

(c) After certification of the application, a petition containing a summary of the subject matter shall be prepared by the Recorder for circulation by the sponsors. If signed by registered voters, equal in number to thirty-five percent of those registered voters who voted in the preceding general election and resident in at least two thirds of the wards of the City, it may be filed with the Recorder.

(d) An initiative petition may be filed at any time. The Recorder shall prepare a ballot title and proposition summarizing the proposed act, and shall place them on the ballot for the next Citywide election, more than sixty days after adjournment of Council following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.

(e) A referendum petition may be filed only within one hundred eighty days after the adjournment of the Council session at which the act was passed. The Recorder shall prepare a ballot title and proposition summarizing the act and shall place them on the ballot for the first Citywide election held more than sixty days after adjournment of that Council session.

(f) If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The Recorder shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by Council within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty days after certification.

(g) The initiative shall not be used to dedicate revenues, make or repeal appropriations or create courts, define the jurisdiction of courts or other offices with the City. The referendum shall not be applied to dedications of revenue, to appropriations, or to ordinances necessary for the immediate preservation of the public peace, health, or safety.
(Ord. 80-8.)

113.02 PROVISIONS FOR THE RECALL OF ELECTED OFFICIALS.

(a) Notwithstanding any other provision of this Code, the citizens of the City reserve to themselves the right to remove any or all elected public officials of the City, by majority vote in a recall election in the manner hereinafter provided.

(b) A recall election of the public official is proposed by an application containing the name of the official to be recalled. The application shall be signed by not less than twenty-five percent of the registered voters of the City, and shall be filed with the Recorder. If the Recorder finds it in proper form, the Recorder shall so certify within thirty days after its receipt. Denial of certification shall be subject to judicial review.

(c) After certification of the application, a petition containing the name of the official to be recalled shall be prepared by the Recorder for circulation by the sponsors. If signed by registered voters, equal in number to thirty-five percent of those registered voters who voted in the preceding general election and resident in at least two thirds of the wards of the City, it may be filed with the Recorder.

(d) A recall petition may be filed at any time within sixty days after the official's election. The Recorder shall prepare a ballot title and proposition setting forth the proposition, "Shall _____ be recalled from office?", and shall place the ballot title and proposition on the ballot for a special recall election to be held no sooner than 60 days nor more than 90 days from the filing of the petition, the date, place and time of said election to be fixed by resolution of Council. Provided, however, that if the next regular Citywide election is to be held within 180 days of the filing of the petition, the petition shall be void.

(e) If a majority of the votes cast on the proposition favor its adoption, the public official is considered removed from office effective upon certification of the vote by the Recorder.

(f) Any vacancy created in any office as a result of a recall election as provided herein shall be by appointment by vote of Council and Mayor.

(g) No public official shall be subject to more than one recall election during his term of office. (Ord. 80-8.)

CHAPTER FIVE - Administrative

Art. 131. Mayor.
Art. 133. Recorder.
Art. 137. City Attorney
Art. 139. Police Department.
Art. 141 Fire Department.
Art. 143. Health Services.
Art. 145. Employment Provisions.
Art. 147. Sanitary Board.

ARTICLE 131
Mayor

EDITOR'S NOTE: There are no sections in Article 131. This article is reserved for cross references and any future legislation.

CROSS REFERENCES

Position established - see W. Va. Code 8-5-7
Oath - see W. Va. Code 8-5-8
Term - see W. Va. Code 8-5-9
Vacancy - see W. Va. Code 8-5-10
Voting rights - see W. Va. Code 8-9-2
Powers and duties generally - see W. Va. Code 8-10-1
Acting mayor - see W. Va. Code 8-10-3

Why is their nothing for Mayor

ARTICLE 139
Police Department

EDITOR'S NOTE: There are no sections in Article 139. This article is reserved for cross references and any future legislation.

CROSS REFERENCES

Appointment of special police - see W. Va. Code 8-10-1
Powers and duties - see W. Va. Code 8-14-1, 8-14-3
Hours of duty; holidays - see W. Va. Code 8-14-2, 8-14-2a
School zone officers - see W. Va. Code 8-14-5
Parking lot or building officers - see W. Va. Code 8-14-5a
Civil service - see W. Va. Code 8-14-6 et seq.
Pension and relief fund - see W. Va. Code Art. 8-22
Police bonds - see W. Va. Code 61-7-5

Why
We need a hiring commette
not just the police chief

ARTICLE 133
Recorder

EDITOR'S NOTE: There are no sections in Article 133. This article is reserved for cross references and any future legislation.

CROSS REFERENCES

Position established - see W. Va. Code 8-5-7
Oath - see W. Va. Code 8-5-8
Term - see W. Va. Code 8-5-9
Vacancy - see W. Va. Code 8-5-10
Voting rights - see W. Va. Code 8-9-2
Powers and duties generally - see W. Va. Code 8-10-3

ARTICLE 137
City Attorney

EDITOR'S NOTE: There are no sections in Article 137. This article is reserved for cross references and any future legislation.

CROSS REFERENCES

Hiring special counsel - see W. Va. Code 8-10-1a
Notice of suit against municipality - see W. Va. Code 8-12-2

ARTICLE 141
Fire Department

141.01 Municipal Fire Department created.
141.02 Composition of Department; Fire Chief.
141.03 Duties and powers of Fire Chief.
141.04 Duties of firemen.
141.05 Former companies dissolved.
141.99 Penalty.

CROSS REFERENCES
Power of governing body - see W. Va. Code 8-15-1
Fire protection contracts - see W. Va. Code 8-15-3, 8-12-5(56)
Volunteer fire companies - see W. Va. Code 8-15-4 et seq.
Paid fire departments - see W. Va. Code 8-15-9 et seq.
Civil service - see W. Va. Code 8-15-11 et seq.
Pension and relief fund - see W. Va. Code Art. 8-22
Authority of local fire departments - see W. Va. Code Art. 29-3A

141.01 MUNICIPAL FIRE DEPARTMENT CREATED.

There is created a Municipal Fire Department, which shall be a municipally supported volunteer fire department established pursuant to the laws of the State. The Municipal Fire Department shall be responsible for the prevention and extinguishment of all fires upon all property, public or private, within the City. (1963 Code 1-29-1)

141.02 COMPOSITION OF DEPARTMENT; FIRE CHIEF.

The Municipal Fire Department shall consist of the Municipal Fire Chief and a minimum of twenty firemen. The Municipal Fire Chief shall be appointed by the Mayor upon the advice and consent of the Council, and shall receive the salary authorized by Council. Firemen shall be recruited by the Municipal Fire Chief and shall be appointed as firemen by the Mayor upon the advice and recommendation of the Municipal Fire Chief.
(1963 Code 1-29-2)

141.03 DUTIES AND POWERS OF FIRE CHIEF.

The Municipal Fire Chief shall be responsible for the organization, equipment, government and discipline of the Municipal Fire Department and for the maintenance of its equipment. He shall enforce the ordinances of this City 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. He shall be in command of all fire-fighting efforts, including men and equipment, at all fires within the City, 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. He shall devote as much time as necessary to accomplish his duties and shall be on call at all times, but shall not be considered a full-time employee of the City.
(1963 Code 1-29-3)

141.04 DUTIES OF FIREMEN.

Firemen 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 City 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. (1963 Code 1-29-4)

141.05 FORMER COMPANIES DISSOLVED.

All voluntary fire companies heretofore formed and existing in the City are hereby dissolved. (1963 Code 1-29-5)

141.99 PENALTY.

All persons refusing to obey any lawful order or direction of the Municipal Fire Chief or disrupting or hindering the efforts of the Municipal Fire Department in the prevention and extinguishment of fires shall be deemed guilty of a misdemeanor and fined not more than five hundred dollars ($500.00) or imprisoned for not more than thirty days, or both.

View §8-15-4 in new website

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

PART II. VOLUNTEER FIRE COMPANIES.

§8-15-4. Power and authority to form fire companies; recordation of statement; organization.

Any number of persons, not less than twenty, residing within the corporate limits of a municipality without a paid fire department may form themselves into a company for extinguishing fires therein. A writing stating the formation of such company, with the names of the members thereof subscribed thereto, shall be recorded in the office of the clerk of the county commission of the county wherein such municipality or the major portion of the territory thereof is located, after which the members of the company shall elect its officers, including a commander, and make rules and regulations for effecting its object consistent with the laws of the state and the ordinances of such municipality. A volunteer fire company shall be subject to the authority of the governing body.

ARTICLE 143
Health Services

143.01 Health Officer. **143.02 Duties of Health Officer.**

CROSS REFERENCES
Municipal health officers - see W. Va. Code 16-2-1 et seq.
Alternate local agencies - see W. Va. Code Art. 16-2A
Health, safety and sanitation - see GEN. OFF. Art. 515

143.01 HEALTH OFFICER.

The Health Officer of the City shall be the Health Commissioner of the Kanawha-Charleston Combined Board of Health. (1963 Code 1-33-1)

143.02 DUTIES OF HEALTH OFFICER.

The Health Officer shall enforce all health and sanitation provisions of the West Virginia Code, the rules and regulations of the West Virginia Board of Health, and all health and sanitation provisions of this City Code. (1963 Code 1-33-2)

ARTICLE 145
Employment Provisions

EDITOR'S NOTE: Compensation and benefit legislation is not codified herein since it is subject to frequent change. Please contact the Recorder for information pertaining to such legislation currently in effect.

CROSS REFERENCES

Compensation of officers and employees - see W. Va. Code 8-5-12
Conflict of interest - see W. Va. Code 8-5-19
Bonds - see W. Va. Code 8-12-5(46), (47); 6-2-11
Reimbursement of employment applicant - see W. Va. Code 8-12-5(53)
Employee benefit fund - see W. Va. Code 8-12-5(55)
Insurance and indemnification - see W. Va. Code 8-12-7 et seq.
Retirement benefits - see W. Va. Code Art. 8-22
Military leave - see W. Va. Code Art. 6-11; 15-1F-1
Social security - see W. Va. Code 5-7-5
Police holidays - see W. Va. Code 8-14-2a
Fire department holidays - see W. Va. Code 8-15-10a

ARTICLE 147
Sanitary Board

147.01 Creation; members; term; vacancies.
147.02 City officials not eligible.
147.03 Officers of Board.
147.04 Compensation; expenses.
147.05 Supervisory powers of Board.
147.06 Powers generally.

CROSS REFERENCES
Appointment of Board - see W. Va. Code 16-13-2, 16-13-18
Powers of Board - see W. Va. Code 16-13-3

147.01 CREATION; MEMBERS; TERM; VACANCIES.

There is hereby created the Sanitary Board of the City, which Board shall be composed of the Mayor and two persons appointed by 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 City. 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. (1963 Code 9-71-1)

147.02 CITY OFFICIALS NOT ELIGIBLE.

No officer or employee of the City, 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 his public office. (1963 Code 9-71-2)

147.03 OFFICERS OF BOARD.

The Mayor shall act as chairman of the Sanitary Board, which shall elect a vice chairman 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 chairman, 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. (1963 Code 9-71-3)

147.04 COMPENSATION; EXPENSES.

The chairman of the Sanitary Board shall receive one hundred twenty-five dollars ($125.00) per month and each of the other two members shall receive fifty dollars ($50.00) per month for his services, and shall be entitled to payment for his reasonable expenses incurred in the performance of his duties. The secretary and treasurer shall be paid such reasonable compensation for services as Council shall fix, and the treasurer shall give bond in the amount of one thousand dollars ($1,000) or such other amount as 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 Article 16-13. (1963 Code 9-71-4)

147.05 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 City, 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. (1963 Code 9-71-5)

147.06 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 Article 16-13. (1963 Code 9-71-6)

CHAPTER SEVEN - Judicial
Art. 171. Municipal Court.

ARTICLE 171
Municipal Court

EDITOR'S NOTE: There are no sections in Article 171. This article has been established to provide a place for cross references and any future legislation.

CROSS REFERENCES

Establishment - see W. Va. Code 8-10-2
Suspension of licenses - see W. Va. Code 8-10-2a et seq.
General rights of appeal - see W. Va. Code 8-34-1
Costs for crime victims reparation fund - see W. Va. Code 14-2A-4
Costs for funding law enforcement training academies - see W. Va. Code 30-29-4
Search warrant - see W. Va. Code 62-1A-1

CODIFIED ORDINANCES OF CHESAPEAKE

PART THREE - TRAFFIC CODE

CHAPTER ONE - Administration

Art. 301. Definitions.
Art. 303. Enforcement, Impounding and Penalty.
Art. 305. Traffic Control Map and File.

ARTICLE 301
Definitions

301.01 Meaning of words and phrases.
301.02 Authorized emergency vehicle.
301.03 Bicycle.
301.04 Bus.
301.05 Business district.
301.06 Controlled-access highway.
301.07 Crosswalk.
301.08 Driver.
301.09 Explosives.
301.10 Flammable liquid.
301.11 Gross weight.
301.12 Intersection.
301.13 Laned roadway.
301.14 Moped.
301.15 Motorcycle.
301.16 Motor-driven cycle.
301.17 Motor vehicle.
301.18 Owner.
301.19 Park.
301.20 Parking area.
301.201 Passenger van.
301.21 Pedestrian.
301.22 Person.
301.23 Pole trailer.
301.24 Police officer.
301.25 Private road or driveway; private property.
301.26 Railroad.
301.27 Railroad sign or signal.
301.28 Railroad train.
301.29 Residence district.
301.30 Residential street.
301.31 Right of way.
301.32 Roadway.
301.33 Safety zone.
301.34 School bus.
301.35 School grounds.
301.36 Semitrailer.
301.37 Sidewalk.
301.38 Stop.
301.39 Stop, stopping or standing.
301.40 Street or highway; alley.
301.41 Through street or through highway.
301.42 Traffic.
301.43 Traffic control devices.
301.44 Traffic control signal.
301.45 Trailer.
301.46 Truck.
301.47 Vehicle.

CROSS REFERENCES
See sectional histories for similar State law
Speed race defined - see TRAF. 335.04

301.01 MEANING OF WORDS AND PHRASES.

The following words and phrases when used in this Traffic Code shall, for the purpose of this Traffic Code, have the meanings respectively ascribed to them in this article. (WVaC 17C-1-1)

301.02 AUTHORIZED EMERGENCY VEHICLE.

"Authorized emergency vehicle" means vehicles of the Fire Department, duly chartered rescue squad, Police Department, ambulance service, state, county or municipal agency and such privately owned ambulances, tow trucks, wreckers, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation, postal service vehicles, snow removal equipment, Class A vehicles of firefighters, Class A vehicles of members of ambulance services, and Class A vehicles of members of duly chartered rescue squads, and all other emergency vehicles as are designated by the agency responsible for the operation and control of these persons or organizations. Class A vehicles are as defined by West Virginia Code 17A-10-1. Agency authorization and emergency equipment are defined in West Virginia Code 17C-15-26. Agencies responsible for issuing authorization for emergency vehicle permits may promulgate such regulations that are necessary for the issuance of permits for emergency vehicles. (WVaC 17C-1-6)

301.03 BICYCLE.

"Bicycle" means every device which does not have a motor attached and which is propelled by human power upon which any person may ride, having two tandem wheels either of which is more than twenty inches in diameter. (WVaC 17C-1-8)

301.04 BUS.

"Bus" means every motor vehicle designed for carrying more than seven passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation. (WVaC 17C-1-13)

301.05 BUSINESS DISTRICT.

"Business district" means the territory contiguous to and including a street or highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks or office buildings, railroad stations, and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the street or highway. (WVaC 17C-1-45)

301.06 CONTROLLED-ACCESS HIGHWAY.

"Controlled-access highway" means every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway. (WVaC 17C-1-41)

301.07 CROSSWALK.
"Crosswalk" includes:
(a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the street or highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; and
(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface. (WVaC 17C-1-43)

301.08 DRIVER.
"Driver" means every person who drives or is in actual physical control of a vehicle. (WVaC 17C-1-31)

301.09 EXPLOSIVES.
"Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosive and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.
(WVaC 17C-1-24)

301.10 FLAMMABLE LIQUID.
"Flammable liquid" means any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closedcup test device.
(WVaC 17C-1-25)

301.11 GROSS WEIGHT.
"Gross weight" means the weight of a vehicle without load plus the weight of any load thereon.
(WVaC 17C-1-26)

301.12 INTERSECTION.
"Intersection" includes:
(a) The area embraced within the prolongation or connection of the lateral curb lines or, if none, then the lateral boundary lines of the roadways of two streets or highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different streets or highways joining at any other angle may come in conflict; and
(b) Where a street or highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided street or highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting street or highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such streets or highways shall be regarded as a separate intersection.
(WvaC 17C-1-42)

301.13 LANED ROADWAY.

"Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.
(WVaC 17C-1-39)

301.14 MOPED.

"Moped" means every motorcycle or motor-driven cycle unless otherwise specified in this Traffic Code, which is equipped with two or three wheels, foot pedals to permit muscular propulsion and an independent power source providing a maximum of two brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement shall be fifty cubic centimeters regardless of the number of chambers in such power source. The power source shall be capable of propelling the vehicle, unassisted, at a speed not to exceed thirty miles per hour on a level road surface and shall be equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged.
(WVaC 17C-1-5a)

301.15 MOTORCYCLE.

"Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.
(WVaC 17C-1-4)

301.16 MOTOR-DRIVEN CYCLE.

"Motor-driven cycle" means every motorcycle having a piston displacement of more than fifty cubic centimeters but not more than 150 cubic centimeters, or with not more than five brake horsepower.
(WVaC 17C-1-5)

301.17 MOTOR VEHICLE.

"Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.
(WVaC 17C-1-3)

301.18 OWNER.

"Owner" means a person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this Traffic Code.
(WVaC 17C-1-32)

301.19 PARK.

"Park" when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.
(WVaC 17C-1-54)

301.20 PARKING AREA.

"Parking area" means lots, areas or other accommodations for the parking of vehicles off the street or highway and open to public use with or without charge.
(WVaC 17C-1-60)

301.201 PASSENGER VAN.

"Passenger van" means any van or other motor vehicle owned by any agency, business or other legal entity and operated for the purpose of transportation of children under the age of eighteen years, other than a van utilized for private use, taxicab, bus or school bus. Passenger vans include, but are not limited to, vehicles used by daycare centers, after-school centers and nursery schools. (WVaC 17C-1-64)

301.21 PEDESTRIAN.

"Pedestrian" means any person afoot. (WVaC 17C-1-30)

301.22 PERSON.

"Person" means every natural person, firm, copartnership, association or corporation. (WVaC 17C-1-29)

301.23 POLE TRAILER.

"Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, trusses or structural members capable, generally, of sustaining themselves as beams between the supporting connections.
(WVaC 17C-1-17)

301.24 POLICE OFFICER.

"Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.
(WVaC 17C-1-33)

301.25 PRIVATE ROAD OR DRIVEWAY; PRIVATE PROPERTY.

(a) "Private road" or "driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(b) "Private property" means real estate in private ownership without regard to the manner in which it is used. (WVaC 17C-1-36)

301.26 RAILROAD.

"Railroad" means a carrier of persons or property, upon cars, other than streetcars, operated upon stationary rails. (WVaC 17C-1-21)

301.27 RAILROAD SIGN OR SIGNAL.

"Railroad sign" or "signal" means any sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train. (WVaC 17C-1-49)

301.28 RAILROAD TRAIN.

"Railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars.
(WVaC 17C-1-22)

301.29 RESIDENCE DISTRICT.

"Residence district" means the territory contiguous to and including a street or highway not comprising a business district when the property on such street or highway for a distance of 300 feet or more is in the main improved with residences or residences and buildings in use for business.
(WVaC 17C-1-46)

301.30 RESIDENTIAL STREET.

"Residential street" means the entire width between the boundary lines of every way, whether publicly or privately maintained, located within any subdivision, development or other similar area used primarily for residential purposes when any part thereof is open to the common use of those living in such area for the purpose of vehicular travel.
(WVaC 17C-1-62)

301.31 RIGHT OF WAY.

"Right of way" means the privilege of the immediate use of the street or highway.
(WVaC 17C-1-51)

301.32 ROADWAY.

"Roadway" means that portion of a street or highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a street or highway includes two or more separate roadways, the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.
(WVaC 17C-1-37)

301.33 SAFETY ZONE.

"Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.
(WVaC 17C-1-44)

301.34 SCHOOL BUS.

"School bus" means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school, or privately owned and operated for compensation for the transportation of children to or from school.
(WVaC 17C-1-7)

301.35 SCHOOL GROUNDS.

"School grounds" includes the land on which a school is built together with such other land used by students for play, recreation or athletic events while attending school.
(WVaC 17C-1-55)

301.36 SEMITRAILER.

"Semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.
(WVaC 17C-1-16)

301.37 SIDEWALK.

"Sidewalk" means that portion of a street or highway between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.
(WVaC 17C-1-38)

301.38 STOP.

"Stop" when required, means complete cessation from movement.
(WVaC 17C-1-52)

301.39 STOP, STOPPING OR STANDING.

"Stop", "stopping," or "standing," when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.
(WVaC 17C-1-53)

301.40 STREET OR HIGHWAY; ALLEY.

(a) "Street" or "highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.
(WVaC 17C-1-35)

(b) "Alley" means a street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic.

301.41 THROUGH STREET OR THROUGH HIGHWAY.

"Through street" or "through highway" means every street or highway or portion thereof at the entrances to which vehicular traffic from intersecting streets or highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this Traffic Code.
(WVaC 17C-1-40)

301.42 TRAFFIC.

"Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances either singly or together while using any street or highway for purposes of travel.
(WVaC 17C-1-50)

301.43 TRAFFIC CONTROL DEVICES.

"Traffic control device" means any sign, signal, marking and device not inconsistent with this Traffic Code placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.
(WVaC 17C-1-47)

301.44 TRAFFIC CONTROL SIGNAL.

"Traffic control signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.
(WVaC 17C-1-48)

301.45 TRAILER.

"Trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.
(WVaC 17C-1-15)

301.46 TRUCK.

"Truck" means every motor vehicle designed, used or maintained primarily for the transportation of property.
(WVaC 17C-1-12)

301.47 VEHICLE.

"Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a street or highway, except devices moved by human power or used exclusively upon stationary rails or tracks.
(WVaC 17C-1-2)

ARTICLE 303
Enforcement, Impounding and Penalty

303.01 Authority of Police and Fire Department officials.
303.02 Application to vehicles upon streets and highways; exceptions.
303.03 Obedience to police officers; fleeing.
303.04 Application to government vehicles; exception.
303.05 Authorized emergency vehicles.
303.06 Application to persons riding animals or driving animal-drawn vehicles.
303.07 Impounding of vehicles; redemption.
303.08 Rights of owners of real property.
303.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Disposition of abandoned vehicles - see W. Va. Code 17-24-5 et seq.
Uniform application of West Virginia traffic law - see W. Va. Code 17C-2-7
Power of local authorities - see W. Va. Code 17C-2-8

303.01 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 this Municipality and all of the State vehicle laws applicable to street traffic in this Municipality.

(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.

303.02 APPLICATION TO VEHICLES UPON STREETS AND HIGHWAYS; EXCEPTIONS.

The provisions of this Traffic Code relating to the operation of vehicles refer exclusively to the operation of vehicles upon streets and highways except:

(a) Where a different place is specifically referred to in a given section.

(b) The provisions of this Traffic Code except Article 347 shall apply upon streets and highways as defined in Section 351.06.

(WVaC 17C-2-1)

303.03 OBEDIENCE TO POLICE OFFICERS; FLEEING.

(a) No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer or special officer invested by law with authority to direct, control or regulate traffic.

(WVaC 17C-2-3(c))

(b) 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 his vehicle to a stop.

303.04 APPLICATION TO GOVERNMENT VEHICLES; EXCEPTION.

(a) The provisions of this Traffic Code applicable to the drivers of vehicles upon the streets or highways shall apply to the drivers of all vehicles owned or operated by the United States, this State, or any county, Municipality, town, district or any other political subdivision of the State, except as provided in this section and subject to such specific exceptions as are set forth in this Traffic Code with reference to authorized emergency vehicles.

(b) Unless specifically made applicable, the provisions of this Traffic Code shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a street or highway but shall apply to such persons and vehicles when traveling to or from such work.

(WVaC 17C-2-4)

303.05 AUTHORIZED EMERGENCY VEHICLES.

(a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of an authorized emergency vehicle may:

(1) Park or stand, irrespective of the provisions of this Traffic Code;

(2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(3) Exceed the speed limits so long as he does not endanger life or property;

(4) Disregard regulations governing direction of movement or turning in specified directions.

(c) The exemptions herein granted to an authorized emergency vehicle shall apply only when the driver of any such vehicle while in motion sounds audible signal by bell, siren or exhaust whistle as may be reasonably necessary, and when the vehicle is equipped with at least one lighted flashing lamp as authorized by Section 345.18 which is visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a warning light visible from in front of the vehicle.

(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.
(WVaC 17C-2-5)

303.06 APPLICATION TO PERSONS RIDING ANIMALS OR DRIVING ANIMAL-DRAWN VEHICLES.

Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Traffic Code, except those provisions of this Traffic Code which by their very nature can have no application.
(WVaC 17C-2-6)

303.07 IMPOUNDING OF VEHICLES; REDEMPTION.

Police officers are authorized to provide for the removal and impounding of a vehicle under the following circumstances:

(a) 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.

(b) When any vehicle has been abandoned or junked on private or public property as provided in West Virginia Code Article 17-24.

(c) When any vehicle has been stolen or operated without the consent of the owner.

(d) When any vehicle displays illegal license plates or fails to display the current lawfully required license plates.

(e) When any vehicle has been used in or connected with the commission of a felony.

(f) When any vehicle has been damaged or wrecked so as to be inoperable or violates equipment provisions of this Traffic Code or West Virginia Code Article 17C-15 whereby its continued operation would constitute a condition hazardous to life, limb or property.

(g) When any vehicle is left unattended due to the removal of an ill, injured or arrested operator.

(h) When any vehicle has been operated by any person who has failed to stop in case of an accident or collision.

(i) When any vehicle has been operated by any person who is driving without a lawful license or while his license has been suspended or revoked.

(j) When any vehicle is found for which two or more citation tags for violations of this Traffic Code 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 (b) hereof shall be disposed of as provided under West Virginia Code Article 17-24. 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 pound operator shall release such vehicle upon the receipt of the release form and payment of all towage and storage charges.

303.08 RIGHTS OF OWNERS OF REAL PROPERTY.

Nothing in this Traffic Code shall be construed to prevent an owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as matter of right from prohibiting such use, or from requiring other or different or additional conditions than those specified in this Traffic Code, or otherwise regulating such use as may seem best to such owner.
(WVaC 17C-2-9)

303.99 PENALTY.

Whoever violates any provision of this Traffic Code for which another penalty is not provided shall, for a first conviction thereof, be fined not more than one hundred dollars ($100.00) or imprisoned not more than ten days; for a second such conviction within one year thereafter such person shall be fined not more than two hundred dollars ($200.00) or imprisoned not more than twenty days, or both; and upon a third or subsequent conviction such person shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than thirty days, or both. (WVaC 17C-18-1)

ARTICLE 305
Traffic Control Map and File

305.01 Traffic Control Map.
305.02 Traffic Control File.
305.03 Amendments.
305.99 Penalty.

CROSS REFERENCES
Uniformity with State law required - see W. Va. Code 17C-2-7
Powers of Municipality - see W. Va. Code 17C-2-8

305.01 TRAFFIC CONTROL MAP.

(a) There is hereby established a Traffic Control Map to show at all times the City'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 this Traffic Code shall be attached to and is incorporated as a part of this Traffic Code. (1963 Code 3-5-1)

305.02 TRAFFIC CONTROL 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 this Traffic Code is incorporated as part of this Traffic Code.

(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 Council action authorizing designation.
(4) Date proper signs and markings were erected.
(5) Date recorded upon Traffic Control Map.
(1963 Code 3-5-2)

305.03 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 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) above, he 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 be required by this Traffic Code, 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.
(1963 Code 3-5-3)

305.99 PENALTY.

After the date of the adoption hereof, including any amendment made as provided in Section 305.03, and the erection of signs giving notice thereof, any person upon being found guilty of violating any such traffic control area regulation shall be punished as provided in Section 303.99. (1963 Code 3-5-99)

CHAPTER THREE - Streets and Traffic Control Devices
Art. 311. Street Obstructions and Special Uses.
Art. 313. Traffic Control Devices.

ARTICLE 311
Street Obstructions and Special Uses

311.01 Placing injurious material in street.
311.02 Play streets.
311.03 Toy vehicles on streets.
311.04 Parades and assemblages.
311.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Authority to prohibit littering in streets - see W. Va. Code 8-12-5(3)
Authority to regulate processions or assemblages - see W. Va. Code 17C-2-8(a)(3)
Dropping, leaking loads - see TRAF. 347.04

311.01 PLACING INJURIOUS MATERIAL IN STREET.

(a) No person shall throw or deposit upon any street or highway any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person, animal or vehicle upon such street or highway.

(b) Any person who drops, or permits to be dropped or thrown, upon any street or highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(c) Any person removing a wrecked or damaged vehicle from a street or highway shall remove any glass or other injurious substance dropped upon the street or highway from such vehicle.
(WVaC 17C-14-11)

(d) 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.

311.02 PLAY STREETS.

(a) No person shall use the public streets, highways, alleys, thoroughfares, roads or avenues of the Municipality 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.

311.03 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.

311.04 PARADES AND ASSEMBLAGES.

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.

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.

The permit may be refused or canceled if:

(a) 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.

(b) 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 Municipality.

(c) The parade route of march or assembly areas would unreasonably interfere with the movement of police vehicles, fire-fighting equipment or ambulance service to other areas of the Municipality.

(d) The parade would unreasonably interfere with another parade for which a permit has been issued.

(e) The information contained in the application is found to be false, misleading or incomplete in any material detail.

(f) 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.

311.99 PENALTY.

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty.)

ARTICLE 313
Traffic Control Devices

313.01 Obedience to traffic control devices.
313.02 Obedience to traffic control instructions at street construction.
313.03 Traffic control signal terms and lights.
313.04 Pedestrian control signals.
313.05 Flashing traffic signals.
313.06 Unauthorized signs and signals, hiding from view, advertising.
313.07 Alteration, injury, removal of traffic control devices.
313.08 Traffic violations in construction zones.
313.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Authority to place traffic control devices - see W. Va. Code 17C-2-8(a)(2), 17C-3-3
Placing traffic control devices on State highways - see W. Va. Code 17C-2-8(b), 17C-3-2
Local regulations requiring traffic control devices - see W. Va. Code 17C-2-8(c)
Traffic control devices defined - see TRAF. 301.43
Traffic control signal defined - see TRAF. 301.44

313.01 OBEDIENCE TO TRAFFIC CONTROL DEVICES.

(a) The driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto placed in accordance with the provisions of this Traffic Code, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this Traffic Code.

(b) No provision of this Traffic Code for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, such section shall be effective even though no signs are erected or in place.
(WVaC 17C-3-4)

313.02 OBEDIENCE TO TRAFFIC CONTROL INSTRUCTIONS AT STREET CONSTRUCTION.

The driver of any vehicle shall obey the traffic-control instructions of any law enforcement officer or persons authorized by the Commissioner of Highways or by proper local authorities to operate traffic control devices, act as flagmen or operate authorized vehicles engaged in work at or near the site of street or highway construction maintenance work, for the purpose of regulating, warning or guiding traffic, subject to the exceptions granted the driver of an authorized emergency vehicle in this Traffic Code.
(WVaC 17C-3-4a)

313.03 TRAFFIC CONTROL SIGNAL TERMS AND LIGHTS.

Whenever traffic is controlled by traffic control signals exhibiting the words "go," "caution" or "stop," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and such terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) Green alone or "go":

(1) Vehicular traffic facing the signal, except when prohibited under Section 343.02, may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(2) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(b) Yellow alone or "caution" when showing following the green or "go" signal:

(1) Vehicular traffic facing the signal is thereby warned that the red or "stop" signal will be exhibited immediately thereafter and such vehicular traffic shall not enter or be crossing the intersection when the red or "stop" signal is exhibited.

(2) Pedestrians facing such signal are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right of way to all vehicles.

(c) Red alone or "stop":

(1) Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "go" is shown alone except as provided in subsection (c)(2) and (3) hereof.

(2) A vehicle which is stopped in obedience to a red or "stop" signal as close as practicable at the entrance to the crosswalk on the near side of the intersection or, if none, then at the entrance to the intersection, may cautiously make a right turn but such vehicle shall yield the right of way to pedestrians lawfully within a crosswalk and to other vehicular traffic proceeding as directed by the signal at such intersection, except that Council may by ordinance prohibit any such right turn against a red or "stop" signal at any intersection which ordinance shall be effective when a sign is erected at such intersection giving notice thereof.

(3) A vehicle which is stopped in obedience to a red or "stop" signal as close as practicable at the entrance to the crosswalk on the near side of the intersection or, if none, then at the entrance to the intersection on a one-way street which intersects another one-way street on which traffic moves to the left, may cautiously make a left turn into the one-way street but such vehicle shall yield the right of way to pedestrians lawfully within a crosswalk and to other vehicular traffic proceeding as directed by the signal at such intersection, except that Council may by ordinance prohibit any such left turn against a red or "stop" signal at any intersection, which ordinance shall be effective when a sign is erected at such intersection giving notice thereof.

(4) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(d) Red with green arrow:

(1) Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right of way to pedestrians lawfully within a crosswalk and to other traffic lawfully using the intersection.

(2) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(e) In the event an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.
(WVaC 17C-3-5)

313.04 PEDESTRIAN CONTROL SIGNALS.

Whenever special pedestrian control signals exhibiting the words "walk" or "wait" are in place such signals shall indicate as follows:

(a) Walk. Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right of way by the drivers of all vehicles.

(b) Wait. No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his or her crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.
(WVaC 17C-3-6)

313.05 FLASHING TRAFFIC SIGNALS.

Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

(a) Flashing Red (Stop Signal). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or, if none, then before entering the intersection and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(b) Flashing Yellow (Caution Signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.
(WVaC 17C-3-7)

313.06 UNAUTHORIZED SIGNS AND SIGNALS, HIDING FROM VIEW, ADVERTISING.

(a) No local authority or person shall place, maintain or display upon or in view of any street or highway any unauthorized traffic control device or traffic control signal, or any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic control device or railroad sign or signal, or which attempts to direct the movement of traffic or which hides from view or interferes with the effectiveness of any official traffic control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any street or highway any traffic control device bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to a street or highway of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(b) Every such prohibited device, signal, sign or marking is hereby declared to be a public nuisance and the Commissioner of Highways or other authority having jurisdiction over the street or highway is hereby empowered to remove the same or cause it to be removed without notice.
(WVaC 17C-3-8)

313.07 ALTERATION, INJURY, REMOVAL OF TRAFFIC CONTROL DEVICES.

No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down or remove any official traffic control device or any railroad sign or signal or any inscription, shield or insignia thereon, or any other part thereof.
(WVaC 17C-3-9)

313.08 TRAFFIC VIOLATIONS IN CONSTRUCTION ZONES.

(a) At each and every location where street or highway construction work is to be conducted a sign shall be posted at least 1,000 feet from the construction site, or as close to 1,000 feet from the construction site as is practicable given the location of the site when workers are present, notifying all motorists as to the speed limit and displaying the words "construction work".

(b) No person shall violate any posted speed restriction or traffic restriction at such construction site referred to in subsection (a) of this section.

(c) Nothing in this section shall be construed to preclude prosecution of any operator of a motor vehicle who commits a violation of any other provision of this Traffic Code for such violation.
(WWaC 17C-3-4b)

313.99 PENALTY.

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty if no specific penalty is provided.)

(a) General Penalty. Whoever violates Section 313.01, 313.02 or 313.04 shall be fined not more than one hundred dollars ($100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars ($200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars ($500.00).

(b) Construction Zones.

(1) Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in Section 313.08 by less than fifteen miles per hour shall be fined not more than two hundred dollars ($200.00).

(2) Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in Section 313.08 by fifteen miles per hour or more shall be fined not more than two hundred dollars ($200.00) or imprisoned not more than twenty days, or both.

CHAPTER FIVE - Vehicular Operation

Art. 331. Accidents.
Art. 333. Driving Under the Influence; Reckless Driving.
Art. 335. Speed Restrictions.
Art. 337. Driving on Right; Passing.
Art. 339. Turning and Starting; Signals.
Art. 341. Right of Way.
Art. 343. Special Stops Required.
Art. 345. Safety and Equipment.
Art. 347. Commercial and Heavy Vehicles.
Art. 349. Miscellaneous Rules.
Art. 351. Licensing Generally.
Art. 353. Commercial Drivers.

ARTICLE 331
Accidents

331.01 Accidents involving death or personal injuries.
331.02 Accidents involving damage to vehicle.
331.03 Duty to give information and render aid.
331.04 Collision with unattended vehicle.
331.05 Collision with fixtures upon a street or highway.
331.06 Immediate reports of accidents.
331.07 When driver unable to report.
331.08 Garages to report bullet damage.
331.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law
Authority to require local accident report - see W. Va. Code 17C-4-15
Impounding wrecked vehicles - see TRAF. 303.07
Removal of glass, etc. from highway - see TRAF. 311.01

331.01 ACCIDENTS INVOLVING DEATH OR PERSONAL INJURIES.

The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and shall remain at the scene of the accident until he or she has complied with the requirements of Section 331.03: provided, that the driver may leave the scene of the accident as may reasonably be necessary for the purpose of rendering assistance to an injured person as required by Section 331.03. Every such stop shall be made without obstructing traffic more than is necessary. (WVaC 17C-4-2)

331.02 ACCIDENTS INVOLVING DAMAGE TO VEHICLE.

The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of Section 331.03. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with such requirements under such circumstances shall be guilty of a misdemeanor. (WVaC 17C-4-2)

331.03 DUTY TO GIVE INFORMATION AND RENDER AID.

The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his or her name, address and the registration number of the vehicle he or she is driving and shall upon request and if available exhibit his or her driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making arrangements for the carrying of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person. (WVaC 17C-4-3)

331.04 COLLISION WITH UNATTENDED VEHICLE.

The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.
(WVaC 17C-4-4)

331.05 COLLISION WITH FIXTURES UPON A STREET OR HIGHWAY.

The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his or her name and address and of the registration number of the vehicle he or she is driving and shall upon request and if available exhibit his or her driver's license and shall make report of such accident when and as required.
(WVaC 17C-4-5)

331.06 IMMEDIATE REPORTS OF ACCIDENTS.

The driver of a vehicle involved in an accident resulting in injury to or death of any person or total property damage to an apparent extent of five hundred dollars ($500.00) or more shall immediately by the quickest means of communication, whether oral or written, give notice of such accident to the Police Department.
(WVaC 17C-4-6)

331.07 WHEN DRIVER UNABLE TO REPORT.

Whenever the driver of a vehicle is physically incapable of making an immediate report of an accident as required in Section 331.06 and there was another occupant in the vehicle at the time of the accident capable of making a report, such occupant shall make or cause to be made such report not made by the driver.
(WVaC 17C-4-8)

331.08 GARAGES TO REPORT BULLET DAMAGE.

The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been struck by any bullet, shall report to the Police Department within twenty-four hours after such motor vehicle is received, giving the engine number, registration number, and the name and address of the owner or operator of such vehicle.
(WVaC 17C-4-12)

331.99 PENALTY.

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty.)

Any person violating the provisions of Section 331.01 after being involved in an accident resulting in physical injury but not death to any person shall be imprisoned for not more than thirty days, or fined not more than one thousand dollars ($1,000) or both.
(WVaC 17C-4-1)

ARTICLE 333
Driving Under the Influence; Reckless Driving

333.01 Driving under the influence.
333.02 Reckless driving.
333.03 Hazardous driving.
333.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Authority to prohibit driving under the influence - see W. Va. Code 8-12-5(21)
Compliance with State law - see W. Va. Code 17C-5-11a
Implied consent - see W. Va. Code 17C-5A

333.01 DRIVING UNDER THE INFLUENCE.

(a) Any person who:
  (1) Drives a vehicle in this Municipality while:
    A. He is under the influence of alcohol, or
    B. He is under the influence of any controlled substance, or
    C. He is under the influence of any other drug, or
    D. He is under the combined influence of alcohol and any controlled substance or any other drug, or
    E. He has an alcohol concentration in his or her blood of ten hundredths of one percent (0.10%) or more, by weight; and
  (2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes the death of any person within one year next following such act or failure, is guilty of a misdemeanor, and shall be confined in jail for not less than ninety days nor more than one year and shall be fined not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000).

(b) Any person who:
  (1) Drives a vehicle in this Municipality while:
    A. He is under the influence of alcohol, or
    B. He is under the influence of any controlled substance, or
    C. He is under the influence of any other drug, or
    D. He is under the combined influence of alcohol and any controlled substance or any other drug, or
    E. He has an alcohol concentration in his or her blood of ten hundredths of one percent (0.10%) or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes bodily injury to any person other than himself, is guilty of a misdemeanor, and shall be confined in jail for not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours and shall be fined not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000).

(c) Any person who:

(1) Drives a vehicle in this Municipality while:

A. He is under the influence of alcohol, or

B. He is under the influence of any controlled substance, or

C. He is under the influence of any other drug, or

D. He is under the combined influence of alcohol and any controlled substance or any other drug, or

E. He has an alcohol concentration in his or her blood of ten hundredths of one percent (0.10%) or more, by weight;

(2) Is guilty of a misdemeanor, and shall be confined in jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

(d) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this Municipality, is guilty of a misdemeanor, and shall be confined in jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

(e) Any person who:

(1) Knowingly permits his or her vehicle to be driven in this Municipality by any other person who is:

A. Under the influence of alcohol, or

B. Under the influence of any controlled substance, or

C. Under the influence of any other drug, or

D. Under the combined influence of alcohol and any controlled substance or any other drug, or

E. Has an alcohol concentration in his or her blood of ten hundredths of one percent (0.10%) or more, by weight;

(2) Is guilty of a misdemeanor and shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

(f) Any person who knowingly permits his or her vehicle to be driven in this Municipality by any other person who is an habitual user of narcotic drugs or amphetamine or any derivative thereof, is guilty of a misdemeanor, and shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

(g) Any person under the age of twenty-one years who drives a vehicle in this Municipality while he or she has an alcohol concentration in his or her blood of two hundredths of one percent (0.02%) or more, by weight, but less than ten hundredths of one percent (0.10%), by weight, shall, for a first offense under this subsection, be guilty of a misdemeanor, and shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00). For a second or subsequent offense under this subsection, such person is guilty of a misdemeanor, and shall be confined in jail for twenty-four hours, and shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00). A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings from time to time to allow the person to participate in the vehicle alcohol test and lock program as provided for in West Virginia Code 17C-5A-3a. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection shall not be construed as an admission or be used as evidence.

A person arrested and charged with an offense under the provisions of subsection (a), (b), (c), (d), (e) or (f) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(h) Any person who:

(1) Drives a vehicle in this Municipality while:

A. He is under the influence of alcohol; or

B. He is under the influence of any controlled substance; or

C. He is under the influence of any other drug; or

D. He is under the combined influence of alcohol and any controlled substance or any other drug; or

E. He has an alcohol concentration in his or her blood of ten hundredths of one percent (0.10%) or more, by weight; and

(2) The person when so driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday, shall be guilty of a misdemeanor, and, shall be confined in jail for not less than two days nor more than twelve months, which jail term shall include actual confinement of not less than forty-eight hours, and shall be fined not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000).

(i) A person violating any provision of subsection (a), (b), (c), (d) (e), (f) or (h) hereof shall, for the second offense under this section, be guilty of a misdemeanor, and shall be confined in jail for a period of not less than six months nor more than one year, and the court may, in its discretion, impose a fine of not less than one thousand dollars ($1,000) nor more than three thousand dollars ($3,000).

(j) A person violating any provision of subsection (a), (b), (c), (d), (e), (f) or (h) hereof shall, for the third or any subsequent offense under this section, be guilty of a felony and charged under West Virginia Code 17C-5-2.

(k) For purposes of subsections (i) and (j) hereof relating to second, third and subsequent offenses, the following types of convictions shall be regarded as convictions under this section:

(1) Any conviction under the provisions of subsection (a), (b), (c), (d) or (e) of the prior enactment of this section for an offense which occurred on or after September 1, 1981, and prior to the effective date of this section;

(2) Any conviction under the provisions of subsection (a) of the prior enactment of this section for an offense which occurred within a period of five years immediately preceding September 1, 1981;

(3) Any conviction under a municipal ordinance of this State or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), (c), (d), (e) or (f) of this section, which offense occurred after June 10, 1983; and

(l) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section, if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time periods for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In such case, the warrant or indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final.

(m) The fact that any person charged with a violation of subsection (a), (b), (c) or (d) hereof, or any person permitted to drive as described under subsection (e) or (f) hereof, is or has been legally entitled to use alcohol, a controlled substance or a drug shall not constitute a defense against any charge of violating subsection (a), (b), (c), (d), (e) or (f) hereof.

(n) For purposes of this section, the term "controlled substance" has the meaning ascribed to it in West Virginia Code Chapter 60A.

(o) The sentences provided herein upon conviction for a violation of this section are mandatory and shall not be subject to suspension or probation; provided, that the court may apply the provisions of West Virginia Code 62-11A-1 et seq., to a person sentenced or committed to a term of one year or less. An order for home detention by the court pursuant to the provisions of West Virginia Code Article 62-11B may be used as an alternative sentence to any period of incarceration required by this section.
(WVaC 17C-5-2)

(p) For purposes of this section, the phrase "in this Municipality" means anywhere within the physical boundaries of this Municipality, including, but not limited to, publicly maintained streets and highways, and subdivision streets or other areas not publicly maintained but nonetheless open to the use of the public for purposes of vehicular travel.

(q) When used in this section, the terms or phrases "driving under the influence of intoxicating liquor," "driving or operating a motor vehicle while intoxicated," "for any person who is under the influence of intoxicating liquor to drive any vehicle," or any similar term or phrase shall be construed to mean and be synonymous with the term or phrase "while under the influence of alcohol...drives a vehicle" as the latter term or phrase is used in this section.

(r) A warrant or indictment which charges or alleges an offense, prohibited by the provisions of this section, and which warrant or indictment uses any of the terms or phrases set forth in subsection (q) hereof, shall not thereby be fatally defective if such warrant or indictment otherwise informs the person so accused of the charges against him.
(WVaC 17C-5-2a)

333.02 RECKLESS DRIVING.

(a) No person shall drive any vehicle upon any street or highway, or upon any residential street, or in any parking area, or upon the ways of any institution of higher education, whether public or private or upon the property of the Board of Education, or upon any property within the Municipal park and public recreation system, in willful or wanton disregard for the safety of persons or property.

(b) The provisions of subsection (a) hereof shall not apply to those areas which have been temporarily closed for racing sport events or which may be set aside by the Municipality within the park and recreation system for exclusive use by motorcycles or other recreational vehicles. (WVaC 17C-5-3)

333.03 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 his full time and attention to the operation of such vehicle.

333.99 PENALTY.

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty.)

Whoever violates Section 333.02 shall for a first offense be fined not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500.00), or imprisoned not less than five nor more than thirty days; for a second or subsequent offense shall be fined not less than fifty dollars ($50.00) or more than one thousand dollars ($1,000), or imprisoned not less than ten nor more than thirty days, or both.

ARTICLE 335
Speed Restrictions

335.01 Maximum speed limits.
335.02 Slow speed.
335.03 Special speed limitations.
335.04 Racing on streets and highways prohibited.
335.05 Prima facie evidence of speed by radar.
335.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Authority to regulate speed - see W. Va. Code 17C-2-8, 17C-6-3
Minimum speed regulations - see W. Va. Code 17C-6-3(a)
Special speed limitations - see W. Va. Code 17C-6-4 et seq.
Use of radar - see W. Va. Code 17C-6-7

335.01 MAXIMUM SPEED LIMITS.

(a) No person may drive a vehicle on a street or highway at a speed greater than is reasonable and prudent under the existing conditions and the actual and potential hazards. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the streets and highways in compliance with legal requirements and the duty of all persons to use due care.

(b) Where no special hazard exists that requires lower speed for compliance with subsection (a) of this section the speed of any vehicle not in excess of the limits specified in this section or established as hereinafter authorized is lawful, but any speed in excess of the limits specified below in this subsection or established as hereinafter authorized is unlawful.

(1) Fifteen miles per hour in a school zone during school recess or while children are going to or leaving school during opening or closing hours. A school zone is all school property including school grounds and any street or highway abutting such school grounds and extending one hundred twenty-five feet along such street or highway from the school grounds. Such speed restriction does not apply to vehicles traveling on a controlled-access highway which is separated from the school or school grounds by a fence or barrier approved by the Division of Highways;

(2) Twenty-five miles per hour in any business or residence district;
(3) Fifty-five miles per hour on open country highways; except as otherwise provided by this article.

The speeds set forth in this section may be altered as authorized in West Virginia Code Article 17C-6.

(c) The driver of every vehicle shall, consistent with the requirements of subsection (a) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(d) The speed limit on controlled-access highways and interstate highways, where no special hazard exists that requires a lower speed, shall be not less than fifty-five miles per hour and the speed limits specified in subsection (b) of this section do not apply.
(WVaC 17C-6-1)

335.02 SLOW SPEED.

No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.
(WVaC 17C-6-3a(a))

335.03 SPECIAL SPEED LIMITATIONS.

(a) Subject to all other speed restrictions of this Traffic Code no person shall drive a vehicle not designed for carrying passengers and equipped with pneumatic tires at a speed in excess of:

(1) Twenty miles per hour in any business district;
(2) Twenty-five miles per hour in any residence district;
(3) Forty miles per hour on open country highway;
(4) Trucks licensed at 8,000 pounds gross vehicle weight or less shall be permitted the same speed as passenger cars.
(WVaC 17C-6-4)

(b) No person shall drive any vehicle equipped with other than pneumatic tires at a speed greater than a maximum of ten miles per hour.

No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a street or highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is so signposted.
(WVaC 17C-6-5)

335.04 RACING ON STREETS AND HIGHWAYS PROHIBITED.

No person shall engage in, or aid or abet by serving as lookout or timer or in any other capacity whatever, any speed race, as defined herein, on any public street or highway in this Municipality. For the purposes of this section, "speed race" means:

(a) The operation of a motor vehicle in speed acceleration competition with another motor vehicle or motor vehicles; or

(b) The operation of a motor vehicle in speed acceleration competition against time; or

(c) The operation of a motor vehicle in speed competition with another motor vehicle or motor vehicles where the speed exceeds the lawful speed limit.

(WvaC 17C-6-8(a))

335.05 PRIMA FACIE EVIDENCE OF SPEED BY RADAR.

The speed of a motor vehicle may be proved by evidence obtained by use of any device designed to measure and indicate or record the speed of a moving object by means of microwaves, when such evidence is obtained by members of the Police Department. The evidence so obtained shall be accepted as prima facie evidence of the speed of such vehicle.
(WVaC 17C-6-7)

335.99 PENALTY.

(a) General Article Penalty. Whoever violates any provision of this article for which no other penalty is provided shall be fined not more than one hundred dollars ($100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars ($200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars ($500.00).

(b) Speeding.

(1) Unless otherwise provided in this subsection (b) hereof, any person who violates the provisions of Section 335.01 shall be fined not more than one hundred dollars ($100.00); upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars ($200.00); and, upon a third or subsequent conviction within two years thereafter, shall be fined not more than five hundred dollars ($500.00); provided, that if such third or subsequent conviction is based upon a violation of the provisions of Section 335.01 where the offender exceeded the speed limit by fifteen miles per hour or more, then the person shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than thirty days, or both.

(2) Any person who violates the provisions of Section 335.01(b)(1) shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00); provided, that if such conviction is based upon a violation of the provisions of Section 335.01(b)(1) where the offender exceeded the speed limit by fifteen miles per hour or more in the presence of one or more children, then the person shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or imprisoned not more than thirty days, or both.
(WVaC 17C-6-1)

(c) Street Racing. Whoever violates Section 335.04 shall be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00); for a second offense fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), or by imprisonment for not less than six days nor more than thirty days, or both; and for a third and each subsequent offense fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000), or by imprisonment for not more than thirty days or both. For the purposes of this section, a forfeiture of bail or collateral deposited to secure such person's appearance in court, which forfeiture has not been vacated, shall be equivalent to a final conviction. If at the time of any violation of the provisions of Section 335.04 by any person as an operator of a motor vehicle, such person was not entitled to operate a motor vehicle in this State because his operator's or chauffeur's license, or privilege to drive in this State if such person be a nonresident, had earlier been suspended or removed, then in addition to the penalties provided for in this section, the provisions of Section 351.10 shall be applicable.
(WVaC 17C-6-8)

ARTICLE 337
Driving on Right; Passing

337.01 Driving upon right side of roadway; exceptions.
337.02 Passing to right when proceeding in opposite directions.
337.03 Overtaking, passing to left; driver's duties.
337.04 Overtaking and passing upon right.
337.05 Overtaking, passing to left of center.
337.06 Additional restrictions on driving upon left side of roadway.
337.07 Hazardous or no passing zones.
337.08 One-way roadways and rotary traffic islands.
337.09 Driving in marked lanes or continuous lines of traffic.
337.10 Following too closely.
337.11 Driving upon divided roadways.
337.12 Entering and exiting controlled-access highway.
337.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Authority to establish one-way streets - see W. Va. Code 17C-2-8(4)

337.01 DRIVING UPON RIGHT SIDE OF ROADWAY; EXCEPTIONS.

(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(2) When the right half of a roadway is closed to traffic while under construction or repair;

(3) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(4) Upon a roadway designated and signposted for one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.
(WVaC 17C-7-1)

337.02 PASSING TO RIGHT WHEN PROCEEDING IN OPPOSITE DIRECTIONS.

Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half of the main-traveled portion of the roadway as nearly as possible.
(WVaC 17C-7-2)

337.03 OVERTAKING, PASSING TO LEFT; DRIVER'S DUTIES.

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to these limitations, exceptions and special rules hereinafter stated.

(a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall give an audible signal and pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.
(WVaC 17C-7-3)

337.04 OVERTAKING AND PASSING UPON RIGHT.

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(1) When the vehicle overtaken is making or about to make a left turn;

(2) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction;

(3) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.
(WVaC 17C-7-4)

337.05 OVERTAKING, PASSING TO LEFT OF CENTER.

No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within 100 feet of any vehicle approaching from the opposite direction.
(WVaC 17C-7-5)

337.06 ADDITIONAL RESTRICTIONS ON DRIVING UPON LEFT SIDE OF ROADWAY.

(a) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

(1) When approaching the crest of a grade or upon a curve in the street or highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(2) When approaching within 100 feet of or traversing any intersection or railroad grade crossing;

(3) When the view is obstructed upon approaching within 100 feet of any bridge, viaduct or tunnel.

(b) The foregoing limitations shall not apply upon a one-way roadway.
(WVaC 17C-7-6)

337.07 HAZARDOUS OR NO PASSING ZONES.

When signs or markings are in place and clearly visible to an ordinarily observant person indicating that overtaking and passing or driving to the left of the roadway would be especially hazardous, every driver of a vehicle shall obey the directions thereof.
(WVaC 17C-7-7)

337.08 ONE-WAY ROADWAYS AND ROTARY TRAFFIC ISLANDS.

(a) Upon a roadway designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated.

(b) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.
(WVaC 17C-7-8(b), (c))

337.09 DRIVING IN MARKED LANES OR CONTINUOUS LINES OF TRAFFIC.

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(b) Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane which is clearly marked as a left turn lane except in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation.

(c) Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such sign.
(WVaC 17C-7-9)

337.10 FOLLOWING TOO CLOSELY.

(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent having due regard for the speed of such vehicles and the traffic upon and the condition of the street or highway.

(b) No operator of any motor truck, registered for a gross weight of more than 8,000 pounds, bus, special mobile equipment or any motor vehicle drawing another vehicle operating upon any roadway outside of a business or residence district, shall follow within 200 feet of another motor truck, bus, special mobile equipment or any motor vehicle drawing another vehicle; provided that this provision shall not be construed to:

(1) Prevent overtaking and passing;

(2) Apply upon any lane specially designated for the use of motor trucks or combinations of vehicles, or within any section of a roadway posted or marked as a "no-passing zone";

(3) Apply to any convoy of vehicles of the military service of the United States or of this State; and

(4) Apply to funeral processions.

(c) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to:

(1) Funeral processions; or

(2) Any convoy of vehicles of the military service of the United States or of this State.

(WVaC 17C-7-10)

337.11 DRIVING UPON DIVIDED ROADWAYS.

Whenever any street or highway has been divided into two roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway and no vehicle shall be driven over, across or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection established by public authority.
(WVaC 17C-7-11)

337.12 ENTERING AND EXITING CONTROLLED-ACCESS HIGHWAY.

No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.
(WVaC 17C-7-12)

337.99 PENALTY.

Whoever violates any provision of this article shall be fined not more than one hundred dollars ($100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars ($200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars ($500.00).

ARTICLE 339
Turning and Starting; Signals

339.01 Conformity with provisions required.
339.02 Right turns.
339.03 Left turns on two-way roadways.
339.04 Left turns on other than two-way roadways.
339.05 Specified turns at intersections.
339.06 "U" turns restricted.
339.07 Starting vehicle.
339.08 Signals before changing course, turning or stopping.
339.09 Signals to be given by hand and arm or signal device.
339.10 Hand and arm signals.
339.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Authority to regulate the turning of vehicles - see W. Va. Code 17C-2-8(a)(9)
Authority to specify different courses for turns - see W. Va. Code 17C-8-5

339.01 CONFORMITY WITH PROVISIONS REQUIRED.

The driver of a vehicle intending to turn at an intersection shall do so as provided in this article.
(WVaC 17C-8-1)

339.02 RIGHT TURNS.

Both the 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.
(WVaC 17C-8-2)

339.03 LEFT TURNS ON TWO-WAY ROADWAYS.

At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the centerline thereof and by passing to the right of such centerline where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the centerline of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.
(WVaC 17C-8-3)

339.04 LEFT TURNS ON OTHER THAN TWO-WAY ROADWAYS.

At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.
(WVaC 17C-8-4)

339.05 SPECIFIED TURNS AT INTERSECTIONS.

Council or other designated traffic authority may cause markers, buttons or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this article be traveled by vehicles turning at an intersection, and when markers, buttons or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons or signs. (WVaC 17C-8-5)

339.06 "U" TURNS RESTRICTED.

(a) No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within 500 feet.
(WVaC 17C-8-6)

(b) No vehicle shall be turned so as to proceed in the opposite direction within an intersection, or upon any street in a business district, or upon a freeway, expressway or controlled-access highway, or where authorized signs are erected to prohibit such movement, or at any other location unless such movement can be made with reasonable safety to other users of the street and without interfering with the safe operation of any traffic that may be affected by such movement.

339.07 STARTING VEHICLE.

No person shall start a vehicle which is stopped, standing or parked unless and until such movement can be made with reasonable safety.
(WVaC 17C-8-7)

339.08 SIGNALS BEFORE CHANGING COURSE, TURNING OR STOPPING.

(a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in Sections 339.02 to 339.05, or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.
(WVaC 17C-8-8)

339.09 SIGNALS TO BE GIVEN BY HAND AND ARM OR SIGNAL DEVICE.

Any stop or turn signal when required herein shall be given either by means of the hand and arm or by a signal lamp or lamps or mechanical signal device, but when a vehicle is so constructed or loaded that hand-and-arm signal would not be visible both to the front and rear of such vehicle then such signals must be given by such a lamp or lamps or signal device.
(WVaC 17C-8-9)

339.10 HAND AND ARM SIGNALS.

All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

(a) Left Turn: Hand and arm extended horizontally.
(b) Right Turn: Hand and arm extended upward.
(c) Stop or Decrease Speed: Hand and arm extended downward.
(WVaC 17C-8-10)

339.99 PENALTY.

Whoever violates any provision of this article shall be fined not more than one hundred dollars ($100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars ($200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars ($500.00).

ARTICLE 341
Right of Way

341.01 Right of way at intersections.
341.02 Right of way when turning left.
341.03 Right of way at through street or highway or stop intersections.
341.04 Driving onto roadway from private road or driveway; duty to yield.
341.05 Right of way of emergency vehicle.
341.06 Turning into private driveway, alley or building.
341.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Authority to designate through streets and stop intersections - see W. Va. Code 17C-2-8(a)(6), 17C-12-5

341.01 RIGHT OF WAY AT INTERSECTIONS.

(a) The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection from a different street or highway.

(b) When two vehicles enter an intersection from a different street or highway at approximately the same time the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(c) The right-of-way rules declared in subsections (a) and (b) hereof are modified at through streets or highways and otherwise as hereinafter stated in this article.
(WVaC 17C-9-1)

341.02 RIGHT OF WAY WHEN TURNING LEFT.

The driver of a vehicle within an intersection intending to turn to the left shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but such driver, having so yielded and having given a signal when and as required by this Traffic Code may make such left turn and the drivers of all other vehicles approaching the intersection from the opposite direction shall yield the right of way to the vehicles making the left turn.
(WVaC 17C-9-2)

341.03 RIGHT OF WAY AT THROUGH STREET OR HIGHWAY OR STOP INTERSECTIONS.

(a) The driver of a vehicle shall stop as required by Section 343.05 at the entrance to a through street or highway and shall yield the right of way to other vehicles which have entered the intersection from such through streets or highways or which are approaching so closely on such through street or highway as to constitute an immediate hazard but the driver having so yielded may proceed.

(b) The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through street or highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.
(WVaC 17C-9-3)

341.04 DRIVING ONTO ROADWAY FROM PRIVATE ROAD OR DRIVEWAY; DUTY TO YIELD.

The driver of a vehicle about to enter or cross a street or highway from a private road or driveway shall yield the right of way to all vehicles approaching on the street or highway.
(WVaC 17C-9-4)

341.05 RIGHT OF WAY OF EMERGENCY VEHICLE.

(a) Upon the immediate approach of an authorized emergency vehicle equipped with at least one flashing lighted lamp of a color authorized by Section 345.18, which is visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle other than a police vehicle when operated as an authorized emergency vehicle, and when the driver is giving audible signal by siren, exhaust whistle or bell, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the street or highway.
(WVaC 17C-9-5)

341.06 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:

(a) 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.

(b) 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 center line thereof.

(c) 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.

341.99 PENALTY.

Whoever violates any provision of this article shall be fined not more than one hundred dollars ($100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars ($200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars ($500.00).
(WVaC 17C-9-6)

ARTICLE 343
Special Stops Required

343.01 Driving across grade crossing.
343.02 Stops at dangerous grade crossings.
343.03 Stopping at grade crossing.
343.04 Moving heavy equipment across grade crossings.
343.05 Through streets and stop intersections.
343.06 Driving onto roadway from place other than roadway; stopping at sidewalk.
343.07 Stopping for school bus; signs and warning lights; sale of school bus.
343.08 Stopping for passenger van; signs and warning lights.
343.09 Obstructing intersection or crosswalk.
343.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Authority to establish through streets and stop intersections - see W. Va. Code 17C-2-8(a)(6)

343.01 DRIVING ACROSS GRADE CROSSING.

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

(1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(2) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

(3) A railroad train approaching within approximately 1,500 feet of the street or highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;

(4) Any approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(b) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed. (WVaC 17C-12-1)

343.02 STOPS AT DANGEROUS GRADE CROSSINGS.

Council or other designated traffic authority with the approval of the State Commissioner of Highways is hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. When such stop signs are erected the driver of any vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall proceed only upon exercising due care.
(WVaC 17C-12-2)

343.03 STOPPING AT GRADE CROSSING.

(a) The driver of any motor vehicle carrying passengers for hire, or of any bus, or of any vehicle required to be placarded under 49 CFR part 172 carrying explosive substances, flammable liquids or hazardous materials as a cargo or part of a cargo, or of any vehicle owned by an employer which, in carrying on such employer's business or in carrying employees to and from work, is carrying more than six employees of such employer, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty feet but not less than fifteen feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so the driver of any such vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing and the driver shall not shift gears while crossing the track or tracks.

(b) No stop need be made at any such crossing where a police officer or a traffic control signal directs traffic to proceed.
(WVaC 17C-12-3)

343.04 MOVING HEAVY EQUIPMENT ACROSS GRADE CROSSINGS.

(a) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller or any equipment or structure having a normal operating speed of ten or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event, of less than nine inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(b) Notice of any such intended crossing shall be given to a station agent of such railroad and a reasonable time be given to such railroad to provide proper protection at such crossing.

(c) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen feet nor more than fifty feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(d) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction.
(WVaC 17C-12-4)

343.05 THROUGH STREETS AND STOP INTERSECTIONS.

(a) Council or other designated traffic authority may designate through streets or highways and erect stop signs at specified entrances thereto or may designate any intersection as a stop intersection and erect like signs at one or more entrances to such intersection.

(b) Every such sign shall bear the word "Stop" in letters not less than six inches in height and such sign shall at nighttime be rendered luminous by steady or flashing internal illumination, or by a fixed floodlight projected on the face of the sign, or by efficient reflecting elements on the face of the sign.

(c) Every stop sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the roadway.

(d) Every driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or in the event there is no crosswalk shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting street or highway where the driver has a view of approaching traffic on the intersecting street or highway before entering the intersection except when directed to proceed by a police officer or traffic control signal.
(WVaC 17C-12-5)

343.06 DRIVING ONTO ROADWAY FROM PLACE OTHER THAN ROADWAY; STOPPING AT SIDEWALK.

The driver of a vehicle within a business or residence district emerging from any alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or private driveway, and shall yield the right of way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right of way to all vehicles approaching on such roadway.
(WVaC 17C-12-6)

343.07 STOPPING FOR SCHOOL BUS; SIGNS AND WARNING LIGHTS; SALE OF SCHOOL BUS.

(a) The driver of a vehicle upon meeting or overtaking from either direction any school bus which has stopped for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on such school bus flashing warning signal lights, as referred to in West Virginia Code 17C-12-8 and such driver shall not proceed until such school bus resumes motion, or is signaled by the school bus driver to proceed or the visual signals are no longer actuated. This section applies wherever the school bus is receiving or discharging children, including, but not limited to, any street, highway, parking lot, private road or driveway: provided, that the driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a school bus which is on a different roadway or adjacent to such highway and where pedestrians are not permitted to cross the roadway. If the identity of the driver cannot be ascertained, then any such owner or lessee of the vehicle in violation of this subsection shall be subject to the penalty provided for a violation of this subsection provided, however, that such conviction shall not subject such owner or lessee to further administrative or other penalties for such offense, notwithstanding other provisions of the West Virginia Code or this Traffic Code to the contrary.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words "school bus" in letters not less than eight inches in height. When a contract school bus is being operated upon a street or highway for purposes other than the actual transportation of children either to or from school, all markings thereon indicating "school bus" shall be covered or concealed. Any school bus sold or transferred to another owner by a county board of education, agency or individual, shall have all flashing warning lights disconnected and all lettering removed or permanently obscured, except when sold or transferred for the transportation of school children.
(WVaC 17C-12-7)

343.08 STOPPING FOR PASSENGER VAN; SIGNS AND WARNING LIGHTS.

(a) Every passenger van used for the transportation of children shall bear upon the front and rear thereof a plainly visible sign containing the warning "Caution: Loading and Unloading Passengers" in letters not less than six inches in height. Every such passenger van shall be equipped with either flashing warning signal lights as are contemplated and referred to in West Virginia Code 17C-12-8, or a red caution flag which the driver or some other adult must use by exiting the passenger van and displaying while assisting in the loading or unloading of passengers. Such vehicles may also be equipped with a white flashing strobotron warning light that meets the requirements set forth in West Virginia Code 17C-15-26(e).

(b) The driver of a vehicle upon meeting or overtaking from any direction any passenger van which has stopped for the purpose of loading or unloading passengers shall stop his or her vehicle before reaching the passenger van when there is in operation on the passenger van flashing warning signal lights or when an adult is outside the passenger van with a red caution flag and assisting with the loading or unloading of passengers. The driver of a vehicle may not proceed until he or she is signaled by the passenger van driver to proceed, the passenger van flashing signal lights are no longer actuated, or the passenger resumes motion. This section applies whenever the passenger van is loading or unloading children on any street, highway, parking lot, private road or driveway: provided, that the driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a passenger van which is on a different roadway or adjacent to the highway and where pedestrians are not permitted to cross the roadway.
(WVaC 17C-12-17a)

343.09 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 he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

343.99 PENALTY.

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty if no specific penalty is provided.)

(a) Driving Onto Roadway From Place Other Than Roadway. Whoever violates Section 343.06 shall be fined not more than one hundred dollars ($100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars ($200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars ($500.00).

(b) Stopping For School Bus or Passenger Van. Any driver acting in violation of Section 343.07(a) or 343.08(b) shall be fined not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00), or imprisoned not more than thirty days, or both. If the identity of the driver cannot be ascertained, then any such owner or lessee of the vehicle in violation of Section 343.07(a) or 343.08(b) shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00): provided, however, that such conviction shall not subject such owner or lessee to further administrative or other penalties for such offense, notwithstanding other provisions of this Traffic Code to the contrary.

ARTICLE 345
Safety and Equipment

345.01 Driving unsafe vehicles; application; farm and road equipment exceptions.
345.02 When lighted lights required.
345.03 Measurement of distances and heights.
345.04 Headlights on motor vehicles and motorcycles.
345.05 Tail light; illumination of rear license plate.
345.06 Red light or red flag on extended loads.
345.07 Lights on parked or stopped vehicles.
345.08 Lights on slow-moving vehicles.
345.09 Spotlights and auxiliary lights.
345.10 Signal lamps and signal devices.
345.11 Cowl, fender and back-up lights; flashing hazard lights.
345.12 Multiple-beam road-lighting equipment requirements.
345.13 Use of headlight beams.
345.14 Single-beam road-lighting equipment.
345.15 Lights on motorcycles, motor-driven cycles and mopeds.
345.16 Alternate road-lighting equipment.
345.17 Number of driving lights required or permitted.
345.18 Special restrictions on lights.
345.19 Motor vehicle or motorcycle brakes.
345.20 Inspection of brakes on motorcycles, motor-driven cycles and mopeds.
345.21 Horn, siren and theft alarm signal.
345.22 Muffler; muffler cutout; excessive smoke, gas or noise.
345.23 Rear-view mirror.
345.24 Windshield to be unobstructed; windshield wiper.
345.25 Tire equipment restrictions.
345.26 Safety glass in motor vehicles.
345.27 Vehicles transporting explosives.
345.28 Television receiver in driver's view prohibited.
345.29 Safety equipment for motorcyclists, motorcycles, motor-driven cycles and mopeds.
345.30 Certification labels on mopeds.
345.31 Child passenger safety device required.
345.32 Certificate of inspection and approval.
345.33 Alteration of motor vehicles; bumper height limits.
345.34 Sun screening devices.
345.35 Operation of vehicles with safety belts.
345.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Obscured light on vehicles in combination - see W. Va. Code 17C-15-13
Warning devices for commercial vehicles - see W. Va. Code 17C-15-39
Bicycle equipment - see TRAF. Art. 373

345.01 DRIVING UNSAFE VEHICLES; APPLICATION; FARM AND ROAD EQUIPMENT EXCEPTIONS.

(a) No person shall drive or move and no owner shall cause or knowingly permit to be driven or moved on any street or highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this article, or which is equipped in any manner in violation of this article, or for any person to do any act forbidden or fail to perform any act required under this article.

(b) Nothing contained in this article shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this article.

(c) The provisions of this article with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers or farm tractors except as herein made applicable. Every farm tractor equipped with an electric lighting system shall at all times mentioned in Section 345.02 display a red tail lamp and either multiple-beam or single-beam head lamps meeting the requirements of Section 345.02.
(WVaC 17C-15-1)

345.02 WHEN LIGHTED LIGHTS REQUIRED.

Every vehicle other than a school bus, motorcycle, motor-driven cycle or moped operated upon a street or highway within this Municipality at any time from sunset to sunrise or during fog, smoke, rain or other unfavorable atmospheric conditions, or at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the street or highway at a distance of 500 feet ahead shall display lighted head lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as provided for in Section 345.07(c). Every school bus, motorcycle, motor-driven cycle and moped shall display lighted head lamps at all times when upon the street or highway.
(WVaC 17C-15-2)

345.03 MEASUREMENT OF DISTANCES AND HEIGHTS.

(a) Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible such provisions shall apply during the times stated in Section 345.02 in respect to a vehicle without load when upon a straight, level, unlighted street or highway under normal atmospheric conditions unless a different time or condition is expressly stated.

(b) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.
(WVaC 17C-15-3)

345.04 HEADLIGHTS ON MOTOR VEHICLES AND MOTORCYCLES.

(a) Every motor vehicle other than a motorcycle, motor-driven cycle or moped shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this article.

(b) Every motorcycle, motor-driven cycle and moped shall be equipped with at least one and not more than two head lamps which shall comply with the requirements and limitations of this article.

(c) Every head lamp upon every motor vehicle, including every motorcycle, motor-driven cycle and moped, shall be located at a height measured from the center of the head lamp of not more than fifty-four inches nor less than twenty-four inches to be measured as set forth in Section 345.03.
(WVaC 17C-15-4)

345.05 TAIL LIGHT; ILLUMINATION OF REAR LICENSE PLATE.

(a) Every motor vehicle, trailer or semitrailer, and any other vehicle which is being drawn at the end of a train of vehicles, shall be equipped with at least one tail lamp mounted on the rear, which, when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of 500 feet to the rear, provided that in the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified.

(b) Every tail lamp upon every vehicle shall be located at a height of not more than sixty inches nor less than twenty inches to be measured as set forth in Section 345.03(b).

(c) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. Any tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.
(WVaC 17C-15-5)

345.06 RED LIGHT OR RED FLAG ON EXTENDED LOADS.

Whenever the load upon any vehicle extends to the rear four feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in Section 345.02, a red light or lantern plainly visible from a distance of at least 500 feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red rear light required upon every vehicle. At any time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than twelve inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.
(WVaC 17C-15-14)

345.07 LIGHTS ON PARKED OR STOPPED VEHICLES.

(a) Whenever a vehicle is lawfully parked upon a street or highway during the hours between sunset and sunrise and in the event there is sufficient light to reveal any person or object within a distance of 500 feet upon such street or highway no lights need be displayed upon such parked vehicle.

(b) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between sunset and sunrise and there is not sufficient light to reveal any person or object within a distance of 500 feet upon such street or highway, such vehicle so parked or stopped shall be equipped with one or more lamps meeting the following requirements: At least one lamp shall display a white or amber light visible from a distance of 500 feet to the front of the vehicle, and the same lamp or at least one other lamp shall display a red light visible from a distance of 500 feet to the rear of the vehicle, and the location of such lamp or lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. The foregoing provisions shall not apply to a motorcycle, motor-driven cycle or moped.

(c) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed. (WVaC 17C-15-15)

345.08 LIGHTS ON SLOW-MOVING VEHICLES.

All vehicles including animal-drawn vehicles and including those referred to in Section 345.01(c) not hereinbefore specifically required to be equipped with lamps, shall at the times specified in Section 345.02 be equipped with at least one lighted lamp or lantern exhibiting a white light visible from a distance of 500 feet to the front of such vehicle and with a lamp or lantern exhibiting a red light visible from a distance of 500 feet to the rear.
(WVaC 17C-15-16)

345.09 SPOTLIGHTS AND AUXILIARY LIGHTS.

(a) Spot Lamps. Any motor vehicle except a public utility company maintenance vehicle may be equipped with not to exceed one spot lamp and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than 100 feet ahead of the vehicle. A public utility company maintenance vehicle may be equipped with more than one spot lamp but all lighted spot lamps shall be aimed and used in conformity to the requirements of this subsection.

(b) Fog Lamps. Any motor vehicle may be equipped with not to exceed two fog lamps mounted on the front at a height not less than twelve inches nor more than thirty inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty-five feet ahead project higher than a level of four inches below the level of the center of the lamp from which it comes.

(c) Auxiliary Passing Lamp. Any motor vehicle may be equipped with not to exceed one auxiliary passing lamp mounted on the front at a height not less than twenty-four inches nor more than forty-two inches above the level surface upon which the vehicle stands and every auxiliary passing lamp shall meet the requirements and limitations set forth in this article.

(d) Auxiliary Driving Lamp. Any motor vehicle may be equipped with not to exceed one auxiliary driving lamp mounted on the front at a height not less than sixteen inches nor more than forty-two inches above the level surface upon which the vehicle stands and every such auxiliary driving lamp shall meet the requirements and limitations set forth in this article. (WVaC 17C-15-17)

345.10 SIGNAL LAMPS AND SIGNAL DEVICES.

(a) Any motor vehicle may be equipped and when required under this Traffic Code shall be equipped with the following signal lamps or devices:

(1) A stop lamp on the rear which shall emit a red or yellow light and which shall be actuated upon application of the service (foot) brake and which may but need not be incorporated with a tail lamp.

(2) A lamp or lamps or mechanical signal device capable of clearly indicating any intention to turn either to the right or to the left and which shall be visible both from the front and rear.

(b) A stop lamp shall be plainly visible and understandable from a distance of 100 feet to the rear both during normal sunlight and at nighttime and signal lamp or lamps indicating intention to turn shall be visible and understandable during daytime and nighttime from a distance of 100 feet both to the front and rear. When a vehicle is equipped with a stop lamp or other signal lamps, such lamp or lamps shall at all times be maintained in good working condition. No stop lamp or signal lamp shall project a glaring or dazzling light.

(c) All mechanical signal devices shall be self-illuminated when in use at the times mentioned in Section 345.02.
(WVaC 17C-15-18)

345.11 COWL, FENDER AND BACK-UP LIGHTS; FLASHING HAZARD LIGHTS.

(a) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

(b) Any motor vehicle may be equipped with not more than one running-board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(c) Except for school buses as provided in this subsection, any motor vehicle may be equipped with not more than two back-up lamps either separately or in combination with other lamps, but any such back-up lamp shall not be lighted when the motor vehicle is in forward motion. School buses used for the transportation of school children in this Municipality, whether owned and operated by a county board of education or privately owned and operated under contract with a county board of education, shall be equipped with two back-up lamps, one on each side of the rear door, with white lens or reflectors, capable of lighting the roadway and objects to the rear of the bus for safe backing during darkness, and which, at the option of the county board of education, may each provide fifty candlepower in illumination intensity instead of thirty-two candlepower.

(d) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing, and when so equipped may display such warning in addition to any other warning signals required by this article. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights or any shade of color between amber and red.

(e) Vehicles used by "rural mail carriers" in carrying or delivering mail in rural areas may be equipped with amber flashing lights. Such lights shall be on the front and rear of the vehicle and may be activated when the vehicle is stopped or decreasing speed in order to stop in the course of carrying, delivering or picking up mail along the route.

(f) Notwithstanding any other provision of this Code to the contrary, any motor vehicle may be equipped with not more than one electroluminescent solid state ceramic front identification plate without glare, mounted in conformance with the manufacturer's specifications.

(g) Vehicles used as the lead car in a funeral procession are hereby authorized to be equipped with, but are not required to use, purple lamps or purple flashing lights. Such lamps may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing a funeral procession, and when so equipped may display such warning in addition to any other warning signals required by this article. The lamps or flashing lights used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously either illuminating or flashing purple lights. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing or illuminated purple lights. (WVaC 17C-15-19)

345.12 MULTIPLE-BEAM ROAD-LIGHTING EQUIPMENT REQUIREMENTS.

Except as hereinafter provided, the head lamps or the auxiliary driving lamp or the auxiliary passing lamp or combinations thereof on motor vehicles other than a motorcycle, motor-driven cycle or moped shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(a) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least 350 feet ahead for all conditions of loading.

(b) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(c) Every new motor vehicle, other than a motorcycle, motor-driven cycle or moped, registered in the State after January 1, 1952, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. Such indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped. (WVaC 17C-15-20)

345.13 USE OF HEADLIGHT BEAMS.

Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in Section 345.02, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(a) Whenever a driver of a vehicle approaches an oncoming vehicle within 500 feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam specified in Section 345.12(b) shall be deemed to avoid glare at all times regardless of road contour and loading.

(b) Whenever the driver of a vehicle follows another vehicle within 200 feet to the rear, except when engaged in the act of overtaking and passing, such driver shall use a distribution of light permissible under this Traffic Code other than the uppermost distribution of light specified in Section 345.12(a). (WVaC 17C-15-21)

345.14 SINGLE-BEAM ROAD-LIGHTING EQUIPMENT.

Head lamps arranged to provide a single distribution of light shall be permitted on motor vehicles manufactured and sold prior to July 1, 1952 in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

(a) The head lamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of twenty-five feet ahead project higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two inches above the level on which the vehicle stands at a distance of seventy-five feet ahead.

(b) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least 200 feet. (WVaC 17C-15-22)

345.15 LIGHTS ON MOTORCYCLES, MOTOR-DRIVEN CYCLES AND MOPEDS.

The head lamp or head lamps upon every motorcycle, motor-driven cycle and moped may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

(a) Every such head lamp or head lamps shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than 100 feet when the motorcycle, motor-driven cycle or moped is operated at any speed less than twenty-five miles per hour and at a distance of not less than 200 feet when it is operated at a speed of twenty-five or more miles per hour.

(b) In the event the motorcycle, motor-driven cycle or moped is equipped with a multiple-beam type head lamp or head lamps the upper beam shall meet the minimum requirements set forth above and shall not exceed the limitations set forth in Section 345.12(a) and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in Section 345.12(b).

(c) In the event the motorcycle, motor-driven cycle or moped is equipped with a single-beam lamp or lamps such lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five feet ahead, shall project higher than the level of the center of the lamp from which it comes. (WVaC 17C-15-23)

345.16 ALTERNATE ROAD-LIGHTING EQUIPMENT.

Any motor vehicle may be operated under the conditions specified in Section 345.02 when equipped with two lighted lamps upon the front thereof capable of revealing persons and objects seventy-five feet ahead in lieu of lamps required in Section 345.12, or Section 345.14, provided that at no time shall it be operated at a speed in excess of twenty miles per hour. (WVaC 17C-15-24)

345.17 NUMBER OF DRIVING LIGHTS REQUIRED OR PERMITTED.

(a) At all times specified in Section 345.02 at least two lighted lamps shall be displayed, one on each side at the front of every motor vehicle other than a motorcycle, motor-driven cycle or moped, except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

(b) Whenever a motor vehicle equipped with head lamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of intensity greater than 300 candlepower, not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time when upon a street or highway. (WVaC 17C-15-25)

345.18 SPECIAL RESTRICTIONS ON LIGHTS.

(a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps or flashing front-direction signals which projects a beam of light of an intensity greater than 300 candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

(b) No person shall drive or move any vehicle or equipment upon any street or highway with any lamp or device thereon displaying other than a white or amber light visible from directly in front of the center thereof except as authorized by subsection (d) hereof.

(c) Except as authorized in subsections (d) and (f) of this section and Section 345.11, flashing lights are prohibited on motor vehicles: Provided, that any vehicle as a means for indicating right or left turn, or any vehicle as a means of indicating the same is disabled or otherwise stopped for an emergency may have blinking or flashing lights.

(d) Notwithstanding any other provisions of this Traffic Code, the following colors of flashing warning lights are restricted for the use of the type of vehicle designated:

(1) Blue flashing warning lights are restricted to police vehicles. Authorization for police vehicles shall be designated by the chief administrative official of each police department.

(2) Except for standard vehicle equipment authorized by Section 345.11, red flashing warning lights are restricted to ambulances; firefighting vehicles; hazardous material response vehicles; industrial fire brigade vehicles; school buses; Class A vehicles, as defined by West Virginia Code 17A-10-1, of those firefighters who are authorized by their fire chiefs to have such lights; Class A vehicles of members of ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have such lights; and Class A vehicles of out-of-state residents who are active members of West Virginia fire departments, ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have such lights. Red flashing warning lights attached to such Class A vehicles shall be operated only when responding to or engaged in handling an emergency requiring the attention of such firefighters, members of such ambulance services, or chartered rescue squads.

(3) The use of red flashing warning lights shall be authorized as follows:

A. Authorization for all ambulances shall be designated by the Department of Health and Human Resources and the sheriff of the county of residence.

B. Authorization for all fire department vehicles shall be designated by the Fire Chief and the State Marshal's Office.

C. Authorization for all hazardous material response vehicles and industrial fire brigades shall be designated by the Chief of the Fire Department and the State Fire Marshal's Office.

D. Authorization for all rescue squad vehicles not operating out of a fire department shall be designated by the squad chief, the sheriff of the county of residence and the Department of Health and Human Resources.

E. Authorization for school buses shall be designated as set out in West Virginia Code 17C-14-12.

F. Authorization for firefighters to operate Class A vehicles shall be designated by their fire chiefs and the State Fire Marshal's Office.

G. Authorization for members of ambulance services or any other emergency medical service personnel to operate Class A vehicles shall be designated by their chief official, the Department of Health and Human Resources and the sheriff of the county of residence.

H. Authorization for members of duly chartered rescue squads not operating out of a fire department to operate Class A vehicles shall be designated by their squad chiefs, the sheriff of the county of residence and the Department of Health and Human Resources.

I. Authorization for out-of-state residents operating Class A vehicles who are active members of a West Virginia fire department, ambulance services or duly chartered rescue squads shall be designated by their respective chiefs.

(4) Yellow flashing warning lights are restricted to the following:

A. All other emergency vehicles, including tow trucks and wreckers, authorized by the West Virginia Code Chapter 17C and 17C-15-27;

B. Postal service vehicles and rural mail carriers, as authorized in Section 345.11;

C. Rural newspaper delivery vehicles;

D. Flag car services;
E. Vehicles providing road service to disabled vehicles;
F. Service vehicles of a public service corporation;
G. Snow removal equipment; and
H. School buses.

(5) The use of yellow flashing warning lights shall be authorized as follows:
A. Authorization for tow trucks, wreckers, rural newspaper delivery vehicles, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation and postal service vehicles shall be designated by the sheriff of the county of residence.
B. Authorization for snow removal equipment shall be designated by the Commissioner of the Division of Highways.
C. Authorization for school buses shall be designated as set out in West Virginia Code 17C-14-12.

(e) Notwithstanding the foregoing provisions of this section, any vehicle belonging to a county board of education, an organization receiving funding from the state or federal transit administration for the purpose of providing general public transportation, or hauling solid waste may be equipped with a white flashing strobotron warning light. This strobe light may be installed on the roof of a school bus, a public transportation vehicle, or a vehicle hauling solid waste not to exceed one-third the body length forward from the rear of the roof edge. The light shall have a single clear lens emitting light three hundred sixty degrees around its vertical axis and may not extend above the roof more than six and one-half inches. A manual switch and a pilot light must be included to indicate the light is in operation.

(f) No person shall install or use flashing warning lights of an unauthorized color on a vehicle other than as specified in this section, except that a police vehicle may be equipped with either or both blue or red warning lights.
(WVaC 17C-15-26)

345.19 MOTOR VEHICLE OR MOTORCYCLE BRAKES.

(a) Brake Equipment Required.

(1) Every motor vehicle, other than a motorcycle, motor-driven cycle or moped, when operated upon a street or highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

(2) Every motorcycle, motor-driven cycle and moped, when operated upon a street or highway, shall be equipped with at least one brake which may be operated by hand or foot.

CHAPTER ELEVEN - Special Vehicles
Art. 375. All-Terrain Vehicles.

CHAPTER 375
All-Terrain Vehicles

375.01 Unlawful to operate.
375.02 Definition.
375.99 Penalty.

375.01 UNLAWFUL TO OPERATE.

It shall be unlawful to drive or operate any all-terrain vehicle on any public street, right-of-way, or alley way within the Corporate Limits of the City. (Ord. 2001-1. Passed 10-1-01.)

375.02 DEFINITION.

"All-terrain vehicles" or also known as ATV's means any motor vehicle designed for off-highway use and designed for operator use only with no passengers; having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.
(Ord. 2001-1. Passed 10-1-01.)

375.99 PENALTY.

Any violation of this article shall be punishable by a fine of not less than fifty dollars ($50.00) nor more than two hundred and fifty dollars ($250.00).
(Ord. 99-1. Passed 10-1-01.)

Chapter 375
All-Terrain Vehicle

An Ordinance Amending Previous Code in Regulating the Use and Operation of All-Terrain (ATVs) and Utility-Terrain (UTV) Vehicles

1.Definition of all-terrain and utility-terrain vehicles:

(a) All-terrain vehicle, or ATV, shall mean any motor vehicle designed for off-highway use and designed to travel on not less than three low-pressure tires, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control, and intended to be used by a single operator, or by an operator and no more than one passenger.

(b) Utility-terrain vehicle, or UTV, shall mean any motor vehicle with four or more low-pressure tires designed for off highway use, having bench or bucket seating for each occupant and a steering wheel for control.

(c) As used in this ordinance, all-terrain vehicles shall refer to both ATV and UTV vehicles.

Required Equipment:

(a) Brakes
(b) Steering apparatus
(c) Tires
(d) Rearview mirror
(e) Stop lamps on the rear of the vehicle
(f) Headlights that emit white lights visible 500 feet to the front
(g) Taillights that emit red light visible from at least 100 feet from the rear
(h) Helmets with faceplate or goggles for any and all passengers age 16 and under

Town Permit:

A permit is required for operation of vehicles covered under this ordinance. Any individual or business owner of an ATV or UTV, in order to comply with the conditions of this ordinance, must obtain a permit from the Town Business Office. Said owner must present proof of ownership and valid, current liability insurance for the vehicle to the Town Clerk. Upon presenting required documents, the owner will then pay a $20 fee per vehicle to the Clerk. Said permit will be in force for twelve months from date of issue, and must be renewed annually. Funds collected from the issue of permits will be used for supplies and record keeping required to maintain a register of owners permitted to operate ATVs and UTVs within the Town limits.

Permitted operators will be assigned a numbered decal or sticker that must be affixed and displayed openly on the vehicle(s). Failure to display said identification will be considered and enforced as an offense as described in the Penalties section of this ordinance.

Permitted Operation:

(a) ATVs and UTVs may only be operated during daylight hours within Town limits on Town streets, for which posted speed limits are 15 mph or less.
(b) NO ATV or UTV may be operated on any sidewalk.
(c) During daylight hours ONLY, a permitted ATV or UTV may cross a highway or street at an intersection where the highway or street has a posted speed limit of 35 mph or less.
(d) A permitted ATV or UTV shall ONLY be operated by a person of 21 years of age or older who possesses a valid operator's license. No instruction or learner's permit will be allowed.
(e) Any and all operators of a permitted ATV or UTV shall obey ALL Town ordinances related to motor vehicle operation and the laws of the road the same as if the operator was driving a motor vehicle.
(f) A permitted ATV or UTV operator shall at all times of operation have in their possession:

1. Valid permit registration certificate issued by the Town Clerk;
2. Proof of liability insurance for the vehicle;
3. Valid operator's license

(g) The registered owner of the permitted vehicle assumes ALL liability for the operation of said vehicle.
(h) From September 1 to Dec. 31, ATVs or UTVs may be operated one hour before sunrise and one hour after sunset for purposes of hunting only

Enforcement:

ONLY the Town Business Office has the authority to issue permits, maintain registry files, and oversee the enforcement of all provisions of this ordinance.

Penalties:

Any violation of this ordinance will result in the owner and or operator being issued a citation, and must appear before the Municipal judge to answer. If found in violation of Town code, the following judgments will be applied:

(a) First offense - Permits for any and all ATVs or UTVs registered to the owner will be revoked for three months, and a fine of $100 imposed;
(b) Second offense - Permits for any and all ATVs or UTVs registered to the owner will be revoked for six months, and a fine of $250 imposed;
(c) Third offense - Permits for any and all ATVs or UTVs registered to the owner will be revoked for not less than one year and not more than three years, and a fine of $500 imposed.

In all instances the owner will be required to appear before the Municipal judge to apply for reinstatement of a permit.

Exceptions:

The provisions of this ordinance that restrict the use of ATVs and UTVs to certain streets and certain hours will not apply to vehicles used by public safety or law enforcement agencies in connection with the performance of their duties.
This ordinance shall NOT apply to the operation of other vehicles or machinery such as golf carts, scooters, and other wheeled wagons or machinery. All other vehicles and machines not specifically named in this ordinance shall be illegal to operate on streets alleys, and public property within the Town limits under any condition or circumstance.

(3) Every trailer or semitrailer of a gross weight of 3,000 pounds or more when operated upon a street or highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle and so designed as to be applied by the driver of the towing motor vehicle from its cab, and such brakes shall be so designed and connected that in case of an accidental breakaway of the towed vehicle the brakes shall be automatically applied.

(4) Every new motor vehicle, trailer or semitrailer hereinafter sold in this State and operated upon the streets or highways shall be equipped with service brakes upon all wheels, with the following exceptions:

A. Trucks and truck-tractors having three or more axles need not have brakes on the front wheels, except when such vehicles are equipped with at least two steerable axles, the wheels of one such axle need not be equipped with brakes, and

B. Any motorcycle, motor-driven cycle or moped and any semitrailer of less than 1,500 pounds gross weight need not be equipped with brakes.

(5) In any combination of motor-driven vehicles, means shall be provided for applying the rearmost trailer brakes, of any trailer equipped with brakes, in approximate synchronism with the brakes on the towing vehicle and developing the required braking effort on the rearmost wheels at the fastest rate; or means shall be provided for applying braking effort first on the rearmost trailer equipped with brakes; or both of the above means capable of being used alternatively may be employed.

(6) Every such vehicle and combination of vehicles, except motorcycles, motor-driven cycles and mopeds, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading on a surface free from snow, ice or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind.

The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that a failure of any one part shall not leave the vehicle without operative brakes.

(7) The brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both service and hand operation.

(b) Performance Ability of Brakes. Every motor vehicle or combination of motor-drawn vehicles shall be capable, at all times and under all conditions of loading, of being stopped on a dry, smooth, level road free from loose material, upon application of the service (foot) brake, within the distances specified below, or shall be capable of being decelerated at a sustained rate corresponding to these distances:

	Feet to stop from 20 miles per hour	Deceleration in feet per second
Vehicle or combinations of vehicles having brakes on all wheels	30	14
Vehicles or combinations of vehicles not having brakes on all wheels	40	10.7

(c) Maintenance of Brakes. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.
(WVaC 17C-15-31)

345.20 INSPECTION OF BRAKES ON MOTORCYCLES, MOTOR-DRIVEN CYCLES AND MOPEDS.

No person shall operate on any street or highway any motorcycle, motor-driven cycle or moped in the event the Commissioner of Highways has disapproved the brake equipment upon such vehicle or type of vehicle.
(WVaC 17C-15-32)

345.21 HORN, SIREN AND THEFT ALARM SIGNAL.

(a) Every motor vehicle when operated upon a street or highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with his horn but shall not otherwise use such horn when upon a street or highway.

(b) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle or bell, except as otherwise permitted in this section.

(c) It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

Any authorized emergency vehicle may be equipped with a siren, whistle or bell, capable of emitting sound audible under normal conditions from a distance of not less than 500 feet and of a type approved by the Department of Motor Vehicles, but such siren shall not be used except when such vehicle is operated in response to an emergency or in the immediate pursuit of an actual or suspected violator of the law, in which such latter events the driver of such vehicle shall sound such siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof.
(WVaC 17C-15-33)

345.22 MUFFLER; MUFFLER CUTOUT; EXCESSIVE SMOKE, GAS OR NOISE.

(a) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise. Such muffler shall be the muffler originally installed by the manufacturer of the vehicle or, if a replacement, the equivalent thereof. No person shall use a muffler cutout, bypass or similar device upon a motor vehicle on a street or highway.

(b) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.
(WVaC 17C-15-34)

345.23 REAR-VIEW MIRROR.

Every motor vehicle which is so constructed or loaded as to obstruct the driver's view to the rear thereof from the driver's position shall be equipped with a mirror so located as to reflect to the driver a view of the street or highway for a distance of at least 200 feet to the rear of such vehicle.
(WVaC 17C-15-35)

345.24 WINDSHIELD TO BE UNOBSTRUCTED; WINDSHIELD WIPER.

(a) No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon the front windshield, side wings or side or rear windows of such vehicle which obstructs the driver's clear view of the street or highway or any intersecting street or highway.

(b) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(c) Every windshield wiper upon a motor vehicle shall be maintained in good working order.
(WVaC 17C-15-36)

345.25 TIRE EQUIPMENT RESTRICTIONS.

(a) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.

(b) No person shall operate or move on any highway any motor vehicle, trailer or semitrailer having any metal tire in contact with the roadway.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that:

(1) It shall be permissible to use farm machinery with tires having protuberances which will not injure the street or highway;

(2) It shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice or other conditions tending to cause a vehicle to skid; and

(3) It shall be permissible to use studded tires during the period from November 1, of each year until April 15 of the following year. Provided that in the interest of highway maintenance, no vehicle moved on a street or highway, other than school buses, shall be equipped with studded tires which are operational with a recommended air pressure greater than forty pounds per square inch.

(d) No studded tires or chains shall be sold or used within the Municipality which do not meet the specifications established by the rules and regulations which the Commissioner of Highways shall promulgate.

(e) Council may in its discretion issue special permits authorizing the operation upon the street or highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this Traffic Code. (WVaC 17C-15-37)

345.26 SAFETY GLASS IN MOTOR VEHICLES.

(a) On and after July 1, 1951, no person shall operate any motor vehicle as specified herein, nor shall any motor vehicle as specified herein be registered thereafter unless such vehicle is equipped with safety glass of a type approved by the Commissioner of Highways wherever glass is used in doors, windows and windshields. The foregoing provisions shall apply to all passenger-type motor vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glass shall apply to all glass used in doors, windows, and windshields in the drivers' compartments of such vehicles.

(b) The term "safety glass" shall mean any product composed of glass, so manufactured, fabricated or treated as substantially to prevent shattering and flying of the glass when struck or broken, or such other or similar product as may be approved by the Commissioner. (WVaC 17C-15-38)

345.27 VEHICLES TRANSPORTING EXPLOSIVES.

Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a street or highway shall at all times comply with the provisions of this section.

(a) Such vehicle shall be marked or placarded on each side and the rear with the word "Explosives" in letters not less than eight inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four inches square marked with the word "Danger" in white letters six inches high.

(b) Every such vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use and placed at a convenient point on the vehicle so used.

(WVaC 17C-15-41)

345.28 TELEVISION RECEIVER IN DRIVER'S VIEW PROHIBITED.

No motor vehicle shall be operated on any street or highway in this Municipality when equipped with a television receiver unless such receiver is so placed that the screen or picture tube of such receiver is visible only in the rear seat of such motor vehicle and not in view of the operator of such motor vehicle.

(WVaC 17C-15-42)

345.29 SAFETY EQUIPMENT FOR MOTORCYCLISTS, MOTORCYCLES, MOTOR-DRIVEN CYCLES AND MOPEDS.

(a) No person shall operate or be a passenger on any motorcycle or motor-driven cycle unless he is wearing securely fastened on his head by either a neck or chin strap a protective helmet designed to deflect blows, resist penetration and spread impact forces. Any helmet worn by an operator or passenger shall meet the current performance specifications established by the American National Standards Institute Standard, Z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard No. 218 or Snell Safety Standards for Protective Headgear for Vehicle Users.

(b) No person shall operate or be a passenger on any motorcycle or motor-driven cycle unless he is wearing safety, shatter-resistant eyeglasses (excluding contact lenses), or eyegoggles or face shield that complies with the performance specifications established by the American National Standards Institute for Head, Eye and Respiratory Protection, Z 2.1. In addition, if any motorcycle, motor-driven cycle or moped is equipped with a windshield or windscreen, the windshield or windscreen shall be constructed of safety, shatter-resistant material that complies with the performance specifications established by Department of Transportation Federal Motor Vehicle Safety Standard No. 205 and American National Standards Institute, Safety Glazing Materials for Glazing Motor Vehicles Operated on Land Highways, Standard Z 26.1.

(c) No person shall operate a motorcycle, motor-driven cycle or moped on which the handlebars or grips are more than fifteen inches higher than the uppermost part of the operator's seat when the seat is not depressed in any manner.

(d) A person operating a motorcycle, motor-driven cycle or moped shall ride in a seated position facing forward and only upon a permanent operator's seat attached to the vehicle. No operator shall carry any other person nor shall any other person ride on such a vehicle unless the vehicle is designed to carry more than one person, in which event a passenger may ride behind the operator upon the permanent operator's seat if it is designed for two persons, or upon another seat firmly attached to the vehicle to the rear of the operator's seat and equipped with footrests designed and located for use by the passenger or in a sidecar firmly attached to the vehicle. No person shall ride sidesaddle on a seat. An operator may carry as many passengers as there are seats and footrests to accommodate those passengers. Additional passengers may be carried in a factory produced side car provided that there is one passenger per seat. Passengers riding in a sidecar shall be restrained by safety belts.

(e) Every motorcycle, motor-driven cycle and moped shall be equipped with a rearview mirror affixed to the handlebars or fairings and adjusted so that the operator shall have a clear view of the road and condition of traffic behind him for a distance of at least 200 feet.
(WVaC 17C-15-44)

345.30 CERTIFICATION LABELS ON MOPEDS.

Every moped sold in this Municipality shall have permanently affixed to it a certification label which shall contain the following information:

(1) Name of manufacturer;
(2) Month and year of manufacture;
(3) Gross vehicle weight rating (GVWR);
(4) Gross axle weight rating for front and rear axles (GAWR);
(5) Vehicle identification number;
(6) Classification type; and
(7) Statement of conformance to Federal standards as required by Federal law.
(WVaC 17C-15-45)

345.31 CHILD PASSENGER SAFETY DEVICE REQUIRED.

Every driver who transports a child under the age of nine years in a passenger automobile, van or pickup truck other than one operated for hire, shall, while such motor vehicle is in motion and operated on a street or highway of this Municipality, provide for the protection of such child by properly placing, maintaining and securing such child in a child passenger safety device system meeting applicable Federal motor vehicle safety standards: provided, that if such child is between the age of three and eight, both inclusive, a vehicle seat belt shall be sufficient to meet the requirements of this section.

Whoever violates this section shall be fined not less than ten dollars ($10.00) nor more than twenty dollars ($20.00).

A violation of this section shall not be deemed by virtue of such violation to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

If all seat belts in a vehicle are being used at the time of examination by a law officer and the vehicle contains more passengers than the total number of seat belts or other safety devices as installed in compliance with Federal motor vehicle safety standards, the driver shall not be considered as violating this section.
(WVaC 17C-15-46)

345.32 CERTIFICATE OF INSPECTION AND APPROVAL.

No owner or operator of any vehicle required to be inspected under West Virginia Code Article 17C-16 shall operate or permit to be operated such vehicle without having displayed thereon a current and valid certificate of inspection and approval or fail to produce same upon demand of any authorized person as therein designated.
(WVaC 17C-16-9)

345.33 ALTERATION OF MOTOR VEHICLES; BUMPER HEIGHT LIMITS.

(a) No person shall operate upon a public street or highway any motor vehicle registered or required to be registered in this State if it has been modified by alteration of its height from the ground to the extent that its bumpers, measured to any point on the lower edge of the main horizontal bumper bar, exclusive of any bumper guards, do not fall within the limits specified herein for its gross vehicle weight rating category. The front and rear bumper height of motor vehicles whose gross vehicle weight rating is 10,000 pounds or less shall be no less than six inches and no more than thirty-one inches. In the absence of bumpers, and in cases where bumper heights have been altered or modified, height measurements shall be made to the bottom of the frame rail. If a motor vehicle has a bumper, the bumper must be at least three inches in vertical width, centered on the center line of the motor vehicle and not less than the width of the wheel track distance. The provisions of this subsection do not apply to motor vehicles with a gross vehicle weight rating in excess of 10,000 pounds. For the purpose of this subsection, the term "gross vehicle weight ratings" means the manufacturer's gross vehicle weight ratings established for that vehicle.

(b) The maximum distance between the vehicle body to the vehicle frame shall not exceed three inches. The distance from the vehicle body to the vehicle frame shall be measured from the vehicle body mount seat to the vehicle frame mount seat: provided, that the maximum distance limitation shall not prohibit a body lift kit up to three inches to be added to the manufacturer's original spacer between the body and the frame. No vehicle shall be modified to cause the vehicle body or chassis to come in contact with the ground, expose the fuel tank to damage from collision, or cause the wheels to come in contact with the body under normal operation. No part of the original suspension system may be disconnected to defeat the safe operation of the suspension system. Modification of the front end suspension by the use of lift blocks is expressly prohibited.

(c) Nothing contained in this section prevents the installation of heavy duty equipment, including shock absorbers and overload springs.

(d) Nothing contained in this section prohibits the operation on a public street or highway of a motor vehicle with normal wear to the suspension system if such normal wear does not adversely affect the control of the vehicle.

(e) This section does not apply to specially designed or modified motor vehicles when operated off the public streets and highways in races and similar events. Such motor vehicles may be lawfully towed on the streets and highways of this Municipality.

(f) Modifications to motor vehicles, not prohibited herein, shall be made subject to inspection as provided in subsection (h) hereof.

(g) Nothing contained in this section shall subject a vehicle modified solely by the installation of tires not larger than two sizes beyond the maximum specified by the manufacturer to inspection as provided in subsection (h) hereof.

(h) Any motor vehicle which has been altered from the manufacturer's specification with respect to bumper height for that vehicle make and model but within the allowable limits of subsection (a) hereof or any motor vehicle which has been altered from the manufacturer's specification for that vehicle make and model with respect to the distance from the vehicle body to vehicle frame but within the allowable limits of subsection (b) hereof may be operated upon a public street or highway in this Municipality, subject to inspection under West Virginia Code 17C-15-48: provided, that any motor vehicle which has been altered from the manufacturer's specification by lowering the bumper height for that vehicle make and model within the allowable limits of subsection (a) hereof shall be exempt from the inspection requirements hereunder and may be operated upon a public street or highway in this Municipality subject to provisions of West Virginia Code Chapter 17C-16. Each municipal law-enforcement agency must record on accident report forms whether a modified vehicle was involved in the accident.
(WVaC 17C-15-48)

345.34 SUN SCREENING DEVICES.

(a) No person may operate a motor vehicle that is registered or required to be registered in the State on any public highway, road or street that has a sun screening device on the windshield, the front side wings and side windows adjacent to the right and left of the driver and windows adjacent to the rear of the driver that do not meet the requirements of this section.

(b) A sun screening device when used in conjunction with the windshield must be nonreflective and may not be red, yellow or amber in color. A sun screening device may be used only along the top of the windshield and may not extend downward beyond the ASI line or more than five inches from the top of the windshield whichever is closer to the top of the windshield.

(c) A sun screening device when used in conjunction with the automotive safety glazing materials of the side wings or side windows located at the immediate right and left of the driver shall be a nonreflective type with reflectivity of not more than twenty percent (20%) and have a light transmission of not less than thirty-five percent (35%). The side windows behind the driver and the rear most windows may have a sun screening device that is designed to be used on automotive safety glazing materials that has a light transmission of not less than thirty-five percent (35%) and a reflectivity of not more than twenty percent (20%). If a sun screening device is used on glazing behind the driver, one right and one left outside rear view mirror is required.

(d) Each manufacturer shall:

(1) Certify to the State Police and Division of Motor Vehicles that a sun screening device used by it is in compliance with the reflectivity and transmittance requirements of this section;

(2) Provide a label not to exceed one and one-half square inches in size, with a means for the permanent and legible installations between the sun screening material and each glazing surface to which it is applied that contains the manufacturer's name and its percentage of light transmission; and

(3) Include instructions with the product or material for proper installation, including the affixing of the label specified in this section. The labeling or marking must be placed in the left lower corner of each glazing surface when facing the vehicle from the outside.

(e) No person shall:

(1) Offer for sale or for use any sun screening product or material for motor vehicle use not in compliance with this section; or

(2) Install any sun screening product or material on vehicles intended for use on public roads without permanently affixing the label specified in this section.

(f) The provisions of this section do not apply to a motor vehicle registered in this State in the name of a person, or the person's legal guardian, who has an affidavit signed by a physician or an optometrist licensed to practice in this State that states that the person has a physical condition that makes it necessary to equip the motor vehicle with sun screening material which would be of a light transmittance or luminous reflectance in violation of this section. The affidavit must be in the possession of the person so afflicted, or the person's legal guardian, at all times while being transported in the motor vehicle.

(g) The light transmittance requirement of this section does not apply to windows behind the driver on trucks, buses, trailers, mobile homes and multipurpose passenger vehicles.

(h) As used in this section:

(1) "Bus" means a motor vehicle with motive power, except a trailer, designed for carrying more than ten persons.

(2) "Light transmission" means the ratio of the amount of total light to pass through a product or material to the amount of the total light falling on the product or material.

(3) "Luminous reflectants" means the ratio of the amount of total light that is reflected outward by the product or material to the amount of the total light falling on the product or materials.

(4) "Manufacturer" means any person engaged in the manufacturing or assembling of sun screening products or materials designed to be used in conjunction with vehicle glazing materials for the purpose of reducing the effects of the sun.

(5) "Motor homes" means vehicular units designed to provide temporary living quarters built into and an integral part of or permanently attached to a self-propelled motor vehicle chassis.

(6) "Multipurpose passenger vehicle" means a motor vehicle with motive power, except a trailer, designed to carry ten persons or less which is constructed either on a truck chassis or with special features for occasional offroad operation.

(7) "Nonreflective" means a product or material designed to absorb light rather than to reflect it.

(8) "Passenger car" means a motor vehicle with motive power, except a multipurpose passenger vehicle, motorcycle or trailer, designed for carrying ten persons or less.

(9) "Sun screening device" means film material or device that is designed to be used in conjunction with motor vehicle safety glazing materials for reducing the effects of the sun.

(10) "Truck" means a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment.

(WVaC 17C-15-36a)

345.35 OPERATION OF VEHICLES WITH SAFETY BELTS.

(a) A person shall not operate a passenger vehicle on a public street or highway unless the person, any passenger in the back seat under eighteen years of age, and any passenger in the front seat of such passenger vehicle is restrained by a safety belt meeting applicable federal motor vehicle safety standards. For the purposes of this section, "passenger vehicle" means a motor vehicle which is designed for transporting ten passengers or less, including the driver, except that such term does not include a motorcycle, a trailer or any motor vehicle which is not required on the date of the enactment of this section under a federal motor vehicle safety standard to be equipped with a belt system. The provisions of this section shall apply to all passenger vehicles manufactured after the first day of January, 1967, and being 1968 models and newer.

(b) The required use of safety belts as provided herein does not apply to a duly appointed or contracted rural mail carrier of the United States Postal Service who is actually making mail deliveries or to a passenger or operator with a physically disabling condition whose physical disability would prevent appropriate restraint in such safety belt if the condition is duly certified by a physician who shall state the nature of the disability as well as the reason such restraint is inappropriate.

(c) A violation of this section is not admissible as evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages, and shall not be admissible in mitigation of damages: provided, that the court may, upon motion of the defendant, conduct an in camera hearing to determine whether an injured party's failure to wear a safety belt was a proximate cause of the injuries complained of. Upon such a finding by the court, the court may then, in a jury trial, by special interrogatory to the jury, determine (1) that the injured party failed to wear a safety belt, and (2) that the failure to wear the safety belt constituted a failure to mitigate damages. The trier of fact may reduce the injured party's recovery for medical damages by an amount not to exceed five percent (5%) thereof. In the event the plaintiff stipulates to the reduction of five percent (5%) of medical damages, the court shall make the calculations and the issue of mitigation of damages for failure to wear a safety belt shall not be presented to the jury. In all cases, the actual computation of the dollar amount reduction shall be determined by the court.

(d) Notwithstanding any other provision of this Code to the contrary, no points may be entered on any driver's record maintained by the Division of Motor Vehicles as a result of a violation of this section.

(e) Nothing contained in this section shall be construed to abrogate or alter the provisions of Section 345.31 relating to the mandatory use of child passenger safety devices. (WVaC 17C-15-49)

(f) Any person who violates the provisions of this section shall be fined not more than twenty-five dollars ($25.00). No court costs or other fees shall be assessed for a violation of this section. Enforcement of this section shall be accomplished only as a secondary action when a driver of a passenger vehicle has been detained for probable cause of violating another section of this code.

345.99 PENALTY.

(a) General Article Penalty. Unless otherwise provided for in this article, any person violating any provision of this article shall be fined not more than one hundred dollars ($100.00); upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars ($200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars ($500.00).

(b) Brakes. Any person violating Sections 345.19 or 345.20 shall be fined not more than one hundred dollars ($100.00) or imprisoned not more than ten days, or both; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars ($200.00) or imprisoned not more than twenty days, or both; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than thirty days, or both. (WVaC 17C-15-6)

(c) Sunscreening Devices. Whoever violates Section 345.34 shall be fined not more than two hundred dollars ($200.00).
(WVaC 17C-15-36a)

ARTICLE 347
Commercial and Heavy Vehicles

347.01 Unlawful to exceed size and weight limitations.
347.02 Projecting loads on passenger vehicles.
347.03 Maximum width, height and length.
347.04 Loads dropping or leaking.
347.05 Towing requirements.
347.06 Special load limits.
347.07 Single-axle load limit.
347.08 Tandem-axle load limit.
347.09 Gross weight of vehicles and loads.
347.10 Officers may weigh, measure, etc. vehicles and require removal or rearrangement of excess loads.
347.11 Local authorities may restrict right to use highways.
347.12 Liability for damage to highway or structure.
347.99 Penalties for violation of weight laws: impounding vehicles.

CROSS REFERENCES
See sectional histories for similar State law
Authority to designate weight limits on local streets - see W. Va. Code 17C-2-8(a)(7)
Authority to permit oversized buses - see W. Va. Code 17C-17-2(b)
Red light or flag on extended load - see TRAF. 345.07
Transporting explosives - see TRAF. 345.27

347.01 UNLAWFUL TO EXCEED SIZE AND WEIGHT LIMITATIONS.

(a) It shall be unlawful for any owner, lessee or borrower of a vehicle or combination of vehicles to operate on any highway such vehicle or combination of vehicles, whether driven by such owner, lessee or borrower, or by some person on behalf of such owner, lessee or borrower, of a size or weight exceeding any limitation stated in this article, or otherwise in violation of any provision of this article, whether such limitation or provision be specifically stated in this article or set by express authority granted in this article, and the maximum size and weight of vehicles herein specified shall be lawful throughout this State, and local authorities shall have no power or authority to alter said limitations or provisions except as express authority shall be granted in this article. Subject to the penalties for weight violations of this Section 347.99, violation of this section shall constitute a misdemeanor.

(b) The provisions of this article governing size, weight, and load shall not apply to fire apparatus, road machinery, or to implements of husbandry, including farm tractors, temporarily moved upon a highway, or to a vehicle operated under the terms of a special permit issued as herein provided.

(c) The phrase "operate a vehicle or combination of vehicles" shall in this article be interpreted to mean the use of such vehicle or combination of vehicles on behalf of the owner, lessee or borrower, whether driven by him or by some person on behalf of him.
(Ord. 99-1. Passed 3-1-99.)

347.02 PROJECTING LOADS ON PASSENGER VEHICLES.

No passenger-type vehicle shall be operated on any street or highway with any load carried thereon extending beyond the line of the fenders of the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof.
(WVaC 17C-17-3)

347.03 MAXIMUM WIDTH, HEIGHT AND LENGTH.

(a) A vehicle including any load thereon shall not exceed a height of thirteen feet six inches, but the owner or owners of such vehicles shall be responsible for damage to any bridge or highway structure and to the Municipality for any damage to traffic control devices or other highway structures where such bridges, devices or structures have a vehicle clearance of less than thirteen feet six inches.

(b) A motor vehicle including any load thereon shall not exceed a length of forty feet extreme overall dimension, inclusive of front and rear bumpers.

(c) Except as hereinafter provided, a combination of vehicles coupled together shall not consist of more than two units, and no such combination of vehicles including any load thereon shall have an overall length, inclusive of front and rear bumpers, in excess of fifty-five feet, except as provided in West Virginia Code 17C-17-11b, and except as otherwise provided in respect to the use of a pole trailer as authorized in West Virginia Code 17C-17-5: provided, that the limitation that a combination of vehicles coupled together shall not consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a drive-away service when no more than three saddle mounts are used: provided, however, that equipment used in such combination meets the requirements of the safety regulations of the United States Department of Transportation and shall not exceed an overall length of more than sixty-five feet.

(d) The length limitations for truck tractor-semitrailer combinations and truck tractor-semitrailer-trailer combinations operating on the national system of interstate and defense highways and those classes of qualifying federal-aid primary system highways so designated by the United States Secretary of Transportation, and those highways providing reasonable access to and from terminals, facilities for food, fuel, repairs and rest, and points of loading and unloading for household goods carriers from such highways, and further, as to other highways so designated by the West Virginia Commissioner of Highways, shall be as follows: the maximum length of a semitrailer unit operating in a truck tractor-semitrailer combination shall not exceed forty-eight feet in length, except where semitrailers have an axle spacing of not more than thirty-seven feet between the rear axle of the truck tractor and the front axle of the semitrailer, such semitrailer shall be allowed to be not more than fifty-three feet in length and the maximum length of any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination shall not exceed twenty-eight and one-half feet in length and in no event shall any combinations exceed three units, including the truck tractor: provided, that nothing herein contained shall impose an overall length limitation as to commercial motor vehicles operating in truck tractor-semitrailer or truck tractor-semitrailer-trailer combinations.
(WVaC 17C-17-4)

(e) The total outside width, exclusive of safety equipment authorized by the United States Department of Transportation, of any vehicle or the load thereon shall not exceed ninety-six inches, except as otherwise provided in West Virginia Code Article 17C-17: provided, that any vehicle with a total outside width of 102 inches, exclusive of safety equipment authorized by the United States Department of Transportation, may be operated on any street or highway designated by the United States Department of Transportation or the Commissioner of the Department of Highways or on any street or highway having a minimum lane width of ten feet.

(f) Motor buses with a total outside width of 102 inches, excluding safety equipment authorized by the United States Department of Transportation may operate on any street or highway.
(WVaC 17C-17-2)

347.04 LOADS DROPPING OR LEAKING.

(a) No vehicle or combination of vehicles shall be operated on any street or highway unless such vehicle or combination of vehicles is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

(b) No person shall operate on any street or highway any vehicle or combination of vehicles with any load unless such load and any covering thereon is securely fastened so as to prevent such covering or load from becoming loose, detached or in any manner a hazard to other users of the street or highway.
(WVaC 17C-17-6; Ord. 91-2. Passed 3-4-91.)

347.05 TOWING REQUIREMENTS.

(a) When one vehicle is towing another the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and such drawbar or other connection shall not exceed fifteen feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered.

(b) When one vehicle is towing another and the connection consists of a chain, rope or cable, there shall be displayed upon such connection a white flag or cloth not less than twelve inches square.
(WVaC 17C-17-7)

347.06 SPECIAL LOAD LIMITS.

(a) Subject to the foregoing provisions of this article limiting the length of vehicles and loads, the load upon any vehicle operated alone or the load upon the front vehicle of a combination of vehicles shall not extend more than three feet beyond the foremost part of the vehicle, and the load upon any vehicle operated alone or the load upon the rear vehicle of a combination of vehicles shall not extend more than six feet beyond the rear of the bed or body of such vehicle.

(b) The limitations as to length of vehicles and loads heretofore stated in Section 347.03 and this section shall not apply to any load upon a pole trailer when transporting poles or pipes or structural material which cannot be dismembered, provided that no pole or pipe or other material exceeding eighty feet in length shall be so transported unless a permit has first been obtained as authorized in West Virginia Code 17C-17-11. (Ord. 99-1. Passed 3-1-99.)

347.07 SINGLE-AXLE LOAD LIMIT.

(a) The gross weight imposed on the highway by the wheels of any one axle of a vehicle shall not exceed twenty thousand pounds.

(b) For the purpose of this article an axle load shall be defined as the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes forty inches apart, extending across the full width of the vehicle.
(Ord. 99-1. Passed 3-1-99.)

347.08 TANDEM-AXLE LOAD LIMIT.

(a) The gross weight imposed on the highway by the wheels of a tandem-axle of a vehicle shall not exceed thirty-four thousand pounds.

(b) For the purpose of this article a tandem-axle load shall be defined as the total load transmitted to the road by two or more consecutive axles whose centers may be included between parallel transverse vertical planes spaced more than forty inches and not more than ninety-six inches apart, extending the full width of the vehicle.
(Ord. 99-1. Passed 3-1-99.)

347.09 GROSS WEIGHT OF VEHICLES AND LOADS.

(a) It shall be unlawful for any owner, lessee or borrower of a vehicle or combination of vehicles to operate on any highway such vehicle or combination of vehicles with a gross weight in excess of the gross weight for which such vehicle or combination of vehicles is registered or in excess of any weight limitation set forth in this chapter, whether such limitation be specifically stated in this chapter or set by express authority granted in this chapter.

(b) Subject to the limit upon the weight imposed upon the highway through any one axle as set forth in Section 347.07, or the limit imposed upon the highway through any tandem-axle as set forth in Section 347.08, the total gross weight and load imposed upon the highway by any one group of two or more consecutive axles of a vehicle or combination of vehicles shall not exceed the gross weight given for the respective distance between the first and last axle of the total group of axles measured longitudinally to the nearest foot as set forth in the following table:

Distance in feet between the extremes of any groups of two or more consecutive axles	Maximum load in pounds carried on any group of two or more consecutive axles				
	2 axles	3 axles	4 axles	5 axles	6 axles
4	34,000				
5	34,000				
6	34,000				
7	34,000				
8	34,000	34,000			
9	39,000	42,500			
10	40,000	43,500			
11		44,000			
12		45,000	50,000		
13		45,500	50,500		
14		46,500	51,500		
15		47,000	52,000		
16		48,000	52,500	58,000	
17		48,500	53,500	58,500	
18		49,500	54,000	59,000	
19		50,000	54,500	60,000	
20		51,000	55,500	60,500	66,000

Distance in feet between the extremes of any groups of two or more consecutive axles	Maximum load in pounds carried on any group of two or more consecutive axles				
	2 axles	3 axles	4 axles	5 axles	6 axles
21		51,500	56,000	61,000	66,500
22		52,500	56,500	61,500	67,000
23		53,000	57,500	62,500	68,000
24		54,000	58,000	63,000	68,500
25		54,500	58,500	63,500	69,000
26		55,500	59,500	64,000	69,500
27		56,000	60,000	65,000	70,000
28		57,000	60,500	65,500	71,000
29		57,500	61,500	66,000	71,500
30		58,500	62,000	66,500	72,000
31		59,000	62,500	67,500	72,500
32		60,000	63,500	68,000	73,000
33			64,000	68,500	74,000
34			64,500	69,000	74,500
35			65,500	70,000	75,000
36			66,000	70,500	75,500
37			66,500	71,000	76,000
38			67,500	72,000	77,000
39			68,000	72,500	77,500
40			68,500	73,000	78,000

Distance in feet between the extremes of any groups of two or more consecutive axles	Maximum load in pounds carried on any group of two or more consecutive axles				
	2 axles	3 axles	4 axles	5 axles	6 axles
41			69,500	73,500	78,500
42			70,000	74,000	79,000
43			70,500	75,000	80,000
44			71,500	75,500	80,500
45			72,000	76,000	81,000
46			72,500	76,500	81,500
47			73,500	77,500	82,000
48			74,000	78,000	83,000
49			74,500	78,500	83,500
50			75,500	79,000	84,000
51			76,000	80,000	84,500
52			76,500	80,500	85,000
53			77,500	81,000	86,000
54			78,000	81,500	86,500
55			78,500	82,500	87,000
56			79,500	83,000	87,500
57			80,000	83,500	88,000
58				84,000	89,000
59				85,000	89,500
60				85,500	90,000

Provided, that no vehicle or combination of vehicles shall have a gross weight, including the load, in excess of sixty-five thousand pounds, except that the maximum gross weight of vehicles operating on the national system of interstate and defense highways and any highway providing reasonable access to and from terminals and facilities for food, fuel, repairs and rest within the State shall not be in excess of eighty thousand pounds and except as otherwise provided in this article. Notwithstanding the limits prescribed in subsection (b) of this section, two consecutive sets of tandem-axles is thirty-six feet or more: Provided, however, That the limits prescribed in subsection (b) of this section shall not prohibit the operation of any vehicle or combination of vehicles of a type which could be lawfully operated in accordance with gross vehicle weights in effect on the first day of January, one thousand nine hundred seventy-five: Provided further, That no maximum weight in excess of or in conflict with any weight limitations prescribed by or pursuant to any act of Congress shall be permitted on the national system of interstate and defense highways. (Ord. 99-1. Passed 3-1-99.)

347.10 OFFICERS MAY WEIGH, MEASURE, ETC., VEHICLES AND REQUIRE REMOVAL OR REARRANGEMENT OF EXCESS LOADS.

(a) Any police officer or employee of the Department of Highways designated by the Commissioner of Highways as a member of an official weighing crew may require the driver of any vehicle or combination of vehicles on any street or highways to stop and submit such vehicle or combination of vehicles to a weighing with portable or stationary weighing devices or submit such vehicle or combination of vehicles to a measuring or to any other examination necessary to determine if such vehicle or combination of vehicles is in violation of any of the provisions of this article, and may require that such vehicle or combination of vehicles be driven to the nearest weighing device, but only if such weighing device is within two miles of the place where the vehicle or combination of vehicles is stopped.

No police officer or member of an official weighing crew may stop a vehicle or combination of vehicles for weighing, unless a portable or stationary weighing device is actually present at the location where, and at the time, the vehicle or combination of vehicles is stopped or unless the vehicle or combination of vehicles is escorted immediately after being stopped to a portable or stationary weighing device. In no case may a vehicle or combination of vehicles be detained more than one hour from the time the same is stopped for weighing unless the vehicle or combination of vehicles is impounded for a violation in accordance with the provisions of Section 347.99 of this article.

(b) Whenever an officer or a member of an official weighing crew determines that a vehicle or combination of vehicles is in violation of any of the provisions of this article, he may require the driver to stop such vehicle or combination of vehicles in a suitable place and to remain standing until such vehicle or combination of vehicles is brought into conformity with the provisions violated.

In the case of a weight violation all material unloaded shall be cared for by the owner, lessee or borrower of such vehicle or combination of vehicles at the risk of such owner, lessee or borrower: Provided, That no criminal charge shall be preferred against any driver, operator or owner of a vehicle when a rearrangement of the load upon the vehicle, without removal therefrom, reduces the axle loads of said vehicle to such limit as is permitted under this chapter.

(c) Any driver of a vehicle or combination of vehicles who fails or refuses to comply with any requirement or provision of this section shall be guilty of a misdemeanor. (Ord. 99-1. Passed 3-1-99.)

347.11 LOCAL AUTHORITIES MAY RESTRICT RIGHT TO USE HIGHWAYS.

(a) Local authorities with respect to highways under their jurisdiction may by ordinance or resolution prohibit the operation of vehicles upon any such highway or impose restrictions as to the weight of vehicles to be operated upon any such highway, for a total period of not to exceed ninety days in any one calendar year, whenever any said highway by reason of deterioration, rain, snow, or other climatic conditions will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced.

(b) The local authority enacting any such ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end of that portion of any highway affected thereby, and the ordinance or resolution shall not be effective unless and until such signs are erected and maintained.

(c) Local authorities with respect to highways under their jurisdiction may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles or may impose limitations as to the weight thereof, on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways.

(d) The State Road Commission (Commissioner of Highways) shall likewise have authority as hereinabove granted to local authorities to determine by resolution and to impose restrictions as to the weight of vehicles operated upon any highway under the jurisdiction of said Commission and such restrictions shall be effective when signs giving notice thereof are erected upon the highway or portion of any highway affected by such resolution.
(Ord. 99-1. Passed 3-1-99.)

347.12 LIABILITY FOR DAMAGE TO HIGHWAY OR STRUCTURE.

(a) The owner, lessee or borrower of any vehicle, object or contrivance driven or moved upon any street, highway or highway structure shall be liable for all damage which said street, highway or structure may sustain as a result of any illegal operation, driving, or moving of such vehicle, object or contrivance, or as a result of operating, driving, or moving any vehicle, object or contrivance weighing in excess of the maximum weight in this chapter but authorized by a special permit issued as provided in this article.

(b) Such damage may be recovered in civil action brought by the authorities in control of such street, highway or highway structure. (Ord. 99-1. Passed 3-1-99.)

347.99 PENALTIES FOR VIOLATION OF WEIGHT LAWS: IMPOUNDING VEHICLES.

(EDITOR'S NOTE: See Section 303.99 for general Code penalty is no specific penalty is provided.)

Any owner, lessee or borrower of a vehicle or combination of vehicles who operates or permits to be operated on any highway such vehicle or combination of vehicles with any axle load in excess of that permitted by Sections 347.07 and 347.08, or with a total gross weight with load imposed upon the highway by any one group of two or more consecutive axles in excess of that permitted by Section 347.09 or West Virginia Code 17C-17-11a, shall be punished by a fine scheduled in proportion to the amount of pounds in excess of the registered weight, or in excess of allowable weights for single axle, or in excess of allowable weights for groups of two or more consecutive axles, in accordance with the schedule in words and figures as follows:

Pounds in excess of registered weight, or in excess of allowable weights for single axle, or in excess of allowable weights for groups of two or more consecutive axles.	Amount of Fine
1 to 4,000	$ 20.00
4,001 to 5,000	$ 25.00
5,001 to 6,000	$ 60.00
6,001 to 7,000	$ 70.00
7,001 to 8,000	$ 80.00
8,001 to 9,000	$ 90.00
9,001 to 10,000	$ 100.00
10,001 to 11,000	$ 165.00
11,001 to 12,000	$ 180.00
12,001 to 13,000	$ 195.00
13,001 to 14,000	$ 210.00
14,001 to 15,000	$ 225.00
15,001 to 16,000	$ 320.00
16,001 to 17,000	$ 340.00
17,001 to 18,000	$ 360.00
18,001 to 19,000	$ 380.00
19,001 to 20,000	$ 400.00
20,001 to 21,000	$ 525.00
21,001 to 22,000	$ 550.00
22,001 to 23,000	$ 575.00
23,001 to 24,000	$ 600.00
24,001 to 25,000	$ 625.00
25,001 to 26,000	$ 780.00
26,001 to 27,000	$ 810.00
27,001 to 28,000	$ 840.00
28,001 to 29,000	$ 870.00
29,001 to 30,000	$ 900.00
30,001 to 40,000	$ 1,200.00
40,001 to 50,000	$ 1,400.00
50,001 and over	$ 1,600.00

In the event any owner, lessee or borrower of a vehicle is charged with violating this section, the vehicle which is charged to be overloaded shall be impounded by the arresting officer and shall not be released to such owner, lessee or borrower unless and until such owner, lessee or borrower either shall have been found guilty and paid any fine assessed against such owner, lessee or borrower, or shall have furnished cash or surety bond in at least double the amount of the fine which may be assessed against such owner, lessee or borrower for such violation of this section and conditioned upon the payment acquitted of such charge. Such owner, lessee or borrower shall be liable for any reasonable storage costs incurred in storing such vehicles: Provided, That if the owner of such vehicle is a resident of or has a principal place of business located in the Municipality and State, and said vehicle has been duly licensed in the State, then said vehicle shall not be impounded but the arresting officer shall deliver to the driver a written notice stating such violation; the place, date and time; the license number of said vehicle; the title number and name and address of the owner; the driver's name, address, and the number of his operator's or chauffeur's card, or permit; and the court, place, date and time for hearing, which shall be within five days of such violation Saturdays, Sundays and holidays, excluded. A copy of such notice shall within forty-eight hours be mailed to the owner of said vehicle. Upon the failure by such owner or his or its agent to appear at the designated place and time, or upon failure to pay the fine and costs assessed for such violation, unless such owner shall have been acquitted of such charge, the court shall order a bond or the impounding of said vehicle as provided in this section. (Ord. 99-1. Passed 3-1-99.)

ARTICLE 349
Miscellaneous Rules

349.01 Unattended motor vehicle.
349.02 Backing a vehicle.
349.03 Drivers' view and control to be unobstructed by load or persons.
349.04 Passengers in seat with operator.
349.05 Passengers on running board.
349.06 Following authorized emergency vehicles.
349.07 Driving over fire hose.
349.08 Funeral processions.
349.09 Opening door of vehicle on traffic side.
349.10 Boarding or alighting from vehicle.
349.11 Unlawful riding.
349.12 Squealing tires, cracking exhaust noises.
349.13 Taking, injuring or tampering with vehicle.
349.14 Driving upon sidewalk, street lawn or curb.
349.15 Shortcutting; avoiding traffic control devices.
349.16 Coasting prohibited.
349.17 Driving through safety zone.
349.18 Driving upon street posted as closed for repair.
349.19 Obstruction of traffic.
349.20 Vehicle security.
349.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Obedience to traffic control devices - see TRAF. 313.01

349.01 UNATTENDED MOTOR VEHICLE.

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key, and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the street or highway.
(WVaC 17C-14-1)

349.02 BACKING A VEHICLE.

The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.
(WVaC 17C-14-2)

349.03 DRIVERS' VIEW AND CONTROL TO BE UNOBSTRUCTED BY LOAD OR PERSONS.

(a) No person shall drive a vehicle when it is so loaded as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his or her control over the driving mechanism of the vehicle.
(WVaC 17C-14-4)

349.04 PASSENGERS IN SEAT WITH OPERATOR.

No more than three persons including the operator shall ride or be permitted by such operator to ride in the seat with the operator of any motor vehicle while such motor vehicle is being operated on the streets or highways of this Municipality: provided, however, that the limitation of this section shall not apply to a truck cab or truck crew compartment properly designed for the occupancy of four persons including the operator, and so designated on the registration card by the Division of Motor Vehicles.
(WVaC 17C-14-5)

349.05 PASSENGERS ON RUNNING BOARD.

No passenger shall ride nor shall the operator permit any passenger to ride on the running boards of any motor vehicle while such vehicle is being operated on the streets or highways of this Municipality.
(WVaC 17C-14-6)

349.06 FOLLOWING AUTHORIZED EMERGENCY VEHICLES.

The driver of any vehicle other than one on official business may not follow any authorized emergency vehicle traveling in response to a fire alarm or other emergency closer than 500 feet or drive into or park such vehicle within the block where such authorized emergency vehicle has stopped in answer to a fire alarm or other emergency.
(WVaC 17C-14-9)

349.07 DRIVING OVER FIRE HOSE.

No vehicle shall be driven over any unprotected hose of the Fire Department when laid down on any street or private driveway to be used at any fire or alarm of fire, without the consent of the Fire Department official in command.
(WVaC 17C-14-10)

349.08 FUNERAL PROCESSIONS.

(a) Definitions.

(1) "Funeral director" and "funeral establishment" have the same meaning as set forth in West Virginia Code 30-6-4.

(2) "Funeral procession" means two or more vehicles accompanying the body of a deceased person, or traveling to the church, chapel, cemetery, or other location at which the funeral service or final disposition is to be held, including a funeral lead vehicle or a funeral escort vehicle.

(3) "Funeral lead vehicle" means any authorized law enforcement or nonlaw-enforcement motor vehicle or a funeral escort vehicle being used to lead and facilitate the movement of a funeral procession. A funeral hearse may serve as a funeral lead vehicle.

(4) "Funeral escort" means a person or entity that provides escort services for funeral processions, including law-enforcement personnel and agencies.

(5) "Funeral escort vehicle" means any motor vehicle that escorts a funeral procession.

(b) Funeral Procession Right-Of-Way.

(1) Regardless of any traffic control device or right-of-way provisions prescribed by state or local ordinance, pedestrians and operators of all vehicles, except as stated in subsection (b)(3) of this section, shall yield the right-of-way to any vehicle which is part of a funeral procession being led by a funeral escort vehicle or a funeral lead vehicle.

(2) When the funeral lead vehicle lawfully enters an intersection, either by reason of a traffic control device or at the direction of law-enforcement personnel, the remaining vehicles in the funeral procession may follow through the intersection regardless of any traffic control devices or right-of-way provisions prescribed by state or local law.

(3) Funeral processions have the right-of-way at intersections regardless of traffic control devices subject to the following conditions and exceptions:

A. Operators of vehicles in a funeral procession shall yield the right-of-way to an approaching emergency vehicle giving an audible or visible signal;

B. Operators of vehicles in a funeral procession shall yield the right-of-way when directed to do so by a police officer; and

C. Operators of vehicles in a funeral procession must exercise due care when participating in a funeral procession.

(c) Driving in Procession.

(1) All vehicles comprising a funeral procession shall follow the preceding vehicle in the funeral procession as closely as is practical and safe.

(2) Any ordinance, law or rule stating that motor vehicles shall be operated to allow sufficient space enabling any other vehicle to enter and occupy such space without danger is not applicable to vehicles in a funeral procession.

(d) Liability. Liability for any death, personal injury or property damage suffered on or after the first day of July, one thousand nine hundred ninety-nine, by any person in a funeral procession may not be imposed upon a funeral director or funeral establishment or their employees or agents unless the death, personal injury or property damage is proximately caused by the negligent or intentional act of a funeral director or funeral establishment or their employees or agents.

(e) Equipment. All nonlaw-enforcement funeral escort vehicles and funeral lead vehicles may be equipped with at least one lighted circulation flashing lamp exhibiting an amber or purple light or lens. Flashing amber or purple lights may be used when such vehicles are used in a funeral procession. (WVaC Art. 17C-23)

349.09 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.

349.10 BOARDING OR ALIGHTING FROM VEHICLE.
No person shall board or alight from any vehicle while such vehicle is in motion.

349.11 UNLAWFUL RIDING.
No person shall ride on any vehicle 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.

349.12 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".

349.13 TAKING, INJURING OR TAMPERING WITH VEHICLE.
(a) No person shall drive a vehicle, not his or her own, without consent of the owner thereof, and with intent temporarily to deprive such owner of his or her possession of such vehicle, but without intent to steal the vehicle. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same or a different person. Any person who assists in, or is a party or accessory to or an accomplice in any such unauthorized taking or driving, shall also be guilty of a violation of this section.
(WVaC 17A-8-4)

(b) No person either individually or in association with one or more persons shall willfully injure or tamper with any vehicle or break or remove any part or parts of or from a vehicle without the consent of the owner.

No person with intent to commit any malicious mischief, injury or other crime shall climb into or upon a vehicle whether it is in motion or at rest or with like intent attempt to manipulate any of the levers, starting mechanism, brakes or other mechanism or device of a vehicle while the same is at rest and unattended or with like intent set in motion any vehicle while the same is at rest and unattended.
(WVaC 17A-8-6)

349.14 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.

349.15 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.

ARTICLE 351
Licensing Generally

351.01 Registration, certificate of title required.
351.02 Registration card.
351.03 Display of registration plates.
351.04 Operation of vehicle without evidence of registration; use of temporary facsimile.
351.05 Improper use of registration card, plate or permit.
351.06 Driver or motorcycle license required.
351.07 Persons exempt from license.
351.08 Display of license.
351.09 Certain acts prohibited.
351.10 Driving under suspension or revocation.
351.11 Owner or operator allowing another to drive.
351.99 Penalty.

CROSS REFERENCES
Impounding unlicensed vehicle - see TRAF. 303.07
Illumination of license plate - see TRAF. 345.05(c)

351.01 REGISTRATION, CERTIFICATE OF TITLE REQUIRED.

No person shall drive or move and no owner shall knowingly permit to be driven or moved upon any street or highway any vehicle of a type required to be registered under West Virginia Code Chapter 17-A which is not registered or for which a certificate of title has not been issued or applied for or for which the appropriate fee has not been paid when and as required, except as otherwise permitted by the provisions therein: provided, that in the event of the sale of a vehicle by a person other than a registered dealer, the person purchasing the same may, for a period of not more than ten days, operate such vehicle under the registration of its previous owner and display the registration thereof: provided further that he shall have and display on the demand of any proper officer the consent in writing of such previous owner so to use such registration.
(WVaC 17A-3-1)

351.02 REGISTRATION CARD.

Every owner upon receipt of a registration card shall write his signature thereon with pen and ink in the space provided. Every such registration card shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle who shall display the same upon demand of a police officer or any officer or employee of the Department of Motor Vehicles.
(WVaC 17A-3-13)

351.03 DISPLAY OF REGISTRATION PLATES.

Registration plates issued for vehicles required to be registered shall be attached to the rear thereof except that on truck tractors and road tractors designed and constructed to pull trailers or semi-trailers, the registration plate shall be mounted to the front.

Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than twelve inches from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible.
(WVaC 17A-3-15)

351.04 OPERATION OF VEHICLE WITHOUT EVIDENCE OF REGISTRATION; USE OF TEMPORARY FACSIMILE.

No person shall operate or park, nor shall an owner knowingly permit to be operated or parked upon any street or highway any vehicle required to be registered unless there is attached thereto and displayed thereon or is in the possession of the operator when and as required by this Traffic Code, a valid registration card and registration plate or plates issued therefor by the Department of Motor Vehicles for the current registration year except as otherwise expressly permitted in West Virginia Code Chapter 17-A.

In the event that the registration plate or plates originally issued are lost, destroyed or stolen, a temporary facsimile of the plate or plates, showing the number of the same, may be attached to the vehicle by the owner for a period of not more than fifteen days, or until a new plate or plates are issued by the Department whichever is earlier: provided, that no such facsimile shall be used and no such vehicle shall be driven upon the streets or highways of this Municipality until the owner has notified in writing the State Police of the loss of such registration plate or plates.
(WVaC 17A-9-2)

351.05 IMPROPER USE OF REGISTRATION CARD, PLATE OR PERMIT.

No person shall lend to another any certificate of title, registration card, registration plate, special plate or permit issued to him if the person desiring to borrow the same would not be entitled to the use thereof, nor shall any person knowingly permit the use of any of the same by one not entitled thereto, nor shall any person display upon a vehicle any registration card, registration plates or permit not issued for such vehicle or not otherwise lawfully used thereon under this Traffic Code. (WVaC 17A-9-3)

351.06 DRIVER OR MOTORCYCLE LICENSE REQUIRED.

(a) No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a street or highway in this Municipality or upon any subdivision street, as used in West Virginia Code Article 8-24, when the use of such subdivision street is generally used by the public unless the person has a valid driver's license under the provisions of the West Virginia Code for the type or class of vehicle being driven.

Any person licensed to operate a motor vehicle as provided in the West Virginia Code may exercise the privilege thereby granted as provided in the West Virginia Code and, except as otherwise provided by law, shall not be required to obtain any other license to exercise such privilege by any county, municipality or local board or body having authority to adopt local police regulations.

(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.

349.16 COASTING PROHIBITED.

The operator of any motor vehicle when traveling on a down grade on any street, alley or highway shall not coast with the gears of such vehicle in neutral.

349.17 DRIVING THROUGH SAFETY ZONE.

No operator of a vehicle shall drive the same over or through a safety zone.

349.18 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.

349.19 OBSTRUCTION OF TRAFFIC.

No person shall operate, stop, stand or park any motor vehicle on any street or alley within the Municipality 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.

349.20 VEHICLE SECURITY.

Every owner or registrant of a motor vehicle shall maintain security upon such vehicle as required by West Virginia Code Article 17D-2A, and no person shall knowingly drive or operate on any street within the Municipality any motor vehicle upon which security is required by such Article unless the security is provided, and violation of any of the provisions of West Virginia Code Article 17D-2A including failure to have a certificate of insurance, if required, shall constitute a violation under this section.

349.99 PENALTY.

(a) General Article Penalty. Whoever violates any provision of this article for which no other penalty is provided shall be fined not more than one hundred dollars ($100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars ($200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars ($500.00).

(b) Taking, Injuring or Tampering With Vehicle. Whoever violates Section 349.13 shall, for a first offense, be fined not more than five hundred dollars ($500.00) or imprisoned not more than thirty days, or both. (WVaC 17A-11-1)

(c) Vehicle Security. Whoever violates Section 349.20 shall be fined not less than two hundred dollars ($200.00) or more than five thousand dollars ($5,000) or imprisoned not more than thirty days, or both. (WVaC 17D-2A-9)

(b) No person, except those hereinafter expressly exempted, shall drive any motorcycle upon a street or highway in this Municipality or upon any subdivision street, as used in West Virginia Code Article 8-24 when the use of such subdivision street is generally used by the public unless the person has a valid motorcycle license or a valid license which has been endorsed under West Virginia Code 17B-2-7b for motorcycle operation or has a valid motorcycle instruction permit. (WVaC 17B-2-1)

351.07 PERSONS EXEMPT FROM LICENSE.

The following persons are exempt from the license required under Section 351.06:

(a) Any person while operating a motor vehicle in the armed services of the United States while in the performance of his official duties;

(b) A nonresident who is at least sixteen years of age and who has in his or her immediate possession a valid driver's license issued to the person in the person's home state or country unless the Commissioner determines the person's home state or country does not extend the same privileges to a resident of this State, may operate a motor vehicle in this State only as a noncommercial driver for a period not to exceed ninety days in any one calendar year;

(c) A nonresident who is at least sixteen years of age, who has in the person's immediate possession a valid driver's license issued to the person in the person's home state or country and who is employed in this State, or owns, maintains or operates a place or places of business in this State, or engages in any trade, profession or occupation in this State, in addition to the driving privileges extended under subsection (b) hereof, unless the Commissioner determines the person's home state or country does not extend the same privileges to a resident of this State, may operate a motor vehicle in this State only as a noncommercial driver in traveling to and from the person's place or places of employment, place or places of business or place or places at which the person engages in the trade, profession or occupation and in the discharge of the duties of the person's employment, business, trade, profession or occupation if the duties are such that, if performed by a resident of the State of West Virginia over the age of eighteen years of age, the resident would not be required under the provisions of West Virginia Code Chapter 17 to obtain a Class A, B, C or D driver's license. However, this subsection shall not exempt any person who is required to obtain a West Virginia driver's license in accordance with the provisions of West Virginia Code 17B-2-1a;

(d) A nonresident who is at least eighteen years of age and who has in his or her immediate possession a valid commercial driver's license issued to the person in his or her home state or country and which meets the requirements of the federal commercial motor vehicle act of 1986, Title XI of public law 99-570 and unless the Commissioner determines the person's home state or country does not extend the same privilege to a resident of this State may operate a motor vehicle in this State either as a commercial driver subject to the age limits applicable to commercial driver in this State, or as a noncommercial driver subject to the limitations imposed on nonresident drivers in subsections (b) and (c) hereof;

(e) Any person who is a student, properly enrolled and registered in an accredited school, college or university in this State, who is at least sixteen years of age and who has in his or her immediate possession a valid driver's license issued to the person in the person's home state, notwithstanding the limitations of subsections (b) and (c) hereof may operate motor vehicle in this State only as noncommercial driver: provided, that the state of which the person is a resident shall extend the same privileges to residents of this State. This exemption shall be canceled immediately when the student is graduated from school, college or university or is expelled or ceases to be a student. (WVaC 17B-2-2)

351.08 DISPLAY OF LICENSE.

Every licensee shall have his or her driver's license in such person's immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of a magistrate, municipal judge, circuit court judge, peace officer or an employee of the Division of Motor Vehicles. However, no person charged with violating this section shall be convicted if such person produces in court or the office of the arresting officer a driver's license theretofore issued to such person and valid at the time of such person's arrest.
(WVaC 17B-2-9)

351.09 CERTAIN ACTS PROHIBITED.

No person shall commit any one of the following acts:

(a) Display or cause or permit to be displayed or have in his possession any fictitious or fraudulently altered driver's or commercial driver's license or nonoperator's identification;

(b) Lend his driver's or commercial driver's license or nonoperator's identification to any other person or knowingly permit the use thereof by another;

(c) Display or represent as one's own any driver's or commercial driver's license or nonoperator's identification not issued to him;

(d) Use a false or fictitious name in any application for a driver's or commercial driver's license or nonoperator's identification or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application;

(e) Permit any unlawful use of a driver's or commercial driver's license or nonoperator's identification issued to him; or

(f) Do any act forbidden or fail to perform any act required by this Traffic Code or West Virginia Code Chapter 17.
(WVaC 17B-4-1)

351.10 DRIVING UNDER SUSPENSION OR REVOCATION.

No person shall drive a motor vehicle on any public street or highway of this Municipality at a time when his privilege so to do has been lawfully suspended or revoked.
(WVaC 17B-4-3)

351.11 OWNER OR OPERATOR ALLOWING ANOTHER TO DRIVE.

No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any street or highway by any person who is not authorized hereunder or in violation of any of the provisions of this Traffic Code.
(WVaC 17B-4-4)

351.99 PENALTY.

(a) General Article Penalty. Whoever violates any provision of this article for which no other penalty is provided shall be fined not more than five hundred dollars ($500.00); for a second or subsequent violation of the same provision such person shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than thirty days, or both.

(b) Driving Under Suspension or Revocation.

(1) Except as otherwise provided in West Virginia Code 17B-4-3(b), or subsection (b)(2) hereof, whoever drives a motor vehicle on any street or highway of this Municipality at a time when his privilege so to do has been lawfully suspended or revoked shall, for the first offense, be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00); for the second offense, such person, shall be imprisoned for a period of ten days and, in addition to such mandatory jail sentence, shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00); for the third or any subsequent offense, such person shall be imprisoned for a period of thirty days and, in addition to such mandatory jail sentence, shall be fined not less than one hundred fifty dollars ($150.00) nor more than five hundred dollars ($500.00).

A record of the conviction of any person under this section upon a charge of driving a vehicle while the license of such person was suspended lawfully shall be sent to the State Department of Motor Vehicles.

(2) Any person who drives a motor vehicle on any public street or highway of this Municipality at a time when his or her privilege to do so has been lawfully suspended for driving while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, shall be imprisoned for twenty-four hours or shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or both.

(c) Additional Penalties. Whoever violates Sections 351.02, 351.03, 351.05, 351.09 or 351.11 shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than thirty days, or both.

ARTICLE 353
Commercial Drivers

353.01 Definitions.
353.02 Limitation on number of driver's licenses.
353.03 Employer responsibilities.
353.04 Commercial driver's license required.
353.05 Exemptions.
353.06 Drivers prohibited from operating with any alcohol in system.
353.99 Penalty.

CROSS REFERENCES
Uniform Commercial Driver's License Act - see W.Va. Code Art. 17E-1
Commercial vehicles - see TRAF. Art. 347
Driver's licensing - see TRAF. Art. 351

353.01 DEFINITIONS.

Notwithstanding any other provision of this Traffic Code, the following definitions apply to this article:

(a) "Alcohol" means:

(1) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propanol and isopropanol;

(2) Beer, ale, port or stout and other similar fermented beverages (including sake or similar products) of any name or description containing one half of one percent (0.5%) or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;

(3) Distilled spirits or that substance known as ethyl alcohol, ethanol or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced); or

(4) Wine of not less than one half of one percent (0.5%) of alcohol by volume.

(b) "Alcohol concentration" means:
(1) The number of grams of alcohol per 100 milliliters of blood; or
(2) The number of grams of alcohol per 210 liters of breath; or
(3) The number of grams of alcohol per sixty-seven milliliters of urine.

(c) "Commercial driver license" means a license issued in accordance with the requirements of West Virginia Code Article 17E-1 to an individual which authorizes the individual to drive a class of commercial motor vehicle.

(d) "Commercial driver instruction permit" means a permit issued pursuant to West Virginia Code 17E-1-9(d).

(e) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:
(1) If the vehicle has a gross vehicle weight rating as determined by federal regulation;
(2) If the vehicle is designed to transport sixteen or more passengers, including the driver; or
(3) If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. part 172, sub-part F.

(f) "Conviction" means the final judgment in a judicial or administrative proceeding or a verdict or finding of guilty, a plea of guilty, a plea of nolo contendere, or a forfeiture of bond or collateral upon a charge of a disqualifying offense, as a result of proceedings upon any violation of the requirement of this article.

(g) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(h) "Drive" means to drive, operate or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of Section 353.06 "drive" includes operation or physical control of a motor vehicle anywhere in this Municipality.

(i) "Driver" means any person who drives, operates or is in physical control of a commercial motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a commercial driver license.

(j) "Driver license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle of a specific class.

(k) "Employee" means a person who is employed by an employer to drive a commercial motor vehicle, including independent contractors. An employee who is self employed as a commercial motor vehicle driver must comply with both the requirements of this article pertaining to employees and employers.

(l) "Employer" means any person, including the United States, a state or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(m) "Farm vehicle" includes a motor vehicle or combination vehicle registered to the farm owner or entity operating the farm and used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants and in the transportation of agricultural or horticultural supplies and machinery to such farms or orchards to be used thereon.

(n) "Farmer" includes owner, tenant, lessee, occupant or person in control of the premises used substantially for agricultural or horticultural pursuits, who is at least eighteen years of age with two years licensed driving experience.

(o) "Farmer vehicle driver" means the person employed and designated by the farmer to drive a farm vehicle as long as driving is not his sole or principal function on the farm, who is at least eighteen years of age with two years licensed driving experience.

(p) "Motor vehicle" means every vehicle which is self-propelled, and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

(q) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle as a result of a determination by a federal agency or the Public Service Commission, pursuant to West Virginia Code Chapter 24A, that:

(1) The continued use of a commercial motor vehicle may result in death, serious injury or severe personal injury; or

(2) The continued actions by the driver of a commercial motor vehicle poses an imminent hazard to public safety.

(r) "Violation of an out-of-service order" means:

(1) The operation of a commercial motor vehicle during the period the driver was placed out of service; or

(2) The operation of a commercial motor vehicle by a driver after the vehicle was placed out of service and before the required repairs are made.

(WVaC 17E-1-3)

353.02 LIMITATION ON NUMBER OF DRIVER'S LICENSES.

No person who drives a commercial motor vehicle shall have more than one driver license at one time except during the ten-day period beginning on the date the person is issued a driver's license.

(WVaC 17E-1-4)

353.03 EMPLOYER RESPONSIBILITIES.

(a) Each employer shall require the applicant to provide the information specified in West Virginia Code 17E-1-5.

(b) No employer shall knowingly allow, permit or authorize a driver to drive a commercial motor vehicle during any period:

(1) In which the driver has a driver's license suspended, revoked or canceled by a state; has lost the privilege to drive a commercial motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle; or

(2) In which the driver has more than one driver's license at one time except during the ten-day period beginning on the date the employee is issued a driver's license.

(WVaC 17E-1-6)

353.04 COMMERCIAL DRIVER'S LICENSE REQUIRED.

(a) Except when driving under a commercial driver's instruction permit accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person shall drive a commercial motor vehicle unless the person holds a commercial driver's license and applicable endorsements valid for the vehicle they are driving.

(b) No person shall drive a commercial motor vehicle while their driving privilege is suspended, revoked, canceled, expired, subject to a disqualification, or in violation of an out-of-service order.

(c) Drivers of a commercial motor vehicle must have a commercial driver's license in their possession at all times while driving.
(WVaC 17E-1-7)

353.05 EXEMPTIONS.

(a) Farmers. Bona fide farmers or farm vehicle drivers, as defined, operating a vehicle otherwise covered by the commercial driver's license requirements may be exempted from the provisions of this article only if the vehicle used is:

(1) Driven by a farmer or farm vehicle driver;
(2) Used only to transport either agricultural products, farm machinery, farm supplies, to or from a farm;
(3) Not used in the operation of a common or contract motor carrier; and
(4) Used within 150 miles of the qualifying farm.

Farmers who wish to be exempted from the commercial driver's license requirements must apply to the Division of Motor Vehicles for a certificate of exemption.

(b) Military Personnel. Military personnel, including the national guard and reserve, will be exempt from the provision of this article, only:

(1) When in uniform; and
(2) Operating equipment owned by the United States Department of Defense, except during declared emergencies or disaster situations; and
(3) On duty; and
(4) In possession of a valid classified military driver's license for the class of vehicle being driven.

(c) Fire Fighting and Rescue Equipment. Operators of vehicles authorized to hold an authorized emergency vehicle permit for use of red signal lights only are exempt from the provisions of this article while the authorized emergency vehicle permit is in force. Vehicles in this class include, but are not limited to, fire fighters and rescue equipment:

(1) Owned and operated by state, county and municipal fire departments.
(2) Owned and operated by state, county and municipal civil defense organizations.
(3) Owned and operated by a manufacturer engaged in a type of business that requires fire fighter equipment to protect the safety of their plants and its employees.
(4) Owned and operated by volunteer fire departments.

(d) Operators of Off-Road Construction and Mining Equipment. Operators of equipment which, by its design, appearance and function, is not intended for use on a public road, including, without limitation, motorscrapers, backhoes, motorgraders, compactors, excavators, tractors, trenches and bulldozers, will be exempt from the provisions of this article: Provided, that the exemption recognized by this subsection shall not be construed to permit the operation of such equipment on any public road except such operation as may be required for a crossing of such road: Provided, however, that no such equipment may be operated on a public road for a distance exceeding five hundred feet from the place where such equipment entered upon the public road.

(e) Exempt Vehicles. The Commercial Motor Vehicles Safety Act of 1986 exempts vehicles used exclusively for personal use such as recreation vehicles and rental trucks used only to transport the driver's personal or household property.
(WVaC 17E-1-8)

353.06 DRIVERS PROHIBITED FROM OPERATING WITH ANY ALCOHOL IN SYSTEM.

(a) In addition to any other penalties provided by the West Virginia Code or these Codified Ordinances, any person who drives, operates or is in physical control of a commercial motor vehicle while having an alcohol concentration in his or her blood, breath or urine of four hundredths of one percent or more, by weight, shall be imprisoned for not less than twenty-four hours nor more than thirty days, and shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00). A person convicted of a second or any subsequent offense under the provisions of this subsection shall be imprisoned for a period of thirty days, and the court may, in its discretion, impose a fine of not less than one thousand dollars ($1,000) nor more than three thousand dollars ($3,000).

(b) A person who violates the provisions of subsection (a) of this section shall be treated in the same manner set forth in West Virginia Code 17C-19-3, as if he or she had been arrested for driving under the influence of alcohol or of any controlled substance.

(c) In addition to any other penalties provided by the West Virginia Code or these Codified Ordinances, a person who drives, operates or is in physical control of a commercial motor vehicle having any measurable alcohol in such person's system or who refuses to take a preliminary breath test to determine such person's blood alcohol content as provided by West Virginia Code 17E-1-15 must be placed out of service for twenty-four hours by the arresting law-enforcement officer. (WVaC 17E-1-14)

353.99 PENALTY.

Unless another penalty is provided in this article, whoever violates any provision of this article shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000), or imprisoned for not more than thirty days, or both except that for the second violation of Section 353.04, the offender shall be fined not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000) or imprisoned not more than thirty days, or both. For the third or any subsequent conviction for violation of Section 353.04, the offender shall be fined not less than one thousand dollars ($1,000) nor more than two thousand five hundred dollars ($2,500), or imprisoned for not more than thirty days, or both.
(WVaC 17E-1-25)

CHAPTER SEVEN - Parking
Art. 361. Parking Generally.

ARTICLE 361
Parking Generally

361.01 Prohibition against parking on streets or highways.
361.02 Police may remove illegally stopped vehicles.
361.03 Prohibited stopping, standing or parking places.
361.04 Vehicles parked on private property.
361.05 Manner of angle and parallel parking.
361.06 Handicapped parking.
361.07 Abandoned and junk vehicles.
361.08 Parking for certain purposes prohibited.
361.09 Truck loading zones.
361.10 Bus stops and taxicab stands.
361.11 Parking in alleys and narrow streets; exceptions.
361.12 Registered owner prima-facie liable for unlawful parking.
361.13 Parking heavy vehicles along State Route 61.
361.14 Vehicles laden with explosives or flammable materials.
361.15 Storing vehicle on street.
361.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law
Authority to regulate the standing or parking of vehicles - see W. Va. Code 17C-2-8(a)(1)
Authority to regulate parallel and angle parking - see W. Va. Code 17C-13-4
Impounding of abandoned vehicles - see TRAF. 303.07
Duty to stop engine, set brake on grade and remove key - see TRAF. 349.01

361.01 PROHIBITION AGAINST PARKING ON STREETS OR HIGHWAYS.

(a) Upon any street or highway outside of a business or residence district no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the street or highway when it is practicable to stop, park or so leave such vehicle off such part of the street or highway, but in every event an unobstructed width of the street or highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of 200 feet in each direction upon such highway or street.

(b) This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a street or highway in such a manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.
(WVaC 17C-13-1)

361.02 POLICE MAY REMOVE ILLEGALLY STOPPED VEHICLES.

(a) Whenever any police officer finds a vehicle standing upon a street or highway in violation of Section 361.01, such officer is hereby authorized to move such vehicle or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or main-traveled part of such street or highway.

(b) Whenever any police officer finds a vehicle unattended upon any bridge or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety.
(WVaC 17C-13-2)

361.03 PROHIBITED STOPPING, STANDING OR PARKING PLACES.

(a) No person shall stop, stand or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device, in any of the following places:

(1) On a sidewalk;
(2) In front of a public or private driveway;
(3) Within an intersection;
(4) Within fifteen feet of a fire hydrant;
(5) In a properly designated fire lane;
(6) On a crosswalk;
(7) Within twenty feet of a crosswalk at an intersection;
(8) Within thirty feet upon the approach to any flashing beacon, stop sign or traffic control signal located at the side of a roadway;
(9) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;
(10) Within fifty feet of the nearest rail of a railroad crossing;

(11) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of such entrance (when properly signposted);
(12) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;
(13) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
(14) Upon any bridge or other elevated structure upon a street or highway or within a street or highway tunnel;
(15) At any place where signs prohibit stopping, standing or parking, or where the curbing or street is painted yellow or red, or at any place in excess of the maximum time limited by signs;
(16) Within twenty feet of any mail receptacle served regularly by a carrier using a motor vehicle for daily deliveries, if such parking interferes with or causes delay in the carrier's schedule;
(17) Upon any controlled-access highway;
(18) At any place on any street or highway where the safety and convenience of the traveling public is thereby endangered;
(19) Over or across any lines or marks established by the Municipality to indicate parking spaces.
(20) In front of a wheelchair accessible ramp or curb cut which is part of a sidewalk designed for use by the general public when the ramp or curb cut is properly marked with blue paint.

(b) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.
(WVaC 17C-13-3)

361.04 VEHICLES PARKED ON PRIVATE PROPERTY.

No driver of a vehicle shall stop, park or leave standing unattended any vehicle on a private road or driveway or on private property without having express or implied permission from the owner, tenant or lessee of such land. The owner, tenant or lessee of such private road or driveway or private property may move, or have moved, any vehicle stopped, parked or left standing unattended on his or her private road, driveway or private property as above prohibited without any liability for the cost of moving any vehicle, nor shall he or she be liable to the owner of the vehicle for any damage done to such vehicle in moving it, unless the owner, tenant or lessee of such private road or driveway or private property was negligent in removing or authorizing the removal of the vehicle. The owner of such vehicle shall be responsible to the persons removing such vehicle for paying all removal costs. Any person who removes any vehicle under the provisions of this section shall notify the State Police of such action, and, in addition notify the Police Department.
(WVaC 17C-14-13)

361.05 MANNER OF ANGLE AND PARALLEL PARKING.

(a) Every vehicle stopped or parked upon a roadway where there is an adjacent curb shall be stopped or parked with the curb-side wheels of such vehicle parallel with and not more than eighteen inches from the curb, unless it is impossible to approach so close to the curb; in such case the stop shall be as close to the curb as possible and only for the time necessary to discharge and receive passengers or to load or unload merchandise.

(b) This subsection does not apply to streets or parts thereof where angle parking is lawfully permitted. However, no angle parking shall be permitted on a State or Federal-aid route unless approved by the State Commissioner of Highways.

(c) 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.

(d) 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.

361.06 HANDICAPPED PARKING.

(a) As used in this section, the following terms have the meanings ascribed to them in this subsection:

(1) A person with a "mobility impairment" means a person who, as determined by a licensed physician:

A. Cannot walk two hundred feet without stopping to rest;

B. Cannot walk without the use of or assistance from a brace, cane, crutch, prosthetic device, wheelchair, other assistive device or another person;

C. Is restricted by lung disease to such an extent that the person's force (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

D. Uses portable oxygen;

E. Has a cardiac condition to such an extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards established by the American heart association; or

F. Is severely limited in his or her ability to walk because of an arthritic, neurological, orthopedic or other physical condition.

(2) "Special registration plate" means a registration plate that displays the international symbol of access in a color that contrasts with the background, in letters and numbers the same size as those on the plate, and which may be used in lieu of a regular registration plate.

(3) "Removable windshield placard" (permanent or temporary) means a two-sided, hanger style placard measuring three inches by nine and one half inches, with all of the following on each side:

A. The international symbol of access, measuring at least three inches in height, centered on the placard, in white on a blue background for permanent designations and in white on a red background for temporary designations;

B. An identification number measuring one inch in height;

C. An expiration date in numbers measuring one inch in height; and

D. The seal or other identifying symbol of the issuing authority.

(4) "Public entity" means state or local government or any department, agency, special purpose district or other instrumentality of a state or local government.

(5) "Public facility" means all or any part of any buildings, structures, sites, complexes, roads, parking lots or other real or personal property, including the site where the facility is located.

(6) "Place(s) of public accommodation" means a facility or facilities operated by a private entity whose operations affect commerce and fall within at least one of the following categories:

A. Inns, hotels, motels and other places of lodging;

B. Restaurants, bars or other establishments serving food or drink;

C. Motion picture houses, theaters, concert halls, stadiums or other places of exhibition or entertainment;

D. Auditoriums, convention centers, lecture halls or other places of public gatherings;

E. Bakeries, grocery stores, clothing stores, hardware stores, shopping centers or other sales or rental establishments;

F. Laundromats, dry cleaners, banks, barber and beauty shops, travel agencies, shoe repair shops, funeral parlors, gas or service stations, offices of accountants and attorneys, pharmacies, insurance offices, offices of professional health care providers, hospitals or other service establishments;

G. Terminals, depots or other stations used for public transportation;

H. Museums, libraries, galleries or other places of public display or collection;

I. Parks, zoos, amusement parks or other places of recreation;

J. Public or private nursery, elementary, secondary, undergraduate or post-graduate schools or other places of learning and day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies or other social service establishments; and

K. Gymnasiums, health spas, bowling alleys, golf courses or other places of exercise or recreation.

(7) "Commercial facility" means a facility whose operations affect commerce and which are intended for nonresidential use by a private entity.

(b) A handicapped parking space should comply with the provisions of the Americans with Disabilities Act Guidelines, contained in 28 C.F.R. 36, Appendix A, section 4.6. In particular, the parking space should be a minimum of eight feet wide with an adjacent access aisle for vans having side mounted handicap lifts. Access aisles should be marked using diagonal stripes or other appropriate markings denoting that the space is a no-parking zone. Lines or markings on the pavement or curbs for parking spaces and access aisles may be in any color, although blue is the generally accepted color for handicapped parking.

(c) A vehicle from any other state, United States territory or foreign country displaying an officially issued special registration plate, placard or decal bearing the international symbol of access, shall be recognized and accepted as meeting the requirements of this section, regardless of where the plate, placard or decal is mounted or displayed on the vehicle.

(d) Free stopping, standing or parking places marked with the international symbol of access shall be designated in close proximity to all public entities, including state, county and municipal buildings and facilities, places of public accommodation and commercial facilities. These parking places shall be reserved solely for persons with a mobility impairment during the hours that those buildings are open for business.

(e) Any person whose vehicle properly displays a valid, unexpired special registration plate or removable windshield placard may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted: provided, that this privilege does not mean that the vehicle may park in any zone where stopping, standing or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard.

The privileges provided for in this subsection apply only during those times when the vehicle is being used for the transportation of a person with a mobility impairment. Any person who knowingly exercises, or attempts to exercise, these privileges at a time when the vehicle is not being used for the transportation of a person with a mobility impairment, in addition to any other penalty he or she may otherwise incur, shall be fined one hundred dollars ($100.00).

(f) Any person whose vehicle does not display a valid, special registration plate or removable windshield placard may not stop, stand or park a motor vehicle in an area designated, zoned or marked for handicapped parking with signs or instructions displaying the international symbol of access, either by itself or with explanatory text. Such signs may be mounted on a post or a wall in front of the handicapped parking space and instructions may appear on the ground or pavement, but use of both methods is preferred. Handicapped parking spaces for vans having an eight-foot adjacent access aisle should be designated as "van accessible" but may be used by any vehicle displaying a valid special registration plate or removable windshield placard. These spaces are intended solely for persons with a mobility impairment, as defined in this section: provided, that any person in the act of transporting a person with a mobility impairment as defined in this section, may stop, stand or park a motor vehicle not displaying a special registration plate or removable windshield placard in the area designated for handicapped parking by the international symbol of access for the limited purposes of loading or unloading a passenger with a mobility impairment: provided, however, that the vehicle shall be promptly moved after the completion of this limited purpose.

Any person who violates the provisions of this subsection shall be fined one hundred dollars ($100.00).

(g) Signs erected in the future that designate areas as "handicapped parking" or that display the international symbol of access shall also include the words "$100 fine".

(h) No person may stop, stand or park a motor vehicle in an area designated or marked off as an access aisle adjacent to a van-accessible parking space or regular handicapped parking space. Any person, including a driver of a vehicle displaying a valid removable windshield placard or special registration plate, who violates the provisions of this subsection shall be fined one hundred dollars ($100.00).

(i) Parking enforcement personnel who otherwise enforce parking violations are hereby authorized to issue citations for violations of this section.

(j) A grace period is hereby established for individuals who, on the date of adoption of this code section, hold special registration plates or removable windshield placard bearing no expiration date. Said grace period shall expire on the date as designated by the West Virginia Commissioner of Motor Vehicles, after which time any undated registration plate or windshield placard is invalid and subject to confiscation by any police officer of the Municipality.

(k) To the extent any provision of any ordinance of the Municipality is contrary to the provisions of this section, the provisions of this section shall take precedence and shall apply. (WVaC 17C-13-6)

361.07 ABANDONED AND JUNK VEHICLES.

(a) Definitions.

(1) "Abandoned motor vehicle" means any motor vehicle, or major part thereof, which is inoperative and which has been abandoned on public or private property for any period of time over five days, other than in an enclosed building or in a licensed salvage yard or at the business establishment of a demolisher, or any motor vehicle, or major part thereof, which has remained illegally on public or private property for any period of time over five days, or any motor vehicle, or major part thereof, which has remained on private property without consent of the owner or person in control of the property for any period of time over three days, or any motor vehicle, or major part thereof, which is unattended, discarded, deserted and unlicensed and is not in an enclosed building, a licensed salvage yard or the actual possession of demolisher.

(2) "Junked motor vehicle" means a motor vehicle or any part thereof, other than an on-premise farm utility vehicle, which:

A. Is discarded, wrecked, ruined, scrapped or dismantled;

B. Cannot pass the State inspection required by West Virginia Code 17C-16-1 et seq;

C. Is either not serving a functional purpose or use or is not in an enclosed building, a licensed salvage yard or the actual possession of a demolisher.

(3) "Motor vehicle" means a vehicle which is or was self-propelled, including but not limited to automobiles, trucks, buses and motorcycles. (WVaC 17-24-2)

(b) Abandoning or Depositing Prohibited.

(1) No person shall abandon a motor vehicle upon the right-of-way of any public street or highway, upon any other public property, or upon any private property which he does not own, lease, rent or otherwise control unless it be at a licensed salvage yard or at the business establishment of a demolisher.
(WVaC 17-24-3)

(2) No person shall place or deposit any junked motor vehicle upon the right-of-way of any public street or highway or upon any other public property; nor shall any person place or deposit any junked motor vehicle upon any private property which he does not own, lease, rent or otherwise control unless it be at a licensed salvage yard or at the business establishment of a demolisher.
(WVaC 17-24-4)

361.08 PARKING FOR CERTAIN PURPOSES PROHIBITED.

No person shall park any vehicle upon any street within the Municipality for the principal purpose of:

(a) Displaying such vehicle for sale.
(b) Displaying advertising.
(c) Washing, greasing or repairing such vehicle, except repairs made necessary by an emergency.
(d) Relieving the crowded condition of any parking lot, used car lot, automobile sales lot, repair garage, automobile sales agency or used car sales agency.

361.09 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 pickup 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 thirty minutes.

361.10 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 eighteen 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.

361.11 PARKING IN ALLEYS AND NARROW STREETS; EXCEPTIONS.

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.

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 thirty minutes.

361.12 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 Traffic Code, 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.

361.13 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 West Virginia State Route 61 within the corporate limits of the City.
(Ord. 92-1. Passed 3-2-92.)

361.14 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.
(1963 Code 3-61-5)

361.15 STORING VEHICLE ON STREET.

(a) For the purposes of this section, "store" means:

(1) To leave a vehicle on a street, sidewalk or public alley unattended for a period longer than twenty-four 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 City, providing nothing in this section shall prohibit the owner of a passenger automobile from leaving the same in front of his residence as a part of the normal use thereof so long as it shall not be in violation of this Traffic Code.

(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 303.07.
(1963 Code 3-61-7)

361.99 PENALTY.

(a) General Article Penalty. Whoever violates any provision of this article for which no other penalty is provided shall be fined not more than one hundred dollars ($100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars ($200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars ($500.00).

(b) Abandoned and Junk Vehicles. Whoever violates Section 361.07 shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than thirty days, or both.

CHAPTER NINE - Pedestrians and Bicycles
Art. 371. Pedestrians.
Art. 373. Bicycles.

ARTICLE 371
Pedestrians

371.01 Compliance with traffic regulations.
371.02 Right of way in crosswalk.
371.03 Crossing roadway outside crosswalk.
371.04 Drivers to exercise due care.
371.05 Moving upon right half of crosswalk.
371.06 Walking along streets and highways; soliciting rides.
371.07 Persons working on streets and highways.
371.08 Protection of blind pedestrians.
371.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Pedestrian defined - see TRAF. 301.21
Pedestrians at traffic signal - see TRAF. 313.03
Pedestrian control signal - see TRAF. 313.04

371.01 COMPLIANCE WITH TRAFFIC REGULATIONS.

Pedestrians shall be subject to traffic control signals at intersections as provided in Section 313.03, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this article.
(WVaC 17C-10-1(a))

371.02 RIGHT OF WAY IN CROSSWALK.

(a) When traffic control signals are not in place or not in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. This provision shall not apply under the conditions stated in Section 371.03(b).

(b) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.
(WVaC 17C-10-2)

371.03 CROSSING ROADWAY OUTSIDE CROSSWALK.

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.
(WVaC 17C-10-3)

371.04 DRIVERS TO EXERCISE DUE CARE.

Notwithstanding any other provision of this article every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.
(WVaC 17C-10-4)

371.05 MOVING UPON RIGHT HALF OF CROSSWALK.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.
(WVaC 17C-10-5)

371.06 WALKING ALONG STREETS AND HIGHWAYS; SOLICITING RIDES.

(a) Where sidewalks are provided, no pedestrian shall walk along and upon an adjacent roadway.

(b) Where sidewalks are not provided any pedestrian walking along and upon a street or highway shall when practicable walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

(c) No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any vehicle.
(WVaC 17C-10-6)

371.07 PERSONS WORKING ON STREETS AND HIGHWAYS.

The driver of a vehicle shall yield the right of way to persons engaged in maintenance or construction work on a street or highway whenever he is notified of their presence by an official traffic control device or flagman.
(WVaC 17C-10-8)

371.08 PROTECTION OF BLIND PEDESTRIANS.

The driver of a vehicle approaching a blind pedestrian who knows, or in the exercise of reasonable care should know, that such pedestrian is blind because such pedestrian is carrying a cane predominantly white or metallic in color with or without a red tip, or is using a guide dog or otherwise, shall exercise care commensurate with the situation to avoid injuring such pedestrian.
(WVaC 5-15-5)

371.99 PENALTY.

Whoever violates any provision of this article shall be fined not more than one hundred dollars ($100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars ($200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars ($500.00).
(WVaC 17C-10-7)

ARTICLE 373
Bicycles

373.01 Compliance; code application to bicycles.
373.02 Obedience to traffic rules; exceptions.
373.03 Riding upon seats; number of persons.
373.04 Attaching bicycle or sled to vehicle.
373.05 Riding on roadways and bicycle paths.
373.06 Carrying articles.
373.07 Lights and reflector on bicycle; signal device; brakes.
373.08 Reckless operation; control, course and speed.
373.09 Bicycle helmets for children.
373.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Authority to regulate bicycle operation - see W. Va. Code 17C-2-8(a)(8)
Bicycle defined - see TRAF. 301.03
Moped equipment and operation - see TRAF. 345.29

373.01 COMPLIANCE; CODE APPLICATION TO BICYCLES.

(a) No person shall do any act forbidden or fail to perform any act required in this article.

(b) The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this Traffic Code.

(c) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any street or highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.
(WVaC 17C-11-1)

373.02 OBEDIENCE TO TRAFFIC RULES; EXCEPTIONS.

Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Traffic Code, except as to special regulations in this article and except as to those provisions of this Traffic Code which by their nature can have no application.
(WVaC 17C-11-2)

373.03 RIDING UPON SEATS; NUMBER OF PERSONS.

(a) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

(b) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.
(WVaC 17C-11-3)

373.04 ATTACHING BICYCLE OR SLED TO VEHICLE.

No person riding upon any bicycle, coaster, skateboard, roller skates, sled or toy vehicle shall attach the same or himself to any vehicle upon a roadway.
(WVaC 17C-11-4)

373.05 RIDING ON ROADWAYS AND BICYCLE PATHS.

(a) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

(b) Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

(c) Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.
(WVaC 17C-11-5)

373.06 CARRYING ARTICLES.

No person operating a bicycle shall carry any package, bundle or article which prevents the driver from keeping at least one hand upon the handlebars.
(WVaC 17C-11-6)

373.07 LIGHTS AND REFLECTOR ON BICYCLE; SIGNAL DEVICE; BRAKES.

(a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least 500 feet to the front and with a red reflector on the rear of a type approved by the Department of Motor Vehicles which shall be visible from all distances from fifty feet to 300 feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to the red reflector.

(b) No person shall operate a bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least 100 feet, except that a bicycle shall not be equipped with nor shall any person use upon a bicycle any siren or whistle.

(c) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.
(WVaC 17C-11-7)

373.08 RECKLESS OPERATION; CONTROL, COURSE AND SPEED.

No person shall operate a bicycle:

(a) Without due regard for the safety and rights of pedestrians and drivers and occupants of all other vehicles, and so as to endanger the life, limb or property of any person while in the lawful use of the streets or sidewalks or any other public or private property;

(b) Without exercising reasonable and ordinary control over such bicycle;

(c) In a weaving or zigzag course unless such irregular course is necessary for safe operation in compliance with law;

(d) Without both hands upon the handle grips except when necessary to give the required hand and arm signals, or as provided in Section 373.06;

(e) At a speed greater than is reasonable and prudent under the conditions then existing.

373.09 BICYCLE HELMETS FOR CHILDREN.

(a) Definitions. As used in this section:

(1) "Bicycle" means a human-powered vehicle with wheels designed to transport, by the action of pedaling, one or more persons seated on one or more saddle seats on its frame. Such term also includes a human-powered vehicle, and any attachment to such vehicle designed to transport by pedaling when the vehicle is used on a public roadway, public bicycle path or other public right-of-way, but does not include a tricycle.

(2) "Tricycle" means a three-wheeled human-powered vehicle designed for use as a toy by a single child under the age of six years, the seat of which is no more than two feet from ground level.

(3) "Public roadway" means a right of way under the jurisdiction and control of this State or the Municipality for use primarily by motor vehicles.

(4) "Public bicycle path" means a right of way under the jurisdiction and control of this State or the Municipality for use primarily by bicycles and pedestrians.

(5) "Other public right-of-way" means any right of way other than a public roadway or public bicycle path that is under the jurisdiction and control of this State or the Municipality and is designed for use and used by vehicular or pedestrian traffic.

(6) "Protective bicycle helmet" means a piece of headgear which meets or exceeds the impact standards for protective bicycle helmets set by the American National Standards Institute (ANSI) or the Snell Memorial Foundation's standards for protective headgear or American Society for Testing and Materials (ASTM) for use in bicycling.

(7) "Passenger" means any person who travels on a bicycle in any manner except as an operator.

(8) "Operator" means a person who travels on a bicycle seated on a saddle seat from which that person is intended to and can pedal the bicycle.

(WVaC 17-11A-3)

(b) Requirements for Helmet Use.

(1) It is unlawful for any person under fifteen years of age to operate or be a passenger on a bicycle or any attachment to a bicycle used on a public roadway, public bicycle path or other public right of way unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet.

(2) It is unlawful for any parent or legal guardian of a person under fifteen years of age to knowingly permit such person to operate or be a passenger on a bicycle or on any attachment to a bicycle used on a public roadway, public bicycle path or other public right of way unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet. (WVaC 17C-11A-4)

(c) Sale of Bicycle Helmets. Any helmet sold or offered for sale for use by operators and passengers of bicycles shall be conspicuously labeled in accordance with the standard described in subsection (a)(6) hereof, which shall constitute the manufacturer's certification that the helmet conforms to the applicable safety standards. (WVaC 17C-11A-5)

(d) Civil Actions. A violation of subsection (b) hereof is not admissible as evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages, and shall not be admissible in mitigation of damages. (WVaC 17C-11A-6)

373.99 PENALTY.

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty.)

(a) Notwithstanding the provisions of Section 303.99, any parent or legal guardian violating any requirement set forth in Section 373.09(b) shall be fined ten dollars ($10.00) or be required to perform two hours in community service related to a child injury prevention program which includes injury prevention education or both fined and required to perform such community service. Notwithstanding the provisions of West Virginia Code 8-11-1, no court costs may be assessed to any person violating the requirements of Section 373.09(b).

(b) In the case of a first violation of Section 373.09(b), the court may waive the fine upon receipt of satisfactory proof that the person has a helmet or within a reasonable time from the date of the violation, purchased or otherwise obtained, a protective bicycle helmet.

(c) It is an absolute defense to a charge for a violation of Section 373.09 that a parent or legal guardian is unable to pay for the protective bicycle helmet. Inability to pay may be demonstrated by the filing of a financial affidavit in accordance with the provisions of West Virginia Code 59-2-1(c). Any person who demonstrates inability to pay shall be referred to the Governor's highway safety program for assistance in obtaining the appropriate helmet or helmets. (WVaC 17C-11A-7)

CODIFIED ORDINANCES OF CHESAPEAKE

PART FIVE - GENERAL OFFENSES CODE

Art. 501. Administration and Law Enforcement.

Art. 505. Animals and Fowl.

Art. 509. Disorderly Conduct and Peace Disturbance.

Art. 513. Gambling.

Art. 515. Health, Safety and Sanitation.

Art. 517. Indecency and Obscenity.

Art. 521. Liquor Control.

Art. 525. Minors.

Art. 529. Offenses Relating to Persons.

Art. 533. Offenses Relating to Property.

Art. 541. Railroads.

Art. 545. Weapons and Explosives.

Art. 549. Weeds.

CODIFIED ORDINANCES OF CHESAPEAKE

PART FIVE - GENERAL OFFENSES CODE

ARTICLE 501
Administration and Law Enforcement

501.01 Refusal to aid officer.
501.02 Obstructing officer; fleeing from officer.
501.03 False fire alarm.
501.04 False reports concerning bombs or other explosive devices.
501.05 Impersonating an official or law enforcement officer.
501.06 Attempts.
501.07 Citation in lieu of arrest; failure to appear.
501.08 Falsely reporting an emergency incident.
501.09 False report.
501.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law
Specific types of bribery - see W. Va. Code 3-1-1 et seq., 15-2-17 et seq., 18-2A-9, 61-10-15 and 61-10-22
Penalty not to exceed that provided in W. Va. Code Ch. 61 - see W. Va. Code 8-12-5(57)
Crimes against public justice - see W. Va. Code Art. 61-5
Bribery and corrupt practices generally - see W. Va. Code Art. 61-5A
Failure to comply with lawful order of police officer - see TRAF. 303.02

501.01 REFUSAL TO AID OFFICER.

No person shall, when required by the Police Chief or any other officer, refuse or neglect to assist him in the execution of his office in a criminal case, in the preservation of the peace or in the apprehension or securing of any person for a breach of the peace or in any case of escape or rescue.
(WVaC 61-5-14)

501.02 OBSTRUCTING OFFICER; FLEEING FROM OFFICER.

(a) No person shall by threats, menaces, acts or otherwise, forcibly or illegally hinder or obstruct, or attempt to hinder or obstruct, any law-enforcement officer, probation officer, or parole officer acting in his or her official capacity.

(b) No person shall intentionally flee or attempt to flee by any means other than the use of a vehicle from any law-enforcement officer, probation officer, or parole officer acting in his or her official capacity who is attempting to make a lawful arrest of the person, when the person knows or reasonably believes that the officer is attempting to arrest him or her.

(c) No person shall intentionally flee or attempt to flee in a vehicle from any law-enforcement officer, probation officer, or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop.

(d) For purposes of this section, "vehicle" includes any motor vehicle, motorcycle, motorboat, all-terrain vehicle or snowmobile, as those terms are defined in West Virginia Code 17A-1-1 whether or not it is being operated on a public highway at the time and whether or not it is licensed by the State.

(e) For purposes of this section, "flee" and "fleeing" do not include any person's reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer, probation officer, or parole officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction to stop. (WVaC 61-5-17)

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

501.03 FALSE FIRE ALARM.

No person shall make, turn in or telephone, or by use of any means or method of communication aid or abet in the making or turning in of any alarm of fire which he knows to be false at the time of making such alarm. (WVaC 29-3-21)

501.04 FALSE REPORTS CONCERNING BOMBS OR OTHER EXPLOSIVE DEVICES.

(a) No person shall impart or convey or cause to be imparted or conveyed any false information, knowing or having reasonable cause to believe such information to be false, concerning the presence of any bomb or other explosive device in, at, on, near, under or against any dwelling house, structure, improvement, building, bridge, motor vehicle, vessel, boat, railroad car, airplane or other place, or concerning an attempt or alleged attempt being made or to be made to so place or explode any such bomb or other explosive device.

(b) Notwithstanding any provision of this section to the contrary, any person violating the provisions of subsection (a) of this section for a second offense or whose violation of the subsection results in another suffering serious bodily injury shall be guilty of a felony and prosecuted under appropriate State law. (WVaC 61-6-17)

501.05 IMPERSONATING AN OFFICIAL OR LAW ENFORCEMENT OFFICER.

(a) No person shall falsely represent himself or herself to be a law-enforcement officer or law-enforcement official or be under the order or direction of any such person. No person not a law-enforcement officer or law-enforcement official shall wear the uniform prescribed for such persons, or the badge or other insignia adopted for use by such persons with the intent to deceive another person.

For purposes of this section, "law-enforcement officer" and "law-enforcement official" shall have the meanings set forth in West Virginia Code 30-29-1 except that such terms shall not include members of the State Division of Public Safety and shall not include individuals hired by non-public entities for the provision of security services.
(WVaC 61-1-9)

(b) No person shall falsely represent himself to be an officer or employee of the Municipality, or exercise or attempt to exercise any of the duties, functions or powers of a Municipal 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.

501.06 ATTEMPTS.

Every person who attempts to commit an offense, but fails to commit or is prevented from committing it, shall be subject to the penalty provided in Section 501.99 if the offense is punishable by confinement in jail.
(WVaC 61-11-8)

501.07 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:

(a) Any misdemeanor, not involving injury to the person, committed in a police officer's presence: provided, that the officer may arrest the person if he has reasonable grounds to believe that the person is likely to cause serious harm to himself or others; and

(b) When any person is being detained for the purpose of investigating whether such person has committed or attempted to commit shoplifting, pursuant to Section 533.01 of this Code.

The citation shall provide that the defendant shall appear within a designated time.

If the defendant fails to appear in response to the citation or if there are reasonable grounds to believe that he 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 court appearance date, the word "arrested" in lieu of the date of court appearance.
(WVaC 62-1-5(a))

501.08 FALSELY REPORTING AN EMERGENCY INCIDENT.

A person is guilty of reporting a false emergency incident when knowing the information reported, conveyed or circulated is false or baseless, he:

(a) Initiates or circulates a false report or warning of or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness or other emergency under circumstances in which it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned; or

(b) Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness or other emergency in which it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned, which did not occur, does not in fact exist; or

(c) Reports to a law enforcement officer or agency the alleged occurrence of any offense or incident which did not in fact occur or an allegedly impending occurrence of an offense or incident which is not in fact about to occur or false information relating to an actual offense or incident or to the alleged implication of some person therein; or

(d) Without just cause, calls or summons by telephone, fire alarm system or otherwise, any firefighting apparatus, ambulance apparatus, rescue vehicles or other emergency vehicles.

(WvaC 61-6-20)

501.09 FALSE REPORT.

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

501.99 PENALTY.

(a) Whoever violates any provision of this Part Five - General Offenses Code for which no other penalty is provided shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than thirty days, or both. Each day such violation continues shall constitute a separate offense.

(b) Whoever violates Section 501.01 shall be fined not more than one hundred dollars ($100.00) or imprisoned not more than thirty days, or both.
(WVaC 61-5-14)

(c) Whoever violates Section 501.02(c) shall be fined not more than one thousand dollars ($1,000) and shall be imprisoned not more than thirty days.
(WVaC 61-5-17)

(d) Whoever violates Section 501.04 shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than thirty days, or both.
(WVaC 61-6-17)

(e) Whoever violates Section 501.05(a) shall be fined not less than one hundred dollars ($100.00) and not more than one thousand dollars ($1,000).
(WVaC 61-1-9)

ARTICLE 505
Animals and Fowl

505.01 Cruelty to animals.
505.02 Cruelty to dogs and cats.
505.03 Nuisance conditions prohibited.
505.04 Barking or howling dogs.
505.05 Hunting prohibited.
505.06 Animals at large.
505.07 Poisoning animals.
505.08 Keeping hogs.
505.09 Permit required; condition and location of animal enclosure.
505.10 Cattle at large; impounding.
505.11 Manure or animal refuse.
505.12 Cats.
505.13 Dogs.
505.99 Penalty.

CROSS REFERENCES

Authority to regulate the keeping of animals - see W. Va. Code 8-12-5(26)
Authority to prevent ill-treatment of animals - see W. Va. Code 8-12-5(27)
Domestic animal tax - see W. Va. Code 8-13-10
Disposing of dead animals - see W. Va. Code 16-9-3
Diseases among domestic animals - see W. Va. Code Art. 19-9
Dogs generally - see W. Va. Code Art. 19-20
Vaccination of dogs - see W. Va. Code Art. 19-20A
Hunting - see W. Va. Code Art. 20-2

505.01 CRUELTY TO ANIMALS.

(a) No person shall cruelly mistreat, abandon or withhold proper sustenance, including food, water, shelter or medical treatment necessary to sustain normal health and fitness or to end suffering or abandon any animal to die, or use, train or possess any domesticated animal for the purpose of seizing, detaining or maltreating any other domesticated animal.

(b) No person, other than a licensed veterinarian or a person acting under the direction or with the approval of a licensed veterinarian, shall knowingly and willfully administer or cause to be administered to any animal participating in any contest any controlled substance or any other drug for the purpose of altering or otherwise affecting such animal's performance.

(c) Any person convicted of a violation of this section shall forfeit his or her interest in any such animal and all interest in such animal shall vest in the humane society or county pound of the county in which the conviction was rendered, and such person shall, in addition to any fine imposed, be liable for any costs incurred or to be incurred by the humane society or county pound as a result.

(d) For the purpose of this section, "controlled substance" has the same meaning ascribed to it by West Virginia Code 60A-1-101(d).

(e) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management, nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. Section 2131 et seq. and the regulations promulgated thereunder, as both such statutes and regulations are in effect on the effective date of this section.
(WVaC 61-8-19)

505.02 CRUELTY TO DOGS AND CATS.

No person shall cruelly, or needlessly beat, torture, torment, mutilate, kill or willfully deprive necessary sustenance, to any dog or cat, irrespective of whether any such dog or cat is his or her own or that of another person. No person shall impound or confine any dog or cat in any place unprotected from the elements or fail to supply the same with a sufficient quantity of food and water, or abandon to die any maimed, sick or diseased dog or cat or be engaged in or employed at dogfighting, or pitting one dog or cat to fight against another dog or cat or any similar cruelty to any dog or cat, or receive money for the admission of any person, or use, train or possess a dog or cat for the purpose of seizing, detaining or maltreating any other dog or cat. (WVaC 61-8-19a)

505.03 NUISANCE CONDITIONS PROHIBITED.

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

505.04 BARKING OR HOWLING DOGS.

No person shall keep or harbor any dog within the Municipality 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 Municipality. Any person who shall allow any dog habitually to remain, be lodged or fed within any dwelling, building, yard or enclosure, which he occupies or owns, shall be considered as harboring such dog.

505.05 HUNTING PROHIBITED.

No person shall hunt, kill or attempt to kill any animal or fowl by the use of firearms, bow and arrow, air rifle or any other means within the corporate limits of the Municipality.

Void

505.06 ANIMALS AT LARGE.

It shall be unlawful for any person being the owner of or having charge of horses, mules, cattle, swine, sheep, goats, geese, ducks, turkeys, chickens or other fowl or animals excepting dogs and cats, to suffer or allow the same to run at large on any public streets and upon any unenclosed lands within the corporate limits.

Void

505.07 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 his own lands or the lands of another. (1963 Code 5-11-3)

Void

505.08 KEEPING HOGS.

It shall be unlawful for any person to keep or permit to be kept any swine or hogs within the corporate limits. (1963 Code 5-11-4)

Void

505.09 PERMIT REQUIRED; CONDITION AND LOCATION OF ANIMAL ENCLOSURE.

No chickens, turkeys, ducks, geese, live poultry or fowl of any kind, horses, ducks, geese, ponies, cows, calves, rabbits, guinea pigs or live animals of any kind, except dogs and cats, shall be kept in the City without the owner thereof having received a permit to keep the same from the City Recorder with the approval of Council. No charge will be made for such permit, but such permit will only be granted upon agreement that the stable, barn, coop or other place where such animals, poultry or fowl are kept shall be constructed in such a manner that it can be kept and maintained in a dry, clean and sanitary condition, free from offensive odors. Applications for such permit shall be accompanied by a certificate signed by a majority of the householders residing within a radius of five hundred feet from the place where such stable, barn, coop, etc., is proposed to be located; provided, however, that no barn, stable, coop or other place where animals, fowl or poultry are kept shall be built, used or maintained within fifty feet of any house inhabited by human beings and unless built and maintained in a clean, dry and sanitary condition and free from offensive odors; and provided further, that none of the above enumerated poultry, fowl or animals shall be allowed to run at large, but shall be housed in a suitable enclosure. Said enclosure shall be kept thoroughly clean and unobjectionable at all times. Upon the failure of any owner or occupant of any premises to comply with any of the provisions of this section, such barn, stable, coop, etc., shall be deemed a nuisance, and as such shall be removed or abated, as provided by law. (1963 Code 5-11-5)

Void

505.10 CATTLE AT LARGE; IMPOUNDING.

(a) No cattle shall be allowed upon any public street without an attendant; nor shall such cattle be permitted to graze upon any unfenced lot or parcel of land in the City unless in charge of an attendant or herdsman. In addition to any fine imposed upon the owner of cattle in violation of this section, the cattle running at large shall be impounded until redeemed, as herein provided.

(b) In any case where such animal is impounded, the owner thereof may upon proceedings instituted for that purpose before the Municipal Court Judge cause to be investigated the legality of such impounding and if, from the evidence, the Municipal Court Judge shall be of the opinion that such animal was illegally impounded, he shall by order in writing direct the Chief of Police to release the same. If any animal is not redeemed within five days from the impounding of same, or within ten days subsequent to the decision of the Municipal Court Judge, the same shall be sold by the Chief of Police after giving notice for ten days by publication in one issue of a newspaper published in the City indicating the time and place of such sale, which notice shall briefly describe the cow to be sold; if the owner of such cow be known, notice shall be served upon him. The proceeds shall be applied first to the payment of the costs of the maintenance of such animal, and costs attending the impounding and sale thereof, and any fine imposed and any residue shall be paid over to the owner of such animal.
(1963 Code 5-11-6)

505.11 MANURE OR ANIMAL REFUSE.

It shall be unlawful for any person owning or using a barn or stable within the City to deposit any manure or refuse from a stable or barn upon any street, alley or open ground within the City except for use for gardens and lawns. It shall be the duty of all persons owning or using stables or barns to provide a box or other receptacle, which shall be so constructed as to exclude rain water and prevent the ingress and egress of flies and be provided with a suitable cover, and all manure and or stable refuse shall be deposited in such box or receptacle, pending its removal from the premises, and such box or receptacle, shall be kept securely closed, except when manure or other refuse is being deposited or removed therefrom. From April 1 to November 30 in each and every year, every collection of such stable or barnyard manure shall be removed from the premises at least once a week; during the remaining period of the year, it shall be removed as frequently as may be necessary to prevent it from becoming offensive or a menace to the health and comfort of any person in the neighborhood. The ground, such box or other receptacle in which manure is stored must at all times be kept clean and treated in such a manner that flies will not breed in it. (1963 Code 5-11-7)

505.12 CATS.

(a) Definitions.

(1) "Cat" shall mean cats of either sex at least three months old unless otherwise specified.

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

(3) "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.

(b) Impounding and Disposition.

(1) The Humane Officer of the City shall seize and impound any cat running at large within the City.

(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 of the City 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 the preceding paragraph, 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 Kanawha 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 Kanawha County Animal Shelter.

D. Any City Court fees and costs 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 Kanawha County Animal Shelter, consistent with law.

(c) Running at Large Prohibited. It shall be an unlawful misdemeanor for the owner, keeper, harborer or person having charge or control of any cat to permit it to run at large within the City, 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 City 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 City.

(f) Interference with the Human Officer. No person shall interfere with, impede or obstruct the Humane Officer, or his 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 City 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.

(Ord. 97-1. Passed 7-7-97.)

505.13 DOGS.

(a) Dog Defined. "Dog" shall mean dogs of either sex at least three months old, unless otherwise specified.

(b) Application for License; Tag.

(1) Every person owning or harboring a dog in the City shall apply to the City Recorder for a license for each dog so owned or harbored, and at the time of application shall present and file with the City Recorder information whether the dog is a male or female. After the payment of the fee set forth in subsection (c) hereof, the City Recorder shall issue to such person a license together with an official tag, which tag shall be fastened to the collar of the dog so licensed.

VOID

See attached →

(2) In the event of a dog's being acquired, a license shall be obtained as aforesaid immediately after the date of acquiring the animal.

(c) License Fee; Expiration of License. The fee for obtaining a dog license shall be one dollar ($1.00) for each male dog and two dollars ($2.00) for each female dog. The license shall expire July 1 following the date of issue, provided, that the license fee mentioned shall not apply to dogs in a licensed kennel or veterinary hospital.

(d) Impounding of Dogs. The Chief of Police may cause to be seized and impounded any dog at large in the City, whether licensed or unlicensed. The Council may employ, as needed, an impounding officer.

(e) Retention and Disposition of Impounded Dogs; Notice to Owner. Any dog, licensed or unlicensed, seized and impounded as provided in subsection (d) hereof, shall be detained for a period of five days. Any dog not claimed or redeemed by the owner or by the person harboring such dog within the period applicable, shall be disposed of by the Chief of Police, provided that whenever the name of any person appears on the collar of any dog so seized, or any dog so seized bears a tag as provided in subsection (b) hereof, such person or owner shall be notified of such seizure within forty-eight hours.

(f) Redemption of Impounded Dogs.

(1) The owner of a dog bearing a tag as provided in subsection (b) hereof, which has been seized or impounded, as provided in subsection (d), shall be entitled to redeem the dog by paying to the City Recorder or Chief of Police a redemption fee of two dollars and fifty cents ($2.50) plus fifty cents (50¢) for each day, or fraction thereof, that the dog has been impounded.

(2) The owner of, or person harboring a dog not bearing a tag as provided in subsection (b) hereof, which has been seized or impounded, as provided in subsection (d), shall be entitled to redeem such dog upon establishing his title thereto to the satisfaction of the officer in charge of the dog, by securing a license for such dog as provided in subsections (b) and (c) (if not previously secured) and by paying to the City Recorder or Chief of Police, pursuant to a statement furnished such owner or person by the officer in charge of the dog, a redemption fee of five dollars ($5.00) plus fifty cents (50¢) for each day, or fraction thereof, that the dog has been impounded.

(g) Muzzling of Dogs. Whenever it shall be made to appear to the Mayor that there are good reasons for believing that any dog within the City is afflicted by rabies, he may issue a proclamation requiring that all dogs shall for a period to be defined in the proclamation, wear good, substantial muzzles, securely put on, so as to prevent them from biting or snapping. Any dog going at large, during the period defined by the Mayor, without such muzzle, shall be taken by the Chief of Police and impounded as provided herein.

(h) Seizing or Enticing Dog; Bringing Dog into City for Impounding or Killing. No person shall entice any properly licensed dog into any enclosure for the purpose of taking off its collar or tag, or, for such purpose, decoy or entice any dog out of the enclosure or house of its owner or possessor, or seize or molest any dog while held or led by any person, or bring any dog into the City for the purpose of impounding and killing the same.

(i) Dogs Running at Large. It shall be unlawful for the owner, keeper, harborer or person having charge or control of any dog, licensed or unlicensed, to permit it to run at large in the City, except upon the property of the owner.
(1963 Code 5-27)

505.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) (1) Whoever violates Section 505.01(a) shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) or imprisoned not more than thirty days, or both, for a first offense. Any person convicted of a second violation of Section 505.01(a) shall be imprisoned for not more than thirty days or fined not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000), or both. The incarceration set forth in this subsection shall be mandatory unless the provisions of subsection (a)(2) are complied with.

(2) Notwithstanding any provision of this Code to the contrary, no person who has been convicted of a second or subsequent violation of the provisions of Section 505.01(a) may be granted probation until the defendant has undergone a complete psychiatric or psychological evaluation and the court has reviewed such evaluation. Unless the defendant is determined by the court to be indigent, he or she shall be responsible for the cost of said evaluation.

(3) In addition to any other penalty which can be imposed for a violation of Section 505.01, a court may, as a condition of probation, prohibit any person so convicted from possessing or owning any animal or type of animal during the period of probation.

(b) Whoever violates Section 505.01(b) shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000).
(WVaC 61-8-19)

(c) Whoever violates Section 505.02 shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than thirty days, or both. In addition the Humane Officer may remove the dog or cat involved and place it in the pound and such dog or cat shall not be returned to the owner or perpetrator of the act of cruelty, but shall be put up for adoption to a desirable home or given into the care of a humane society or upon the recommendation of a licensed veterinarian shall be humanely destroyed.
(WVaC 61-8-19a)

(d) Whoever violates Sections 505.06 to 505.11 or 505.13 shall be fined not more than one hundred dollars ($100.00) and/or imprisoned not more than thirty days. Each day's continued violation shall constitute a separate offense.

505.13 DOGS

(a) Dog defined. "Dog" shall mean dogs of either sex at least three months old, unless otherwise specified.

All dogs must be maintained in a closed area, fence or kept in the residence.

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,

1st Offense:	Warning
2nd Offense:	$25.00 fine
3rd Offense:	$50.00 fine

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

DANGEROUS DOGS

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

A. Without provocation, chases or approaches in a menacing fashion any person while on or off the premises of the owner or,
B. Without provocation, bites, attempts to bite or causes physical harm to any person while on or off the premises of the owner.

VICIOUS DOGS

Vicious dog means any dog other than a police dog that:

C. Without provocation kills or causes serious physical harm to any person
D. 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 Pit Bulls, Pit Bull Dogs or Pit Bull Terriers or a combination of those breeds.

As of the date of this ordinance, these vicious dogs will not be allowed in our town.

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

They must be registered and you must pay a license fee of $50.00, which is to be renewed annually at City Hall.

You 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 City Hall.

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

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 City Hall within five (5) days in the event that the vicious animal is lost, stolen or dies.

If we are advised that a citizen has one of these dogs, there will be an investigation to make sure you are in compliance.

If you are found to not be in compliance, you will be fined as follows:

1st Offense - $100.00
2nd Offense - $200.00
3rd Offense - $300.00

After third offense, dog will be removed from the household.

505.14 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.

As of the date of this ordinance, the following Ordinances are null and void.

505.06
505.08
505.09
505.10
505.11

ARTICLE 509
Disorderly Conduct and Peace Disturbance

509.01 Disorderly conduct.
509.02 Loitering on school property.
509.03 Wearing masks, hoods or face coverings.
509.04 Disturbing the peace.
509.99 Penalty.

CROSS REFERENCES
Authority to maintain order - see W. Va. Code 8-12-5 (19), (44)
Crimes against the peace - see W. Va. Code Art. 61-6
Intoxication or drinking in public places - see GEN. OFF. 521.06
Breach of peace with weapon - see GEN. OFF. 545.02

509.01 DISORDERLY CONDUCT.

(a) No person shall, in a public place, a mobile home park, a public parking area, a common area of an apartment building or dormitory, or a common area of a privately owned commercial shopping center, mall or other group of commercial retail establishments, disturb the peace of others by violent, profane, indecent or boisterous conduct or language or by the making of unreasonably loud noise that is intended to cause annoyance or alarm to another person, and who persists in such conduct after being requested to desist by a law-enforcement officer acting in his lawful capacity.

(b) For purposes of this section:

(1) "Mobile home park" means a privately-owned residential housing area or subdivision wherein the dwelling units are comprised mainly of mobile homes and wherein the occupants of such dwelling units share common elements for purposes of ingress and egress, parking, recreation and other like residential purposes.

(2) "Mobile home" means a moveable or portable unit, designed and constructed to be towed on its own chassis (comprised of frame and wheels), and designed to be connected to utilities for year-round occupancy. The term includes:

A. Units containing parts that may be folded, collapsed or telescoped when being towed and that may be expanded to provide additional cubic capacity, and

B. Units composed of two or more separately towable components designed to be joined into one integral unit capable of being separated again into the components for repeated towing.

(3) "Public parking area" means an area, whether publicly or privately owned or maintained, open to the use of the public for parking motor vehicles. (WVaC 61-6-1b)

509.02 LOITERING ON SCHOOL PROPERTY.

No person, not a student in regular attendance, shall loiter in or about any school, school building or school grounds in violation of any posted rules or regulations governing the use of any such school without written permission from the principal. (WVaC 61-6-14a)

509.03 WEARING MASKS, HOODS OR FACE COVERINGS.

(a) Except as otherwise provided in this section, no person, whether in a motor vehicle or otherwise, while wearing any mask, hood or device whereby any portion of the face is so covered as to conceal the identity of the wearer, shall:

(1) Come into or appear upon any walk, alley, street, road, highway or other thoroughfare dedicated to public use;

(2) Come into or appear in any trading area, concourse, waiting room, lobby or foyer open to, used by or frequented by the general public;

(3) Come into or appear upon or within any of the grounds or buildings owned, leased, maintained or operated by the State or Municipality;

(4) Ask, request, or demand entrance or admission to the premises, enclosure, dwelling or place of business of any other person within this Municipality; or

(5) Attend or participate in any meeting upon private property of another unless written permission for such meeting has first been obtained from the owner or occupant thereof.

(b) The provisions of this section do not apply to any person:

(1) Under sixteen years of age;

(2) Wearing a traditional holiday costume;

(3) Engaged in a trade or employment where a mask, hood or device is worn for the purpose of ensuring the physical safety of the wearer;

(4) Using a mask, hood or device in theatrical productions, including use in mardi gras celebrations or similar masquerade balls;

(5) Wearing a mask, hood or device prescribed for civil defense drills, exercises or emergencies; or

(6) Wearing a mask, hood or device for the sole purpose of protection from the elements or while participating in a winter sport.

(WVaC 61-6-22)

509.04 DISTURBING THE PEACE.

No person shall:

(a) 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 or persons at whom, individually, such conduct is directed.

(b) Willfully, or being intoxicated, whether willfully or not, disrupt any meeting of the governing body of any political subdivision of this 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 or persons at whom, individually, such disruption is directed.

509.05

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 Chesapeake 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 and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

City means the jurisdictional limits of the Town of Chesapeake, West Virginia.

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

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 PM and 7:00 AM, unless due to power outage in the town, as indicated by the electric company.

(c) No person in actual physical control of a motor vehicle within the city 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 provision shall not apply to fire trucks or other emergency vehicles equipped with a dynamic braking system.
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" or "jake brakes."

(d) Noise prohibited; motor vehicles, motorcycles
All motor vehicles and motorcycles shall be operated as quietly as possible at all times within the city. No person shall operate any motor vehicle or motorcycle in such a manner so as to cause unnecessary noise within the city.

No person shall operate, or permit the operation within the city 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.

No person shall use a muffler cutout, bypass, or similar device upon a motor vehicle or motorcycle operated within the city.

(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.

(c) Engage in fighting, or threaten to harm persons or property unlawfully.

(d) 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.

(e) Insult, taunt or challenge another under circumstances in which such conduct is likely to provoke a violent response.

(f) 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.

(g) Create a condition which presents a risk of physical harm to persons or property.

(h) 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.

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 his sole intent for engaging in the activities for which he was arrested was to exercise one or more of the rights guaranteed to him under the Constitution of the United States or the State Constitution or to exercise any other rights guaranteed to that person by law.

509.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) Whoever violates Section 509.01 shall be fined not more than one hundred dollars ($100.00).
(WVaC 61-6-16)

(b) Whoever violates Section 509.02 shall be fined not more than one hundred dollars ($100.00) or imprisoned not more than thirty days, or both, for a first offense. For a second or subsequent offense such person shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than thirty days, or both.
(WVaC 61-6-14a)

ARTICLE 513
Gambling

513.01 Keeping or exhibiting gambling apparatus.
513.02 Permitting gambling apparatus on premises.
513.03 Acting as lookout or guard for keeper of gambling apparatus.
513.04 Playing on gambling apparatus; hotels, public places.
513.05 Making wager for value or furnishing money to another for wager.
513.06 Permitting gambling at public places.
513.07 Cheating or fraudulent actions while gambling or making a wager.
513.08 Poolrooms and pool tickets.
513.09 Lotteries and raffles.
513.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Gambling at fairs prohibited - see W. Va. Code 19-7-8
Pari-mutuel system of wagering at race track permitted - see W. Va. Code 19-23-9
Gaming contracts - see W. Va. Code Art. 55-9
Crimes against public policy - see W. Va. Code Art. 61-10

513.01 KEEPING OR EXHIBITING GAMBLING APPARATUS.

No person shall keep or exhibit a gaming table, commonly called an A.B.C. or E.O. table, faro bank, keno table, or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine, or any other gaming table or device of like kind, under any denomination or which has no name, whether the game, table, bank, machine or device is played with cards, dice or otherwise, or be a partner, or concerned in interest, in keeping or exhibiting such table, bank, machine or gaming device of any character. Any such table, faro bank, machine or gaming device, and all money staked or exhibited to allure persons to bet at such table or upon such gaming device, may be seized by order of the Police Court and the money so seized shall be forfeited to the Municipality and paid into the Municipal Treasury and the table, faro bank, machine or gaming device shall be completely destroyed. However, the provisions of this section shall not extend to coin-operated nonpayout machines with free play features or to automatic weighing, measuring, musical and vending machines which are so constructed as to give a certain uniform and fair return in value or services for each coin deposited therein and in which there is no element of chance.
(WVaC 61-10-1)

513.02 PERMITTING GAMBLING APPARATUS ON PREMISES.

No person shall knowingly permit a gaming table, bank or device, as mentioned in Section 513.01, to be kept or exhibited on any premises in his occupation.
(WVaC 61-10-2)

513.03 ACTING AS LOOKOUT OR GUARD FOR KEEPER OF GAMBLING APPARATUS.

No person shall act as doorkeeper, guard or watch, or employ another person to act as such, for a keeper or exhibitor of any gaming table, bank or device as mentioned in Section 513.01, nor resist, nor by any means or device, prevent, hinder or delay the lawful arrest of such keeper or exhibitor, or the seizure of the table, bank or device, or money exhibited or staked thereat, nor unlawfully take the same from the person seizing it.
(WVaC 61-10-3)

513.04 PLAYING ON GAMBLING APPARATUS; HOTELS, PUBLIC PLACES.

No person shall bet or play at any gaming table, bank or device as mentioned in Section 513.01, or, at any hotel or tavern, other public place or place of public resort, play at any game except bowling, chess or backgammon, draughts or a licensed game, or bet on the side of those who play at any game, whether or not the game is permitted or licensed.
(WVaC 61-10-4)

513.05 MAKING WAGER FOR VALUE OR FURNISHING MONEY TO ANOTHER FOR WAGER.

No person shall, at any place, public or private, bet or wage money or other thing of value on any game of chance, or knowingly furnish any money or other thing of value to any other person to bet or wage on any such game.
(WVaC 61-10-5)

513.06 PERMITTING GAMBLING AT PUBLIC PLACES.

No keeper of a hotel, tavern or other public place shall permit unlawful gaming at his house, or at any outhouse, booth, arbor or other place appurtenant thereto.
(WVaC 61-10-6)

513.07 CHEATING OR FRAUDULENT ACTIONS WHILE GAMBLING OR MAKING A WAGER.

No person playing at any game or making a wager, or having a share in any stake or wager, or betting on the hands or sides of others playing at any game or making a wager, shall cheat, or by fraudulent means win or acquire for himself, or another, money or any other valuable thing.
(WVaC 61-10-9)

513.08 POOLROOMS AND POOL TICKETS.

"Poolroom", wherever used in this section, means any room where any pool ticket, chance voucher or certificate is sold entitling or purporting to entitle the holder or promisee thereof, or any other person, to money or other thing of value, contingent upon the result of any horse race, prizefight, game of chance, game of skill or science or other sport or contest. No person shall set up or promote, or be connected with or interested in the management or operation of any poolroom. The buying, selling or transferring of tickets or chances in any lottery is hereby prohibited.
(WVaC 61-10-10)

513.09 LOTTERIES AND RAFFLES.

Except as otherwise provided by law, no person shall set up, promote or be concerned in managing or drawing a lottery or raffle for money or other thing of value; knowingly permit such lottery in any house under his control; knowingly permit money or other property to be raffled for in such house or to be won therein by throwing or using dice or by any other game of chance; knowingly permit the sale in such house of any chance or ticket, or share of a ticket in a lottery, or any writing, certificate, bill, token or other device purporting or intended to guarantee or assure to any person or to entitle him to a prize, or a share of or interest in a prize to be drawn in a lottery. No person shall for himself or any other person, buy, sell, transfer or have in his possession for the purpose of sale or with intent to exchange, negotiate or transfer, or aid in selling, exchanging, negotiating or transferring a chance or ticket, or a share of a ticket, in a lottery or any such writing, certificate, bill, token or device. However, this section shall not be deemed to apply to that certain type or form of lottery or raffle designated and familiarly known as "policy" or "numbers".
(WVaC 61-10-11)

513.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) Whoever violates Section 513.04 or 513.06 shall be fined not more than one hundred dollars ($100.00).

(b) Whoever violates Section 513.05 shall be fined not more than three hundred dollars ($300.00).

ARTICLE 515
Health, Safety and Sanitation

515.01 Offensive odors.
515.02 Improper drainage.
515.03 Diverting watercourse.
515.04 Deposit of offensive garbage or refuse matter.
515.05 Spitting or urinating.
515.06 Airtight containers.
515.07 Dangerous conditions or dangerous nuisances.
515.08 Openings; protective covers.
515.09 Electrically charged fence.
515.10 Barbed wire fence.
515.99 Penalty.

CROSS REFERENCES
Power to regulate - see W. Va. Code 8-12-5

515.01 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 his premises any offensive odors or substances. (1963 Code 5-43-1)

515.02 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 twenty feet of any other person's property without first obtaining a permit from the City Recorder. (1963 Code 5-43-2)

515.03 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 him, 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 City, unless permission to do so shall be granted by the Council by an order entered upon its records or Minute Book.
(1963 Code 5-43-3)

515.04 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 his own premises or any premises under his 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 City, except as is otherwise provided by law. It shall be the responsibility of any violator of this section to remove such matter immediately. (1963 Code 5-43-4)

515.05 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. (1963 Code 5-43-5)

515.06 AIRTIGHT CONTAINERS.

No person shall abandon, discard or knowingly permit to remain on premises under his control, in a place accessible to children, any refrigerator, or other airtight or semi-tight container which has a capacity of one and one-half cubic feet or more, and an opening of fifty square inches or more and which has a door or lid equipped with hinge, latch or other fastening device capable of securing such door or lid, without rendering such equipment harmless to human life by removing such hinges, latches or other hardware which may cause a person to be confined therein. This section shall not apply to an icebox, refrigerator or other airtight or semi-airtight container located in that part of a building occupied by a dealer, warehouseman or repairman. (1963 Code 5-75-1)

515.07 DANGEROUS CONDITIONS OR DANGEROUS NUISANCES.

(a) No property owner, tenant or person having control of property within the City, 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 his premises.

(b) "Dangerous conditions", as used in this section, shall mean 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 catch basin.

(c) "Conditions which might constitute a hazard to life or property" shall mean any unprotected, dangerous area which will likely prove dangerous to life or limb, or would likely cause damage to the property of others. (1963 Code 5-75-2)

515.08 OPENINGS; PROTECTIVE COVERS.

(a) No person or property owner shall have or maintain in the City any coal hole, 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 eighty-five 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.
(1963 Code 5-75-3)

515.09 ELECTRICALLY CHARGED FENCE.

No person shall construct, erect, maintain or use, for any purpose, any fence charged with electrical current, within the corporate limits.
(1963 Code 5-75-4)

515.10 BARBED WIRE FENCE.

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

(b) No person shall construct, cause to be constructed, or have upon his property any fence on or within which any barbed wires are placed at a height of less than seventy-two inches from the ground. (1963 Code 5-75-5)

515.99 PENALTY.

Any person who violates any provision of this article where another penalty is not provided, shall be fined not exceeding one hundred dollars ($100.00). Each day's violation shall constitute a separate offense.
(1963 Code 5-75-99)

ARTICLE 517
Indecency and Obscenity

517.01 Operating a place for or permitting or engaging in prostitution, lewdness or assignation.
517.02 Detention of person in place of prostitution.
517.03 Pandering.
517.04 Pimping.
517.05 Profane swearing and drunkenness.
517.06 Obscene or harassing telephone calls.
517.07 Indecent exposure.
517.08 Invasion of privacy by looking.
517.09 Preparation, distribution or exhibition of obscene matter to minors.
517.10 Sale or display of obscene matter.
517.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Authority to prohibit distribution of obscene literature - see W. Va. Code 8-12-5(17)
Authority to suppress houses of ill fame - see W. Va. Code 8-12-5(18)
Authority to prevent indecent practices - see W. Va. Code 8-12-5(19)
Equitable remedies - see W. Va. Code Art. 61-9

517.01 OPERATING A PLACE FOR OR PERMITTING OR ENGAGING IN PROSTITUTION, LEWDNESS OR ASSIGNATION.

(a) No person shall keep, set up, maintain or operate any house, place, building, hotel, tourist camp, other structure or part thereof, or vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation; or own any place, house, hotel, tourist camp, other structure or part thereof, or trailer or other conveyance knowing the same to be used for the purpose of prostitution, lewdness or assignation, or let, sublet or rent any such place, premises or conveyance to another with knowledge or good reason to know of the intention of the lessee or rentee to use such place, premises or conveyance for prostitution, lewdness or assignation; or offer, or offer to secure another for the purpose of prostitution or for any other lewd or indecent act; or receive or offer or agree to receive any person into any house, place, building, hotel, tourist camp or other structure, or vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation, or permit any person to remain there for such purpose; or for another or others, direct, take or transport, or offer or agree to take or transport, or aid or assist in transporting any person to any house, place, building, hotel, tourist camp, other structure, vehicle, trailer or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation; or aid, abet or participate in the doing of any acts herein prohibited. Whoever violates this subsection (a) shall, for a first offense, be guilty of a misdemeanor.

(b) No person shall engage in prostitution, lewdness or assignation, or solicit, induce, entice or procure another to commit an act of prostitution, lewdness or assignation; or reside in, enter or remain in any house, place, building, hotel, tourist camp or other structure, or enter or remain in any vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation; or aid, abet or participate in the doing of any of the acts herein prohibited.

Whoever violates this subsection (b) shall, for a first or second offense, be guilty of a misdemeanor.

The subsequent offense provision shall apply only to the pimp, panderer, solicitor, operator or any person benefiting financially or otherwise from the earnings of a prostitute.

(c) All leases and agreements, oral or written, for letting, subletting or renting any house, place, building, hotel, tourist camp or other structure which is used for the purpose of prostitution, lewdness or assignation, shall be void from and after the date any person who is a party to such an agreement shall be convicted of an offense hereunder. "Tourist camp" includes any temporary or permanent buildings, tents, cabins or structures, or trailers or other vehicles which are maintained, offered or used for dwelling or sleeping quarters for pay.

(d) In the trial of any person charged with a violation of any of the provisions of this section, testimony concerning the reputation or character of any house, place, building, hotel, tourist camp or other structure, and of the person or persons who reside in or frequent them, and of the defendant or defendants, shall be admissible in evidence in support of the charge. (WVaC 61-8-5)

517.02 DETENTION OF PERSON IN PLACE OF PROSTITUTION.

(a) No person shall by any means keep, hold, detain or restrain any person in a house of prostitution or other place where prostitution is practiced or allowed; shall, directly or indirectly, keep, hold, detain or restrain or attempt to keep, hold, detain or restrain, in any house of prostitution or other place where prostitution is practiced or allowed, any person by any means, for the purpose of compelling such person, directly or indirectly, to pay, liquidate or cancel any debt, dues or obligations incurred or said to have been incurred by such person.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor if the person so kept, held, detained or restrained under this section is not a minor. (WVaC 61-8-6)

517.03 PANDERING.

(a) No person shall procure an inmate for a house of prostitution, or by promises, threats, violence or by any device or scheme, cause, induce, persuade or encourage a person to become an inmate of a house of prostitution, or shall procure a place as inmate in a house of prostitution for a person. No person shall, by promises, threats, violence or any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or shall, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procure any person to become an inmate of a house of ill fame, to enter any place in which prostitution is encouraged or allowed within this Municipality, or to come into or leave this Municipality for the purpose of prostitution, or shall procure any person to become an inmate of a house of ill fame within this Municipality or to come into or leave this Municipality for the purpose of prostitution; or shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any person to become an inmate of a house of ill fame within this Municipality, or to come into or leave this Municipality for the purpose of prostitution.

It shall not be a defense to prosecution for any of the acts prohibited in this section that any part of such act or acts shall have been committed outside of this Municipality, and the offense shall in such case be deemed and alleged to have been committed and the offender tried and punished in the municipality or county in which the prostitution was intended to be practiced, or in which the offense was consummated, or any overt act in furtherance of the offense was committed.

Any such person shall be a competent witness in any prosecution under this section to testify for or against the accused as to any transaction, or as to conversation with the accused, or by the accused with another person or persons in his or her presence, notwithstanding his or her having married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution. The act or state of marriage shall not be a defense to any violation of this section.

(b) Whoever violates this section is guilty of a misdemeanor for the first offense unless the inmate referred to in this section is a minor.
(WVaC 61-8-7)

517.04 PIMPING.

(a) No person knowing another person to be a prostitute, shall live or derive support or maintenance, in whole or in part, from the earnings or proceeds of the prostitution of such prostitute, or from money loaned or advanced to or charged against such prostitution by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or shall tout or receive compensation for touting for such prostitution. A prostitute shall be a competent witness in any prosecution hereunder to testify for or against the accused as to any transaction or conversation with the accused, or by the accused with another person or persons in the presence of the prostitute, even if the prostitute may have married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor unless the prostitute referred to in this section is a minor.
(WVaC 61-8-8)

517.05 PROFANE SWEARING AND DRUNKENNESS.

No person having arrived at the age of discretion shall profanely curse or swear or get drunk in public.
(WVaC 61-8-15)

517.06 OBSCENE OR HARASSING TELEPHONE CALLS.

(a) No person with intent to harass or abuse another by means of telephone shall:
(1) Make any comment, request, suggestion or proposal which is obscene; or
(2) Make a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to harass any person at the called number; or
(3) Make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or
(4) Make repeated telephone calls, during which conversation ensues, with intent to harass any person at the called number; or
(5) Threaten to commit a crime against any person or property.

(b) No person shall knowingly permit any telephone under his control to be used for any purpose prohibited by this section.

(c) Any offense committed under this section may be deemed to have occurred at the place at which the telephone call was made, or the place at which the telephone call was received.
(WVaC 61-8-16)

517.07 INDECENT EXPOSURE.

No person shall intentionally expose his or her sex organs or anus or the sex organs or anus of another person, or intentionally cause such exposure by another or engage in any overt act of sexual gratification, under circumstances in which the person knows that the conduct is likely to cause affront or alarm.
(WVaC 61-8-9)

517.08 INVASION OF PRIVACY BY LOOKING.

No person shall unlawfully enter upon the property of another or secretly or furtively peep through or attempt to peep into, through, or spy through a window, door or other aperture of any building, structure or other enclosure of any nature occupied by or intended for occupancy as a dwelling or dormitory, whether or not such building, structure or enclosure be permanently situated or transportable and whether or not such occupancy be permanent or temporary.

517.09 PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE MATTER TO MINORS.

(a) Definitions of terms used in this section, and any variations thereof required by the context, shall have the meaning ascribed to them as follows:

(1) "Distribute" means to transfer possession of, whether with or without consideration.

(2) "Employee" means any individual who renders personal services in the course of a business, who receives compensation therefor at a fixed rate and who has no financial interest in the ownership or operation of the business other than his salary or wages.

(3) "Exhibit" means to display or offer for viewing, whether with or without consideration.

(4) "Knowingly" means to display or offer for viewing, whether with or without consideration.

(5) "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or any statue or other figure, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.

(6) "Minor" means any individual under the age of eighteen years.

(7) "Obscene matter" means to the average individual, applying contemporary State standards, matter which:

A. Considered as a whole, appeals to the prurient interests;

B. Depicts or describes in a patently offensive manner ultimate sexual acts, both normal and perverted, actual or simulated, masturbation, sodomy, fellatio, cunnilingus, bestiality, sadism, excretory functions or lewd exhibition of the genitals; and

C. Considered as a whole, lacks serious literary, artistic, political or scientific value.

(8) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(9) "Prepare" means to produce, publish or print.

(10) "Public display" means the placing of material on or in a billboard, viewing screen, theater, marquee, newsstand, display rack, window showcase, display case or similar public place, so that the material within the meaning of "obscene matter" is easily visible from a public thoroughfare, from the property of others or from commercial or business premises generally open to minors at the time of such placing.

(b) No person shall knowingly send or cause to be sent or bring or cause to be brought into this Municipality any obscene matter for distribution, exhibition or public display to a minor, or in this Municipality prepare for, distribute to, exhibit to or publicly display to a minor any obscene matter, or offer to prepare for, distribute to, exhibit to or publicly display to a minor any obscene matter, or have in his possession with the intent to distribute, exhibit or make a public display of, any obscene matter to a minor.

(c) No employees shall be guilty of a violation of this section when such employee is a projectionist, ticket taker, usher or when such employee distributes, prepares or exhibits obscene matter while acting within the scope of his employment.

(d) Any person who distributes or exhibits obscene matter, or possesses obscene matter with the intent to distribute or exhibit the same in the course of his business, is presumed to do so with knowledge of its content or character.

(e) No person shall be guilty of distributing or exhibiting obscene matter to a minor when such person has reasonable cause to believe that the minor involved was eighteen years of age or more and such minor exhibited to such person a driver's license, draft card or other official or apparently official document purporting to establish that such minor was eighteen years of age or more.

(f) No person who, with knowledge that a person is a minor under eighteen years of age, or who, while in possession of such facts that he should reasonably know that such person is a minor under eighteen years of age, shall hire, employ or use such minor to do or assist in doing any of the acts described in subsection (a)(7)B. hereof.
(WVaC Art. 61-8A)

517.10 SALE OR DISPLAY OF OBSCENE MATTER.

(a) Definitions. For the purposes of this section:

(1) "Knowingly" means to have knowledge of or to be aware of the content or character of obscene matter.

(2) "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.

(3) "Individual" means any human being regardless of age.

(4) "Obscene" means matter which the average individual applying contemporary community standards would find

A. Taken as a whole, appeals to the prurient interest;

B. Depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated; and

C. The matter, taken as a whole, lacks serious literary, artistic, political or scientific value, and which either:

1. Depicts or describes patently offensive representation of masturbation, excretory functions, lewd exhibition of the genitals, sodomy, fellatio, cunnilingus, bestiality, sadism, masochism; or

2. Depicts or describes nudity or sexual acts of persons, male or female, below the age of eighteen years.

(5) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(6) "Prepare" means to produce, publish or print.
(7) "Public display" means the placing of material on or in a billboard, viewing screen, theater, marquee, newsstand, display sack, window, showcase, display case or similar public places so that material can be purchased or viewed by individuals.

(b) Individual Relief. The circuit court shall have jurisdiction to issue an injunction to enforce the purposes of this section upon petition by the attorney for the Municipality or a representative thereof or any citizen of the Municipality who can show a good faith and valid reason for making such application. No bond shall be required unless for good cause shown.

(c) Activities Prohibited. No person shall knowingly send or cause to be sent or cause to be brought into the Municipality for sale or public display, or prepare, sell or make a public display, or in the Municipality offer to prepare, sell or make a public display, or have in his possession with the intent to sell or make a public display of any obscene matter to any individual.

(d) Employees Not Prosecuted. No employee shall be guilty of a violation of this section when such employee is a projectionist, ticket taker, usher, or when such employee prepares, sells or makes a public display of obscene matter while acting within the scope of his regular employment, unless such employee has a proprietary interest in such obscene matter or is a shareholder or officer of a corporation which has a proprietary interest in such obscene matter.

(e) Exceptions. Nothing in this section shall be construed so as to apply to any person exercising a right secured by the Constitution or laws of this State or of these United States. (WVaC 8-12-5(b))

517.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) Whoever violates Section 517.01(a), or 517.07 shall be fined not more than two hundred fifty dollars ($250.00) or imprisoned not more than thirty days, or both.
(b) Whoever violates Section 517.01(b) shall be fined not more than one hundred dollars ($100.00) or imprisoned not more than thirty days, or both, and for a second offense shall be fined not more than two hundred fifty dollars ($250.00) or imprisoned not more than thirty days, or both.
(c) Whoever violates Section 517.10 shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than thirty days, or both, for a first offense. For a second or subsequent offense such person shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than six months, or both.

ARTICLE 521
Liquor Control

521.01 Definitions.
521.02 Article not applicable to certain uses by physicians, druggists and others.
521.03 Prohibited acts generally.
521.04 Unlawful sale or possession by alcoholic liquor licensee.
521.05 Unlawful purchase of alcoholic liquors from State agency.
521.06 Intoxication or drinking in public places; illegal possession.
521.07 Acts prohibited by non-intoxicating beer licensee.
521.08 Unlawful purchase of non-intoxicating beer.
521.09 Acts prohibited by private club licensee.
521.10 Unlawful purchase from private club.
521.11 Acts prohibited by wine dealers.
521.12 Unlawful purchase of wine.
521.13 Unlawful purchase from retail liquor licensee.
521.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law
Authority to regulate liquor sales - see W. Va. Code 8-12-5(20)
Nonintoxicating beer - see W. Va. Code Art. 11-16
Local option - see W. Va. Code Art. 60-5
Search warrants - see W. Va. Code 60-6-18
Public drunkenness - see GEN. OFF. 517.05

521.01 DEFINITIONS.

For the purposes of this article, unless the context clearly indicates otherwise, the following definitions shall apply:

(a) "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.

(b) "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.

(c) "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.

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

(e) "Nonintoxicating beer" means all 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 containing at least one half of one percent (0.5%) alcohol by volume, but not more than four and two-tenths percent (4.2%) of alcohol by weight, or six percent (6%) by volume, whichever is greater, all of which are hereby declared to be nonintoxicating and the word "liquor" as used in this article shall not be construed to include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparation included within this definition.

(f) "Person" means an individual, firm, partnership, limited partnership, corporation or voluntary association.

(g) "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. "Public place" does not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of West Virginia Code Chapter 60 or the Codified Ordinances to sell alcoholic liquors for consumption on the premises.

(h) "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.

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

(j) "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)

521.02 ARTICLE NOT APPLICABLE TO CERTAIN USES BY PHYSICIANS, DRUGGISTS AND OTHERS.

The provisions of this article shall not prevent:

(a) A physician from prescribing the use of alcoholic liquors when necessary for a bona fide patient;

(b) A druggist from selling, upon a prescription properly issued by a physician, alcoholic liquors for medicinal purposes;

(c) A physician, dentist or veterinarian, in the legitimate practice of his profession, from using and administering alcoholic liquors;

(d) 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;

(e) Religious organizations from using wine for sacramental purposes.
(WvaC 60-6-5)

521.03 PROHIBITED ACTS GENERALLY.

No person shall:

(a) Manufacture or sell in this City, without a license, any alcoholic liquor except as permitted by West Virginia Code Chapter 60;

(b) Aid or abet in the manufacture or sale of alcoholic liquor without a license, except as permitted by West Virginia Code Chapter 60;

(c) Sell without a license any alcoholic liquor other than provided by West Virginia Code Article 60-6;

(d) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude, unrectified or impure form of ethyl alcohol, or any other foreign or deleterious substance or liquid;

(e) Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has been sold at retail in this State;

(f) Advertise any alcoholic liquor in this State except in accordance with the rules and regulations of the West Virginia Alcohol Beverage Control Commissioner;

(g) Distribute, deal in, process or use crowns, stamps or seals required under the authority of West Virginia Code Chapter 60, except in accordance with the rules and regulations prescribed by the West Virginia Alcohol Beverage Control Commissioner.
(WVaC 60-6-7)

(h) Manufacture, sell, give or offer to make a sale or gift of, transport or otherwise possess any alcoholic liquor or nonintoxicating beer except as permitted by West Virginia Code Chapters 11 and 60.

(i) Whoever violates subsection (a) to (g) hereof is guilty of a misdemeanor for a first offense.

521.04 UNLAWFUL SALE OR POSSESSION BY ALCOHOLIC LIQUOR LICENSEE.

No person licensed under West Virginia Code Chapter 60 shall:

(a) Sell alcoholic liquors of a kind other than that which is permissible under West Virginia Code Chapter 60;

(b) Sell beer to which wine, spirits or alcohol has been added;

(c) Sell wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture thereof under regulations of the West Virginia Alcohol Beverage Control Commissioner;
(WVaC 60-6-8)

(d) (1) Sell alcoholic liquors or nonintoxicating beer to a person who is:
A. Less than twenty-one years of age;
B. An habitual drunkard;
C. Intoxicated;
D. Addicted to the use of any controlled substance as defined by West Virginia Code Chapter 60A;
E. Mentally incompetent.

(2) It shall be a defense to a violation of subsection (d)(1)A. hereof if the seller shows that the purchaser:
A. Produced written evidence which showed his or her age to be at least the required age for purchase and which bore a physical description of the person named on the writing which reasonably described the purchaser; or
B. Produced evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.
(WVaC 60-3-22)

(e) Keep on the premises covered by his license any alcoholic liquor other than that which is authorized by West Virginia Code Chapter 60.
(WVaC 60-6-8)

521.05 UNLAWFUL PURCHASE OF ALCOHOLIC LIQUORS FROM STATE AGENCY.

No person shall:

(a) Being under the age of twenty-one years, for the purpose of purchasing alcoholic liquors from a State liquor store or an agency, misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or illegally attempt to purchase alcoholic liquors from a State liquor store or an agency.

(b) Knowingly buy for, give to or furnish to anyone under the age of twenty-one years to whom they are not related by blood or marriage, any alcoholic liquors from whatever source.
(WVaC 60-3-22a)

521.06 INTOXICATION OR DRINKING IN PUBLIC PLACES; ILLEGAL POSSESSION.

No person shall:

(a) Appear in a public place in an intoxicated condition;

(b) Drink alcoholic liquor or nonintoxicating beer or have an open container of alcoholic liquor or nonintoxicating beer in or on any public sidewalk, walkway, entranceway, street, lane or other public place;

(c) Drink alcoholic liquor or nonintoxicating beer in a motor vehicle on any highway, street, alley or in a public garage. No person shall possess an open container of nonintoxicating beer or alcoholic liquor in a motor vehicle except in a place which can be reached only by leaving the vehicle;

(d) Tender a drink of alcoholic liquor to another person in a public place;

(e) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing stamps or seals of the West Virginia Alcohol Beverage Control Commissioner, without having first obtained written authority from the Commissioner therefor;

(f) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of West Virginia Code Chapter 60.

Whoever violates subsection (e) or (f) hereof is guilty of a misdemeanor for a first offense.
(WVaC 60-6-9)

521.07 ACTS PROHIBITED BY NONINTOXICATING BEER LICENSEE.

(a) No licensee under West Virginia Code Article 11-16, his, her, its or their servants, agents or employees shall sell, give or dispense, and no individual shall drink or consume, in or on any licensed premises or in any rooms directly connected therewith, nonintoxicating beer or cooler on weekdays between the hours of 2:00 a.m. and 7:00 a.m., or between the hours of 2:00 a.m. and 1:00 p.m. on any Sunday, except in private clubs licensed under the provisions of West Virginia Code Article 60-7, where the hours shall conform with the hours of sale of alcoholic liquors;

(b) No licensee, his, her, its or their servants, agents or employees shall sell, furnish or give any nonintoxicating beer as defined in this article to any person visibly or noticeably intoxicated, or to any person known to be insane or known to be a habitual drunkard;

(c) No licensee, his, her, its or their servants, agents or employees, shall sell, furnish or give any nonintoxicating beer as defined in this article to any person who is less than twenty-one years of age;

(d) No distributor shall sell or offer to sell, and no retailer shall purchase or receive, any nonintoxicating beer as defined in this article, except for cash; and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subsection. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for such containers when title is retained by the vendor;

(e) No brewer or distributor or brewpub or his, her, its or their agents, shall transport or deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

(f) No brewer or distributor shall give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail, or offer any prize, premium, gift or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: provided that a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained shall prohibit a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any such events: provided however that no such event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the nonintoxicating Beer Commissioner.

(g) No licensee shall permit in his premises any lewd, immoral or improper entertainment, conduct or practice;

(h) No licensee except the holder of a license to operate a private club issued under the provisions of West Virginia Code Article 60-7, or a holder of a license for a private wine restaurant issued under the provisions of West Virginia Code Article 60-8, shall possess a Federal license, tax receipt or other permit entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

(i) No licensee shall obstruct the view of the interior of his premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying such premises. The interior of all licensed premises shall be adequately lighted at all times: provided, that provisions of this subsection shall not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of West Virginia Code Article 60-7, or the premises of a private wine restaurant licensed under the provisions of West Virginia Code Article 60-8;

(j) No licensee shall manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith: 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 shall not be applicable with respect to the holder of a license to operate a private club issued under the provisions of West Virginia Code Article 60-7, nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of West Virginia Code Article 60-8, insofar as such private wine restaurant is authorized to serve wine;

(k) No retail licensee shall sell or dispense nonintoxicating beer as defined in this article, purchased or acquired from any source other than a distributor, brewer or manufacturer licensed under the laws of this State;

(l) No licensee shall permit loud, boisterous or disorderly conduct of any kind upon his or her premises or permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community wherein such business is located: provided, that no licensee shall have in connection with his or her place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind;

(m) No person whose license has been revoked, shall obtain employment with any retailer within the period of one year from the date of such revocation, and no retailer shall employ knowingly any such person within such time;

(n) No distributor shall sell, possess for sale, transport or distribute nonintoxicating beer except in the original container;

(o) No licensee shall knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this State or Municipality;

(p) No Class B retailer shall permit the consumption of nonintoxicating beer upon his licensed premises;

(q) No Class A licensee, his, her, its or their servants, agents or employees, or any licensee by or through such servants, agents or employees, shall allow or permit any person less than eighteen years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subsection shall not apply where such person under the age of eighteen years is in or upon such premises in the immediate company of his or her parent or parents, or where and while such person under the age of eighteen years is in or upon such premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on such premises;

(r) No distributor shall sell, offer for sale, distribute or deliver any nonintoxicating beer outside the territory assigned to such distributor by the brewer or manufacturer of such nonintoxicating beer or sell, offer for sale, distribute or deliver any such nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such nonintoxicating beer: provided, that nothing herein shall be deemed to prohibit sales of convenience between distributors licensed in this State wherein one such distributor sells, transfers or delivers to another such distributor a particular brand or brands for sale at wholesale; and

(s) No licensee or any agent, servant or employee of any such licensee shall knowingly violate any rule or regulation lawfully promulgated by the Commissioner.

(t) Any person who violates any provision of this section, or any rule, regulation or order lawfully promulgated by the Commissioner, or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful, shall be punished as provided in Section 521.99.

(u) Nothing in this section nor any rule or regulation of the Commissioner shall prevent or be deemed to prohibit any licensee from employing any person who is at least eighteen years of age to serve in such licensee's lawful employ, including the sale or delivery of nonintoxicating beer as defined in this article. With the prior approval of the Commissioner, a licensee whose principal business is the sale of food or consumer goods or the providing of recreation 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 eighteen years of age but at least sixteen years of age: provided, that such person's duties shall not include the sale or delivery of nonintoxicating beer or alcoholic liquors: provided, however, that the authorization to employ such persons under the age of eighteen years shall be clearly indicated on the licensee's license.
(WVaC 11-16-18)

521.08 UNLAWFUL PURCHASE OF NONINTOXICATING BEER.

(a) No person under the age of twenty-one years shall purchase, consume, sell, possess or serve nonintoxicating beer.

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 eighteen 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 section, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen 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.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing nonintoxicating beer when he or she 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 West Virginia 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 Commissioner.

(b) No person under the age of twenty-one years for the purpose of purchasing nonintoxicating beer, shall misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or shall illegally attempt to purchase nonintoxicating beer.

(c) No person shall knowingly buy for, give to or furnish nonintoxicating beer to anyone under the age of twenty-one years to whom they are not related by blood or marriage. (WVaC 11-16-19)

521.09 ACTS PROHIBITED BY PRIVATE CLUB LICENSEE.

(a) No person licensed under West Virginia Code Article 60-7, or his 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;

(2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice; gambling or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine;

(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 twenty-one 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 1:00 p.m. on Sunday;

(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 twenty-one 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 Commissioner;

(10) A. Employ any person who is less than eighteen 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;

B. Employ any person who is between the ages of eighteen and twenty-one who is not directly supervised by a person aged twenty-one 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

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

(b) No licensee shall advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased thereat. (WVaC 60-7-12)

521.10 UNLAWFUL PURCHASE FROM PRIVATE CLUB.

(a) No person under the age of twenty-one 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 eighteen years of age from purchasing or possessing nonintoxicating beer, wine or alcoholic liquors when he or she 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 West Virginia 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 Commissioner.

(b) No person under the age of twenty-one years, for the purpose of purchasing nonintoxicating beer, wine or alcoholic liquors from a private club licensee, misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her 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 twenty-one years any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee. (WVaC 60-7-12a)

521.11 ACTS PROHIBITED BY WINE DEALERS.

It shall be unlawful:

(a) For a distributor to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of West Virginia 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 West Virginia Code 60-1-5a;

(b) Unless otherwise specifically provided for by the provisions of West Virginia Code Article 60-8, for a licensee under West Virginia Code Article 60-8 to acquire, transport, possess for sale, or sell wine other than in the original package;

(c) For a licensee, his servants, agents or employees to sell, furnish or give wine to any person less than twenty-one years of age or to a mental incompetent or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs;

(d) For a licensee to permit a person who is less than eighteen years of age to sell, furnish or give wine to any person;

(e) For 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 such brand at wholesale. For the purposes of this article, "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 West Virginia distributor: provided, that no retailer shall sell or deliver wine purchased or acquired from any source other than a distributor licensed as such in this State: provided, however, that nothing herein shall be deemed to prohibit sales of convenience between distributors licensed in this State wherein one such distributor sells, transfers or delivers to another such distributor a particular brand or brands for sale at wholesale of which brand or brands such other distributor may be temporarily out of stock. The Alcohol Beverage Commissioner shall promulgate such rules or regulations as may be necessary to carry this subsection into effect;

(f) For a person to violate any reasonable rule or regulation promulgated by the Alcohol Beverage Control Commissioner under West Virginia Code Article 60-8.

(g) Nothing in this article, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any licensee from employing any person who is at least eighteen years of age to serve in any licensee's lawful employment, including the sale or delivery of wine under the provisions of this article. 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 eighteen years of age but at least sixteen years of age: provided, that such person's duties shall not include the sale or delivery of nonintoxicating beer or alcoholic liquors: provided, however, that the authorization to employ such persons, under the age of eighteen years shall be clearly indicated on the licensee's license.
(WVaC 60-8-20)

521.12 UNLAWFUL PURCHASE OF WINE.

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

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 eighteen 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 eighteen but at least sixteen 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.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing wine or alcoholic liquor when he or she 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 West Virginia 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 Commissioner.

(b) No person under the age of twenty-one years, for the purpose of purchasing wine or other alcoholic liquors from a licensee, shall misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her 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 twenty-one years to whom they are not related by blood or marriage.
(WVaC 60-8-20a)

521.13 UNLAWFUL PURCHASE FROM RETAIL LIQUOR LICENSEE.

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

Nothing is 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 eighteen years of age from serving in the lawful employment of a licensee which includes the sale and serving of alcoholic liquor.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing alcoholic liquor when he or she 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 West Virginia 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 Commissioner.

(b) No person under the age of twenty-one years shall, for the purpose of purchasing liquor from a retail licensee, misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her 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 twenty-one to whom he or she 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.
(WVaC 60-3A-24)

521.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) Whoever violates Section 521.05(a), 521.08(b), 521.12(b) or 521.13(b) shall be fined not more than fifty dollars ($50.00), or imprisoned for not more than seventy-two hours, or both, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for not more than one year.

(b) Whoever violates Section 521.05(b), 521.08(c), 521.12(c) or 521.13(c) or (d) shall be fined not more than one hundred dollars ($100.00), or imprisoned for not more than ten days, or both.
(WVaC 11-16-19, 60-3-22a, 60-8-20a, 60-3A-24)

(c) Whoever violates Section 521.06(a) shall be sentenced in accordance with the following options:

(1) Upon first offense, a fine of not more than one hundred dollars ($100.00). If the individual, prior to conviction, agrees to voluntarily attend the alcohol education program, the judge may delay sentencing until the program is completed and upon completion may dismiss the charges;

(2) Upon conviction for a second offense, a fine of not more than one hundred dollars ($100.00) and not more than thirty days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health-mental retardation center;

(3) Upon third and subsequent convictions, a fine of not more than one hundred dollars ($100.00) and not less than five nor more than thirty days in jail or a fine of not more than one hundred dollars ($100.00) and completion of not less than five hours of alcoholism counseling at the nearest community mental health-mental retardation center: provided that three convictions for public intoxication within the preceding six months shall be considered evidence of alcoholism: provided, however that for the educational counseling programs described in this subsection the community mental health-mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual. A person charged with a violation of Section 521.06(a) who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to West Virginia Code Articles 27-5 and 27-6A.

(d) Whoever violates Section 521.06(b) shall be fined not more than one hundred dollars ($100.00); upon a second or subsequent violation shall be fined not more than one hundred dollars ($100.00) or imprisoned not more than 30 days or both.

(e) Whoever violates Section 521.06(c) shall be fined not more than one hundred dollars ($100.00), or confined in jail not more than thirty days, or both.
(WvaC 60-6-9)

(f) Whoever violates Section 521.06(d) or (e) is guilty of a misdemeanor for a first offense and shall be fined not more than five hundred dollars ($500.00).
(WVaC 60-6-9)

(g) Whoever violates Section 521.08(a), 521.12(a) or 521.13(a) shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than seventy-two hours, or both, or in lieu thereof, may, for the first offense, be placed on probation for a period not to exceed one year.
(WVaC 11-16-19, 60-8-20a, 60-3A-24)

(h) Whoever violates Section 521.09 shall be fined not less than five hundred dollars ($500.00) or more than one thousand dollars ($1,000), or imprisoned not more than thirty days, or both.
(WVaC 60-7-12)

(i) Whoever violates Section 521.10(a) or (b) shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than thirty days, or both, and in addition may, for the first offense be placed on probation for a period not to exceed one year.

(j) Whoever violates Section 521.10(c) shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than ten days, or both.
(WVaC 60-7-12a)

ARTICLE 525
Minors

525.01 Contributing to delinquency or neglect of minor.
525.02 Cruelty to children.
525.03 Parental liability for acts of children.
525.04 Abandoned airtight containers.
525.05 Tobacco usage restrictions.
525.06 Curfew.
525.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Delinquent child defined - see W. Va. Code 49-1-4
Jurisdiction of municipal court - see W. Va. Code 49-5-1(b)
Contributing to delinquency of minor - see W. Va. Code 49-7-7 et seq.

525.01 CONTRIBUTING TO DELINQUENCY OR NEGLECT OF MINOR.

No person shall by any act or omission contribute to, encourage or tend to cause the delinquency or neglect of any child, including, but not limited to, aiding or encouraging any such child to habitually or continually refuse to respond, without just cause, to the lawful supervision of such child's parent, guardian or custodian or to be habitually absent from school without just cause.
(WVaC 49-7-7)

525.02 CRUELTY TO CHILDREN.

No person shall cruelly ill treat, abuse or inflict unnecessary cruel punishment upon, any infant or minor child, and no person, having the care, custody or control of any minor child, shall willfully abandon or neglect the minor child.

In addition to any penalty provided under this section and any restitution which may be ordered by the court, the court may order any person convicted under the provisions of this section to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the victim, the need for which results from the act or acts for which the person is convicted, whether or not the victim is considered to have sustained bodily injury.
(WVaC 61-8-24)

525.03 PARENTAL LIABILITY FOR ACTS OF CHILDREN.

The custodial parent or parents of any minor child shall be personally liable in an amount not to exceed that specified in West Virginia Code 55-7A-2 for damages which are the proximate result of any one or a combination of the following acts of the minor child:

(a) The malicious and willful injury to the person of another; or

(b) The malicious and willful injury or damage to the property of another, whether the property be real, personal, or mixed; or

(c) The malicious and willful setting fire to a forest or wooded area belonging to another; or

(d) The willful taking, stealing and carrying away of the property of another, with the intent to permanently deprive the owner of possession.

For purposes of this section, "custodial parent or parents" means the parent or parents with whom the minor child is living, or a divorced or separated parent who does not have legal custody but who is exercising supervisory control over the minor child at the time of the minor child's act.

Persons entitled to recover damages under this section shall include, but are not limited to, the State, any municipal corporation, county commission and board of education, or other political subdivision of this State or any person or organization of any kind or character. The action may be brought in magistrate or another court of competent jurisdiction. Recovery hereunder shall be limited to the actual damages, based upon direct out-of-pocket loss, taxable court costs, and interest from date of judgment. The right of action and remedy granted herein shall be in addition to and not exclusive of any rights of action and remedies therefor against a parent or parents for the tortious acts of his or their children heretofore existing under the provisions of any law, statutory or otherwise, or now so existing independently of the provisions of this section. (WVaC 55-7A-2)

525.04 ABANDONED AIRTIGHT CONTAINERS.

No person shall abandon any refrigerator or food freezer appliance or other airtight appliance having a height or length of greater then two feet without first removing all entry doors therefrom. (WVaC 61-2-26)

525.05 TOBACCO USAGE RESTRICTIONS.

(a) Sale or Gift of Tobacco to Persons Under Eighteen. No person, firm, corporation or business entity may sell, give or furnish, or cause to be sold, given or furnished, to any person under the age of eighteen years:

(1) Any pipe, cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco or tobacco product; or

(2) Any cigar, cigarette, snuff, chewing tobacco or tobacco product, in any form.

(b) Any firm or corporation that violates any provision of subsection (a)(1) or (2) hereof and any individual who violates any provision of subsection (a)(1) hereof shall be fined twenty-five dollars ($25.00) for the first offense. Upon any subsequent violation at the same location or operating unit, the firm, corporation or individual shall be fined as follows: at least one hundred dollars ($100.00) but not more than two hundred dollars ($200.00) for the second offense, if it occurs within two years of the first conviction; at least two hundred fifty dollars ($250.00) but not more than five hundred dollars ($500.00) for the third offense, if it occurs within two years of the first conviction; at least two hundred fifty dollars ($250.00) but not more than five hundred dollars ($500.00) for the fourth offense, if it occurs within five years of the first conviction; and at least one thousand dollars ($1,000) but not more than five thousand dollars ($5,000) for the fifth and any subsequent offenses, if the fifth or subsequent offense occurs within five years of the first conviction.

(c) Any individual who knowingly and intentionally sells, gives or furnishes or causes to be sold, given or furnished to any person under the age of eighteen years any cigar, cigarette, snuff, chewing tobacco or tobacco product, in any form, for the first offense shall be fined not more than one hundred dollars ($100.00); upon conviction thereof for a second or subsequent offense shall be fined not less than one hundred dollars ($100.00) and not more than five hundred dollars ($500.00). (WVaC 16-9A-2)

(d) Use or Possession of Tobacco by Persons Under the Age of Eighteen Years. No person under the age of eighteen years shall have on or about his or her person or premises or use any cigarette, or cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; or, any pipe, snuff, chewing tobacco or tobacco product; provided, that minors participating in the inspection of locations where tobacco products are sold or distributed pursuant to West Virginia Code 16-9A-7 shall not be deemed to violate the provisions of this subsection (d). Any person violating the provisions of this subsection (d) shall for the first violation be fined twenty-five dollars ($25.00) and be required to serve eight hours of community service; for a second violation, the person shall be fined fifty dollars ($50.00) and be required to serve sixteen hours of community service; and for a third and each subsequent violation, the person shall be fined one hundred dollars ($100.00) and be required to serve twenty-four hours of community service.
(WVaC 16-9A-3)

525.06 CURFEW.

(a) Hours of Curfew. It shall be unlawful for any child under the age of sixteen years to be upon the streets or in other public places of the City after the hour of 9:00 p.m., unless accompanied by the parents, guardian or some adult person lawfully in charge of such child.

(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 sixteen years, to allow such child to be upon the streets or in other public places in the City after 9:00 p.m., unless accompanied by the parents, guardian or some adult person lawfully in charge of such child.

(c) Exceptions. The provisions of this section shall not be so construed as to prohibit children under sixteen years of age from attending places of religious worship or meetings held by or under the auspices of the public schools or boy scouts or girl scouts, or other like organizations, unaccompanied by the parent, guardian or other adult person.

(d) Disposition of Child. Any child found in violation of this section shall be taken to the City Hall and the parent, guardian or person in loco parentis shall be notified to come to the City 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.

(e) Penalty. Any parent, guardian or person in loco parentis who permits any child to violate this section shall upon the first offense be warned; upon the second offense the parent, guardian or person in loco parentis shall be fined not less than ten dollars ($10.00) and not exceeding twenty-five dollars ($25.00); and upon any subsequent offense the parent, guardian or person in loco parentis shall be fined not less than twenty-five dollars ($25.00) and not exceeding fifty dollars ($50.00). (1963 Code 5-67)

525.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

Whoever violates Section 525.04 shall be fined not more than two hundred dollars ($200.00) or imprisoned not more than thirty days, or both.

ARTICLE 529
Offenses Relating to Persons

529.01 Assault and battery.
529.02 Assault and battery on school employees.
529.03 Controlled substances.
529.99 Penalty.

CROSS REFERENCES
Uniform Controlled Substances Act - see W. Va. Code Ch. 60A
State law provisions - see W. Va. Code Art. 61-2
Harassing telephone calls - see GEN. OFF. 517.06
Intoxication or drinking in public places - see GEN. OFF. 521.06

529.01 ASSAULT AND BATTERY.

(a) Assault. No person shall unlawfully attempt to commit a violent injury to the person of another or unlawfully commit an act which places another in reasonable apprehension of immediately receiving a violent injury.

(b) Battery. No person shall unlawfully and intentionally make physical contact of an insulting or provoking nature with the person of another or unlawfully and intentionally cause physical harm to another person.
(WVaC 61-2-9)

529.02 ASSAULT AND BATTERY ON SCHOOL EMPLOYEES.

(a) No person shall commit an assault:

(1) By unlawfully attempting to commit a violent injury to the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a; or

(2) By unlawfully committing an act which places a school employee in reasonable apprehension of immediately receiving a violent injury while the employee is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a.

(b) No person shall commit a battery:

(1) By unlawfully and intentionally making physical contact of an insulting or provoking nature with the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a; or

(2) By unlawfully and intentionally causing physical harm to a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a.

(c) For the purposes of this section, "school employee" means a person employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. For the purposes of this section, a "school employee" includes a student teacher. (WVaC 61-2-15)

529.03 CONTROLLED SUBSTANCES.

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

(b) Except as authorized by West Virginia Code Chapter 60A, no person shall create, deliver or possess with intent to deliver a counterfeit substance classified in Schedule V under West Virginia 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 his professional practice, or except as otherwise authorized by West Virginia Code Chapter 60A. (WVaC 60A-4-401)

(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) hereof shall not apply to a practitioner who administers or dispenses a placebo. (WVaC 60A-4-401)

529.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

Whoever violates Section 529.01(a) or 529.02(a) shall be fined not more than one hundred dollars ($100.00) or imprisoned not more than thirty days, or both.

ARTICLE 533
Offenses Relating to Property

533.01 Shoplifting.
533.02 Trespass.
533.03 Petit larceny.
533.04 Dealing with stolen goods.
533.05 Injury or destruction of property or monuments.
533.06 Tampering with and theft of utilities; CATV.
533.07 Littering and deposit of garbage, rubbish, junk, etc.
533.08 Barricades and warning lights; abandoned excavations.
533.09 Unauthorized use of dumpsters.
533.10 Advertising; billposting and handbills.
533.11 Signs and advertising.
533.99 Penalty.

CROSS REFERENCES
See sectional histories for similar State law
Authority to regulate advertising - see W. Va. Code 8-12-5(31)
State law provisions - see W. Va. Code Art. 61-3

533.01 SHOPLIFTING.

(a) General Definitions.

(1) "Conceal" means to hide, hold or carry merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation.

(2) "Merchant" means an owner or operator of any mercantile establishment, and includes the merchant's employees, servants, security agents or other agents.

(3) "Mercantile establishment" means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale. "Mercantile establishment" does not include adjoining parking lots or adjoining areas of common use with other establishments.

(4) "Merchandise" means any goods, foodstuffs, wares or personal property or any part or portion thereof of any type or description displayed, held or offered for sale, or a shopping cart.

(5) "Value of the merchandise" means the merchant's stated price of the merchandise, or in the event of altering, transferring or removing a price marking or causing a cash register or other sales device to reflect less than the retail value of the merchandise, as defined in subsection (b) hereof, the difference between the merchant's stated price of the merchandise and the altered price.
(WVaC 61-3A-6)

(b) Shoplifting Defined.

(1) A person commits the offense of shoplifting if, with intent to appropriate merchandise without paying the merchant's stated price for the merchandise, such person, alone or in concert with another person, knowingly:

A. Conceals the merchandise upon his or her person or in another manner; or

B. Removes or causes the removal of merchandise from the mercantile establishment or beyond the last station for payment; or

C. Alters, transfers or removes any price marking affixed to the merchandise; or

D. Transfers the merchandise from one container to another; or

E. Causes cash register or other sales recording device to reflect less than the merchant's stated price for the merchandise; or

F. Removes a shopping cart from the premises of the mercantile establishment.

(2) A person also commits the offense of shoplifting if such person, alone or in concert with another person, knowingly and with intent obtains an exchange or refund or attempts to obtain an exchange or refund for merchandise which has not been purchased from the mercantile establishment.
(WVaC 61-3A-1)

(c) Breach of Peace; Detention. An act of shoplifting as defined herein, is hereby declared to constitute a breach of peace and any owner of merchandise, his agent or employee, or any law enforcement officer who has reasonable ground to believe that a person has committed shoplifting, may detain such person in a reasonable manner and for a reasonable length of time not to exceed thirty minutes, for the purpose of investigating whether or not such person has committed or attempted to commit shoplifting. Such reasonable detention shall not constitute an arrest nor shall it render the owner of merchandise, his agent or employee, liable to the person detained.
(WVaC 61-3A-4)

(d) Evidence.

(1) Evidence of stated price or ownership of merchandise may include, but is not limited to:

A. The actual merchandise alleged to have been shoplifted; or

B. The unaltered content of the price tag or marking from such merchandise; or

C. Properly identified photographs of such merchandise.

(2) Any merchant may testify at a trial as to the stated price or ownership of merchandise, as well as to other matters pertaining to the case. (WvaC 61-3A-2)

(e) Civil Liability.

(1) General rule. Any person who commits any of the acts described in this section shall be civilly liable:

A. To restore the merchandise to the mercantile establishment; and

B. If such merchandise is not recoverable or is damaged, for actual damages, including the value of the merchandise involved in the shoplifting; and

C. For other actual damages arising from the incident, not including the loss of time or loss of wages incurred by the mercantile establishment or any merchant in connection with the apprehension and processing of the suspect; and

D. In all cases, for a penalty to be paid to the mercantile establishment in the amount of fifty dollars ($50.00) or double the value of the merchandise whichever is higher.

(2) Costs and attorneys' fees. A merchant who is a prevailing party under this section is entitled to costs.

(3) Effect of conviction. A conviction for the offense of theft by shoplifting is not a prerequisite to the maintenance of a civil action authorized by this section. However, a merchant who has recovered the penalty prescribed by subsection (f) hereof is not entitled to recover the penalty imposed by this section.

(4) Right to demand payment. The fact that a mercantile establishment may bring an action against an individual as provided in this section does not limit the right of such establishment to demand, orally or in writing, that a person who is liable for damages or a penalty under this section remit such damages or penalty prior to the commencement of any legal action.

(WvaC 61-3A-5)

(f) Penalty. A person convicted of shoplifting shall be punished as follows:

(1) First offense conviction. Upon a first shoplifting conviction:

A. When the value of the merchandise is less than or equal to five hundred dollars ($500.00) the defendant shall be fined not more than two hundred fifty dollars ($250.00).

B. When the value of the merchandise exceeds five hundred dollars ($500.00), the defendant shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) and such fine shall not be suspended; or the defendant shall be confined in jail not more than thirty days, or both.

(2) Second offense conviction. Upon a second shoplifting conviction:

A. When the value of the merchandise is less than or equal to five hundred dollars ($500.00) the defendant shall be fined not less than one hundred dollars ($100.00), nor more than five hundred dollars ($500.00) and such fine shall not be suspended; or the defendant shall be confined in jail not more than thirty days, or both.

B. When the value of the merchandise exceeds five hundred dollars ($500.00), the defendant shall be fined not less than five hundred dollars ($500.00) and shall be confined in jail not more than thirty days.

(3) Mandatory penalty. In addition to the fines and imprisonment imposed by this section, in all cases of conviction for the offense of shoplifting, the court shall order the defendant to pay a penalty to the mercantile establishment involved in the amount of fifty dollars ($50.00), or double the value of the merchandise involved, whichever is higher. The mercantile establishment shall be entitled to collect such mandatory penalty as in the case of a civil judgment. This penalty shall be in addition to the mercantile establishment's rights to recover the stolen merchandise.

(4) Prior convictions. In determining the number of prior shoplifting convictions for purposes of imposing punishment under this section, the court shall disregard all such convictions occurring more than seven years prior to the shoplifting offense in question.

(WVaC 61-3A-3)

533.02 TRESPASS.

(a) Definitions. As used in this section:

(1) "Structure" means any building of any kind either temporary or permanent, which has a roof over it, together with the curtilage thereof.

(2) "Conveyance" means any motor vehicle, vessel, railroad car, railroad engine, trailer, aircraft or sleeping car, and "to enter a conveyance" includes taking apart any portion of the conveyance.

(3) An act is committed "in the course of committing" if it occurs in an attempt to commit the offense or in flight after the attempt or commission.

(4) "Posted land" means that land upon which reasonably maintained signs are placed not more than 500 feet apart along and at each corner of the boundaries of the land upon which signs there appears prominently in letters of not less than two inches in height the words "no trespassing" and in addition thereto the name of the owner, lessee or occupant of the land. The signs shall be placed along the boundary line of posted land in a manner and in a position as to be clearly noticeable from outside of the boundary line. It shall not be necessary to give notice by posting on any enclosed land or place not exceeding five acres in area on which there is a dwelling house or property that by its nature and use is obviously private in order to obtain the benefits of this section pertaining to trespass on enclosed lands.

(5) "Cultivated land" means that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture or trees or is fallow land as part of a crop rotation.

(6) "Fenced land" means that land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire or other material, which stands at least three feet in height. For the purpose of this section it shall not be necessary to fence any boundary or part of a boundary of any land which is formed by water and is posted with signs pursuant to the provisions of this section.

(7) Where lands are posted, cultivated or fenced as described herein, then such lands, for the purpose of this section, shall be considered as enclosed and posted.

(8) "Trespass" means the willful unauthorized entry upon, in or under the property of another, but shall not include the following:

A. Entry by the State, its political subdivisions or by the officers, agencies or instrumentalities thereof as authorized and provided by law.

B. The exercise of rights in, under or upon property by virtue of rights of way or easements by a public utility or other person owning such right of way or easement whether by written or prescriptive right.

C. Permissive entry, whether written or oral, and entry from a public road by the established private ways to reach a residence for the purpose of seeking permission shall not be trespass unless signs are posted prohibiting such entry.

D. Entry performed in the exercise of a property right under ownership of an interest in, under or upon such property.

E. Entry where no physical damage is done to property in the performance of surveying to ascertain property boundaries, and in the performance of necessary work of construction, maintenance and repair of a common property line fence, or buildings or appurtenances which are immediately adjacent to the property line and maintenance of which necessitates entry upon the adjoining owner's property.

(WVaC 61-3B-1)

(b) Trespass in Structure or Conveyance. Any person who knowingly enters in, upon or under a structure or conveyance without being authorized, licensed or invited, or having been authorized, licensed or invited is requested to depart by the owner, tenant or the agent of such owner or tenant, and refuses to do so, shall be fined not more than one hundred dollars ($100.00). If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the unlawful and felonious intent to do bodily injury to a human being in such structure or conveyance at the time the offender knowingly trespasses, such offender shall, notwithstanding the provisions of West Virginia Code 61-7-1, be subject to the penalty provided in Section 501.99(a).
(WVaC 61-3B-2)

(c) Trespass on Property Other than Structure or Conveyance.

(1) Whoever knowingly and without being authorized, licensed or invited, enters or remains on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing or cultivation, shall be fined not more than one hundred dollars ($100.00).

(2) If the offender defies an order to leave, personally communicated to him by the owner, tenant or agent of such owner or tenant, or if the offender opens any door, fence or gate, and thereby exposes animals, crops or other property to waste, destruction or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance, he shall be subject to the penalty provided in Section 501.99(a).

(3) If the offender is armed with a firearm or other dangerous weapon with the unlawful and felonious intent to do bodily injury to a human being during his commission of the offense of trespass on property other than a structure or conveyance, such offender shall, notwithstanding the provisions of West Virginia Code 61-7-1, be imprisoned not more than thirty days, or fined not more than one hundred dollars ($100.00), or both.

(4) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass shall be liable to the property owner in the amount of twice the amount of such damage, provided, that the provisions of this section shall not apply in a labor dispute.
(WVaC 61-3B-3)

533.03 PETIT LARCENY.

No person shall commit petit larceny as defined in West Virginia Code 61-3-13 within the City.

533.04 DEALING WITH STOLEN GOODS.

If any person buys or receives from another person, or aids in concealing, or transfers to a person other than the owner thereof, any stolen goods or other thing of value which he knows or has reason to believe has been stolen, he shall be deemed guilty of the larceny thereof, and may be prosecuted although the principal offender is not convicted.
(WVaC 61-3-18)

533.05 INJURY OR DESTRUCTION OF PROPERTY OR MONUMENTS.

(a) No person shall unlawfully, but not feloniously, take and carry away or destroy, tamper with, injure or deface any property, real or personal, not his own.

(b) No person shall break down, destroy, injure, deface or remove any monument erected for the purpose of designating the boundaries of the Municipality, tract or lot of land, or any tree marked for that purpose.
(WVaC 61-3-30)

533.06 TAMPERING WITH AND THEFT OF UTILITIES; CATV.

(a) No person with intent to injure or defraud shall procure, make or cause to be made, any pipe, tube, wire or other conductor of gas, water or electric energy, and connect the same, or cause it to be connected, with any main, service pipe or other pipe for conducting or supplying gas, or water or any wires or other conductor of electric energy, in such manner as to supply gas, water or electric energy to any lamp, motor, burner, orifice or any other device, by or at which gas, water or electric energy is consumed, around or without passing through the meter provided for measuring and registering the quantity of gas, water or electric energy consumed, or in any other manner so as to evade payment therefor, and no person, with like intent, shall injure or alter any gas, water or electric meter, or obstruct its action.
(WVaC 61-3-44)

(b) No person with intent to injure or defraud shall connect, or cause to be connected, any pipe, tube, wire, electrical conductor or other instrument with any main, service pipe or other pipe or conduit or flume for conducting water, or with any main, service pipe or other pipe or conduit for conducting gas, or with any main, service wire or other electric conductor used for the purpose of conducting electric energy for light, heat or motive services, for the purpose of taking therefrom water, gas or electric energy, without the knowledge of the owner thereof and with intent to evade payment therefor. (WVaC 61-3-45)

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

(d) 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, sound or other transmission.

533.07 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.

533.08 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.

533.09 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)

533.10 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 he 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 City or within the street lines of the City or over which the City 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. (1963 Code 5-3)

533.11 SIGNS AND ADVERTISING.

(a) Prohibiting Off-Premise Signs. It shall be unlawful for any business or person to erect or place or cause to erect or place a sign or advertising in the corporate limits of the City that is not on the same parcel of ground as the business being advertised.

(b) Grandfathering Present Advertising. Current, off-premise signs or advertising erected or in place as of July 1, 2001, shall be grandfathered. Any additions to grandfathered signs or advertising is prohibited. If grandfathered signs or advertising are removed the grandfathering provision is lifted and the signs or advertising shall not be replaced.

(c) Restriction of On-Premise Signs and Advertising. It shall be unlawful to erect any sign or advertising within the corporate limits of the City 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.

(d) Grandfathering Present On-Premise Signs. All on-premise signs or advertising that are within the corporate limits of the City 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(s) or advertising may not be replaced.

(e) Building Permits. Building permits shall be required to erect or place any signs or advertising within the City. (Ord. 2001-2. Passed 10-1-01.)

533.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) Whoever violates Section 533.05(b) shall be fined not more than two hundred dollars ($200.00) or imprisoned not more than thirty days, or both.

(b) Any person convicted of a violation of Section 533.09 shall be subject to the following penalties:

(1) Upon a first conviction, the defendant shall be fined not less than fifty dollars ($50.00) nor more than two hundred fifty dollars ($250.00).

(2) Upon a second conviction, the defendant shall be fined not less than two hundred fifty dollars ($250.00) nor more than five hundred dollars ($500.00).

(3) Upon any subsequent conviction in excess of a second conviction, the defendant shall be fined not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000) or imprisoned not more than thirty days, or both.

Notwithstanding the provisions of West Virginia Code 61-11A-4 or West Virginia Code 50-3-2a, the magistrate or court may order restitution not to exceed the value of unauthorized solid waste services received. (WVaC 61-5-33)

(c) Any violation of Section 533.11 shall be punishable by a fine of not less than fifty dollars ($50.00) nor more than two hundred fifty dollars ($250.00) plus the removal of the sign(s) or advertising. Each day that the sign(s) or advertising remains shall be considered a separate offense.

(Ord. 2001-2. Passed 10-1-01.)

ARTICLE 541
Railroads

541.01 Obstructing railroad crossings.
541.02 Trespassing.
541.03 Speed.
541.99 Penalty.

CROSS REFERENCES
Authority to eliminate grade crossings - see W. Va. Code 17-10-7
Grant of right of way - see W. Va. Code 31-2-13
Stopping at grade crossing - see TRAF. 343.01 et seq.

541.01 OBSTRUCTING RAILROAD CROSSINGS.

(a) Definitions. As used in this section:

(1) "Carrier," "railroad" or "railroad company" means a common carrier by railroad.

(2) "Train" or "trains" means engines, cars and any type of railroad equipment or rolling stock, or any part thereof, capable of blocking any crossing of a railroad track or tracks and any public street, road or highway.

(b) Blocking of Crossing Prohibited; Time Limit.

(1) No railroad company, except in an emergency, shall order, allow or permit the operation of or operate its system so that a train blocks the passage of vehicular traffic over the railroad crossing of any public street, road or highway for a period longer than ten minutes. This subsection does not apply to an obstruction of any such street, road or highway caused by a continuously moving train or caused by circumstances wholly beyond the control of the railroad, but does apply to all other obstructions as aforesaid, including, but not limited to, those caused by a stopped train or a train engaged in switching, loading or unloading operations.

(2) Upon receiving notification from a law-enforcement officer, member of a fire department, operator of an emergency medical vehicle, or a member of an emergency services provider that emergency circumstances require the immediate clearing of a public highway railroad grade crossing, the members of the train crew of the train, railroad car or equipment, or engine blocking such crossing shall immediately notify the appropriate railroad dispatcher of the pending emergency situation. Upon receipt of notice of such emergency circumstances by the train crew or dispatcher, the railroad shall immediately clear the crossing, consistent with the safe operation of the train.

(c) Responsibility of Railroad Company. The railroad company shall be solely responsible for the acts of its agents and employees in violating any provision of this section.

(d) Presumption. There shall be a rebuttable presumption that a train is operated by the carrier whose marks, numbers, signs and symbols of identification appear on the engine or caboose of such train.

(e) Service of Process. Process issuing for a violation of this section may be served upon the engineer or conductor of the train causing a violation of the provisions of this section or any other officer, agent or attorney-in-fact of the railroad company authorized by law to receive service of summons or other process issuing against such railroad company. (WVaC Art. 31-2A)

541.02 TRESPASSING.

No person not a passenger or employee, shall be found trespassing upon any railroad or traction car or train of any railroad, by jumping on or off any car or train in motion, on its arrival at or departure from any station or depot of such railroad, or on the passage of any such car or train over any part of such railroad; nor shall any person drive any horse or any horse-drawn or motor-driven vehicle across or upon any railroad track or bridge, except at public or private crossings. (WVaC 61-3-43)

541.03 SPEED.

(a) It shall be unlawful within the limits of the City for any person or the agent or employee of any such person to run any locomotive, engine, car or train of cars at a rate of speed exceeding fifteen miles an hour, across any public street which has not been provided with automatic gates and at which such gates are not operated.

(b) Where such automatic gates are in operation, no person or the agent or employee of any such person shall run any locomotive, engine, car or train of cars at a rate of speed exceeding thirty-five miles an hour.
(1963 Code 5-71)

541.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) Any railroad company, carrier or railroad violating the provisions of Section 541.01(b)(1) shall be fined not less than one hundred fifty dollars ($150.00); upon a second conviction occurring at the same crossing within one year thereafter, shall be fined not less than two hundred fifty dollars ($250.00); and upon a third or subsequent conviction occurring at the same crossing within one year after the first conviction, shall be fined not less than three hundred fifty dollars ($350.00).

(b) Any railroad company, carrier or railroad violating the provisions of Section 541.01(b)(2) shall be fined not less than one thousand dollars ($1,000); upon a second conviction occurring at the same crossing within one year thereafter, shall be fined not less than two thousand five hundred dollars ($2,500); and upon a third or subsequent conviction occurring at the same crossing within one year after the first conviction, shall be fined not less than five thousand dollars ($5,000). (WVaC 31-2A-6)

(c) Whoever violates Section 541.02 shall be fined not more than twenty-five dollars ($25.00) or imprisoned not more than thirty days, or both.

ARTICLE 545
Weapons and Explosives

545.01 Definitions.
545.02 Carrying concealed deadly weapons without license.
545.03 Exceptions as to prohibitions against carrying concealed deadly weapons.
545.04 Persons prohibited from possession of deadly weapons.
545.05 Possession of deadly weapons by minors prohibited.
545.06 Possession of machine guns.
545.07 Display or sale of deadly weapons.
545.08 Brandishing deadly weapons.
545.09 Possessing deadly weapons on premises of educational facilities.
545.10 Fireworks sale, possession and discharge.
545.11 Discharging firearms.
545.12 Throwing or shooting missiles.
545.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law
Authority to prohibit carrying weapons - see W. Va. Code 8-12-5(16)
Limitations on power to restrict ownership - see W. Va. Code 8-2-5a
Dangerous weapons - see W. Va. Code Art. 61-7

545.01 DEFINITIONS.

As used in this article, unless the context otherwise requires:

(a) "Blackjack" means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. "Blackjack" includes, but is not limited to, a billy, billy club, sand club, sandbag or slapjack.

(b) "Gravity knife" means any knife that has a blade released from the handle by the force of gravity or the application of centrifugal force, and when so released is locked in place by means of a button, spring, lever or other locking or catching device.

(c) "Knife" means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a handle, which is capable of inflicting cutting, stabbing or tearing wounds. "Knife" includes, but is not limited to, any dagger, dirk, poniard or stiletto with a blade over three and one-half inches in length, any switchblade knife or gravity knife, and any other instrument capable of inflicting cutting, stabbing or tearing wounds. A pocket knife with a blade three and one-half inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports or other recreational uses, or a knife designed for use as a tool or household implement shall not be included within the term "knife" as defined herein, unless such knife is knowingly used or intended to be used to produce serious bodily injury or death.

(d) "Switchblade knife" means any knife having a spring-operated blade which opens automatically upon pressure being applied to a button, catch or other releasing device in its handle.

(e) "Nunchuka" means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope or other nonrigid, flexible or springy material, constructed in such a manner as to allow the rigid parts to swing freely, so that one rigid part may be used as a handle and the other rigid part may be used as the striking end.

(f) "Metallic or false knuckles" means a set of finger rings attached to a transverse piece, to be worn over the front of the hand for use as a weapon, and constructed in such a manner that, when striking another person with the fist or closed hand, considerable physical damage may be inflicted upon the person struck. The term "metallic or false knuckles" includes any such instrument, without reference to the metal or other substance or substances from which the metallic or false knuckles are made.

(g) "Pistol" means a short firearm having a chamber which is integral with the barrel, designed to be aimed and fired by the use of a single hand.

(h) "Revolver" means a short firearm having a cylinder of several chambers that are brought successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.

(i) "Deadly weapon" means an instrument which is designed to be used to produce serious bodily injury or death, or is readily adaptable to such use. The term "deadly weapon" includes, but is not limited to, the instruments defined in subsections (a) to (h) hereof, or other deadly weapons of like kind or character which may be easily concealed on or about the person.

(j) "Concealed" means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed on notice that the deadly weapon was being carried.

(k) "Firearm" means any weapon which will expel a projectile by action of an explosion.

(l) "Controlled substance" has the same meaning as is ascribed to that term in West Virginia Code 61A-1-101(d).

(m) "Drug" has the same meaning as is ascribed to that term in West Virginia Code 61A-1-101(l). (WVaC 61-7-2)

545.02 CARRYING CONCEALED DEADLY WEAPONS WITHOUT LICENSE.

(a) No person shall carry a concealed deadly weapon, without a State license or other lawful authorization established under the provisions of West Virginia Code 61-7-4 et seq.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor. (WVaC 61-7-3)

545.03 EXCEPTIONS AS TO PROHIBITIONS AGAINST CARRYING CONCEALED DEADLY WEAPONS.

The licensure provisions set forth in West Virginia Code Article 61-7 shall not apply to:

(a) Any person carrying a deadly weapon upon his own premises; nor shall anything herein prevent a person from carrying any firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business, nor shall anything herein prohibit a person from possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site, and returning to his or her home, residence or place of business;

(b) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from the State, or from the United States for the purpose of target practice, from carrying any pistol, as defined in Section 545.01(g), unloaded, from his home, residence or place of business to a place of target practice, and from any such place of target practice back to his home, residence or place of business, for using any such weapon at such place of target practice in training and improving his skill in the use of such weapons;

(c) Any law-enforcement officer or law-enforcement official as such are defined in West Virginia Code 30-29-1;

(d) Any employee of the West Virginia Department of Corrections duly appointed pursuant to the provisions of West Virginia Code 28-5-5 while such employee is on duty;

(e) Any member of the armed forces of the United States or the militia of the State while such member is on duty;

(f) Any circuit judge, prosecuting attorney, assistant prosecuting attorney or a duly appointed investigator employed by a prosecuting attorney.
(WVaC 61-7-6)

545.04 PERSONS PROHIBITED FROM POSSESSION OF DEADLY WEAPONS.

Notwithstanding any provision of this article to the contrary, no person who has been convicted of a felony; has been discharged under less than honorable conditions from the armed forces of the United States; has been adjudicated as a mental incompetent or has been committed involuntarily to a mental institution; is an alien illegally or unlawfully in the United States; or is addicted to alcohol, a controlled substance or a drug, or is an unlawful user thereof shall have in his or her possession any firearm or other deadly weapon, provided, that any person prohibited from possessing a firearm or other deadly weapon by the provisions of this section may petition the circuit court of the county in which he or she resides and if the court finds by clear and convincing evidence that such person is competent and capable of exercising the responsibility concomitant with the possession of a firearm or other deadly weapon the court may enter an order allowing such person to possess such weapon if such would not violate any Federal statute. (WVaC 61-7-7)

545.05 POSSESSION OF DEADLY WEAPONS BY MINORS PROHIBITED.

(a) Notwithstanding any other provision of this article to the contrary, a person under the age of eighteen years who is not married or otherwise emancipated shall not possess or carry concealed or openly any deadly weapon: provided, that a minor may possess a firearm upon premises owned by such minor or his family or on the premises of another with the permission of his or her parent or guardian and in the case of property other than his or her own or that of his family, with the permission of the owner or lessee of such property. Nothing in this section shall prohibit a minor from possessing a firearm while hunting in a lawful manner or while traveling from a place where he or she may lawfully possess a deadly weapon, to a hunting site, and returning to a place where he or she may lawfully possess such weapon.

(b) A violation of this section by a person under the age of eighteen years shall subject the child to the jurisdiction of the circuit court under the provisions of West Virginia Code 49-5-1 et seq., and such minor may be proceeded against in the same manner as if he or she had committed an act which if committed by an adult would be a crime, and may be adjudicated delinquent.
(WVaC 61-7-8)

545.06 POSSESSION OF MACHINE GUNS.

No person shall carry, transport or have in his possession, any machine gun, submachine gun or any other fully automatic weapon unless he or she has fully complied with applicable Federal statutes and all applicable rules and regulations of the Secretary of the Treasury of the United States relating to such firearms.
(WVaC 61-7-9)

545.07 DISPLAY OR SALE OF DEADLY WEAPONS.

No person shall publicly display and offer for rent or sale, or, where the person is other than a natural person, knowingly permit an employee thereof to publicly display and offer for rent or sale, to any passersby on any street, road or alley, any deadly weapon, machine gun, submachine gun or other fully automatic weapon, any rifle, shotgun or ammunition for same.
(WVaC 61-7-10)

545.08 BRANDISHING DEADLY WEAPONS.

No person armed with a firearm or other deadly weapon, whether licensed to carry the same or not, shall carry, brandish or use such weapon in a way or manner to cause, or threaten, a breach of the peace.
(WVaC 61-7-11)

ORDINANCE N0:

545.10

APPROVED ON:

_____

AN ORDINANCE TO AMEND SECTION 10 OF ARTICLE 545 OF THE CITY CODE OF THE TOWN OF CHESAPEAKE CONCERNING FIREWORKS

WHEREAS, the West Virginia Legislature, through the passage of House Bill 2852 [2016], repealed and amended several laws concerning fireworks, as well as created a new article in West Virginia Code, Fireworks Safety Article 3E in Chapter 29;

WHEREAS, House Bill 2852 [2016] authorizes the sale of consumer fireworks with a license, registration, certificate or permit from the State Fire Marshall;

WHEREAS, Chesapeake's existing fireworks ordinance, City Code § 545.10, is now based, in part, on statutory language that was repealed by House Bill 2852 [2016] and should be updated; and

WHEREAS, West Virginia Code §29-3E-10 [2016] specifically provides that Article 3E does not affect the authority of the governing body of a municipality to prohibit or regulate the use of consumer fireworks within its boundaries;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF CHESAPEAKE, WEST VIRGINIA, THAT ARTICLE 545, SECTION 10, BE AMENDED TO READ AS FOLLOWS:

545.10 FIREWORKS USE, SALE AND POSSESSION.

(a) The terms used in this section, including "fireworks", "consumer fireworks" and "display fireworks", shall have such meaning as defined in West Virginia Code Section 29-3E-2. Fireworks include consumer fireworks, display fireworks and special effects. Fireworks do 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.

(b) *FIREWORKS* – 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 eighteen years of age or older or shall be under the direct supervision of his or her 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 twenty-four 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.

(c) *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 PM and 10:00 PM on Memorial Day, Independence Day, Labor Day or corresponding holiday weekends or between 9:00 PM on December 31st and 12:30 AM on January 1st:

(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 Chesapeake Fire Department or the West Virginia 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.

(d) *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 Article 29-3E and the regulations of the State Fire Marshall. The operator shall provide proof of insurance coverage to the Mayor in the amount of $1 million or more and of a character and form as the Mayor determines to be necessary for the protection of the public, with the City 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.

(e) 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 form the State Fire Marshall and the Town of Chesapeake.

(f) The sale of fireworks shall be under the direct supervision and control of a competent person at least twenty-one 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 fifty 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 fifty 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 twenty-five 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 eighteen years.

(g) 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 eighteen years of age. Consumer fireworks shall be stored in accordance with the manufacturer's printed instructions.

(h) The Town of Chesapeake 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 Article 29-3E or an emergency or legislative rule promulgated thereunder,

(I) The provisions of this section shall be enforced by the Fire Chief, Police Chief or their designees.

(J) Whoever violates any of the provisions of this section shall be fined not more than five hundred dollars ($500.00). Each violation of the provisions of this section shall constitute a separate offense.

This ordinance shall take effect immediately upon passage.

545.09 POSSESSING DEADLY WEAPONS ON PREMISES OF EDUCATIONAL FACILITIES.

(EDITOR'S NOTE: Former Section 545.09 which was derived from West Virginia Code 61-7-11a is no longer included in the Codified Ordinances. By Acts 1995 Chapter 90, the West Virginia Legislature reclassified such offense as a felony. Charges for possessing deadly weapons on premises of educational facilities should now be filed under state law.)

545.10 FIREWORKS SALE, POSSESSION AND DISCHARGE.

(a) "Fireworks" means any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, the type of unmanned balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs, or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance, except that the term "fireworks" shall not include:

Model rockets and model rocket engines, designed, sold and used for the purpose of propelling recoverable acro models and shall not include toy pistols, toy canes, toy guns or other devices in which paper or plastic caps manufactured in accordance with the United States Department of Transportation regulations for packing and shipping of toy paper or plastic caps are used and toy paper or plastic caps manufactured as provided therein, the sale and use of which shall be permitted at all times. Each package containing toy paper or plastic caps offered for retail sale shall be labeled to indicate the maximum explosive content per cap.

The following sparklers and novelties shall not be considered fireworks and require a business registration fee be paid to be authorized to sell, as provided in West Virginia Code 11-12-86:

(1) Explosive caps designed to be fired in toy pistols, provided that the explosive mixture of the caps shall not exceed twenty-five hundredths of a grain for each cap.

(2) Snake and glow worms composed of pressed pellets of a pyrotechnic mixture that produce a large snake-like ash when burning.

(3) Smoke devices consisting of a tube or sphere containing a pyrotechnic mixture that produces white or colored smoke.

(4) Trick noisemakers which produce a small report designed to surprise the user and which include:

A. A party popper, which is a small plastic or paper item containing not in excess of twenty-five hundredths of a grain of explosive mixture. A string protruding from the device is pulled to activate the device, expelling paper streamers and producing a small report.

B. A string popper which is a small tube containing not in excess of twenty-five hundredths of a grain of explosive mixture with string protruding from both ends. The strings are pulled to activate the friction-sensitive mixture, producing a small report.

C. A snapper or drop pop, which is a small paper wrapped item containing no more than twenty-five hundredths of a grain of explosive mixture coated on small bits of sand. When dropped, the device produces a small report.

(5) Wire sparklers consisting of wire or stick coated with nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition. These items must not exceed one hundred grams of mixture per item.

(6) Other sparkling devices which emit showers of sparks and sometimes a whistling or crackling effect when burning, do not detonate or explode, are hand-held or ground-based, cannot propel themselves through the air and contain not more than seventy-five grams of chemical compound per tube or not more than a total of two hundred grams if multiple tubes are used: Provided, that sparklers and sparkler devices as provided for herein shall not be sold to anyone below the age of sixteen years old.
(WVaC 29-3-23)

(b) Except as hereinafter provided, no person, firm, copartnership or corporation shall offer for sale, possess, expose for sale, sell at retail, keep with intent to sell at retail, or use or explode any fireworks, provided, permits for the supervised display of fireworks may be granted upon application to the State Fire Marshal and after approval of the Police and Fire Chiefs, and the filing of a bond by the applicant as provided hereinafter. Every such display shall be handled by a competent operator licensed or certified as to competency by the State Fire Marshal and shall be of such composition, character, and so located, discharged or fired as in the opinion of the Fire Chief, after proper inspection, and of the Police Chief shall not be hazardous to property or endanger any person or persons. After such privilege shall have been granted, the sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

The Mayor shall require a bond from the licensee in a sum not less than one thousand dollars ($1,000) conditioned on compliance with the provisions of this section and West Virginia Code Article 29-3 and the regulations of the State Fire Commission, provided, that the Municipality shall not be required to file such bond.

Before any permit for a pyrotechnic display shall be issued, the person, firm or corporation making application therefor shall furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of such person, firm or corporation or any agent or employee thereof, in such amount, character and form as the State Fire Marshal determines to be necessary for the protection of the public.
(WVaC 29-3-24)

545.11 DISCHARGING FIREARMS.

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

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

545.12 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.

545.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99(a) for general Code penalty if no specific penalty is provided.)

TOWN OF CHESAPEAKE

12404 MacCorkle Ave
Chesapeake, WV 25315
304-949-1496

Ordinance Violation Notice

Resident of the Town of Chesapeake,

_____
_____
_____

Date: _____

The Town of Chesapeake has an ordinance pertaining to growth of grass on properties. You are in violation of this ordinance. You have 5 days from today's date _____ to get in compliance with the town ordinance. If you fail to comply with this ordinance within the given date you are subjected to a fine of not more than $100.00 a day. Each day such violation shall continue shall constitute a separate offense. Attached is Article 549 of the ordinance.

_____
Officer for Town of Chesapeake

TOWN OF CHESAPEAKE
12404 MacCorkle Avenue
Chesapeake, WV 25315
304-949-1496

ARTICLE 549
Weeds

549.01 Definition.
549.02 Growth of weeds over one foot.
549.03 Growth on sidewalk or lot.
549.04 Disposal.
549.05 Removal of weeds by owner or occupant; five days' notice.
549.06 Removal of weeds and grasses by City.
549.07 Assessment of costs by City.
549.99 Penalty.

CROSS REFERENCES
Power to regulate - see W. Va. Code 8-12-5

549.01 DEFINITION.

"Weeds" includes all rank vegetable growths which exhale unpleasant and noxious odors, and all high and rank vegetable growth that may conceal filthy deposits.
(1963 Code 5-99-1)

549.02 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.
(1963 Code 5-99-2)

549.03 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 he may have control any growth of weeds or grass whatever.
(1963 Code 5-99-3)

549.04 DISPOSAL.

All weeds, when cut down, must be removed and disposed of in such manner as not to create a nuisance. (1963 Code 5-99-4)

549.05 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 be improved or unimproved, vacant or occupied, within five days after written notice to do so, served upon him by the City 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 twelve inches.
(1963 Code 5-99-5)

549.06 REMOVAL OF WEEDS AND GRASSES BY CITY.

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 his duty to have enforced the provisions of this article, and to cause to be trimmed or removed all grass and weeds.
(1963 Code 5-99-6)

549.07 ASSESSMENT OF COSTS BY CITY.

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 City, then, after the work is done, the City shall give five days' notice by regular mail, to the owner of such lot or parcel of land, at his 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 thirty days after the mailing of said notice, then such claim shall be turned over to the City Attorney, who shall proceed to collect the same or to obtain judgment.
(1963 Code 5-99-7)

549.99 PENALTY.

Any person who violates this article shall be fined not more than one hundred dollars ($100.00). Each day such violation shall continue shall constitute a separate offense.

TOWN OF CHESAPEAKE
12404 MacCorkle Avenue
Chesapeake, WV 25315
304-949-1496

ARTICLE 549
Weeds

549.01 Definition.
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549.05 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 be improved or unimproved, vacant or occupied, within five days after written notice to do so, served upon him by the City 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 twelve inches.
(1963 Code 5-99-5)

549.06 REMOVAL OF WEEDS AND GRASSES BY CITY.

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 his duty to have enforced the provisions of this article, and to cause to be trimmed or removed all grass and weeds.
(1963 Code 5-99-6)

549.07 ASSESSMENT OF COSTS BY CITY.

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 City, then, after the work is done, the City shall give five days' notice by regular mail, to the owner of such lot or parcel of land, at his 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 thirty days after the mailing of said notice, then such claim shall be turned over to the City Attorney, who shall proceed to collect the same or to obtain judgment.
(1963 Code 5-99-7)

549.99 PENALTY.

Any person who violates this article shall be fined not more than one hundred dollars ($100.00). Each day such violation shall continue shall constitute a separate offense.

CODIFIED ORDINANCES OF CHESAPEAKE

PART SEVEN - BUSINESS AND TAXATION CODE

Art. 705. Business and Occupation Tax.

Art. 711. Public Utilities Tax.

Art. 717. Fire Protection Service Charge.

Art. 723. Intoxicating Liquor.

Art. 725. License Taxes.

CODIFIED ORDINANCES OF CHESAPEAKE

PART SEVEN - BUSINESS AND TAXATION CODE

ARTICLE 705
Business and Occupation Tax

705.01 Definitions.
705.02 Levy.
705.03 Producer or manufacturer shipping or transporting products out of City without sale.
705.04 Sales wherein gross proceeds not indicative of true value.
705.05 Adding to or deducting from gross income.
705.06 Producers or manufacturers selling at retail.
705.07 Manufacturers selling products for delivery outside City.
705.08 Producing coal, oil, gas, etc., and using same in producer's business.
705.09 Producers of natural resource products.
705.10 Manufacturers or preparers for sale of commodities or electric power.
705.11 Sellers of tangible property and stocks, bonds, etc.
705.12 Public service or utility business.
705.13 Contractors.
705.14 Banking and other financial business.
705.15 Theaters and other places of amusement.
705.16 Service business or calling.
705.17 Collecting rentals, royalties, etc.
705.18 Surtaxes; business exempt.
705.19 Exemptions.
705.20 When and how taxes payable; estimate and remittance.
705.21 Annual return and remittance.
705.22 Correction of errors.
705.23 Failure or refusal to make return; deficient return.
705.24 Hearing before Council.
705.25 Tax year.
705.26 Tax additional to all others.
705.27 How remittances to be made.
705.28 Lien for unpaid taxes; penalties.
705.29 Powers of collection; injunction.
705.30 Selling out or quitting business.
705.31 Gross income derived from interstate or foreign commerce.
705.32 Duty of officers and agents making contracts on behalf of City.
705.33 Filing copy of assessment with Clerk of County Court; release of lien.
705.34 Distress.
705.35 Offenses.
705.36 Administration and enforcement of article.
705.37 When first tax assessed.

CROSS REFERENCES
Authority to tax - see W. Va. Code 8-13-5
Business and occupation tax - see W. Va. Code Art. 11-13
Collection of taxes - see W. Va. Code 8-13-15 et seq.

CODIFIED ORDINANCES OF CHESAPEAKE

PART SEVEN - BUSINESS AND TAXATION CODE

ARTICLE 705
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CROSS REFERENCES
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Collection of taxes - see W. Va. Code 8-13-15 et seq.

705.03 PRODUCER OR MANUFACTURER SHIPPING OR TRANSPORTING PRODUCTS OUT OF CITY WITHOUT SALE.

If any person liable for any tax under Sections 705.08 or 705.09 shall ship or transport his products, or any part thereof, out of the City 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 City 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.

705.04 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.

705.05 ADDING TO OR DEDUCTING FROM GROSS INCOME.

Gross income included in the measure of the tax under Section 705.08 or 705.09, 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.

705.06 PRODUCERS OR MANUFACTURERS SELLING AT RETAIL.

A person exercising any privilege taxable under Section 705.08 or 705.09 and engaging in the business of selling his natural resources or manufactured products at retail in the City shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in Section 705.10 for the privilege of engaging in the business of selling such natural resources or manufactured products at retail in the City. But any persons exercising any privilege taxable under Sections 705.08 or 705.09 and engaging in the business of selling his 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 705.10 for the privilege of selling such natural resource, products or manufactured products at wholesale.

705.07 MANUFACTURERS SELLING PRODUCTS FOR DELIVERY OUTSIDE CITY.

Manufacturers exercising any privilege taxable under Section 705.09 shall not be required to pay the tax imposed in Section 705.10 for the privilege of selling their manufactured products for delivery outside of the City, but the gross income derived from the sale of such manufactured products outside of the City shall be included in determining the measure of the tax imposed on such manufacturer in Section 705.09.

705.08 PRODUCING COAL, OIL, GAS, ETC., AND USING SAME IN PRODUCER'S BUSINESS.

A person exercising privileges taxable under the other sections of this article, producing coal, oil, natural gas, minerals, timber or other natural resource products the production of which is taxable under Section 705.12 and using or consuming the same in his 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.

705.09 PRODUCERS OF NATURAL RESOURCE PRODUCTS.

Upon every person engaging in or continuing within the City 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, one and one-half percent; oil, one and one-half percent; natural gas, in excess of the value of five thousand dollars, six percent; blast furnace slag, a one and one-half percent; sand, gravel or other mineral product, not quarried or mined, one and one-half percent; timber, one and one-half percent; other natural resource products, two percent. The measure of this tax is the value of the entire production in the City, regardless of the place of sale or the fact that delivery may be made to points outside of the City.

705.10 MANUFACTURERS OR PREPARERS FOR SALE OF COMMODITIES OR ELECTRIC POWER.

Upon every person engaging or continuing within this City 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 City for sale, profit or commercial use, regardless of the place or the fact that deliveries may be made to points outside the state.

705.11 SELLERS OF TANGIBLE PROPERTY AND STOCKS, BONDS, ETC.

Upon every person engaging or continuing within the City 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 fifteen one hundredths of one percent of the gross income of the business.

705.12 PUBLIC SERVICE OR UTILITY BUSINESS.

Upon any person engaging or continuing within this City 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 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 705.08; toll bridge companies; three percent; and upon all other public service or utility business, two percent. The measure of this tax shall not include gross income derived from commerce between this City and other states of the United States or between this City and foreign countries.

705.13 CONTRACTORS.

Upon every person engaging or continuing within the City in the business of contracting, the tax shall be equal to two percent of the gross income of the business.

705.14 BANKING AND OTHER FINANCIAL BUSINESS.

Upon every person engaging or continuing within this City in the business of banking or financial business, from and after the first day of July, 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:

(a) Interest received on the obligations of the United States, its agencies and instrumentalities,

(b) 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

(c) Interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by nontransients.

Provided, however, that all interest derived on activities exempt under (c) above, shall be reported, as to amounts, on the return of a person taxable under the provisions of this section.

Persons taxed pursuant to the provisions of this section shall not be taxed under any other section of this article.

705.15 THEATERS AND OTHER PLACES OF AMUSEMENT.

Upon every person engaging or continuing within the City in the business of operating a theatre, opera house, moving picture show, vaudeville, amusement part, 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.

705.16 SERVICE BUSINESS OR CALLING.

Upon every person engaging or continuing within the City 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.

705.17 COLLECTING RENTALS, ROYALTIES, ETC.

Upon every person or corporation engaging or continuing within the City 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.

705.18 SURTAXES: BUSINESS EXEMPT.

Every person taxable under Sections 705.08 to 705.12 and Sections 705.15 of this article shall pay in addition to that tax, and all other taxes, an additional surtax of three tenths of each tax imposed by such sections.

This surtax shall not apply to:

(a) Water companies;

(b) Privileges taxed under Section 705.11 except in the case of wholesalers or jobbers.

705.19 EXEMPTIONS.

There shall be an exemption in every case of fifty dollars ($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 fifty dollars ($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 he exercises one or more privileges taxable hereunder.

The provisions of this article shall not apply to:

(a) 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 City, whether such income is in the form of rentals or royalties;

(b) Nonprofit cemetery companies organized and operated for the exclusive benefits of their members;

(c) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit;

(d) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes;

(e) 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, as amended;

(f) Building and loan associations and Federal savings and loan associations;

(g) 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.

705.20 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 thirty days from the end of the quarter in which they accrue. The taxpayer shall, within thirty days from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, verify the same by oath, and mail the same, together with a remittance in the form required by Section 705.27 for the amount of the tax to the office of the Collector. The Collector if he deems it necessary to insure payment of the tax, may require return and payment under this section for other than quarter year period.

705.21 ANNUAL RETURN AND REMITTANCE.

On or before thirty days after the end of the tax year each person liable for the payment of a tax under Section 705.02 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 him in accordance with the provisions of this article, and transmit with his report a remittance in the form required by Section 705.27 covering the residue of the tax chargeable against him 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.

705.22 CORRECTION OF ERRORS.

If the taxpayer shall make any error in computing the tax assessable against him, the Collector shall correct the error or reassess the proper amount of taxes and notify the taxpayer of his action by mailing to him 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.

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 his election, apply an over-payment credit to taxes subsequently accruing hereunder.

705.23 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, he may proceed as he deems best to obtain information on which to base the assessment of the tax. The Collector may, himself, or by his duly appointed agent, 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 himself or his agent, or any person who he may believe shall be in possession of any relevant information. As soon as possible after procuring such information as he 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 refused to make a return.

705.24 HEARING BEFORE 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 him for any year by the Collector, he shall apply to Council by petition, in writing, within thirty days after notice is mailed to him by the Collector, for a hearing and a correction of the amount of the tax so assessed upon him 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. 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, Council shall notify the petitioner of the time and place fixed for such hearing. After such hearing, 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.

705.25 TAX YEAR.

The assessment of taxes herein made and the return required therefor shall be for the year ending on the 31st day of December. 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, he may, with the assent of the Collector, make his annual returns and pay taxes for the year covering his accounting period as shown by the method of keeping his books.

705.26 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 condition precedent to exercising the privilege taxes, may exercise the privilege for the current tax year upon the condition that he shall pay the tax accruing under this article.

705.27 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 his receipts therefor to the taxpayers and shall pay the moneys into the City Treasury, to be kept and accounted for as provided by law.

705.28 LIEN FOR UNPAID TAXES; PENALTIES.

A tax due and unpaid under this article shall be a debt due the City. 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 the State of West Virginia and the United States. A penalty of five percent of the tax shall be added for any default for thirty days or less, and for each succeeding thirty days elapsing before payment, there shall be an additional penalty of one percent.

705.29 POWERS OF COLLECTION; INJUNCTION.

The Collector may by himself, or his duly appointed agent, collect taxes due and unpaid under this article, together with all accrued penalties, under the power conferred on the Collector in sections of the City Code. After delinquency shall have continued sixty days, the Collector may proceed, by himself or agent, in the Circuit Court of Kanawha 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, he shall be awarded his costs.

705.30 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 his business or stock of goods, or shall quit business, and such person shall be required to make the return provided for under Section 705.21 within thirty days after the date he sold out his business or stock of goods, or quit business, and his successor in business shall be required to withhold sufficient 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 thirty-day period allowed, he 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.

705.31 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 this State and other states of the United States or between this State and foreign countries.

705.32 DUTY OF OFFICERS AND AGENTS MAKING CONTRACTS ON BEHALF OF CITY.

All officers and agents making contracts on behalf of the City 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.

705.33 FILING COPY OF ASSESSMENT WITH CLERK OF COUNTY COURT; RELEASE OF LIEN.

The Collector, for the more effective collection of the tax, may file with the Clerk of the County Court, 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 City 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 Clerk of the County Court. The Clerk of the County Court 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 City shall be free from any lien for taxes under this article accrued to the date that the certificate was issued.

705.34 DISTRESS.

The Collector may distrain upon any good, 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.

705.35 OFFENSES.

It shall be unlawful for any person to refuse to make the return provided to be made in Section 705.21 or to make any false or fraudulent return or false statement in any return, with the intent to defraud the City, 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.

705.36 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 City Solicitor or the Assistant City Solicitor.

705.37 WHEN FIRST TAX ASSESSED.

The first tax assessed under this article shall be upon the last half of the calendar year 1952.

ARTICLE 711
Public Utilities Tax

711.01 Definitions.
711.02 Imposition of tax; notice to utility of effective date.
711.03 Collection; time of payment; effective date; proration.
711.04 Maintenance and inspection of records.
711.05 Exemptions.
711.06 Nonliability of utility for erroneous collections, etc.
711.07 Additional remedies for collection of tax.

CROSS REFERENCES
Authority to levy - see W.Va. Code 8-13-5a

711.01 DEFINITIONS.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section, except where the context clearly indicates a different meaning:

"Person" means individuals, firms, partnerships, associations, corporations and combinations thereof, of whatever form and character.

"Public utility service" means all services and tangible personal property purchased within the City 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. (Ord. 86-2. Passed 12-1-86.)

711.02 IMPOSITION OF TAX; NOTICE TO UTILITY OF EFFECTIVE DATE.

There is hereby imposed and levied by the City, 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 (2%) 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 subsection (a) of Section 8-13-5 of the Code of West Virginia, the percentage rate of two percent (2%) shall not take effect until the Municipality gives sixty days notice by certified mail to the utility doing business therein of the effective date.
(Ord. 86-2. Passed 12-1-86.)

711.03 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 City to collect from each purchaser for the use of the City 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 City, and each seller shall remit the amount of tax shown by such report to have been collected to the City 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 City Recorder. (Ord. 86-2. Passed 12-1-86.)

711.04 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 City, and they shall have the right, power and authority to make, at the expense of the City, such transcripts thereof during such times as they may desire.
(Ord. 86-2. Passed 12-1-86.)

711.05 EXEMPTIONS.

The tax hereby imposed and levied shall not apply to the following transactions, which transactions are hereby exempted from the tax:

(a) Purchases of public utility service for resale.

(b) 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.

(c) Purchases of tangible personal property, such as appliances or the like, as distinguished from the public service supplied.

(d) 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.

(e) Nonrecurring or one-time charges incidental to the furnishing of public utility service.

(f) Television cable charges.

(g) Sanitary charges or fees..

(Ord. 86-2. Passed 12-1-86.)

711.06 NONLIABILITY OF UTILITY FOR ERRONEOUS COLLECTIONS, ETC.

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 City 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 City Recorder. All claims for refunds of any such tax shall be presented to the City and not to the seller.

The City Recorder shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this article.
(Ord. 86-2. Passed 12-1-86.)

711.07 ADDITIONAL REMEDIES FOR COLLECTION OF TAX.

Any amount of tax due and unpaid under this article shall be a debt due the City. In addition to all other methods set forth and prescribed in this article for the collection of taxes due hereunder, the City, through its City 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 municipal taxes.
(Ord. 86-2. Passed 12-1-86.)

ARTICLE 717
Fire Protection Service Charge

717.01 Definitions.
717.02 Continuation, maintenance and improvement of fire service.
717.03 Legislative intent.
717.04 Article to be administered by City Recorder; rules and regulations.
717.05 Effective date; schedule of payment; additions to charge.
717.06 Use of funds.
717.07 Assessment of fire protection service charges.
717.08 Rates a debt in addition to other taxes.
717.09 Application to governmental property.
717.10 Violation for refusal to pay.
717.11 Continuing violation a separate offense.
717.99 Penalty.

CROSS REFERENCES
Authority to collect - see W.Va. Code 8-13-13

717.01 DEFINITIONS.

The following words and phrases when used in this article shall, for the purposes of this article, have the meanings respectively ascribed to them as follows:

(a) "Owner" means the person who is possessed of the freehold, whether in fee or for life, and shall have the same meaning as the term owner is defined by West Virginia Code 11-3-8.

(b) "Residential building" means any structure which is used or intended by the nature of its construction to be used as a single family dwelling, including mobile homes, but shall not include residential rental units.

(c) "Residential rental units" mean any structure, including mobile homes, which is rented in whole or in part for the purpose of single or a multiple family dwelling.

(d) "Commercial building" and "institutional building" means 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. (Ord. 83-5. Passed 11-7-83.)

717.02 CONTINUATION, MAINTENANCE AND IMPROVEMENT OF FIRE SERVICE.

The service of fire protection shall be continued, maintained and improved by the City, in part, at the charge and expense of the owners of all buildings of every kind and nature within the City, which said owners are declared to be users and beneficiaries of such fire protection service. 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. 83-5. Passed 11-7-83.)

717.03 LEGISLATIVE INTENT.

The imposition of fire protection fees under this article is pursuant to authorization set forth in West Virginia Code 8-13-13. 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 following legislative findings:

(a) Each building or units of a building is a factor which affects fire protection. Therefore, it is the intent and purpose of this article that the fees imposed hereunder be related in part to the number of units in a building and the number of buildings receiving fire protection.

(b) Shelter from the elements is a fundamental need for every individual and family. The charge for fire service protection should be allocated, to the extent possible, in a fashion designed to facilitate the reasonable financial procurement of such shelter. (Ord. 83-5. Passed 11-7-83.)

717.04 ARTICLE TO BE ADMINISTERED BY CITY RECORDER; RULES AND REGULATIONS.

This article shall be administered by the City Recorder. Council shall hereafter have the right to make and promulgate suitable regulations governing the services herein and hereby provided, the making of statements of accounts, the collection thereof and other appropriate rules and regulations as it may deem proper or necessary for the enforcement of this article. (Ord. 83-5. Passed 11-7-83.)

717.05 EFFECTIVE DATE; SCHEDULE OF PAYMENT; ADDITIONS TO CHARGE.

This article shall become effective from passage. The fire protection service charge imposed under this article shall be due and payable in quarterly installments on the 1st day of the months of July, October, January and April of each year. An addition to such quarterly charge of ten percent (10%) shall be added to for the failure to pay the installments by the due date. (Ord. 83-5. Passed 11-7-83.)

717.06 USE OF FUNDS.

The funds, monies and revenues received from the collection of the rates, fees and charges herein provided shall be used only for the continuance, maintenance or improvement of the essential or special service of fire protection within the City. No part of such funds, monies or revenues shall be used for any other municipal purpose. (Ord. 83-5. Passed 11-7-83.)

717.07 ASSESSMENT OF FIRE PROTECTION SERVICE CHARGES.

40.00

(a) There is hereby imposed upon the respective owners of all residential buildings, including mobile homes, in th the amount of twenty dollars ($20.00). The collection ne 30 of the following year and the same shall be pay

(b) There is hereby residential rental units or buildings including mobile h harge in the amount of twenty dollars ($20.00) for eac e collection year shall run from July 1 of each year me shall be payable as prescribed in Section 717.05.

40.00

ARTICLE 717
Fire Protection Service Charge

717.01 Definitions.
717.02 Continuation, maintenance and improvement of fire service.
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CROSS REFERENCES
Authority to collect - see W.Va. Code 8-13-13

717.01 DEFINITIONS.

The following words and phrases when used in this article shall, for the purposes of this article, have the meanings respectively ascribed to them as follows:

(a) "Owner" means the person who is possessed of the freehold, whether in fee or for life, and shall have the same meaning as the term owner is defined by West Virginia Code 11-3-8.

(b) "Residential building" means any structure which is used or intended by the nature of its construction to be used as a single family dwelling, including mobile homes, but shall not include residential rental units.

(c) "Residential rental units" mean any structure, including mobile homes, which is rented in whole or in part for the purpose of single or a multiple family dwelling.

(d) "Commercial building" and "institutional building" means 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. (Ord. 83-5. Passed 11-7-83.)

717.02 CONTINUATION, MAINTENANCE AND IMPROVEMENT OF FIRE SERVICE.

The service of fire protection shall be continued, maintained and improved by the City, in part, at the charge and expense of the owners of all buildings of every kind and nature within the City, which said owners are declared to be users and beneficiaries of such fire protection service. 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. 83-5. Passed 11-7-83.)

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The imposition of fire protection fees under this article is pursuant to authorization set forth in West Virginia Code 8-13-13. 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 following legislative findings:

(a) Each building or units of a building is a factor which affects fire protection. Therefore, it is the intent and purpose of this article that the fees imposed hereunder be related in part to the number of units in a building and the number of buildings receiving fire protection.

(b) Shelter from the elements is a fundamental need for every individual and family. The charge for fire service protection should be allocated, to the extent possible, in a fashion designed to facilitate the reasonable financial procurement of such shelter. (Ord. 83-5. Passed 11-7-83.)

717.04 ARTICLE TO BE ADMINISTERED BY CITY RECORDER; RULES AND REGULATIONS.

This article shall be administered by the City Recorder. Council shall hereafter have the right to make and promulgate suitable regulations governing the services herein and hereby provided, the making of statements of accounts, the collection thereof and other appropriate rules and regulations as it may deem proper or necessary for the enforcement of this article. (Ord. 83-5. Passed 11-7-83.)

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717.06 USE OF FUNDS.

The funds, monies and revenues received from the collection of the rates, fees and charges herein provided shall be used only for the continuance, maintenance or improvement of the essential or special service of fire protection within the City. No part of such funds, monies or revenues shall be used for any other municipal purpose. (Ord. 83-5. Passed 11-7-83.)

717.07 ASSESSMENT OF FIRE PROTECTION SERVICE CHARGES.

(a) There is hereby imposed upon the respective owners of all residential buildings, including mobile homes, in the City a fire protection service charge in the amount of twenty dollars ($20.00). The collection year shall run from July 1 of each year to June 30 of the following year and the same shall be payable as prescribed in Section 717.05.

(b) There is hereby imposed upon the respective owners of all residential rental units or buildings including mobile homes, in the City a fire protection service charge in the amount of twenty dollars ($20.00) for each rental unit within said unit or building. The collection year shall run from July 1 of each year to June 30 of the following year and the same shall be payable as prescribed in Section 717.05.

717.05 EFFECTIVE DATE; SCHEDULE OF PAYMENT; ADDITIONS TO CHARGE.

This article shall become effective from passage. The fire protection service charge imposed under this article shall be due and payable in quarterly installments on the 1st day of the months of July, October, January and April of each year. An addition to such quarterly charge of ten percent (10%) shall be added to for the failure to pay the installments by the due date.

717.07 ASSESSMENT OF FIRE PROTECTION SERVICE CHARGES.

(a) There is hereby imposed upon the respective owners of all residential buildings, including mobile homes, in the City a fire protection service charge in the amount of ten dollars ($10.00) quarterly.

(b) There is hereby imposed upon the respective owners of all residential rental units or buildings including mobile homes, in the City, a fire protection service charge in the amount of n dollars ($10.00) quarterly for each rental unit within said unit or building.

Commercial Property
20.00

Fire Fee Rate
40.00 yearly

(c) There is hereby imposed upon the respective owners of all commercial or institutional buildings in the City a fire protection service charge in the amount of fifty dollars ($50.00) for each commercial tenant, lessee or occupant in said building. The collection year shall run from July 1 of each year to June 30 of the following year and the same shall be payable as prescribed in Section 717.05.

(d) The fire protection service charge hereby imposed shall be payable by persons, businesses or corporations owning the buildings or mobile homes as of July 1, the date of the commencement of the collection year.

(e) In the event a building or structure is both of a residential and commercial character, the owner thereof shall pay for each residential and commercial occupants contained therein at the rates prescribed herein. (Ord. 83-5. Passed 11-7-83.)

717.08 RATES A DEBT IN ADDITION TO OTHER TAXES.

The rates, fees and charges imposed, levied and assessed by this article shall be in addition to all other licenses and taxes levied under the West Virginia statutes or by other City ordinances and shall be a debt due the City from each such user of such service which may be collected in a civil action before any court having jurisdiction thereof under the West Virginia statutes.

The payment thereof shall be a condition precedent to the use and enjoyment of the special and essential services of fire protection within the City. (Ord. 83-5. Passed 11-7-83.)

717.09 APPLICATION TO GOVERNMENTAL PROPERTY.

No buildings, improvements or structures and no tangible personal property, goods or chattels located within the City shall be exempt from the rates, fees or charges provided for in this article, whether the title or ownership thereof and therein be vested in the United States of America, the State of West Virginia or any political subdivisions thereof, or whether the same be used for educational, literary, scientific, religious, charitable or cemetery purposes, or shall otherwise be exempt from the payment of real or personal property taxes under the provisions of Article X of the West Virginia Constitution. (Ord. 83-5. Passed 11-7-83.)

717.10 VIOLATION FOR REFUSAL TO PAY.

It shall be unlawful for any person, firm or corporation to refuse to pay the rates, fees or charges provided for herein, or to aid or abet another person to avoid the payment of such fees or charges. (Ord. 83-5. Passed 11-7-83.)

717.11 CONTINUING VIOLATION A SEPARATE OFFENSE.

Each succeeding day a violation of this article exists or continues shall constitute a new and separate offense. (Ord. 83-5. Passed 11-7-83.)

717.99 PENALTY.

Any person, firm or corporation violating any of the provisions of this article, or refusing or neglecting to pay the rates, fees and charges provided herein or failing or refusing to comply with any of the rules and regulations promulgated by Council to effectuate the provisions of this article, shall for the first offense, be fined not less than one dollar ($1.00) nor more than one hundred dollars ($100.00). For a second offense, any such person, firm or corporation shall be fined not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00). For any third or subsequent violation thereof, any such person, firm or corporation shall be fined not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00), or may be imprisoned not less than one nor more than thirty days, or both.
(Ord. 83-5. Passed 11-7-83.)

ARTICLE 723
Intoxicating Liquor

723.01 Private club license. **723.02 Tax on intoxicating liquor.**

CROSS REFERENCES
Authority to license private clubs - see W.Va. Code 8-13-7; 60-7-7
Intoxicating liquor tax - see W.Va. Code 8-13-7
Private club - see W.Va. Code Art. 60-7
Liquor control - see GEN OFF. Art. 521

723.01 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 beverages licensed by the State of West Virginia, the following annual license fee:

(a) The annual license fee for licenses issued under the provisions of this section shall be as follows:
  (1) For a fraternal or veterans organization or a nonprofit social club: three hundred seventy-five dollars ($375.00);
  (2) For a licensee, other than that set forth in (a) above, having less than one thousand members: five hundred dollars ($500.00); and
  (3) For licensee, other than that set forth in (a) above, having one thousand or more members: one thousand two hundred fifty dollars ($1,250).

(b) The fee for any such license issued following the first day of January of any year and to expire on the 30th day of June of such year shall be one-half (1/2) of that prescribed by subsection (a) of this section; provided, however, that for the period from the date of passage of this article to and including June 30, 1986, any such licensee shall pay a fee equal to one-twelfth of the annual fee for each month or part thereof such license shall be in effect.

(c) All such fees shall be paid to the Recorder of the City and credited to the General Fund of the City.

(Ord. 85-6. Passed 12-2-85.)

723.02 TAX ON INTOXICATING LIQUOR.

There is hereby imposed a tax of five percent (5%) of the retail purchase price of any and all intoxicating liquors purchased from the Alcohol Beverage Control Commissioner or from any person licensed to sell wine at retail to the public under the provision of West Virginia Code Article 60-8, within the corporate boundaries of the Municipality. Such tax shall be levied upon the purchaser of said intoxicating liquor or wine, and shall be added to any collected with the retail purchase price of such intoxicating liquor or wine. Such tax shall be received by the Municipality from the State Treasury pursuant to the rules and regulations adopted by the Alcohol Beverage Control Commissioner. Provided, however, that such tax shall not be collected on intoxicating liquors, other than wine sold by or purchased from holders of a license issued under the provisions of West Virginia Code Article 60-7. Provided further, such tax shall be collected upon all sales of wine to holders of a license issued under the provisions of West Virginia Code Article 60-7 from a wine distributor licensed pursuant to the provisions of West Virginia Code Article 60-3. (Ord. 87-1. Passed 9-14-87.)

ARTICLE 725
License Taxes

725.01 Definitions.
725.02 License required; license tax levied.
725.03 Application and issuance; payment of license tax.
725.04 False statements prohibited.
725.05 Conditions precedent to doing business.
725.06 Licensing not to legalize any act.
725.07 License a personal privilege.
725.08 Effect of change in partners or name.
725.09 Expiration date; annual renewal; fee.
725.10 Display of license.
725.11 Duplicate licenses.
725.12 Collection of back taxes.
725.13 Prosecution for violations; City to seek injunctions.
725.14 Suspension and revocation of licenses; public hearings.
725.99 Penalty.

CROSS REFERENCE
Authority to tax - see W.Va. Code 8-13-4, 11-12-4

725.01 DEFINITIONS.

For the purpose of this article:

(a) "Business" means any business, whether a person is engaged expressly or impliedly holds himself out as engaged in business or supplying his 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 a 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.

(b) "Person" or "company" means any individual, firm, copartnership, 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, means the officers, directors, trustees or members of any firm, copartnership, joint venture, association, corporation, trust or any other groups acting as a unit.

725.02 LICENSE REQUIRED; LICENSE TAX LEVIED.

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

The business license tax levied shall be fifteen dollars ($15.00) for each location a person holds himself out to engage in or transact business therefrom, except for the following business licenses which shall be as set forth below:

(a)	Contractor	$100.00
(b)	Wine retailer	150.00
(c)	Nonintoxicating beer retailer	75.00
(d)	Pool table	25.00 each
(e)	Soft drink machine	5.00 each
(f)	Video game machine	5.00 each
(g)	Peddlers and solicitors	5.00 each

725.03 APPLICATION AND ISSUANCE; PAYMENT OF LICENSE TAX.

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

The City Recorder shall collect in full the proper taxes and fees and determine to his 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.

725.04 FALSE STATEMENTS PROHIBITED.

No person shall knowingly make any false statement in any application for a City license, or in any tax return, report or other statement relating to any activity licensed by the City and which is required to be made to any City officer or agency.

725.05 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 725.03 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.

725.06 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.

725.07 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.

725.08 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.

725.09 EXPIRATION DATE; ANNUAL RENEWAL; FEE.

(a) Licenses shall expire at 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 one-half the full amount of the annual tax if issued during the last half of the City's fiscal year.

725.10 DISPLAY OF LICENSE.

Each person to whom a City 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 his license upon his person 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 he is transacting business or of any City official.

725.11 DUPLICATE LICENSES.

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

725.12 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 City 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 City Recorder or his 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.

725.13 PROSECUTION FOR VIOLATIONS; CITY TO SEEK INJUNCTIONS.

If any person engages in or prosecutes any business, activity, trade or employment contrary to any of the provisions of these Codified Ordinances, whether without first obtaining a license therefor or by continuing the same after the termination of the effective period of such license, or by any violation of the terms and conditions of such license, he shall be subject to immediate prosecution in the Municipal Court and, in addition, the City Solicitor may, in the name of the City, seek such injunctive relief as may be appropriate in any court of competent jurisdiction.

725.14 SUSPENSION AND REVOCATION OF LICENSES; PUBLIC HEARINGS.

The City Recorder, upon reasonable notice to the licensee, may summarily revoke any license issued by him pursuant to the provisions of these Codified Ordinances 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, these Codified Ordinances 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 City.

If a registrant shall at any time knowingly or willfully file false data or information required by Section 725.03, 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 City Recorder may cancel his certificate. Before cancelling any such certificate, the City Recorder shall set a hearing as prescribed in this article and notify the person by certified mail not less than twenty days prior to the hearing date to appear and show cause why such registration certificate should not be canceled.

725.99 PENALTY.

Except as may be herein otherwise expressly provided, whoever violates any provision of this article for which a penalty is not otherwise provided shall be fined not more than two hundred dollars ($200.00) or imprisoned not more than thirty days, or both. Each day or part thereof that any violation continues shall be deemed to constitute a distinct and separate offense and shall be punishable accordingly.

CODIFIED ORDINANCES OF CHESAPEAKE
PART SEVEN – BUSINESS AND TAXATION CODE

ARTICLE: 705 - Business and Occupational Tax.

ARTICLE: 711 - Public Utilities Tax.

ARTICLE: 717 - Fire Protection Service Charge/Fee

ARTICLE: 725 - License Taxes

ARTILCE: 766 - Municipal Service Fee

An Ordinance to adopt:

Introduced By:
Mayor Paul Bradshaw

First Reading:
October 18th, 2021

Second Reading:
November 15th, 2021

Final Reading:
December 20th, 2021

CHAPTER SEVEN – Business and Taxation Code
ARTICLE 766
Municipal Service Protection Fee

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CHESAPEAKE, WEST VIRGINIA THAT CHAPTER SEVEN ARTICLE. 766 of the Codified Ordinance of the Town of Chesapeake, West Virginia be adopted as follows:

Be it further ordained by the Town Council of the Town of Chesapeake, West Virginia is hereby implemented to read as follows to comply with the State Code.

Be it further Ordained by the Town Council of the Town of Chesapeake that this Ordinance shall take effect January 1st, 2022.

CHAPTER SEVEN – Business and Taxation Code
ARTICLE 766
Municipal Service Protection Fee

766.01 DEFINITIONS
766.02 ESTABLISHMENT AND ASSESSMENT OF SERVICE PROTECTION FEE
766.03 PAYMENT
766.04 CONTINUATION, MAINTENANCE AND IMPROVEMENT OF REFUSE, FIRE AND POLICE SERVICE
766.05 LEGISLATIVE INTENT
766.06 USE OF FUNDS
766.07 VIOLATION FOR REFUSAL TO PAY
766.08 PENALTY

766.01 DEFINITIONS

The following words and phrases when used in this article shall, for the purposes of this article, have the meanings respectively ascribed to them as follows:

(a) "Owner": The person who has permanent and absolute tenure of land or property with freedom to dispose of it at will.
(b) "Residential Building": Any structure which is used or intended by the nature of its construction to be used as a single, family dwelling.
(c) "Residential rental units" Any structure, including mobile homes, which is rented in whole or in part for the purpose of single or multiple family dwelling.
(d) "Commercial Building" and or "Institutional Building": 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.

766.02 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 of Chesapeake, beginning January 1st, 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 of Chesapeake a service fee in the amount of twenty one dollars ($21.00) per month

766.03 PAYMENT

The foregoing service fee shall be payable to the Clerk of the Town by the fifteenth day of the month following the enactment date of this section and therefore the first payment shall be due on January 1st, 2022. Payment must be received in the Clerk's office by 3:00 pm 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 766.02. Fees established in 766.02 Paragraph 1, (a), (b), (c) and (d) apply.

766.04 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.

766.05 LEGISLATIVE INTENT

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

766.06 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.

766.07 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.

766.08 PENALTY

(a) Any person, firm or corporation violating any of this provision, or refusing or neglecting to pay the rates, fees and charges provided herein or failing or refusing to comply with this ordinance promulgated by Council to effectuate the provisions of this article, shall be fined not less than one dollar ($1.00) nor more than one hundred dollars ($100) on a first offense. A second offense shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A third or subsequent violation thereof, shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100) or may be imprisoned not less than one nor more than thirty days, or both.

(b) That 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)

(c) 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 non-payment to that company are subject to their company policy.

766.08 FEE (Revised)

This ordinance replaces the quarterly fee provided for in Ordinance 717 - Fire Protection Service Charge.

Town of Chesapeake

_____

Paul D. Bradshaw
Mayor, Town of Chesapeake

Attest:

_____

Harry O. Goins
Councilman at Large
Town of Chesapeake

CODIFIED ORDINANCES OF CHESAPEAKE

PART NINE - STREETS, UTILITIES AND PUBLIC SERVICES CODE

CHAPTER ONE - Street and Sidewalk Areas

Art. 905. General Provisions.
Art. 909. Trees and Shrubbery.
Art. 913. Street Excavations.
Art. 917. Sidewalks and Curbs.

CHAPTER THREE - Utilities

Art. 933. Sewer Regulations and Rates.
Art. 937. ~~Garbage and Refuse Collection~~.
Municipal Fees

CODIFIED ORDINANCES OF CHESAPEAKE

PART NINE - STREETS, UTILITIES AND PUBLIC SERVICES CODE

CHAPTER ONE - Street and Sidewalk Areas

Art. 905. General Provisions.
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ARTICLE 905
General Provisions

905.01 Repair of sidewalk or driveway entrance; assessment.
905.02 Sidewalks to be cleaned of snow and ice.
905.03 Unloading on street, sidewalk.
905.04 Dropping or tracking substances.
905.05 Materials on street or sidewalk.
905.06 Merchandise displays.
905.07 Removal of lanterns and warning barricades.
905.08 Curb service on public areas.
905.99 Penalty.

CROSS REFERENCES
General power to regulate - see W. Va. Code 8-13-5(1)
Special charges for street cleaning etc. - see W. Va. Code 8-13-13
Connection to State road system - see W. Va. Code 17-4-26 et seq.
Action for damages occasioned by defective streets, etc. - see W. Va. Code 17-10-17
Street obstructions - see TRAF. 311.01

905.01 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 his property in repair shall be liable to reimburse the City 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 his 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 he be a resident, or upon his agent if he be 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 his 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 land owner, 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 Clerk of the County Court of Kanahwha County 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. (1963 Code 5-79-1)

905.02 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 City, 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 eleven 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. (1963 Code 5-79-2)

905.03 UNLOADING ON STREET, SIDEWALK.

It shall be unlawful for any person to unload any heavy material in the streets of the City 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. (1963 Code 5-79-3)

905.04 DROPPING OR TRACKING SUBSTANCES.

No vehicle or conveyance shall be driven or moved on any street in such a manner that sand, dirt, rubbish or any offensive substance is dropped, sifted or tracked upon any street or sidewalk except that water may be sprinkled on a roadway in cleaning or maintaining such roadway.

The owner or operator of such vehicle or conveyance shall remove any sand, dirt, rubbish or any offensive substance dropped, sifted or tracked on any street or sidewalk upon request of any City official. (1963 Code 5-79-4)

905.05 B – Yard sales – Three days only. Must have permit from Town Hall, will be issued in same week as the sale at no cost. Permit will have to be visible during sale.

Sale to be on owner's property only within hours of 7:00 AM – 6:00 PM

Everything needs to be cleaned up and packed away at end of final day of sale.

905.05 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. (1963 Code 5-79-5)

905.06 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. (1963 Code 5-79-6)

905.07 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 City 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. (1963 Code 5-79-7)

905.08 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". (1963 Code 5-79-8)

905.99 PENALTY.

Whoever violates any provision of this article shall be fined not exceeding one hundred dollars ($100.00). Each day's continued violation shall constitute a separate offense.

ARTICLE 909
Trees and Shrubbery

909.01 Planting tree or shrub on City property.
909.02 Tree, hedge and shrub trimming.
909.99 Penalty.

CROSS REFERENCES
Power to regulate - see W. Va. Code 8-12-5(29)
Protecting trees during excavations - see S.U.& P.S. 913.07

909.01 PLANTING TREE OR SHRUB ON CITY 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 City without having first obtained the written consent of the Mayor or City Recorder. (1963 Code 5-83-1)

909.02 TREE, HEDGE AND SHRUB TRIMMING.

It shall be the duty of every owner, controller and manager of lots bounding and abutting on street areas including sidewalks of the City, for the distance which their lots so abut and border, to take the following steps for the protection of the public.

(a) 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.

(b) 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.

(c) To cut and remove all weeds and bushes which grow or encroach upon a sidewalk or street.

(d) 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.

(e) 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.

(f) 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.

(g) In the event of the failure of such owner, controller or manager to perform any service required by subsections (a), (b), (c), (d) or (e) hereof, then the Mayor may have such work done by City employees or by an independent contractor, at the expense of the owner, controller or manager of such lot.

(1963 Code 5-83-2)

909.99 PENALTY.

Whoever violates or fails to comply with any provision of this article shall be fined not exceeding one hundred dollars ($100.00). Each day's continued violation or failure to comply shall constitute a separate offense.

ARTICLE 913
Street Excavations

913.01 Permit required.
913.02 Application for permit.
913.03 Fee.
913.04 Determining whether to issue permit.
913.05 Permit fee; deposit.
913.06 Inspection by the Mayor or Engineer.
913.07 Precautions for trees; backfill.
913.99 Penalty.

CROSS REFERENCES
Power to regulate street excavations - see W. Va. Code 8-12-5(2)
Street obstructions - see TRAF. 311.01

913.01 PERMIT REQUIRED.

No excavation or other opening shall be made in any street or other public place within the City by any person without first obtaining a permit therefor in accordance with the provisions of this article. (1963 Code 9-1-1)

913.02 APPLICATION FOR PERMIT.

Any person desiring to make an excavation or other opening in any street or other public place within the City shall make application therefor in writing to the City 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.
(1963 Code 9-1-2)

913.03 FEE.

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 of five dollars ($5.00), with such further sum as the City Engineer may specify as necessary to defray the cost and expense of investigation and inspection of the work by him, 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. (1963 Code 9-1-3)

913.04 DETERMINING WHETHER TO ISSUE PERMIT.

After the filing of such application with the Recorder, together with the deposits specified in Section 913.03, the City Engineer shall investigate the advisability of issuing such permit, and is hereby authorized to issue such permit if he deems the same advisable. Should the City Engineer not deem it advisable to issue such permit, he shall transmit such application to Council, together with his report and his reasons for not issuing the permit, and Council at its next meeting shall determine whether such permit shall be issued, and its action in such respect shall be final.
(1963 Code 9-1-4)

913.05 PERMIT FEE; DEPOSIT.

If no permit shall be issued pursuant to any such application, the deposits made with such application shall be returned to the applicant, less the cost and expense of the investigation by the City Engineer. If a permit is issued, the fee of five dollars ($5.00) 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 City 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 City, 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 City Engineer or to restore the street or other place so excavated or opened, the additional amount required therefor shall be paid to the City by such applicant upon receipt of a statement therefor. (1963 Code 9-1-5)

913.06 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 City Engineer. No construction shall be covered until the City Engineer shall have ascertained that such work conforms to the plans submitted. (1963 Code 9-1-6)

913.07 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 City 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 City Engineer.
(1963 Code 9-1-7)

913.99 PENALTY.

Whoever violates any provision of this article shall be fined not exceeding one hundred dollars ($100.00). Each day's continued violation shall constitute a separate offense.
(1963 Code 9-1-99)

ARTICLE 917
Sidewalks and Curbs

917.01 Approval required for construction.
917.02 Requirements for approval.
917.99 Penalty.

CROSS REFERENCES
General powers relative to sidewalks - se W. Va. Code 8-12-5(1) et seq.
General powers relative to curbs - see W. Va. Code 8-12-5(1) et seq.
Low cost improvements - see W. Va. Code Art. 8-17
Sidewalk assessments - see W. Va. Code Art. 8-18

917.01 APPROVAL REQUIRED FOR CONSTRUCTION.

Before any person shall construct any sidewalk, curb or gutter in the City 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 City 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 City shall have provided the applicant with the grade level for the construction and shall have approved the profile, cross section and specifications. (1963 Code 9-3-1)

917.02 REQUIREMENTS FOR APPROVAL.

Approval and recommendation shall not be granted if the minimum slope or pitch proposed shall be less than one-eighth of an inch or the maximum more than five-eighths of an inch per foot. All slopes shall be in the direction of the curb. No curbs shall be approved that are less than five inches in height or more than seven inches in height, except where a lower curb is necessary for driveways crossing the sidewalk, which shall be shown on the profile thereof. However, the Mayor may, in cases of undue hardship or special circumstances, approve lesser or greater curb heights.

All sidewalks shall be constructed in a smooth and even manner, on a plane with the curb and in conformity with the City's specifications. (1963 Code 9-3-2)

917.99 PENALTY.

Whoever violates any provision of this article shall be fined not more than one hundred dollars ($100.00) or imprisoned for not more than thirty days for each offense. Each day's continued violation shall constitute a separate offense. (1963 Code 9-3-99)

CHAPTER THREE - Utilities

Art. 933. Sewer Regulations and Rates.
Art. 937. Garbage and Refuse Collection.

ARTICLE 933
Sewer Regulations and Rates

933.01 Definitions.
933.02 Discharge of sanitary sewage to sanitary sewerage system required.
933.03 Exclusion of storm water runoff.
933.04 Prohibited wastes.
933.05 Sewer service schedule of rates.
933.06 Liens and penalties for failure to pay within specified times.
933.07 Regulation by Sanitary Board.
933.08 Sewer service charges paid by City.
933.09 Billing and collection of service charge.
933.10 Creation of sinking fund.
933.99 Penalty.

CROSS REFERENCES

Power to regulate utility systems - see W. Va. Code 8-12-5(32)
Power to collect charges - see W. Va. Code 8-123-5(32), 16-13-16
Sewer connections - see W. Va. Code 8-18-22
Review by Public Service commission - see W. Va. Code 24-2-4(b)
Deposit limitations - see W. Va. Code 24-3-8
Sanitary Board - see ADM. Art. 147
Authority to establish and maintain a sewage system - see W. Va. Code Art. 16-13A

933.01 DEFINITIONS.

Unless the context specifically indicates otherwise, the meaning of the terms used in this article shall be as follows:

(a) "Sewage" shall mean a combination of water-carried wastes from residences. business buildings, institutions and industrial establishments, together with such ground, surface or storm water as may be present.

(b) "Sanitary sewage" shall mean the normal water-carried household and toilet wastes from residences, business buildings, institutions, industries and commercial establishments, exclusive of storm water runoff, surface water or ground water.

(c) "Garbage" shall mean solid wastes from the preparation, cooking and dispensing of food and from the handling, storage and sale of produce.

(d) "Properly shredded garbage" shall mean the wastes from the preparation, cooking and dispensing of food that has been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, where no particle is greater than one-half inch in any dimension.

(e) "Storm water runoff" shall mean that portion of the rainfall which reaches a drain.

(f) "Sewer" shall mean a pipe or conduit for carrying sewage or other waste liquids.

(g) "Combined sewer" shall mean a sewer designated to receive both sewage and storm water runoff.

(h) "Sanitary sewer" shall mean a sewer which carries sewage to which storm, surface and ground waters are not intentionally admitted.

(i) "Storm sewer" shall mean a sewer which is intended to carry storm water runoff, surface water, ground water drainage, etc., but which is not intended to carry any sanitary sewage or polluted industrial waste.

(j) " Public sanitary sewerage system" shall mean all separate sanitary sewers, all combined sewers, all sewage pumping stations, all sewage treatment works, and other facilities provided and owned by the City of Chesapeake for the collection, transportation and treatment of sanitary sewage and industrial wastes, with their appurtenances and any additions, extensions or improvements thereto that may be made by the City. It shall also include sewers within or outside the City limits which serve one or more persons and discharge into the City sanitary sewerage system even though those sewers may not have been constructed by City funds. It does not include separate storm sewers or culverts which have been constructed for the sole purpose of carrying storm and surface runoff, the discharge from which is not and does not become tributary to the City's sewage treatment facilities.

(k) "Occupied building" shall mean any structure erected and intended for continuous or periodic habitation, occupancy or use by human beings or animals, and from which structure sanitary sewage and industrial wastes, or either thereof, are or may be discharged.

(l) "Premises accessible to the sanitary sewerage system" shall mean any real estate which adjoins, abuts or is adjacent to the public sanitary sewerage system, or any real estate which might be connected to that system by construction of a private sewer of not more than one hundred feet in length.

(m) "Shall" is mandatory; "may" is permissive.

(n) "Domestic user" shall mean each family unit which uses the sewerage system of the City; such family unit may consist of one or more persons, and where there is more than one family unit using water from the same water meter or under the same roof, each family unit shall be considered a separate domestic user.

(o) "Commercial user" shall mean a user of the City sewerage system in a location where a trade, business, profession or occupation is carried on or where a service is rendered.

(p) "Public user" shall mean a user of the City sewerage system by governmental, educational, church, charitable, benevolent, civic, service or like units or organizations.

(q) "Industrial user" shall mean a user of City sewerage system as factories and like organizations where more than twenty-five persons are employed.

(r) "Person" shall include firms and corporations. (1963 Code 9-73-1)

933.02 DISCHARGE OF SANITARY SEWAGE TO SANITARY SEWERAGE SYSTEM REQUIRED.

(a) All persons owning any occupied building now erected within the City upon premises accessible to the public sanitary sewerage system shall, if not already connected, at their own expense make connection with the sanitary sewerage system within three months after the effective date of this article.

(b) All persons owning any premises within the City accessible to the public sanitary sewerage system upon which a building is hereafter erected shall, at the time of erection of such building and at their own expense, make the connection with the public sanitary sewerage system.

(c) All persons owning any occupied building within the City upon premises which hereafter become accessible to the public sanitary sewerage system shall, at their own expense, make the connection with the public sanitary sewerage system within three months after notice to do so from the Sanitary Board or its authorized representative.

(d) No person owning any occupied building within the City on premises accessible to the public sewerage system shall erect, construct, use or maintain, or cause to be erected, used or maintained, any privy, cesspool, sinkhole, septic tank or other receptacle on such premises for receiving sanitary sewage.

(e) Any person who erects, constructs or maintains a privy, cesspool, sinkhole, septic tank or other receptacle for receiving sanitary sewage on any property within the City or accessible to the public sewerage system in violation of this article, shall be punished as provided in Section 933.99. (1963 Code 9-73-2)

933.03 EXCLUSION OF STORM WATER RUNOFF.

(a) The discharge of storm water runoff to separate sanitary sewers is prohibited, and persons presently discharging storm water runoff to separate sanitary sewers shall cease and desist such practice within three months after the effective date of this article.

(b) All persons connecting to the public sanitary sewerage system shall provide adequate means for excluding storm water runoff in the event connection is made to separate sanitary sewers.

(c) The provisions of this article do not prohibit the present or future discharge of storm water runoff to combined sewers.

(d) No person shall permit storm water runoff to be discharged into separate sanitary sewers of the City. However, nothing in this article shall be construed to require persons, now directing storm water runoff into a combined sewer that they now use for sanitation, to comply therewith until such time as separate storm sewers are provided.

(e) Any person violating any provisions of this section shall be punished as provided in Section 933.99. (1963 Code 9-73-3)

933.04 PROHIBITED WASTES.

The discharge of garbage to the public sanitary sewerage system is expressly prohibited unless such garbage is first properly shredded.

Except as hereinafter provided, no person shall discharge any industrial waste having any of the following:

(a) Wastes containing liquids, solids or gases which by reason of their nature or quality may cause fire, explosion or be in any other way injurious to persons, the structures or the sewerage system or its operation.

(b) Wastes having a temperature in excess of 160 degrees Fahrenheit or less than thirty-two degrees Fahrenheit.

(c) Wastes having any corrosive property capable of causing damage or hazards to structures, equipment or personnel of the public sanitary sewerage system.

(d) Any noxious or malodorous gas or substance which either singly or by interaction with sewage or other wastes is, in the opinion of the Sanitary Board, likely to create a public nuisance or hazard to life, or prevent entry to sewers for their maintenance and repair.

(e) Solids, greases, lime slurry or viscous materials of such character or in such quantity that, in the opinion of the Sanitary Board, they may cause an obstruction to the flow in sewers or otherwise interfere with the proper operation of the public sanitary sewerage system.

(f) Any toxic radioactive isotopes without a special permit.

No provision contained in this section shall be construed as prohibiting any special agreement or arrangement to be entered into between the Sanitary Board and any person whereby any industrial waste of unusual strength or character may be admitted to the public sanitary sewerage system either before or after pretreatment by the producer of such industrial waste.

Any person violating any of the provisions of this article shall be punished as provided in Section 933.99. (1963 Code 9-73-4)

933.05 SEWER SERVICE SCHEDULE OF RATES.

(a) There is hereby levied and assessed against all owners, tenants or occupants of each and every lot or parcel of real estate or building having any active connection with the public sanitary sewage system, or otherwise discharging sewage, industrial wastes, water or other liquids, either directly or indirectly into the system, or any part thereof, a service charge payable as hereinafter provided and in the amount hereinafter provided.

(b) The service charge for any owner, tenant or occupant of each and every lot or parcel of real estate or building, situated within or outside the corporate limits of the City, having any connection with the public sanitary sewage system and discharging sewage, industrial wastes, water or other liquids into the system, shall be according to the following schedules:

SCHEDULES OF RATE AND CHARGES FOR SANITARY SEWER SERVICE

RATE SCHEDULE NO. 1
Applicable within the corporate limits of the
City of Chesapeake, West Virginia

APPLICABILITY OF SERVICE:

Available for general domestic, commercial and industrial sanitary sewer service.

RATE:

Gallons per Month		Rate per Thousand Gallons
First	2,000	$6.31
Next	3,000	3.32
Next	10,000	2.32
All over	15,000	1.49

MINIMUM CHARGE:
The above schedule is subject to a minimum monthly charge of twelve dollars and sixty two cents ($12.62).

MULTIPLE OCCUPANCY:
On apartment buildings or other multiple occupancy buildings, each unit shall be required to pay not less than the above minimum charge.

DELAYED PAYMENT CHARGE:
The above schedule is net. On all accounts not paid in full within ten days of date of bill, ten percent will be added to the net amount shown.

SERVICE CONNECTION:
Tap inspection fee, new installation $80.00

RATE SCHEDULE NO. 2
Applicable in territory outside the corporate limits of the City of Chesapeake, West Virginia

AVAILABILITY OF SERVICE:
Available for general domestic, commercial and industrial sewer service.

RATE:

Gallons per Month		Rate per Thousand Gallons
First	2,000	$6.97
Next	3,000	3.98
Next	10,000	2.82
All over	15,000	1.83

old Rates

MINIMUM CHARGE:
The above schedule is subject to a m nd
ninety four cents ($13.94)

MULTIPLE OCCUPANCY:
On apartment buildings or other mu be
required to pay not less than the above min

See New rates →

DELAYED PAYMENT CHARGE:
The above schedule is net. On all ac of
bill, ten percent will be added to the net am

SERVICE CONNECTION:
Tap inspection fee, new installation

WATER DISCONNECT -- RECONNECT

(c) Whenever water service has been di a
disconnection fee of $20.00 shall be charged.
Whenever water service which has been previously disconnected or otherwise withheld for nonpayment of sewer bills is reconnected, a fee of $20.00 shall be charged.

(d) Each owner, tenant or occupant of each and every lot or parcel of real estate or building shall be considered a separate billing unit in applying the above rates. (Ord. 94-1. Passed 9-12-94.)

933.06 LIENS AND PENALTIES FOR FAILURE TO PAY WITHIN SPECIFIED TIMES.

Each sewer service charge or surcharge levied by this article shall be a debt due the City. If any service rate or charge so established shall not be paid within thirty days after it shall be due and payable, the amount thereof, together with a penalty of ten percent and a reasonable attorney fee, may be recovered by the Sanitary Board in a civil action in the name of the City. All rates or charges levied by this article, if not paid when due, shall constitute a lien upon the premises served by the system.

In the event of failure to pay the sewer service charge or surcharge after such becomes delinquent, the Sanitary Board may be authorized to remove or close the sewer connection and shall have the right to enter upon the property of the user of the service for such purpose and to take such steps as may be necessary to accomplish such removal or closing, and the cost of such removal or closing, as well as the expense of restoring any such service, shall likewise be a debt due the City and may be recovered by the City by civil action in the name of the City. Such sewer service shall not again be turned on, nor the sewer connection restored, until all service charges, including the expense of removal, closing and restoration shall have been paid. Change of ownership or occupancy of premises found delinquent shall not be cause for reducing or eliminating these penalties. (1963 Code 9-73-6)

933.07 REGULATION BY SANITARY BOARD.

In addition to the specific authority granted by this article, the Sanitary Board shall make and enforce such other rules and regulations subject to the approval of Council for the safe, economical and efficient management, control and protection of the public sewerage system, for the construction and use of all other connections thereto, and for the regulation, collection, rebating and refunding of such sewer service charges as may be needful or necessary from time to time. However, such rules and regulations shall not become effective until the same have been approved by Council by ordinance or resolution and spread upon the records of the Council, as notice to the public of the provisions of such rules and regulations.

No person shall violate any of the rules or regulations made and promulgated by the Sanitary Board as aforesaid. Any person, on conviction of any such violation, shall be punished as provided in Section 933.99. (1963 Code 9-73-7)

933.08 SEWER SERVICE CHARGES PAID BY CITY.

There shall be no free service rendered by the system, and if the City or any department, agency or instrumentality shall avail itself of the service and facilities of the system, it shall pay for the use of such service and facilities at the established rates. Revenues received from the services and facilities furnished by the system to the City shall be applied and accounted for in the same manner as other revenue derived from the operation of the system. However, nothing herein contained shall be construed as requiring the City to avail itself of the services and facilities afforded by the system. (1963 Code 9-73-8)

933.09 BILLING AND COLLECTION OF SERVICE CHARGE.

The sewer service charges, surcharges and fees levied by or pursuant to this article, shall be billed by the Sanitary Board or, in the discretion of the Sanitary Board, by a designated agent of the Sanitary Board, to all firms, persons and corporations liable therefor, pursuant to such terms, agreements, arrangements and compensation as may be determined by contract between the Sanitary Board and such agent. The collection of such service charges, surcharges and fees shall be by the Sanitary Board or by its designated and authorized agent. (1963 Code 9-73-9)

933.10 CREATION OF SINKING FUND.

There is hereby created a sinking fund to accumulate and hold all the proceeds to be derived from the service charges levied and collected pursuant to this article until the completion of the construction of the sewerage system, which proceeds shall be remitted to and administered by the State Sinking Fund Commission as follows:

Such proceeds shall be paid out on order of the Sanitary Board for such legal purposes as are incident to the acquisition, construction, enlargement, extension, replacement, improvement, operation, management, maintenance and repair of the sewerage system of the City.
(1963 Code 9-73-10)

933.99 PENALTY.

(a) Any person who violates any of the provisions of this article, except where another penalty is otherwise provided, shall be fined or imprisoned, or both, as follows: the fine shall be not less than five dollars ($5.00) nor more than one hundred dollars ($100.00), and the imprisonment in the City or County jail shall be not more than thirty days.

Each day that any person shall continue the violation of this article shall constitute a separate offense.

(b) Any person who violates any of the rules or regulations made and promulgated by the Sanitary Board, as provided in Section 933.07, upon conviction shall be fined or imprisoned, or both, as follows: the fine shall be not less than five dollars ($5.00) nor more than one hundred dollars ($100.00), and the imprisonment in the City or County jail shall be not more than thirty days. Each day that any person shall continue the violation of any of the rules and regulations so made and promulgated shall constitute a separate offense.
(1963 Code 9-73-99)

-MINUTES OF THE SPECIAL MEETING OF THE , Chesapeake Code

CHESAPEAKE TOWN COUNCIL APRIL 22, 2019

Call to order – Mayor Armentrout

Invocation – Janet Armentrout

Roll Call – Janet Searls is absent, all other members present. There is a quorum.

Mayor Armentrout presented for second and final reading Ordinance number 2019-01 to Amend and Re-Enact the Town Code, Chapter IX, Article 933.05, "Sewer Schedule of Rates."

Mayor Armentrout asked for any discussion, there was none. She then asked for a Roll Call vote by members on the matter of the ordinance. The vote as follows:

Lacy, Grooms, Booker, Bradshaw, Armentrout – Yes

Johnson, Goins – No

The ordinance passed both readings, and will be presented to the WV PSC for record, to become effective on June 6, 2019.

Dona Lacy moved to adjourn, Paul Bradshaw seconded. Meeting adjourned.

ORDINANCE 2019-____

AN ORDINANCE TO AMEND AND RE-ENACT THE CHESAPEAKE TOWN CODE, CHAPTER IX, ARTICLE 933.05, ENTITLED "SEWER SERVICE SCHEDULE OF RATES."

THE TOWN COUNCIL OF CHESAPEAKE HEREBY ORDAINS:

That the Chesapeake City Code, Chapter IX, Article 933.05 entitled "Sewer Service Schedule of Rates", be amended to read as follows:

933.05 SEWER SCHEDULE OF RATES

933.06

There is hereby levied and assessed against all owners, tenants or occupants of each and every lot or parcel of real estate or building having any active connection with the public sanitary sewage system, or otherwise discharging sewage, industrial wastes, water or other liquids, either directly or indirectly into the system, or any part thereof, a service charge according to the following schedule:

SCHEDULE OF RATES AND CHARGES FOR SANITARY SEWER SERVICE

APPLICABILITY OF SERVICE

Available for general, domestic, commercial and industrial sanitary sewer service, within and outside the corporate limits.

(I) RATES

New Rates

Gallons per month		Rate per Thousand Gallons Residential	Commercial
First	2,000	$23.26	$25.68
Next	3,000	$12.24	$14.67
Next	10,000	$ 8.56	$10.40
All over	15,000	$ 5.49	$ 6.75

(I) MINIMUM CHARGE

The above schedule is subject to a minimum monthly charge of forty-six dollars and fifty-two cents ($46.52) for residential customers. The minimum charge will be fifty-one dollars and thirty-six cents ($51.36) for commercial customers.

MUNICIPAL EXCISE TAX SURCHARGE

The municipality listed below, having imposed public utility tax computed on the basis of two percent of revenues from sewer service sales by the sewer utility within the corporate limits of such municipalities, shall be billed as a "surcharge" to the customers receiving service within said corporate limits.

The sewer utility is required to collect the utility tax pursuant to W.Va. Code §8-13-5a.

Customers receiving sewer service within the corporate limits of the specified municipality shall pay a surcharge based on the following surcharge rates:

	Utility Excise Tax	
Municipality	Local Tax Rate	Surcharge Rate
Chesapeake	2%	2%

MULTIPLE OCCUPANCY

On apartment buildings or other multiple occupancy buildings, each unit shall be required to pay not less than the above minimum charge.

DELAYED PAYMENT CHARGE

The above schedule is net payment. On all accounts not paid in full within ten days of date of bill, ten percent will be added to the net amount shown.

SERVICE CONNECTIONS

Tap inspection fee and installation. $250.00

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the sewer utility will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

DISCONNECT/RECONNECT/ADMINISTRATIVE FEES

Whenever water service has been disconnected for non-payment of sewer bills in conjunction with a water service termination agreement with the West Virginia-American Water Company, a disconnection fee of $20.00 shall be charged; or in the event the delinquent sewer bill is collected by the water company, an administrative fee of $20.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement with the West Virginia-American Water Company is reconnected, a reconnection fee of $20.00 shall be charged.

SECURITY DEPOSIT

A security deposit equal to 1/6th of the annual estimated charge for the class of customer being served.

LEAK ADJUSTMENT

$3.25 per 1000 gallons is to be used when a bill reflects unusual water consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to such consumption above the customer's historical average usage.

Surcharge formula to be applied in cases where surface drainage is connected to the utility's sewer system.

APPLICABILITY

Whenever the utility has discovered that a customer's roof drain, downspout, storm sewer or similar facilities conducting surface water have been connected to the utility's sewer system, and such customer has failed to take appropriate action, within thirty (30) days of receipt of a demand by the utility in accordance with the Rules of the Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$$S = A \times R \times .0006233 \times C$$

S	=	the surcharge in dollars
A	=	The area under roof and/or the area of any other water collection surface connected to the sanitary sewer, in square feet
R	=	the measured monthly rainfall, in inches
.0006233	=	A conversion factor to change inches of rain x square feet of surface to thousands of gallons of water
.0008333	=	A conversion factor to change inches of rain x square feet of surface water to $ per 1000 gallons
C	=	The utility's approved rate per thousand gallons of metered water usage.

The utility shall not impose the surcharge unless and until the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or surface water is being introduced into the sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the sanitary sewer system.

Said surcharge shall be calculated and imposed for each month that said condition continues to exist Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules of the Public Service Commission of West Virginia.

SEPARABILITY: REPEAL OF CONFLICTING ORDINANCES:

The provisions of this Ordinance are separable, and if any clause, provision or section hereof be held void or unenforceable by any court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance. All resolutions, ordinances, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflicts, hereby repealed: and to the extent that the provisions of this Ordinance do not touch upon the provisions of prior resolutions, ordinances, orders or parts thereof, the same shall remain in full force and effect.

STATUTORY NOTICE AND PUBLIC HEARING

After introduction hereof, the Council shall publish a copy of this Ordinance once a week for two (2) successive weeks within a period of fourteen (14) successive days with at least six (6) full days intervening between each publication in the *Charleston Gazette Daily Mail* being a newspaper published and of general circulation in Chesapeake, West Virginia, and said notice shall state that this Ordinance has been introduced and that any person interested may appear before council on April 21 at 6 p.m. in Council Chambers, which is not less than ten (10) days after the date of the first publication of proposed rates and charges. At such hearing all objections and suggestions shall be heard and the council shall take such action as it shall deem proper in the premises.

This ordinance will not take effect until forty-five (45) days after final passage and adoption.

First reading of Ordinance 2019-___	April 1, 2019 7:00 pm	Passed/Failed
Second reading of Ordinance 2019-___	April 22, 2019 6:00 pm	Passed/Failed

The Ordinance, No. 2019-___ is approved and will go into effect forty-five days from final passage on June 6, 2019 as described above.

_____

_____, Mayor

Attest: _____

Clerk, Town of Chesapeake

Sch 1 Rates Residential	Current Rates		75.50% Increase Going Level	18.00% Design Loan ProForma
First 2,000 Gallons	$ 11.23	$ 11.23	$ 19.71	$ 23.26
Next 3,000 Gallons	$ 5.91	$ 5.91	$ 10.37	$ 12.24
Next 10,000 Gallons	$ 4.13	$ 4.13	$ 7.25	$ 8.56
All Over 15,000 Gallons	$ 2.65	$ 2.65	$ 4.65	$ 5.49
Min Charge	$ 22.46	$ 22.46	$ 39.42	$ 46.52
3,400 Gallon Bill	$ 30.73	$ 30.73	$ 53.94	$ 63.66
Commercial				
First 2,000 Gallons	$ 12.40	$ 12.40	$ 21.76	$ 25.68
Next 3,000 Gallons	$ 7.08	$ 7.08	$ 12.43	$ 14.67
Next 10,000 Gallons	$ 5.02	$ 5.02	$ 8.81	$ 10.40
All Over 15,000 Gallons	$ 3.26	$ 3.26	$ 5.72	$ 6.75
Min Charge	$ 24.80	$ 24.80	$ 43.52	$ 51.36
3,400 Gallon Bill	$ 34.71	$ 34.71	$ 60.92	$ 71.90
Sch 2 Rates				
First 2,000 Gallons	$ 12.40	$ 12.40	$ 21.76	$ 25.68
Next 3,000 Gallons	$ 7.08	$ 7.08	$ 12.43	$ 14.67
Next 10,000 Gallons	$ 5.02	$ 5.02	$ 8.81	$ 10.40
All Over 15,000 Gallons	$ 3.26	$ 3.26	$ 5.72	$ 6.75
Min Charge	$ 24.80	$ 24.80	$ 43.52	$ 51.36
3,400 Gallon Bill	$ 34.71	$ 34.71	$ 60.92	$ 71.90

18% is over Going Level Rates

ARTICLE 937
Garbage and Refuse Collection

937.01 Definitions.
937.02 City to collect garbage and refuse.
937.03 Illegal collection.
937.04 Charges for refuse service.
937.05 Payment of service charges.
937.06 Power to revise rates.
937.07 Special rates authorized by Council.
937.08 Failure to pay a lien; action by City.
937.09 Littering.
937.10 Storing refuse or garbage
937.99 Penalty.

CROSS REFERENCES
Power to regulate - see W. Va. Code 8-12-5(10) et seq.
Placing material in streets - see TRAF. 311.01
Loads dropping or leaking - see TRAF. 347.04

937.01 DEFINITIONS.

The following definitions shall be used in interpreting this article:

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

(b) "Garbage container" means a container made of metal, leakproof and watertight. It shall have a capacity of approximately fifteen gallons and shall be equipped with an adequate carrying bail and tight-fitting metal cover.

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

(d) "Refuse container" means any substantial container which will hold and prevent refuse placed therein from scattering. (1963 Code 9-11-1 to 5)

937.02 CITY TO COLLECT GARBAGE AND REFUSE.

The City shall cause all refuse and garbage within the City 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 City 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 Council. (1963 Code 9-13-1)

937.03 ILLEGAL COLLECTION.

It shall be unlawful for any person, except the City or its authorized agents, to engage in or conduct the business of collection, removal or disposal of refuse or garbage within the corporate limits. (1963 Code 9-13-2)

937.04 CHARGES FOR REFUSE SERVICE.

(a) In conformity with the provisions of Section 937.06 and in order to make the service provided for in this Article self-supporting, the following schedule of rates, fees and charges for standard types of refuse disposal service is established:

(1) For standard weekly family service:

A. Single-family unit residences, $3.50 per month

B. Multiple dwellings (apartments) per single family unit (apartment), $3.50 per month

(2) For standard weekly commercial service:

Retail stores, $15.00 per month

(3) For standard daily commercial service:

Hotel, restaurant or other business requiring daily service, $15.00 per month

All charges are payable in advance and are for garbage and trash only, subject to adjustment for abnormal volume.

Minimum charges are as above, maximum to be determined by Council. The City Recorder is authorized to adopt and prescribe from time to time and enforce rules, regulations and procedure appropriate for the determination by the Recorder and the Recorder shall determine the classification of residences and of multiple dwellings (apartments) for the application of one or more of the foregoing rates which is properly applicable thereto hereunder.

(b) Under these schedules the City 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, alteration or erection of buildings or structures.

(c) A flat charge of one dollar ($1.00) shall be collected from each special service call made, and to this charge shall be added such charges as will compensate the City for extra refuse volume or weight involved in the types of refuse specified under subsection (b) above. (Ord. 79-2.)

937.05 PAYMENT OF SERVICE CHARGES.

(a) The foregoing service charges shall be paid to the City Recorder by the owner of the respective premises, and shall be due and payable on the first day of each calendar quarter in each year thereafter.

(b) The Recorder shall promptly collect all charges for the services provided for in this article, and shall keep in his office proper records showing all collections made and received by him, and all charges which are in default with the respective amounts due thereon and the persons 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 accounts 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 City 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 Council and shall receive ten percent (10%) of the amounts collected as fees for services. (1963 Code 9-13-4)

937.04 CHARGES FOR REFUSE SERVICE.

(a) In conformity with the provision of Section 937.06 and in order to make the service provided for in this Article self-supporting, the following schedule of rates, fees, and charges for standard types of refuse disposal service is established:

(1) For standard weekly family service:

A. Single family unit residences, $13.67 per month

B. Multiple dwelling (apartments) per single family unit (apartment), $13.67 per month

(2) For standard weekly commercial service:

Retail stores, $20.33 per month

(3) For standard daily commercial service:

Hotel, restaurant or other business requiring day service, $20.33 per month

All charges are payable in advance and re for garbage and trash only, subject to adjustment for abnormal volume.

Minimum charges are as above, maximum to be determined by Council. The City Recorder is authorized to adopt and prescribe from time to time and enforce rules, regulations and procedure appropriate for the determination by the Recorder and the Recorder shall determine the classification of residence and of multiple dwellings (apartments) for the application of one or more of the foregoing rates which is properly applicable there to hereunder.

(b) Under these schedules the City 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, alteration or erection of building or structures.

(c) A flat charge of five dollar ($5.00) shall be collected from each special service call made, and to this charge shall be added such charges as will compensate the City for extra refuse volume or weight involved in the types of refuse specified under subsection (b) above.
(Ord. 79-2.)

937.05 PAYMENT OF SERVICE CHARGES.

(a) The foregoing service charges shall be paid to the City Recorder by the owner of the respective premises and shall be due and payable on the first day of each calendar quarter in each year thereafter.

(b) The recorder shall promptly collect all charges for the services provided for in this article, and shall keep in his office proper records showing all collections made and received by him and all charges which are in default with the respective amounts de 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, caused 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 City 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 bod in the penal sum required by Council and shall receive ten percent (10%) pf the amounts collected as fee for services. (1963 Code 9-13-4)

937.04 CHARGES FOR REFUSE SERVICE

(a) In conformity with the provisions of Section 937.06 and in order to make the service provided for in this Article self-supporting, the following schedule of rates, fees and charges for standard types of refuse disposal service is established:

(1) For standard weekly service: 41.00

A. Single-family unit residences, ~~$40.00~~ quarterly

B. Multiple dwellings (apartments) per single family unit (apartment), ~~$40.00~~ quarterly.

(2) For standard weekly service:
Retail stores, ~~$60.00~~ per quarter 61.00

All charges are payable in advance and are for garbage and trash only, subject to adjustment for abnormal volume.

Minimum charges are as above, maximum to be determined by Council. The City Recorder is authorized to adopt and prescribe from time to time and enforce rules, regulations and procedure appropriate for the determination by the Recorder and the Recorder shall determine the classification of residences and of multiple dwellings (apartments) for the application of one or more of the foregoing rates which is properly applicable thereto hereunder.

(b) Under these schedules the City 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, alteration or erection of buildings or structures.

(c) An additional charge (minimum of $5.00) shall be collected for each special service call made, and to this charge shall be added such charges as will compensate the City for extra refuse volume or weight involved in the types of refuse specified under subsection (b) above.

937.06 POWER TO REVISE RATES.

Council shall have the right to revise the schedule of rates set out in Section 937.04 hereof and to adjust them so that costs will be distributed as equitably as possible among all citizens of the city 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.
(1963 Code 9-13-5)

937.07 SPECIAL RATES AUTHORIZED BY COUNCIL.

Council shall have the right to establish and authorize the Recorder to collect such special charges and rates as may be proper for service to any person whose refuse requirements are sufficiently abnormal or different, in the opinion of the Recorder, to justify special or unusual handling of refuse, in lieu and in place of the charges and rates provided in Section 937.04. This shall include those buildings or dwellings not readily accessible to refuse collectors and cases where refuse is not found in standard containers.
(1963 Code 9-13-6)

937.08 FAILURE TO PAY A LIEN; ACTION BY CITY.

If the fee, rate or charge for any of the foregoing services shall not be paid within thirty days after the same is due, the amount thereof shall be in default and may be recovered by the City 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 West Virginia relating to the foreclosure of liens on real property. The City shall file in the office of the Clerk of the Kanawha County Court, a statement of all unpaid fees, charges and liens, executed on its behalf and duly verified by the City 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 thirty 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 of one dollar and fifty cents ($1.50) to reimburse the City for its costs in preparing such statement and the additional item of thirty-five cents (35¢) to reimburse the City for the fee paid by it to the Clerk of the County Court 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 of West Virginia.
(1963 Code 9-13-7)

937.09 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 public health or a fire hazard. (1963 Code 9-15-1)

937.10 STORING REFUSE OR GARBAGE.

It shall be unlawful for any person to store or permit the storage of refuse or garbage on or about his premises or the premises occupied by him, unless same is kept separately in refuse or garbage containers. (1963 Code 9-15-2)

937.99 PENALTY.

Whoever violates any provision of this article shall, for a first offense be fined not more than one hundred dollars ($100.00), and for a subsequent offense shall be fined not more than two hundred dollars ($200.00) or imprisoned for not more than thirty days, or both.

CODIFIED ORDINANCES OF CHESAPEAKE

PART ELEVEN - HEALTH AND SANITATION CODE

Art. 1101. Nuisances

TOWN OF CHESAPEAKE

12404 MacCorkle Ave
Chesapeake, WV 25315
304-949-1496

Ordinance Violation Notice

Resident of the Town of Chesapeake,

_____
_____
_____

Date: _____

The Town of Chesapeake has an ordinance pertaining to storage of items on private or public property which should commonly be referred to as junk. You are in violation of this ordinance. You have 5 days from today's date _____ to get in compliance with the town ordinance. If you fail to comply with this ordinance within the given date you are subjected to a fine of not more than $50.00 a day. Each day such violation shall continue shall constitute a separate offense. Attached is Article 1103.03q of the ordinance.

_____
Officer for Town of Chesapeake

CODIFIED ORDINANCES OF CHESAPEAKE

PART ELEVEN - HEALTH AND SANITATION CODE

ARTICLE 1101
Nuisances

1101.01 Conflict.
1101.02 Nuisances prohibited.
1101.03 Certain nuisances prohibited.
1101.04 Liability of owner for condition of leased premises.
1101.05 Inspections, investigations and complaints.
1101.06 Right to enter upon private premises; duty of occupants.
1101.07 Actions and reports by inspecting and investigating officers.
1101.08 Order to remedy activity or condition; public hearing; action by Mayor.
1101.09 Conduct of public hearing.
1101.10 Remedy by City.
1101.11 Apportionment of cost of abatement.
1101.12 Injunctive relief; nonliability of City employees.
1101.13 Arrest.
1101.99 Penalty.

CROSS REFERENCES
Authority to abate public nuisances - see W. Va. Code 8-12-5 (13) (23)
Authority to establish local health units - see W. Va. Code 8-12-5 (40)

1101.01 CONFLICT.

Various nuisances are defined and prohibited in other City Ordinances and it is the intent of 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. (Ord. 99-3. Passed 12-6-99.)

1101.02 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 this State or as defined by the Codified Ordinances or other ordinance of the City at any place within the City limits when such nuisance constitutes a hazard to the health, safety or good order of the City or its inhabitants. (Ord. 99-3. Passed 12-6-99.)

1101.03 CERTAIN NUISANCES PROHIBITED.

The following acts when committed, or conditions when existing, are hereby defined and declared to be nuisances:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) All sidewalks, gutters or curbstones permitted to remain in an unsafe condition, or out of repair.

(g) All houses or buildings used for special storage of powder, dynamite or other explosive substances, except those maintained pursuant to permit issued by competent authority.

(h) 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.

(i) 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.

(j) Any business, trade or activity whereby noisome stenches and odors or noxious gases arise or are generated.

(k) 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.

(l) 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 offensives, 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 City, and not hereinbefore specified.

(m) 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 catch basins.

(n) 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 seventy-five seconds except for a period aggregating not to exceed twelve 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 City 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.

(o) 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 City.

(p) 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 City ordinances and to creating a condition unsafe, dangerous, unhealthy, injurious, or annoying to the public.

(q) 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 City 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 City is hereby declared to constitute a nuisance. (Ord. 99-3. Passed 12-6-99.)

1101.04 LIABILITY OF OWNER FOR CONDITION OF LEASED PREMISES.

(a) Whenever any owner or agent of any building in the City 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 prosection 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, occupants or agent of the premises, or either or all of those parties.

(b) But owners or agents shall only be held responsible under the provisions of this section where buildings are rented to different persons as described herein.
(Ord. 99-3. Passed 12-6-99.)

1101.05 INSPECTIONS, INVESTIGATIONS AND COMPLAINTS.

The Building Inspector, Chief of Police, the Health and Safety Inspector, and such other officers as may be subject to the orders of the Mayor and designated by him for such purpose, 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.
(Ord. 99-3. Passed 12-6-99.)

1101.06 RIGHT TO ENTER UPON PRIVATE PREMISES; DUTY OF OCCUPANTS.

Each City officer mentioned in Section 1101.05 shall have the right to enter upon private premises for the purposes specified in that section, upon properly identifying himself 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 authorization of the Housing Authority and notification to owner and occupant. (Ord. 99-3. Passed 12-6-99.)

1101.07 ACTIONS AND REPORTS BY INSPECTING AND INVESTIGATING OFFICERS.

(a) If at any time any officer mentioned in Section 1101.05, finds a condition to exist or an activity being engaged in which constitutes a nuisance, he 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 him and that he will be subject to all expenses incurred by the City and 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 he shall forthwith take such lawful action within his capabilities as may be necessary to negate the hazard, or else to clear the endangered area of persons, and he shall notify the Mayor or official acting in that capacity promptly by the most expeditious means of communication.

(b) All City officers mentioned in Section 1101.05, and all police officers of the City, 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) hereof, 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.
(Ord. 99-3. Passed 12-6-99.)

1101.08 ORDER TO REMEDY ACTIVITY OR CONDITION; PUBLIC HEARING; ACTION BY MAYOR.

(a) The Mayor, upon the report and the recommendation of any City officer mentioned in Section 1101.05 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 not be filed within twenty-four 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 twenty-four hour period.

(b) The written orders herein required may be served in any manner authorized by the laws of the State of West Virginia 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 he shall give prompt notice thereof to all parties having an interest therein; and further, he shall publish an appropriate notice of such hearing on the bulletin board of the City Hall. (Ord. 99-3. Passed 12-6-99.)

1101.09 CONDUCT OF PUBLIC HEARING.

(a) At any public hearing held pursuant to Section 1101.08 the applicant therefor may appear in person or by counsel, either or both, and he may have process for the attendance of witnesses and the production of pertinent books and papers, if such there be 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 be shown why such nuisance should not be abated, discontinue 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 1101.08 was an emergency order, then the nuisance shall be abated, discontinued or removed immediately upon the responsible party being served with the order. (Ord. 99-3. Passed 12-6-99.)

1101.10 REMEDY BY CITY.

(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 1101.08 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 his intention so to do, and collect the expenses thereof with one percent (1%) 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 City 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 City of any condition which constitutes a nuisance and reimbursement to the City of expenses incurred thereby shall not bar prosecution for maintenance of a nuisance. (Ord. 99-3. Passed 12-6-99.)

1101.11 APPORTIONMENT OF COST OF ABATEMENT.

The cost of abating 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. (Ord. 99-3. Passed 12-6-99.)

1101.12 INJUNCTIVE RELIEF; NONLIABILITY OF CITY EMPLOYEES.

Any person aggrieved by an order issued by the Mayor pursuant to this article may apply to the Circuit Court of Kanawha County for a temporary injunction restraining the enforcement thereof pending final disposition of the case, but no officer, agent or employee of the City shall be personally liable for damages arising from his lawful performance of his duties under this article. (Ord. 99-3. Passed 12-6-99.)

1101.13 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 City of Chesapeake.
(Ord. 99-3. Passed 12-6-99.)

1101.99 PENALTY.

Whoever violates this article shall be deemed guilty of a misdemeanor and shall be fined not more than fifty dollars ($50.00). Each day such violation shall continue shall constitute a separate offense. (Ord. 99-3. Passed 12-6-99.)

MINIMUM HOUSING STANDARDS ORDINANCE

AN ORDINANCE PROVIDING MINIMUM HEALTH STANDARDS FOR SANITATION FACILITIES IN HOUSING REQUIRING ADEQUATE VENTILATION, LIGHT AND HEATING; DETERMINING ACCEPTABLE OCCUPANCE OF SPACE; REQUIRING SAFE AND SANITARY MAINTENANCE; PROHIBITING SUBSTANDARD CONDITION, STRUCTURALLY AND GENERALLY; REQUIRING ENFORCEMENT BY THE BUILDING COMMITTEE; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISION.

WHEREAS, there exists in the Town numerous dwellings which are sub-standard In one or more important features of structure, equipment, maintenance or occupancy; and

WHEREAS, such conditions adversely affect public health and safety and lead to the continuation, extension and aggravation of urban blight: and

WHEREAS, adequate protection of public health, safety and welfare therefore requires establishment and enforcement of minimum housing standards;

SECTION 1. Short Title. This Ordinance shall be known and may be cited as the "Minimum Housing Standards Ordinance of the Town of Chesapeake."

SECTION 2.; Definition. For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural numbers. The word "shall" is always mandatory and not merely directory.

(1) "Basement" is a portion of any dwelling located partly underground but having less than half its clear floor-to-ceiling height below the average Grade of the adjoining ground.

(2) Building Committee - Fire Chief, Police Chief and a Council member.

(3) Town is the Town of Chesapeake.

(4) "Dwelling" is a building or structure, except temporary housing, which is wholly or partly used or intended to be used for living or sleeping by human occupants.

SECTION 3. SANITATION FACILITIES (CONTINUED):

3. The bathroom is a separate room from the habitable rooms, Privacy and which is accessible to the occupants of each dwelling
Without going through the dwelling unit of another person or going outside the dwelling.

4. The bathtub or shower is within a room, separate from the habitable rooms which affords privacy and which is dwelling unit without going outside the dwelling.

(d) Kitchen Sink. A kitchen sink.

(2) Water Line connections. Every kitchen sink, lavatory basins and bathtub or shower required by this Ordinance shall be properly connected with both hot and cold water lines. The hot water lines shall be connected with supplied water-heating facilities which are capable of heating water to such a temperature as to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin and bathtub or shower at a temperature of not less than 120 degrees F, even when the heating facilities required by this ordinance are not in operation.

(a) Plumbing Fixtures. All plumbing fixtures required by this Section shall be properly connected to a water system and a sewerage system.

(3) Rubbish Collection. Every multi-family dwelling shall have garbage and rubbish storage or disposal facilities.

SECTION 4. Ventilation, Light and Heating: No person shall occupy as owner-occupant or shall let to another for occupancy any dwelling, dwelling unit, which does not comply with the following minimum standards for ventilation, light and heating.

(1) Lighting. Every dwelling with 500 feet of a power line shall be supplied with electricity as follows:

(a) Habitable Room. Every habitable room shall contain at least two Separate floor or wall-type electric convenience outlets, or one such convenience outlet and one supplied type electric light fixture.

(b) Bathrooms, Utility Rooms. Every bathroom, laundry room and furnace room, shall contain at least one supplied ceiling or wall-type electric fixture.

(c) Public Halls. Every public hall and stairway in a dwelling shall contain at least one supplied ceiling or wall-type electric light fixture and one outlet.

(c-1) Two-family Dwelling, Multi-Family dwelling. Every Public hall and stairway in every two-family dwelling, multi-family dwelling shall be adequately lighted at all times except that in a two family dwelling an adequate lighting system which may be turned on when needed by conveniently located wall switches shall be permitted instead of a full-time lighting system.

(d) Standards for Installation. Every outlet and fixture shall be properly installed and maintained in good and safe working condition.

(2) Heating. Every dwelling shall have heating facilities which are capable of safely and adequately heating all habitable rooms, bathrooms, within its walls to a temperature of at least 70 degrees F. when the outside temperature is 0 degree F.

(a) Gas Heaters. Portable heating equipment employing a flame and heating equipment using gasoline or kerosene do not meet the standards of this Ordinance and are prohibited.

SECTION 5. Space and Occupancy. No person shall occupy or shall let to another for occupancy any dwelling, dwelling unit, which does not comply with the following minimum standards for space and occupancy.

(1) Habitable Floor Area. Every dwelling unit shall contain at least 130 square feet of habitable floor area for the first occupancy, at least 100 square feet of additional habitable floor area for each of the next three occupants and at least 50 square feet of additional habitable floor area for each additional occupant.

(1A) Exception for Children under 1 year of age. For the purposes of this Section a person under one year of age shall not be counted as an occupancy.

(2) Sleeping Rooms. In every dwelling unit, every room occupied for

sleeping purposes by one occupant shall contain at least 80 square feet of floor area, and every room occupied for sleeping purposes by more than one occupant shall contain at least 40 square feet of floor area for each occupant 12 years of age and over and at least 20 square feet for each occupant under 12 years of age.

(3) Calculation of Floor Area. Floor area shall be calculated on the basis of of habitable room area. Closet area and hall area within the dwelling unit, where provided may not be counted as required habitable floor area. At lease one-half of the floor area of every habitable room shall have a ceiling height of at least 7 feet, and the floor area of any part of any room where the ceiling height is less than 5 feet shall not be considered as part of the floor area in computing the total floor area of the room to determine maximum permissible occupancy.

(4) Basements. No basement shall be used for living purposes unless:

(a) The floors and walls are substantially watertight.

(b) The total window area, total openable area and ceiling height are in accordance with this Ordinance.

(c The required minimum window area of every habitable room is entirely above the grade of the ground adjoining such window area, not including stairwells or access ways.

SECTION 6. Safe and Sanitary Maintenance of Structural Elements

No person shall occupy as owner-occupant or shall let to another for occupancy any dwelling, rooming house, dwelling unit, or room unit which does not comply with the following minimum standards for safe and sanitary maintenance:

(1) Foundation, Exterior Walls and Roofs. Every foundation, exterior wall and exterior roof shall be substantially weathertight, watertight, shall be kept in sound condition and good repair; and shall be kept in sound condition and good repair; and shall be safe to use and capable of supporting the load which normal use may cause to be place thereon.

(2) Floors, Interior Walls and Ceilings. Every floor, interior wall and ceiling shall be substantially rodent proof.

SECTION 7. COOKING EQUIPMENT. No owner, operator or occupant shall furnish of use any cooking equipment which does not comply with the following minimum standards:

(1) Every piece of cooking equipment shall be so constructed and installed that it will function safely and shall be maintained in sound working condition.

(2) Portable cooking equipment employing flame and cooking equipment Using gasoline or kerosene as fuel for cooking are prohibited.

SECTION 8 Responsibilities of Owners, Operators and Occupants.

(1) Sanitation

(a) Every occupant of a dwelling, or dwelling unit shall maintain in a clean and sanitary condition that part of the dwelling, dwelling unit and yard which he occupies and controls; and shall be responsible for his own misuse of areas and facilities available in common.

(b) Every owner or operator of a two-family dwelling, or multi-family dwelling, shall maintain in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in their proper use and operation.

2) Removal of Waste Matter.

(a) Every occupant of a dwelling unit shall dispose of all rubbish, ashes, garbage and other organic waste in a clean and sanitary manner by placing it in approved storage or disposal facilities which are safe and sanitary. Every occupant shall provide such facilities for his dwelling unit and shall maintain them in a clean and sanitary manner. The owner or operator of a multi-family dwelling shall be responsible for the clean and sanitary maintenance of common storage or disposal facilities. He shall be responsible further for placing out for collection all common garbage and rubbish containers, except where such facilities are for the sole use of an occupant, under which circumstances it shall be the responsibility of the occupant to place these containers out for collection.

SECTION 8 Responsibilities of Owners, Operators and Occupants.

(3) Extermination

(a) Every occupant of a dwelling unit shall be responsible for the extermination of any insects, rodents or other pests in it or in the yard. In a two-family dwelling or a multi-family dwelling, the occupant shall be responsible for such extermination whenever his dwelling unit is the only one infested. When, however, infestation is caused by failure of the owner or operator to maintain a dwelling in a rodent-proof or substantially insect-proof condition, extermination shall be the responsibility of the owner or operator.

(b) Every owner or operator shall be responsible for extermination of any insects, rodents, or other pests whenever infestation exists in two or more of the dwelling units in any dwelling or in the shared or public areas of any two-family dwelling or any multi-family dwelling.

(4) Heat. During the time of the year when it is necessary, as determined by the Building Committee, every owner or operator of every two-family dwelling, multi-family dwelling shall supply adequate heat to every habitable room therein except where there are separate heating facilities for each dwelling unit, whose facilities are under the sold control of the occupant of such dwelling unit.

(5) Utilities. No owner, operator or occupant shall cause any service equipment or utility which is required by this ordinance to be removed, shut off or discontinued for any occupied dwelling let or occupied by him, except for such temporary interruption as may be necessary while actual repairs or alterations are in process, or during temporary emergencies.

(6) Transfer of Responsibility. A contract effective as between owner and operator, operator and occupant or owner and occupant with regard to compliance hereunder shall not relieve any part of his direct responsibility under this Ordinance.

(7) Notice of Maximum Occupancy. Every owner or operator shall advise the occupant in writing either by insertion in the lease between the parties or otherwise of the maximum number of occupant permitted in the occupied premises under this Ordinance.

SECTION 9. This Ordinance shall be enforced by the Building Committee, which shall

be appointed by the Mayor/Council. The committee will keep complete records of all proceedings, records and whenever the committee is informed or has reason to believe that any provision hereof is being violated, shall have the right, at reasonable times, to enter any dwelling in the town for the purpose of determining whether such violation in fact exists therein. It shall be the duty of such officers to report to the Municipal Court for prosecution or other action any violations found by them to exist.

SECTION 10. Any person, firm or corporation violating any of the provisions of this ordinance shall, upon conviction thereof, be fined in an amount not exceeding $50.00. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

CODIFIED ORDINANCES OF CHESAPEAKE

PART THIRTEEN - PLANNING AND ZONING CODE

Art. 1315. Subdivisions and Plats.

CODIFIED ORDINANCES OF CHESAPEAKE

PART THIRTEEN - PLANNING AND ZONING CODE

ARTICLE 1315
Subdivisions and Plats

1315.01 Submission of plat required.
1315.02 Approval of plat by Mayor and Council
1315.99 Penalty.

CROSS REFERENCES
Approval required - see W. Va. Code 8-24-28
Application - see W. Va. Code 8-24-29
Approval - see W. Va. Code 8-24-30 et seq.
Enforcement - see W. Va. Code 8-24-66
Injunction - see W. Va. Code 8-24-67
Penalty - see W. Va. Code 8-24-68

1315.01 SUBMISSION OF PLAT REQUIRED.

It shall be the duty of the owner, or his agent, of any lot or parcel of land situate, lying and being within the corporate limits, or abutting thereon, which is proposed to be divided or subdivided into lots, to submit a plat or plan of any such proposed division or subdivision to the Mayor and Council of the City, showing the avenues, streets, alleys and ways thereon and therein, and their locations, and connections with the City and its ways; and to furnish to the Mayor and Council full and complete information for the purpose of determining whether any such proposed division or subdivision will obstruct, hinder, impede or prevent the further or proper development or extension of the Municipality where any such proposed division or subdivision is situated. (1963 Code 1-3-1)

1315.02 APPROVAL OF PLAT BY MAYOR AND COUNCIL.

Before any such proposed division or subdivision, as is mentioned in Section 1315.01 of this article, is finally laid out and adopted, it shall be the duty of any such owner of land, or his agent, to obtain and have the approval of the Mayor and Council, wherein such proposed division or subdivision is situate, or upon which it abuts; and such approval, with the date thereof, shall be written or indicated upon the map, plat or plan of any such division or subdivision of land into lots before any such map, plat or plan thereof shall be finally filed for recordation in the office of the Clerk of the County Court and County Assessor of Kanawha County, West Virginia, as required by law. (1963 Code 1-3-2)

1315.99 PENALTY.

Whoever violates this article shall be fined not exceeding one hundred dollars ($100.00). Each day such violation continues shall constitute a separate offense.

In addition to any fine imposed under this section, the City may proceed against any violator in the civil courts, by injunction or otherwise, to prevent any such violation. (1963 Code 1-3-99)

CODIFIED ORDINANCES OF CHESAPEAKE

PART FIFTEEN - FIRE PREVENTION CODE

Art. 1509. West Virginia State Fire Code.

CODIFIED ORDINANCES OF CHESAPEAKE

PART FIFTEEN - FIRE PREVENTION CODE

ARTICLE 1509
West Virginia State Fire Code

1509.01	Adoption of Code.	1509.04	New materials, processes or occupancies which may require permits.
1509.02	Modifications.		
1509.03	Appeals from actions of Chief of Fire Department.	1509.99	Penalty.

CROSS REFERENCES
Adoption by reference - see W. Va. Code 8-11-4
Promulgation of State Fire Code - see W. Va. Code 29-3-5

1509.01 ADOPTION OF CODE.

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 West Virginia State Fire Code, which became effective March 30, 1997.

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.

1509.02 MODIFICATIONS.

The Chief of the Bureau of Fire Prevention shall have power to modify any of the provisions of the Fire Prevention Code adopted by this article upon application in writing by the owner or lessee or his duly authorized agent when there are practical difficulties in the way of carrying out the strict letter of such Code; provided, that the spirit of such Code shall be observed, public safety secured and substantial justice done. The particulars of such modification, when granted or allowed, and the decision of the Chief of the Bureau of Fire Prevention thereon shall be entered upon the records of the Fire Department, and a signed copy shall be furnished the applicant.

1509.03 APPEALS FROM ACTIONS OF CHIEF OF FIRE DEPARTMENT.

Whenever the Chief of the Fire Department disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the Fire Prevention Code adopted by this article do not apply or that the true intent and meaning of the Fire Prevention Code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the Chief of the Fire Department to Council within thirty days from the date of the decision appealed.

1509.04 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 Fire Prevention Code. The Chief of the Bureau of Fire Prevention shall post such list in a conspicuous place in his office, and distribute copies thereof to interested persons.

1509.99 PENALTY.

Whoever violates any provision of this Part Fifteen - Fire Prevention Code, for which no other penalty is provided or fails to comply therewith; or violates or fails to comply with any order made thereunder; or builds in violation of any detailed statement of specifications or plans submitted and approved thereunder or any certificate or permit issued thereunder and from which no appeal has been taken; or fails to comply with such an order as affirmed or modified by Council or by a court of competent jurisdiction within the time fixed herein, shall severally for each such violation and noncompliance respectively, be fined not more than five hundred dollars ($500.00) or imprisoned not more than thirty days, or both. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue. All such persons shall be required to correct or remedy such violations or defects within a reasonable time. When not otherwise specified, each ten days that prohibited conditions are maintained shall constitute a separate offense. The application of any penalty pursuant to this section shall not be held to prevent the enforced removal of prohibited conditions.

CODIFIED ORDINANCES OF CHESAPEAKE

PART SEVENTEEN - BUILDING AND HOUSING CODE

Art. 1711. West Virginia State Building Code.

Art. 1715. Building Administration.

Art. 1719. Building Permits and Fees.

Art. 1723. Mobile Homes.

Art. 1725. Demolition.

Art. 1727. Flood Damage Control.

CODIFIED ORDINANCES OF CHESAPEAKE

PART SEVENTEEN - BUILDING AND HOUSING CODE

ARTICLE 1711
West Virginia State Building Code

1711.01 Adoption.
1711.02 Definitions.
1711.03 Conflicts.
1711.04 Additions, insertions and changes.

CROSS REFERENCES
Adoption by reference - see W. Va. Code 8-11-4
Building regulation - see W. Va. Code 8-12-13
State Building Code - see W. Va. Code 29-3-5b

1711.01 ADOPTION.

(a) 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 Municipality that certain code know as the State Building Code as promulgated by the Fire Marshal under West Virginia Code 29-3-5b.

(b) The standards and requirements as set out and as published by the Building Officials & Code Administrators International and the Council of American Building Officials, as listed below, and as adopted by the State Fire Marshal, shall have the same force and effect as if set out verbatim in this section:

The BOCA National Building Code,
The BOCA National Plumbing Code,
The BOCA National Mechanical Code,
The BOCA National Property Maintenance Code,
The BOCA National Energy Conservation Code,
The CABO One- and Two-Family Dwelling Code.

1711.02 DEFINITIONS.

(a) "Building Code" includes all aspects of safe building construction and mechanical operations and all safety aspects related thereto.

(b) "Fire Marshal" means the West Virginia State Fire Marshal and/or his designated representatives.

(c) "State Building Code" means the entire contents of this article and the referenced national codes.

(d) "BOCA" refers to the Building Officials & Code Administrators International, 4051 Flossmoor Road, Country Club Hills, Illinois, 60477-5795.

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

1711.03 CONFLICT.

Whenever there arises a conflict between the State Fire Code and the State Building Code, the State Fire Code shall take precedence.

Whenever there arises a conflict between the BOCA National Plumbing Code portion of the State Building Code and the rules of the State Board of Health, the rules of the Board of Health shall take precedence.

Whenever there arises a conflict between the State Building Code and statutory laws of the State of West Virginia, the West Virginia State Code shall take precedence.

1711.04 ADDITIONS, INSERTIONS AND CHANGES.

(a) The provisions of BOCA National Building Code, Section 111.1 are hereby amended to read as follows:

111.1 PERMIT REQUIRED.

It shall be unlawful to construct, enlarge, alter or demolish a structure; or change the occupancy of a building or structure requiring greater strength, exit or sanitary provisions; or to change to another use; or to install or alter any equipment without obtaining a formal permit except for the following purposes:

(1) The replacement of worn or damaged residential structures, except that it shall be necessary to submit such application and obtain such permit for the replacement of such a structure where it has been damaged by fire to the extent of fifty percent (50%) or more.

(2) The installation of storm windows, screens, or similar devices in, to or on residential structures.

(3) Interior alterations of residential property on any level, except that it shall be necessary to submit such application and to obtain such permit where such alterations are for the purpose of, or would have the effect of, converting a residential structure into one or more apartments or a commercial building.

(4) The enclosing of any open porch on a residential structure where the same is not enlarged in floor area by the construction.

(5) The replacement in, on, or to either residential or commercial structures, of defective wiring, plumbing, or other similar installations relating primarily to reducing or eliminating fire and/or health problems.

In the case of work being performed by anyone other than the owner of said structure or property, a valid contractors license must be shown to obtain a building permit. The license must be valid for the type of work to be performed.

(b) The provisions of BOCA National Building Code, Sections 124.1 through 124.7 are hereby amended to read as follows:

124.1 APPLICATION FOR APPEAL (No change)

124.2 COUNCIL AS APPEALS BOARD
The members of City Council, for the purpose of this code, shall be designated as the Board of Appeals.

124.3 NOTICE OF MEETING
Appeals will be handled as normal business at regular or special council meetings.

124.4 OPEN HEARING (No change)

124.5 POSTPONED HEARING (No change)

124.6 BOARD DECISION (No change)

124.7 COURT REVIEW (No change)

(c) No member of the Board of Appeals (City Council) shall pass upon any question in which he or she, or any corporations in which he or she is a shareholder or member, is interested. (Ord. 91-1. Passed 11-2-92.)

ARTICLE 1715
Building Administration

1715.01 Building Committee.
1715.02 Building Official.
1715.03 Building Inspector.
1715.04 Building Committee powers and duties.

CROSS REFERENCES
Building enforcement agency - see W. Va. Code 8-12-16

1715.01 BUILDING COMMITTEE.

(a) A Building Committee is hereby created.

(b) The Mayor shall appoint, subject to the approval of 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 Council.

(c) In addition to the appointed members, the Mayor shall be an ex-officio member of the Building Committee. (Ord. 91-1. Passed 11-2-92.)

1715.02 BUILDING OFFICIAL.

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

(b) The Building Official shall receive applications required by this 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 law, to remove illegal conditions, to secure the necessary safeguards in building and structures. He shall keep the comprehensive records of applications, of permits issued, of certificates issued, and of notices or orders issued. He 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 City, but shall not be removed from the City Hall. When applications for the permits and certificates are received and for any or all other purposes in the discretion of the Building Official, he shall call meetings of the Building Committee and shall serve at the administrative head of said Committee.
(Ord. 91-1. Passed 11-2-92.)

1715.03 BUILDING INSPECTOR.

(a) The Building Committee shall from time to time appoint one of their 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. He shall, when requested by proper authority or when the interest of the City so requires, make investigations in connection with matters required under the provisions of this Building Code. He shall have authority to enter any building, structure or premises at any reasonable hour.

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.
(Ord. 91-1. Passed 11-2-92.)

1715.04 BUILDING COMMITTEE POWERS AND DUTIES.

(a) The Building Committee shall preserve and protect public health, safety and welfare by maintaining a high character of community development and by protecting the real estate within the City 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 City Code.
(Ord. 91-1. Passed 11-2-92.)

ARTICLE 1719
Building Permits and Fees

1719.01	**Fee payment required.**	**1719.04**	**Moving on same lot.**
1719.02	**Construction or alteration.**	**1719.05**	**Demolition.**
1719.03	**Removal to another lot.**	**1719.06**	**Inspection.**

CROSS REFERENCES
Building permits - see W. Va. Code 8-12-14
Municipal inspections - see W. Va. Code 8-12-15

1719.01 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. (Ord. 91-01. Passed 11-2-92.)

1719.02 CONSTRUCTION OR ALTERATION.

For a permit for construction or alteration of a building or structure, the fee shall be at a rate described below, but the fee shall not be less than twenty dollars ($20.00), in any case. However, no fee shall be required when the estimated cost, determined by the Building Official, does not exceed five hundred dollars ($500.00).

	Type	Area	Fee
(a)	One or two family residence, or additions to existing residence.	First floor living area	$2.00 per 100 sq. ft. or fraction thereof.
		Basement, second floor, porch and garage areas.	$1.00 per 100 sq. ft. or fraction thereof.
(b)	All other types, except (a) above.	Street floor level.	$1.50 per 100 sq. ft. or fraction thereof.
		Basement and other floor areas.	$1.00 per 100 sq. ft. or fraction thereof.

(Ord. 91-01. Passed 11-2-92.)

1719.03 REMOVAL TO ANOTHER LOT.

For a permit for the removal of a building or structure from one lot to another, the fee shall be twenty dollars ($20.00).
(Ord. 91-01. Passed 11-2-92.)

1719.04 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 ten dollars ($10.00).
(Ord. 91-01. Passed 11-2-92.)

1719.05 DEMOLITION.

For a permit for the demolition of a building or structure, the fee shall be twenty dollars ($20.00). (Ord. 91-01. Passed 11-2-92.)

1719.06 INSPECTION.

The Building Committee shall have the authority to expend moneys, not to exceed fifty percent of the fee paid, to the Building Inspector assigned to the project creating the fee as an inspection service fee.
(Ord. 91-01. Passed 11-2-92.)

ARTICLE 1719
Building permits and Fees

1719.07 PLACEMENT OF STRUCTURES ON LOTS **1719.99 PENALTY**

CROSS REFERENCES
Building Permits – see W.Va. Code 8-12-14
Municipal Inspections – see W.Va. Code 8-12-15

1719.07 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 below.

(a) 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.

(b) 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.

(c) This article will not affect any presently completed structures. It will only affect what is built in the Town of Chesapeake after being approved by the Town Council. This article is designed to maintain property values for owners and also for health and safety reasons.

1719.99 PENALTY

Any person who violates, or members of any firm and directors and officers or any corporation which shall violate these provisions of this article shall be fined not less than $100 or more than $500 for each day of violation. Citations will be given by the Chesapeake Police Department and each day of continued violation shall constitute a separate offense under this article. Proper action for injunctive relief can be instituted in a court of record of Kanawha County, West Virginia.

First Reading – June 6 , 2005
Second Reading - July 11, 2005
Third Reading August 1, 2005

This ordinance amendment was passed by vote of council on August 1, 2005 and enacted and made effective on August 2, 2005.

D B Bradshaw Mayor Greg Hendrick Council

[illegible] Recorder Roger L. Green Council

Updated 3/21/22
SQB
See code book

ARTICLE 1723
Mobile Homes

1723.01	**Keeping, maintaining, placing or parking of a mobile home.**	**1723.05**	**Liability of persons moving a mobile home.**
1723.02	**Owner or tenant of land responsible for violation.**	**1723.06**	**Sewage collection line.**
1723.03	**Definition of mobile home.**	**1723.07**	**Permit required.**
1723.04	**Requirements as to the structure and value.**	**1723.99**	**Penalty.**

CROSS REFERENCES
Power to regulate - see W. Va. Code 8-12-5(30)

1723.01 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 City, 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 City. No permits will be written except by a grandfather clause. "Double-wide" homes will be permitted to move into the City only if set up in the manner of a house as a permanent dwelling.

(c) 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 City to occupy such a lot.

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 City 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 in compliance with this article within thirty days.
(Ord. 85-4. Passed 12-7-98.)

1723.02 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 City, knowingly to permit any person, firm or corporation to keep, maintain or place a mobile home except as specially permitted by the provisions of this article.
(Ord. 85-4. Passed 12-7-98.)

1723.03 DEFINITION OF MOBILE HOME.

"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 "mobile home" as herein used, automobiles, trucks and small 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 City.
(Ord. 85-4. Passed 12-7-98.)

1723.04 REQUIREMENTS AS TO THE STRUCTURE AND VALUE.

A single mobile home, to be lawfully kept in the City shall with respect to its structure and value and the method and condition of its keeping meet all the requirements set forth below:

(a) The mobile home shall be of dimensions of not less than ten feet in width and forty feet in length with the tongue included.

(b) 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 twenty-five foot lot, then ten feet and not more than twelve-feet wide trailers can be placed on the lot and centered so that there are equal sides. This will be the only exception for a twenty-five foot lot.

(c) 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 only has to be five feet from the property line; and then when there is another mobile home placed on the adjoining lot, this mobile home has to be placed the ten-foot clearance.

(d) If the lot is large enough to accommodate two mobile homes, then it is considered to be a mobile home park and, therefore, must go by the Mobile Home Park Regulations adopted by the West Virginia State Board of Health. These are found in booklets EG-3 and SG-93 of the State Board of Health.

(e) The mobile home shall be affixed to the land by sturdy underpining made of durable material. All mobile homes must be plumbed for utilities and underpinned and ready for habitation within thirty days of receiving a permit.

(f) 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.

(g) The purchase price of the mobile home (when purchased new) must have been an amount not less than $25,000.00.

(h) If a mobile home is set upon a mobile home lot it shall be plumbed, underpinned ready for habitation within thirty days.
(Ord. 85-4. Passed 12-7-98.)

1723.05 LIABILITY OF PERSONS MOVING A MOBILE HOME.

Any person, firm or corporation bringing or causing to be brought into the City a mobile home shall be liable in damages to any owner or tenant of real or personal property and to the City for damage caused to publicly-owned municipal property.
(Ord. 85-4. Passed 12-7-98.)

1723.06 SEWAGE COLLECTION LINE.

All sewage collection lines shall be located 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, at least ten feet. The line shall have sufficient slope for adequate drainage. All joints shall be watertight.
(Ord. 85-4. Passed 12-7-98.)

1723.07 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 City from outside or from one lot to another inside the City. The cost of the permit shall be $50.00, which shall be paid prior to issuance.

(b) Before issuing such 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 City comply in all respects with the requirements of this article.
(Ord. 85-4. Passed 12-7-98.)

1723.99 PENALTY.

Any person who violates and the members of any firm and the directors and officers of any corporation which shall violate the provisions of this article shall be fined not less than $100.00 nor more than $500.00 for each day. Mobile homes not in compliance will be given citations by the Chesapeake Police Department and each day of continued violation shall constitute a separate offense under this article. Proper action for injunctive relief can be instituted in a court of record of Kanawha County, West Virginia.

This article will not affect any presently inhabited mobile homes. It will only affect what is placed in the City limits of Chesapeake after it is approved by Council. This article is designed to maintain property value for owners and also for health and safety reasons.
(Ord. 85-4. Passed 12-7-98.)

Municipal Fees

937.04 CHARGES FOR ~~REFUSE SERVICE~~.

(a) In conformity with the provision of Section 937.06 and in order to make the service provided for in this Article self-supporting, the following schedule of rates, fees, and charges for standard types of refuse disposal service is established:

(1) For standard weekly family service:

A. Single family unit residences, (6 bags limit a week) $13.67 per month

B. Multiple dwelling (apartments) per single family unit (6 bag limit per week per unit). $13.67 per month

(2) For standard weekly commercial service:

Retail stores, $20.33 per month

(3) For standard daily commercial service:

Hotel, restaurant or other business requiring day service, $20.33 per month

All charges are payable in advance and are for garbage and trash only, subject to adjustment for abnormal volume.

Minimum charges are as above, maximum to be determined by Council. The City Recorder is authorized to adopt and prescribe from time to time and enforce rules, regulations and procedure appropriate for the determination by the Recorder and the Recorder shall determine the classification of residence and of multiple dwellings (apartments) for the application of one or more of the foregoing rates which is properly applicable there to hereunder.

(b) Under these schedules the City 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, alteration or erection of building or structures.

(c) A flat charge shall be collected from each special service call made, and to this charge shall be added such charges as will compensate the City for extra refuse volume or weight involved in the types of refuse specified under subsection (b) above.

(Ord. 79-2.)

937.05 PAYMENT OF SERVICE CHARGES.

(a) The foregoing service charges shall be paid to the City Recorder by the owner of the respective premises and shall be due and payable on the first day of each calendar quarter in each year thereafter.

(b) The recorder shall promptly ~~collect all charges for the services provided for in this article, and shall keep in his office proper records showing all collections made and received by him and all charges which are in default with the respective amounts de 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, caused 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 City 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 bod in the penal sum required by Council and shall receive ten percent (10%) pf the amounts collected as fee for services. (1963 Code 9-13-4)

SECTION 7. COOKING EQUIPMENT. No owner, operator or occupant shall furnish of use any cooking equipment which does not comply with the following minimum standards:

(1) Every piece of cooking equipment shall be so constructed and installed that it will function safely and shall be maintained in sound working condition.

(2) Portable cooking equipment employing flame and cooking equipment Using gasoline or kerosene as fuel for cooking are prohibited.

SECTION 8 Responsibilities of Owners, Operators and Occupants.

(1) Sanitation

(a) Every occupant of a dwelling, or dwelling unit shall maintain in a clean and sanitary condition that part of the dwelling, dwelling unit and yard which he occupies and controls; and shall be responsible for his own misuse of areas and facilities available in common.

(b) Every owner or operator of a two-family dwelling, or multi-family dwelling, shall maintain in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in their proper use and operation.

2) Removal of Waste Matter.

(a) Every occupant of a dwelling unit shall dispose of all rubbish, ashes, garbage and other organic waste in a clean and sanitary manner by placing it in approved storage or disposal facilities which are safe and sanitary. Every occupant shall provide such facilities for his dwelling unit and shall maintain them in a clean and sanitary manner. The owner or operator of a multi-family dwelling shall be responsible for the clean and sanitary maintenance of common storage or disposal facilities. He shall be responsible further for placing out for collection all common garbage and rubbish containers, except where such facilities are for the sole use of an occupant, under which circumstances it shall be the responsibility of the occupant to place these containers out for collection.

SECTION 10. Any person, firm or corporation violating any of the provisions of this ordinance shall, upon conviction thereof, be fined in an amount not exceeding $50.00. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

TOWN OF CHESAPEAKE ORDINANCE:

ARTICLE 1723

Mobile Homes

1723.01 Keeping, Maintaining, Placing, or Parking of a Mobile Home

1723.02 Owner or tenant of land responsible for violation

1723.03 Definition of mobile homes

1723.04 Requirements as to the structure and value

1723.05 Liability of persons moving a mobile home

1723.06 Sewage collection line

1723.07 Permit required

1723.99 Penalty

CROSS REFERENCES: Power to Regulate – see WV Code 8-12-5(30)

(30) To prohibit with or without zoning the location of occupied house trailers or mobile homes in certain residential areas:

1723.01 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) 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.

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 thirty days

1723.02 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 specially permitted by the provisions of this article.

1723.03 DEFINITION OF MOBILE HOME

"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 "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

1723.04 REQUIREMENT 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 below:

(a) The mobile home shall be of dimensions of not less than ten feet in width and forty feet in length with the tongue included.
(b) 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' lot, then ten feet and not more than twelve-feet 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' lot.
(c) 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, this mobile home has to be placed the 10" clearance.
(d) 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 WV State Board of Health. These are found in booklets EG-3 and SG-93 of the State Board of Health.
(e) 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 thirty days of receiving a permit.
(f) 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.

~~(g) The purchase price of the mobile home (when purchased new) must have been an amount not less than $25,000.00~~

(g) The mobile home must appraise for an amount not less than $35,000, be not older than 5 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. (Ordinance amendment passed 3/21/22)

(h) If a mobile home is set upon a mobile home lot it shall be plumbed, underpinned and ready for habitation within thirty days.

1723.05 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 municipal property.

1723.06 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, at least 10". The line shall have sufficient slope for adequate drainage. All joints shall be watertight.

1723.07 PERMIT REQUIRED

(a) Any person, firm or corporation shall obtain a permit to keep, maintain or place a mobile home before it is moved withing the Town from outside or from one lot to another inside the Town. The cost of the permit shall be $50.00, which 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.

1723.99 PENALTY.

Any person who violates and the members of any firm and the directors and officers of any corporation which shall violate the provisions of this article shall be fined not less than $100.00 nor more than $500.00 for each day. Mobile homes not in compliance will be given citations by the Chesapeake Police Department and each day of continued violation shall constitute a separate offense under this article. Proper action for injunctive relief can be instituted in a court of record on Kanawha Count, West Virginia

This article will not affect any presently inhabited mobile homes. It will only affect what is placed in the Town limits of Chesapeake after it is approved by Council. This article is designed to maintain property value for owners and for health and safety reasons. (Ord. 85-4. Passed 12/7/1998)

ARTICLE 1725
Demolition

1725.01 Demolition of structures.

CROSS REFERENCES
Removal of unsafe structures - see W. Va. Code 8-12-16

1725.01 DEMOLITION OF STRUCTURES.

If any building or structure shall continue to be a nuisance as defined herein for a period of three months after the date of the order to vacate, the Building Inspector may cause such building or structure to be removed or demolished, and shall also have the right to file a lien against the real property in question for an amount not to exceed the assessed value of the property as recorded in the office of County Assessor, or to institute a civil action in the Circuit Court against the landowner or other responsible party for all costs incurred by the City with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.

Not less than ten days prior to instituting a civil action as provided for in this section, Council shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the City's intention to institute such action. The notice shall be sent to the most recent address of the landowner of record. If, for any reason, such certified mail is returned without evidence of proper receipt thereof, then in such event, Council shall cause a Class III-O legal advertisement to be published in a newspaper of general circulation in Kanawha County and post notice on the front door or other conspicuous location on the subject property.

In the event any landowner desires to contest any demand brought forth pursuant to this section, the landowner may seek relief in the Circuit Court.

All orders issued by the Building Inspector shall be served in accordance with the law of the State concerning the service of process in civil actions, and shall, in addition thereto, be posted in a conspicuous place on the premises affected by the compliant or order: Provided, that any landowner shall have the right to apply to the Circuit Court for a temporary injunction restraining Council pending final disposition of the cause. In the event such application is made, a hearing thereon shall be had within twenty days, or as soon thereafter as possible, and the court shall enter such final order or decree as the law and justice may require.
(Ord. 99-4. Passed 11-1-99.)

ARTICLE 1727
Flood Damage Control

1727.01 General provisions.
1727.02 Definitions.
1727.03 Establishment of the flood plain area.
1727.04 Utilization of the floodplain area.
1727.05 Criteria for building and site plan approval.
1727.06 Specific requirements.
1727.07 Administration.
1727.08 Appeals and penalties.
1727.09 Municipal liability.

CROSS REFERENCES
Flood plain management - see W. Va. Code 7-1-3(v)
Flood control projects - see W. Va. Code 8-30-1

1727.01 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 flood prone areas. However, any ordinance shall remain in full force and effect to the extent that its provisions are more restrictive.

(c) Applicability. 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 Flood Plain 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.

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.
(Ord. 7-6-92.)

1727.02 DEFINITIONS.

(a) Base Flood. The flood which has been selected to serve as the basis upon which the flood plain management provisions for this article and other ordinances have been prepared; for purposes of this article, the one-hundred (100) year flood.

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

(c) Development. Any man-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.

(d) Flood. A general and temporary inundation of normally dry land areas.

(e) Flood Plain.
(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.

(f) Floodway. 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.

(g) Floodproofing. 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.

(h) Lowest Floor. 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.

(i) Manufactured Home. 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 also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days.

(j) Manufactured Home Park or Subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

(k) New Construction. Structures for which the start of construction as herein defined commenced on or after the effective date of this article.

(l) One-Hundred (100) Year Flood. A flood that has one chance in one-hundred or a one percent chance of being equaled or exceeded in any given year.

(m) Person. Any individual or group of individuals, corporation, partnership, association or other entity, including State and local governments and agencies.

(n) Principally Above Ground. Where at least 51 percent of the actual cash value of a structure, less land value, is above ground.

(o) Start of Construction. 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.

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

(q) Substantial Improvement.

(1) 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 "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. The term 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 assure 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. (Ord. 7-6-92.)

1727.03 ESTABLISHMENT OF THE FLOOD PLAIN AREA.

(a) Identification. The identified floodplain area shall be those areas of the City of Chesapeake, which are subject to the one hundred (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 City 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 shall also include floodway areas identified in other studies for the approximated area discussed in subsection (b)(3) below.

(2) The floodway fringe area shall be those areas for which specific one hundred (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 one hundred (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 City 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 City.

(c) Changes in Designation of Area. The delineation of the identified flood plain area may be revised by the City where natural or man-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. (Ord. 7-6-92.)

1727.04 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 City in writing, that the flood carrying capacity within the altered or relocated portion of the watercourse in question will be maintained. (Ord. 7-6-92.)

1727.05 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 flood plain 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 (2)A. above, 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 Municipality's flood plain 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 flood plain 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 flood plain areas.

(Ord. 7-6-92.)

1727.06 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 Flood Plain Area.

(a) Basements and Lowest Floors.

(1) 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 1727.05(c)(2).

(2) 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:

A. 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.

B. The bottom of all openings shall be no higher than one foot above grade.

C. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(3) 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.

(b) Fill. If fill is used to raise the finished surface of the lowest floor to the base flood elevation:

(1) Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen feet beyond the building line from all points. For non-residential structures, fill shall be placed to provide access acceptable for intended use. At-grade access, with fill extending laterally fifteen feet beyond the building line, shall be provided to a minimum of twenty-five percent of the perimeter of a non-residential structure.

(2) Fill shall consist of soil or rock materials only. Sanitary land fills shall not be permitted.

(3) Fill materials shall be compacted to provide the necessary stability and resistance to erosion, scouring, or settling.

(4) 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.

(5) Fill shall be used only to the extent to which it does not adversely affect adjacent properties.

(c) 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 flood water.

(d) Anchoring.

(1) 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.

(2) All air ducts, large pipes and storage tanks located at or below the base flood elevation shall be firmly anchored to resist flotation.

(3) 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:

A. 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.

B. 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.

C. All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.

D. 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.

(e) 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.

(f) Utility and Facility Requirements.

(1) All new or replacement water systems whether public or private, shall be designed to minimize or eliminate infiltration of flood waters into the systems.

(2) All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

(3) All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.

(4) Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(g) Drainage. Adequate drainage shall be provided to reduce exposure to flood hazard. (Ord. 7-6-92.)

1727.07 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 flood plain 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. 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.

The Permit Officer shall require copies of all necessary permits from those governmental agencies from which approval is required by Federal or State Law.

A record of all information supplied to the Permit Officer shall be kept on file by the City.

(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 1727.05.

(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 City for whatever action it considers necessary.

(h) Fees. Application for a building permit shall be accompanied by a fee, payable to the City, based upon the estimated cost of the proposed construction as determined by the Permit Officer at the following rates:

Estimated Cost	Fee
$0.00 to $50.00	$20.00
$51.00 to $500.00	$20.00
$501.00 to $1,000.00	$20.00
Each additional thousand or part thereof.	$ - 0 -

(Ord. 7-6-92.)

1727.08 APPEALS AND PENALTIES.

(a) Appeals. 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 Council which shall be known as the Appeals Authority. Such appeal must be filed, in writing, within thirty (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 thirty 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 ordinance.

(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 paragraph (b)(4) of this section; and

(4) The Appeals Authority shall:
   A. Maintain a record of all decisions including justification for their 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 one hundred 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 City shall pay a fine to the City of not less than fifty dollars ($50.00) or more than five hundred dollars ($500.00). In default of such payment such person shall be imprisoned for a period not to exceed 10 days. Each day during which any violation of this article continues shall constitute a separate offense. In addition to the above penalties for all other actions are hereby reserved including an action in equity for the proper enforcement of this article. The imposition of a fine or penalty for any violation of, or non-compliance with, this article shall not excuse the violation or non-compliance with this article or permit it to continue; and all such persons shall be required to correct or remedy such violations or non-compliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the City to be a public nuisance and abateable as such.
(Ord. 7-6-92.)

1727.09 MUNICIPAL LIABILITY.

The granting of a permit or approval of a subdivision or development plan in an identified flood-prone area, shall not constitute a representation, guarantee, or warranty of any kind by the City or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the City.
(Ord. 7-6-92.)