

Elkins City Code

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To the user:

Please note that the Elkins City Council has passed additional ordinances and amendments since this codification of the Elkins City Code was compiled.

Sutton Stokes
Elkins City Clerk

Elkins City Code

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Chapter CH: CHARTER

Sections:

CH-1 Charter

Section CH-1 Charter

THE CHARTER.

Editor's note.-- The city Charter herein set out is Acts 1901, Chapter 151, as amended by the state legislature and by Home Rule Amendment pursuant to law as indicated by the historical citation following affected sections. A frontal analysis has been added for the convenience of the user. Some section catch lines have been altered and some material has been inserted in brackets for the purpose of clarification, no portion of which should be regarded as official. A uniform system of capitalization has been used and numbers have been spelled out rather than set out in arabic numerals. Editor's notes have been added to certain sections where the section is no longer accurate.

The legislature, in its 1969 revision and consolidation of chapters 8 and 8A of the Code of West Virginia into a new chapter 8, recognized, in section 8-1-6, "that when the provisions of existing special legislative charters are compared with and are considered in the light of the provisions of this chapter [i.e., the new chapter 8], there are five basic possibilities as to the relationship between such charter provisions and the provisions of this chapter, namely: (1) As to any particular charter provisions, such charter provisions may be inconsistent or in conflict with the pertinent provisions of this chapter; (2) although relating to the same subject matter and although not inconsistent or in conflict with any provisions of this chapter, certain charter provisions may be sufficiently different from pertinent provisions of this chapter as to indicate, as a matter of practical construction, that either the charter provisions or the provisions of this chapter, but not both, should be applicable; (3) although varying in certain respects, certain charter provisions may be similar to and in essential harmony with corresponding provisions of this chapter; (4) as to any particular charter provisions, there may be no counterpart of such provisions in this chapter; and (5) as to any provisions of this chapter, there may be no counterpart charter provisions."

Section 8-1-6, therefore, sets forth certain rules to be applied, in addition to the usual and ordinary rules of statutory construction, with respect to construction and applicability of legislative charters, and it is suggested that users of this city Code refer to W. Va. Code. § 8-1-6, in determining the present construction and applicability of any portion of the Elkins Charter to any given situation.

- § 1. Corporate name and powers.
- § 2. Corporate limits.
- § 3. Wards.
- § 4. Elective municipal authorities.
- § 5. Council to exercise corporate powers.
- § 6. Qualification of mayor and councilmen.
- § 7. Appointive officers and their qualifications.
- § 8. Election of mayor and other officers.
- § 9. Election of councilmen; vacancies.
- § 10. Qualifications and registration of voters.
- § 11. Elections; mode of voting; law governing.
- § 12. Determination of ties.
- § 13. Determination of contested elections.
- § 14. Vacancies.
- § 15. Council to have power to provide for additional officers and to set forth the power, duties, bonds, compensation, etc., of all officers; certain officers set forth.

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- § 16. To whom official bonds made payable and proceedings thereon.
- § 17. Oaths of officers.
- § 18. When officers' duties begin.
- § 19. Procedure when officer-elect is ineligible or fails to qualify.
- § 20. Executive and judicial powers of mayor.
- § 21. City clerk to keep records, etc., and act as mayor in his absence.
- § 22. Quorum.
- § 23. Powers and duties and books required to be kept by city clerk.
- § 24. Minutes of previous meeting to be read; roll call of council.
- § 25. Mayor to vote only in case of a tie.
- § 26. Regular and special meetings and compulsory attendance thereto.
- § 27. City Collector and treasurer to keep all city moneys; how paid out.
- § 28. General corporate powers of council.
- § 28-(a). Authority to erect community building.
- § 29. Mayor's docket and what shall be contained therein; record of cases.
- § 30. Annual estimate of expenses and levy of taxes; statement of receipts and expenditures to be published annually.
- § 31. City assessor--Powers and duties generally.
- § 32. Same--Assessment books.
- § 33. Lien for taxes, fines, etc., and enforcement thereof.
- § 34. Duties, bond, etc., of city collector and treasurer.
- § 35. License ordinances and payment of tax thereon.
- § 36. Provisions of law applicable to licenses and expiration date of certain licenses.
- § 37. Condemnation of real estate for public use.
- § 38. Charter of South Elkins abolished.
- § 39. Ordinances, etc., not inconsistent and bonds, etc., remain in effect.
- § 40. City to take over corporate assets and assume obligations of town of South Elkins.
- § 41. Duties of council as to first election, etc.
- § 42. Former rights, powers, etc., of city undisturbed.
- § 43. Inconsistent ordinances and acts repealed.

Sec. 1. Corporate name and powers.

The inhabitants of so much of the county of Randolph as is within the bounds prescribed by section two of this act [this Charter], and their successors, shall be and remain and they are hereby made a body politic and corporate by the name of "The City of Elkins," and as such shall have perpetual succession and a common seal; and by that name may sue and be sued, plead and be impleaded, purchase, lease and hold real estate, and personal property necessary for the purpose of said corporation. (1901, ch. 151, § 1.)

Sec. 2. Corporate limits.

The corporate limits of said city shall hereafter be as follows: Beginning at the southern abutment of Bridge Number two of the Western Maryland Railway, across the Tygarts Valley River on its Huttonsville branch, being the bridge of said railway, situated about one thousand feet south of the junction of the Belington extension and Huttonsville branch of said railway, and running thence down said Tygarts Valley River on the east bank thereof to a stone the southwest corner of the Davis and Elkins College property; thence with six lines thereof S. 60 E. 478.5 feet to a white oak; N. 47.30 E. 316.8 feet to a stone; N. 48 E. 268.6 feet to a white oak; N. 59 E. 255.5 feet to a stone; N. 21.30 E. 115.5 feet to a stone; N. 68 E. 328 feet to a stone in the west lines of the Beverly and Fairmont Pike; thence with the western line of said pike in a northerly direction 489 feet to a stake; thence N. 62.15 E. 582 feet to a small

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oak tree; thence N. 38.55 E. 1405 feet to a small oak; thence N. 19.15 E. 957 feet to the Woolwine Run; thence S. 58 E. 1885 feet to a post in the line between Woolwine and Taylor 40 Feet southeast of Judson Goddin' s corner; thence N. 17 E. 900 feet to a stone, corner to Wees, Woolwine and Taylor; thence N. 26 W. 2662 feet to the southeastern corner of the reservoir lot on the top of "Wees Hill"; thence with the back line of said reservoir lot to the northern corner thereof; the same being an oak; thence by a straight line to a point where the Buffalo and Leading Creek Pike crosses Cravens Run; thence by a straight line to the nearest corner of Maplewood Cemetery; thence with the line of said cemetery on the northern boundary thereof to the northwestern corner of the new addition to said cemetery; thence by a straight line due west to a stake in the elongation of Isaac Scott' s eastern line; thence with said line S. 13.45 W. to a large chestnut, a corner of said Scott' s land; thence with another line of said Scott' s land S. 24.30 W. 1333.7 feet to the western line of Harrison Avenue; thence with the western line of said avenue S. 77 E. 201.8 feet to a stake; thence S. 25 W. 1024.5 feet to a stake; thence S. 65 E. 166 feet to the western line of Robert E. Lee Avenue; thence with western line of said avenue; S. 25 W. 690 feet to a stake standing N.65 W. 30 feet from a stone monument; thence S. 14.40 W. 940 feet to the river; thence with a straight line to the beginning. (1901, ch. 151, § 2; 1911, ch. 81; 1915, Munl, Chtr., ch. 16; 1921, Munl. Chtr., ch. 8.)

Editor' s note. --The corporate limits description set out in this section is no longer valid as there have been subsequent additions to the city by annexations as provided for by state law. Copies of such annexations are on file in the city clerk' s office.

Sec. 3. Wards.

The territory of said city shall be divided into wards as follows:

First ward. Beginning at the beginning point of the corporate boundary, at Bridge Number two, and running thence down the Tygarts Valley River, with the meanders thereof, to the point where said river crosses the western boundary of said city and with said western boundary to the place of beginning.

Second ward. Beginning at the point where the second corporate boundary line crosses the Beverly and Fairmont Pike, near the residence of W. H. Head and running thence with said Beverly and Fairmont Pike to the point where it intersects the Buffalo and Leading Creek Pike; thence with said last mentioned pike to the point where it crosses Cravens Run on the corporate boundary and shall include all the territory lying between said two pikes and the eastern boundary of the city.

Third ward. Beginning at the point where the boundary of the First Ward crosses the West Virginia Central and Pittsburgh Railway, in the Tygarts Valley River, at Bridge Number one, near the intersection of Railroad Avenue and First Street, and running thence down said river with the meanders thereof to the point where the said river crosses the northern boundary of the city, thence with said northern boundary, in a northern direction to the point where said boundary line crosses said railroad, near Maplewood Cemetery, thence with said railroad to the place of beginning.

Fourth ward. Beginning on the West Virginia Central and Pittsburgh Railway at the junction of Railroad Avenue and Second Street and running thence with Second Street to John Street; thence with John Street to Randolph Avenue, thence with Randolph Avenue to the junction of said avenue with Buffalo Street (a point in the boundary of the second ward) and shall include all the territory lying west and south of the streets just named which is not embraced in the First and Second Wards as above bounded.

Fifth ward. Shall include all the territory within the corporate boundary lying north of the fourth ward, between the Second and Third Wards as above bounded.

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The number and boundary of the wards of said city may be changed at any time by the council thereof, but the number of wards shall not be reduced below three or increased above seven in number and shall be made as nearly equal in population as practical; provided, however, that no change in number or boundary of said wards shall be made nearer than sixty days before any general or special election to be held in said city; and provided, further, that no such change shall be made until public notice is given for at least thirty days, such notice to be posted at the front door of the mayor's office and at five or more public places in said city at least one of which notices shall be posted in each ward. (1901, ch. 151, § 3.)

Editor's note. --The ward descriptions set out in this section are no longer valid because of annexations to the city. Present ward boundary descriptions are on file in the city clerk's office.

Sec. 4. Elective municipal authorities.

The municipal authorities of said city shall consist of a mayor, to be elected by the voters of the whole city, and two councilmen from each ward, to be elected by the voters of such wards, (ten councilmen as provided by this Charter but the number thereof to be increased or diminished if the number of wards be increased or diminished), who together shall form a common council and who shall receive such compensation as the council shall from time to time determine, and which shall not be increased or diminished during their term of office. (1901, ch. 151, § 4.)

For related provisions of general law, see W. Va. Code, § 8-5-7, subsecs. (a) and (b).

Sec. 5. Council to exercise corporate powers.

All the corporate powers of said corporation shall be exercised by said council or under their authority, except when otherwise provided. (1901, ch. 151, § 5.)

Sec. 6. Qualification of mayor and councilmen.

The mayor and councilmen must severally at the time of their election, be assessed with property, real or personal, or both in the aggregate, of the value of at least two hundred dollars and have paid taxes for the preceding year on property situated within the corporate limits of said city of an assessed value of at least two hundred dollars, and at the time of their election be entitled to vote in said city for members of the common council thereof. (1901, ch. 151, § 6.)

Editor's note. --The provisions of this section have been declared unconstitutional. *State ex rel City of Follansbee*, 233 SE2d 419 (1977).

For related provisions of general law, providing, inter alia, that mayors and councilmen of municipalities must be assessed with only \$100 worth of property, with exceptions thereto for honorably discharged veterans of the armed forces of the U.S. for two years after discharge, see W. Va. Code, § 8-5-7, subsec. (c).

Sec. 7. Appointive officers and their qualifications.

There shall be a chief of police, city attorney, superintendent of streets, commissioner of waterworks, city assessor, city collector and treasurer, and city clerk, who at the time of their election or appointment shall be entitled to vote for members of the common council. These several offices or any two or more of them may be held by the same person, except that the offices of city clerk and city attorney shall be deemed incompatible with any other city office. These several offices shall be filled by

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appointment by the common council and to be held by the appointee during the pleasure of the council, and until his successor shall have been appointed and qualified; provided, however, that the common council by ordinance may provide for the election of any of said officers and prescribe their term of office at not less than one, nor more than two years. (1901, ch. 151, § 7.)

Editor's note. --Inasmuch as county assessors now perform the duties heretofore performed by municipal assessors, a city assessor is no longer appointed.

Sec. 8. Election of mayor and other officers.

On the first Tuesday in March, one thousand nine hundred and eleven, and every two years thereafter, on the first Tuesday in March, there shall be elected by the qualified voters of said city, a mayor and such other officers as may be prescribed by ordinance as provided for in the preceding section. The mayor shall hold his office for the term of two years, commencing on the first day of April after his election until his successor shall be elected and qualified.

Sec. 9. Election of councilmen; vacancies.

On the same day mentioned in the preceding section, one member of the common council shall be elected in each ward of the city, who shall reside in the ward from which they were [he is] elected, and shall hold their [his] office for the term of two years, or until their successors are [his successor is] elected and qualified. On the first Tuesday in March, 1912, one member of the common council shall be elected in each ward of the said city, who shall reside in the ward from which they are [he is] elected, and shall hold their [his] office for the period of three years from the first day of April next succeeding their [his] election, or until their successors are [his successor is] elected and qualified; on the first Tuesday in March, 1913, and on the same day of every second year thereafter, one member of [the common] council shall be elected in each ward, whose term of office shall begin on the first day of April next succeeding his election, and continue for the term of four years, and until his successor is elected and qualified; but if any member of the common council remove from the ward in which he was elected, his office shall thereby become vacant, and the council, shall fill such vacancy by appointment, until the next general election, of some qualified person residing in the ward. Each ward shall constitute an election precinct, and the council of the city, in office at the time of the passage of this act [this Charter], shall establish a voting place in each ward, at which the first election above provided for shall be held, and unless such new places be established, the election shall be held at the several places now established therefor. No voter shall be allowed to vote at any city election, excepting in the ward in which he resides. (1901, ch. 151, § 9; 1911, ch. 81.)

For general law relating to municipal voting precincts and duty of governing bodies to establish them so as to coincide with county precincts, see W. Va. Code, § 3-1-6. As to municipal precinct registration records, see W. Va. Code, § 3-1-27.

Sec. 10. Qualifications and registration of voters.

Editor's note. --The text of this section (being Acts 1901, ch. 151, § 10; 1911, ch. 81; 1915, Munl. Chtr., ch. 16; 1921, Munl. Chtr., ch. 8) is omitted as obsolete in all respects.
For general law as to qualifications and registration of voters, see W. Va. Code, ch. 3, arts. 1 and 2; see also, § 8-5-13.

Sec. 11. Elections; mode of voting; law governing.

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The mode of voting shall be by ballot, but the voter shall be left free to vote an open, sealed or secret ballot, as he may elect. The elections in said city shall be held and conducted and the result thereof certified, returned and finally determined under the laws in force in this state, relating to general elections, as they exist at the time any such election is being held, except that the persons conducting said elections shall on the day after the election is held deliver the ballots, tally sheets and poll books to the city clerk, and thereafter the common council of said city shall meet on the sixth day succeeding said election and canvass the returns of said election, and declare the result thereof, and in all respects comply with the requirements of the statutes relating to general elections as they are in force at the time of holding said election. The corporate authorities of said city shall perform all the duties in relation to such election required by general law of county courts [county commissions] and officers in the general election laws of this state, and the provisions of chapter 3 of the Code of West Virginia, in effect at the date of such election, concerning elections by the people, shall govern such elections and be applicable thereto, and the penalties therein prescribed for offenses relating to elections shall be enforced against the offenders at such corporate election; and the said general election laws shall have the same force and effect as if they were specially enacted for corporate elections and were by this act [this Charter] specially reenacted in extenso, except as modified in this amended Charter to the city of Elkins. (1901, ch. 151, § 11; 1911, ch. 81.)

For general law as to applicability of state election laws to municipal elections, see W. Va. Code, § 8-5-6. As to the canvassing of municipal elections, see W. Va. Code, § 8-5-17.

Sec. 12. Determination of ties.

Whenever two or more persons shall receive an equal number of votes for mayor, councilman or other city office, such tie shall be decided by the council in being at the time the election was held. (1901, ch. 151, § 12.)

For general law as to determination of tie votes in municipal elections, see W. Va. Code, § 8-5-15.

Sec. 13. Determination of contested elections.

All contested elections shall be heard and determined by the common council and the contest shall be made and conducted in the same manner as provided for in contests for county and district officers, and the common council by their proceedings in such cases shall comply as nearly as practicable in conformity with like proceedings of the county courts [county commissions] in such cases. (1901, ch. 151, § 13.)

For general law as to determination of contested municipal elections, see W. Va. Code, § 8-5-17.

Sec. 14. Vacancies.

Whenever a vacancy from any cause shall occur in any office the council shall by a majority vote of those present fill such vacancy. (1901, ch. 151, § 14.)

For general law as to filling vacancies in elective municipal offices, see W. Va. Code, § 8-5-10.

Sec. 15. Council to have power to provide for additional officers and to set forth the power, duties, bonds, compensation, etc., of all officers; certain officers set forth.

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(a) The council shall also have authority to provide by ordinance for the appointment of such other officers as shall be necessary and proper to carry into full force and authority the power, capacity, jurisdiction and duties of said city which is [are] or shall be vested therein, or in the council, or in the mayor or any other officer or body of officers thereof, and to grant to the officers so appointed the power necessary or proper for the purposes above mentioned. The council by ordinance shall define the duties of all officers so appointed or elected as aforesaid, and allow them reasonable compensation which shall be by monthly or quarterly salaries and not otherwise, except as to the collection of taxes, and fees to the mayor and chief of police in criminal convictions wherein the fees are recovered from the defendant, which compensation shall not be increased or diminished during their term of office; and shall require and take from all of them whose duty it shall be to receive its funds, assets or property, or have charge of the same, such bonds, obligations or other writings as they shall deem necessary or proper to insure the faithful performance of their several duties. All officers whether appointed or elected may be removed from office for malfeasance, nonfeasance or misfeasance by the council; but provided always that any appointed officer who holds his office at the pleasure of the council may be removed from his office at any time without notice.

For 1974 amendment to state constitution providing, in pertinent part, that no "judge of a municipal, police or mayor's court or any officer thereof shall be compensated for his services on a fee base or receive for his own use for his services any pecuniary compensation reward or benefit other than the salary prescribed therefor," see Const. , art. 8, § 11.

(b) Powers, duties, etc. , of chief of police. The chief of police shall have all powers, rights and privileges within the corporate limits of said city in regard to the arrests of persons, the collection of claims, the execution and return of process, that can be legally exercised by a constable of a district within this state; and may without having any warrant or other process therefor arrest any person who commits any offense against the laws of this state or infraction of the ordinances of said city, in his presence. He shall be ex officio the keeper of the jail and have charge of the city prisoners confined therein, and may confine any persons arrested by him in the city jail until such time as the charges against such person can be inquired into by the mayor. Any person fined by the mayor for infraction of any of the ordinances of the city may pay such fine to either the mayor or chief of police; and the said chief of police and his sureties shall be liable to all fines, penalties and forfeitures that a constable of a district is liable to for any failure or dereliction in his said office to be recovered in the same manner and in the same courts that the said fines, penalties and forfeitures are now recovered against a district constable.

(c) Powers, duties, etc. , of collector and treasurer. It shall be the duty of the collector and treasurer to collect city taxes, licenses, levies, assessments, and other such city claims as are placed in his hands for collection by the council, and [he] may distrain and sell therefor in like manner as a sheriff may distrain and sell for state taxes, and he shall in all other respects have the same powers as the sheriff to enforce the payment and collection thereof. (1901, ch. 151, § 15.)

Sec. 16. To whom official bonds made payable and proceedings thereon.

All bonds, obligations or other writings taken in pursuance of any provision of this act, [this Charter], or under the provisions of any ordinance of said city, shall be made payable to "The City of Elkins ," and the obligors therein and their heirs, executors, administrators and assigns, bound thereby shall be subject to the same proceedings on such bonds, obligations or writings for enforcing the conditions of the terms thereof, by motion or otherwise before any court of record or justice of the peace having jurisdiction thereof, held or acting in, or for said Randolph county, or any district thereof or elsewhere, that the sheriff or collector of said county and his sureties are or shall be subject to on his bond taken for the enforcement of his duties in the payment of the county levies. (1901, ch. 151, § 16.)

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For constitutional provision abolishing office of justice of the peace as of January 1, 1977, see W. Va. Const., art. 8, § 15.

Sec. 17. Oaths of officers.

The mayor and council and all other officers provided for in this act [this Charter] shall each, before entering upon the duties of their office, and within thirty days after their election or appointment, take the oath or affirmation prescribed by law for all officers in this state, and make oath or affirmation that they will truly, faithfully and impartially, to the best of their ability, discharge the duties of their respective offices so long as they continue therein. Said oath or affirmation may be taken before any person authorized to administer oaths under the laws in force at the time the same is taken, or before the mayor or city clerk of said city, but in any event a copy of said oath of said officers shall be filed with the city clerk. (1901, ch. 151, § 17.)

For general law as to oath of office of municipal officers, and requirement for filing certified copy in office of the county clerk, see W. Va. Code, § 8-5-5.

Sec. 18. When officers' duties begin.

The mayor and councilmen, and all other elected officers, shall enter upon the duties of their office on the first day of April next after their election, or as soon thereafter as they have qualified, and all appointed officers shall enter upon the duties of their offices as soon as they have qualified; and all officers shall remain in office until their successors are elected and qualified or until removed therefrom. (1901, ch. 151, § 18.)

Sec. 19. Procedure when officer-elect is ineligible or fails to qualify.

If any person elected to any office shall not be eligible thereto under the provisions of this act [this Charter] or shall fail to qualify as herein required, the council shall declare his said office vacant and proceed to fill the vacancy as required by this act. (1901, ch. 151, § 19.)

Sec. 20. Executive and judicial powers of mayor.

The mayor shall be the chief executive officer of the city, and shall take care that the orders, by-laws, ordinances, acts and resolutions of the council thereof are faithfully executed. He shall be ex officio a justice and conservator of the peace within the city, and shall within the same have, possess and exercise all the powers and perform all the 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 out of the corporate limits of the city unless the defendant resides or is found therein and process therein served upon him, He shall have the same power to issue attachments in a civil suit as a justice of his county has, but in such cases he shall have no power to try the same, but such attachments shall be made returnable and heard before a justice of the peace of his county. Any warrant or other process issued by him may be executed at any place in the county. He shall have control of the police of the city and may appoint special police officers whenever he deems it necessary, and may suspend any police officer until the next regular meeting of the council. And it shall be his duty especially to see that the peace and good order of the city are preserved, and that persons and property therein are protected, and to this end he may arrest, or cause the arrest and detention of, all violators of the laws of the state and the ordinances of the city, before issuing his warrant therefor if the offence is committed in his presence. 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 of Randolph or other place of

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imprisonment in such corporation, if there be one, until the fine or penalty and costs shall be paid; but the term of imprisonment in such cases shall not exceed thirty days. And in all cases when a person is sentenced to imprisonment or to the payment of a fine of ten dollars or more (and in no case shall a judgment for a fine be for less than ten dollars if the defendant, his agent or attorney object to a less fine being imposed), such person shall be allowed an appeal from such decision to the circuit court of the county of Randolph upon the execution of an appeal bond with security deemed sufficient by the mayor, in a penalty sufficient to cover said fine and costs before the mayor, and the costs in the circuit court in case said judgment be affirmed, with condition that the person proposing to appeal will perform and satisfy any judgment which may be rendered against him by the circuit court on such appeal. If such appeal be taken the warrant of arrest (if any), a transcript of the judgment, the appeal bond and other papers in the case, shall be forthwith delivered by the mayor to the clerk of said court, and the court shall proceed to try the case as upon indictment or presentment, and render such judgment, including costs, as the law and the evidence may require. The mayor shall from time to time recommend to the council such measures as he may deem needful for the welfare of the city. The expense of maintaining any person committed to the jail of the county by him, except it be to answer an indictment, shall be paid by the city and taxed as costs against the defendant. The mayor before acting shall execute bond with good security in the penalty of not less than one thousand dollars, or in such additional penalty as the council may require, subject to the approval of the council, with the same conditions as required in bonds executed by [a] justice of the peace by chapter 50 of the said Code [of West Virginia]; and all the provisions of said chapters relating to money received by a justice shall apply to like moneys received by the mayor. (1901, ch. 151, § 20.)

For constitutional provisions that mayor's courts in incorporated cities shall have jurisdiction to enforce municipal ordinances, but that on and after January 1, 1977, any other jurisdiction theretofore exercised by such courts shall cease, see W. Va. Const., art. 8, § 11. As to abolition of office of justice of the peace as of January 1, 1977, see W. Va. Const., art. 8, § 15.

Sec. 21. City clerk to keep records, etc., and act as mayor in his absence.

The city clerk shall keep an accurate record of the proceedings of the council, and have charge of and preserve the records of the city, and in case of the absence from the city, or in case of the sickness or inability of the mayor to act, or during any vacancy in the office of mayor, he shall perform such duties of the mayor as pertain to him as chief executive of the city and be vested with all power necessary for the performance of such duties, but shall not be vested with any of the authority of the mayor, pertaining to civil suits. He shall be a conservator of the peace within the city. (1901, ch. 151, § 21.)

For constitutional provision divesting municipal mayor of jurisdiction over civil suits, see W. Va. Const., art. 8, § 11.

Sec. 22. Quorum.

The presence of a majority of the council shall be necessary to make a quorum for the transaction of business. (1901, ch. 151, § 22.)

For general law as to quorum at meetings of municipal governing bodies, see W. Va. Code, § 8-9-1.

Sec. 23. Powers and duties and books required to be kept by city clerk.

The council shall cause to be kept by the clerk in a well bound book to be called the "Minute Book," an accurate record of all its proceedings, ordinances, acts, orders and resolutions, and in another to

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be called "Ordinance Book," accurate copies of all general ordinances adopted by the council; both of which shall be accurately indexed and open to [the] inspection of anyone required to pay taxes in the city, or who may be otherwise interested therein. All oaths and bonds of officers in the town, and all papers of the council shall be endorsed, filed and securely kept by the clerk. The bond of officers shall be recorded in a well bound book to be called "Record of Bonds." The clerk shall perform such other duties as may by ordinance of the council be prescribed. The transcripts of ordinances, acts, orders and resolutions certified by the clerk under the seal of the city shall be deemed prima facie correct when sought to be used in any court or before any justice. (1901, ch. 151, § 23.)

For constitutional provisions abolishing office of justice of the peace as of January 1, 1977, see W. Va. Const. , art. 8, § 15.

For general law as to records and minutes of municipal governing bodies, and duties of clerks and recorders with respect thereto, see W. Va. Code, §§ 8-9-3, 8-10-3.

Sec. 24. Minutes of previous meeting to be read; roll call of council.

At each meeting of the council the proceedings of the last meeting shall be read and corrected if erroneous and signed by the presiding officer for the time being. Upon the call of any member the ayes and noes on any question shall be taken and recorded by the clerk in the minute book. The call of the members for such vote shall be made alphabetically. (1901, ch. 151, § 24.)

For corresponding provisions of general law, see W. Va. Code, § 8-9-3.

Sec. 25. Mayor to vote only in case of a tie.

The mayor shall have no vote upon any proceedings before the council except in the case of a tie. (1901, ch. 151, § 25.)

For general law as to authority of municipal mayor to cast tie-breaking vote "unless he has previously voted," see W. Va. Code, § 8-9-2.

Sec. 26. Regular and special meetings and compulsory attendance thereto.

The regular meeting of the council shall be held at such time and at such places in the city as they shall from time to time ordain and appoint; and it shall be lawful for the council by ordinance to vest in any officer of the city, or in any member or number of members of their own body, the authority to call special meetings and prescribe the modes in which notice of such special meetings shall be given. If a majority of the members of the council do not attend any regular or special meeting, those in attendance shall have authority to compel the attendance of absent members under such reasonable penalties as they may think proper to impose; all questions put to a vote, except such matters as are hereinafter provided for, shall be decided by a majority of the members present. (1901, ch. 151, § 26.)

For general law as to proceedings of municipal governing bodies, see W. Va. Code, § 8-9-1 through 8-9-3.

Sec. 27. City collector and treasurer to keep all city moneys; how paid out.

All moneys belonging to the city shall be paid over to the city collector and treasurer; and no money shall be paid out by him except as the same shall have been appropriated by the council and upon an order signed by the mayor and city clerk, and not otherwise, except [that] at the expiration of his term

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of office upon the order of the council, signed by the mayor and clerk, he shall pay over to his successor all the money remaining in his hands. (1901, ch. 151, § 27.)

Sec. 28. General corporate powers and duties of council.

Editor's note.--The subsection numbers in this section are supplied by the editors to facilitate reference thereto, and are not to be regarded as official.

For state law as to general powers of municipalities, see W. Va. Code, § 8-12-1 et seq.

(1) The council of said city shall have the following general powers, and may provide by ordinance and resolution for the exercise and enforcement of the same, namely:

(2) To lay off, open, close, vacate and maintain public grounds, parks and public places, and name and re-name the same.

(3) To regulate the planting, trimming and preservation of shade trees by persons and corporations in streets, alleys, roads, public grounds and places, and to provide for the planting, removal, trimming and preservation of such trees and other ornamental shrubbery by the municipality.

(4) To declare as public nuisances any trees, shrubbery, etc., growing on private property within said city, the roots of which clog or choke any public sewer belonging to said city, or damage the streets or sidewalks of said city, and provide for the removal or destruction of said trees or shrubbery.

(5) To establish, maintain and regulate free public libraries and reading rooms, and to purchase books, papers, maps, and manuscripts therefor, and receive donations and bequests of money or property for the same, in trust or otherwise, and to provide for the rent and compensation for the use of any existing free public libraries established or managed by private corporations or associations organized for that purpose.

(6) To protect divine worship in or about the premises where held.

(7) To locate, lay off, close, open, alter, grade, straighten, widen, narrow, vacate, pave, repave, construct and keep in repair bridges, viaducts, undergrade crossings, roads, streets, alleys, sidewalks, crosswalks, drains and gutters, for the use of the public, or any of the citizens thereof, and to improve and light the same, and keep them clean and free from obstruction on or over them; provided, the municipality shall not be liable for or respond in damages for injury to persons or property caused by or from a defect or obstruction in or on the plat [plot] of ground between the gutter or curb of any street and the paved or plank sidewalk extending there along, or between any such sidewalks and the property lying next adjacent thereto, unless the municipality had actual notice of such defect or obstruction prior to the time of the injury complained of.

(8) To enter into a contract with any internal improvement company for the joint ownership of any bridge erected by the municipality and such improvement company, upon such terms as may be prescribed in the contract between them, but such bridge or bridges shall be in a public highway, and the interest of the company shall only be such proportionate part thereof as it may pay for, or that [which] may be named in the contract.

(9) To regulate the width of sidewalks and streets, and the width and care of public grounds or grass plots abutting thereon, and to order the sidewalks, footways, crosswalks, drains and gutters to be curbed and paved, or repaved and kept in good order, free and clean, and to provide for the removal of ice and snow therefrom and for sprinkling the same, by the owners or occupants of the real estate next

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adjacent thereto.

(10) To regulate the use of walks, highways and bridges and the rate of speed or travel thereon, and to prevent and punish for fast driving or riding thereon of any horse, bicycle, wheeled vehicle, wagon, steam or electric or traction engine, motor car or automobile, and to prevent injury to or waste on such streets, alleys, roads or highways from overloaded or improperly loaded vehicles.

(11) To regulate the making of division fences and party walls by the owners of adjoining and adjacent premises and lots, and to regulate or require drainage by the owner of such lots or other real estate by the proper drains, ditches and sewers, and to fill and cause to be filled any lot below the established elevation or grade.

For a case holding that the legislative grant to regulate division fences does not authorize the municipal council to declare a fence a nuisance unless and until it has, by a general ordinance, in fact declared the nature and character of the fences that may properly be built and maintained, see Donohoe v. Fredlock, 72 W. Va. 712, 79 SE 736 (1913).

(12) To regulate the erection and use of radio aerials and other radio equipment.

(13) To regulate or prohibit street carnivals, street fairs, or street parades, advertising exhibitions or other exhibitions thereon, or the exhibition of natural or artificial curiosities thereon.

(14) To regulate or prohibit the ringing of bells, blowing of steam whistles, sounding of motor car or automobile horns, or use of hand organs or other musical instruments of any annoying character or other music of itinerant performers in the streets, roads, parks or public places of the municipality; provided, however, that this regulation shall not apply to common carriers in the ordinary discharge of their duties.

(15) To license, regulate or prohibit auctioneering.

(16) To license or prohibit the sale of goods, wares, merchandise, drugs or medicines on the streets or other public places.

(17) To impose a license tax on persons keeping for hire taxis, carriages, hacks, buggies, wagons or for carrying for hire persons or baggage in such vehicles, and to regulate the charge for such services within the corporate limits of said city.

(18) To establish and regulate hack stands and stands for automobiles, coaches, cabs and omnibuses kept on the streets for hire.

(19) To regulate, assess and collect a license fee for the use of the municipality on anything or business for which a state license is required by chapter 32 of the Code, subject to the exemption as provided therein; and excepting herefrom the right to require licenses under subsections (s) and (t) of section 1 of chapter 32 of the Code.

Editor's note. --The statutory citations in subsection (19) are to Barne's Code, Annotated, 1923, which were carried over into the Official Code of West Virginia, 1931, as article 12, chapter 11 thereof. What was § 1 of ch. 32 of Barne's Code has since been repealed; and the whole of article 12, chapter 11 of the Official Code of 1931, relating to state license taxes, was repealed and reenacted so as to provide for state business franchise certificates instead; but see W. Va. Code, § 11-12-4 as to authority of municipalities to impose license taxes pursuant to W. Va. Code, § 8-13-4,

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up to the amount of the state license tax in effect on January 1, 1970, "with like effect as if this article 1/4art. 12, ch. 11 1/2 had not been enacted."

(20) To establish, locate and keep in repair market places and market houses, and regulate markets, prescribe the time for holding the same and to authorize the seizure thereof and destruction of any and all such foods and drink products as shall be found unwholesome, dangerous or offensive, and without recourse against the municipality for its [the] cost or value.

(21) To regulate the sale of all food or drink products, milk, fresh meats, fish and vegetables, and provide for inspection of the same.

(22) To appoint market masters and invest them with power to make arrests for the violation of the municipal ordinances or regulations.

(23) To regulate and provide for the weighing of hay, coal and other articles for sale in the markets.

(24) To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome, and to prevent and [or] regulate the distribution by canvassers, agents or other persons of sample packages of drugs, medicine, powders, paint, or other articles which may be dangerous or unwholesome for children.

For a case holding that, under the grant of power "To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome. . .," the common council may abate only that as a nuisance which is recognized as such per se or branded as such by lawful statute or ordinance, see Donohoe v. Fredlock, 72 W. Va. 712, 79 SE 736 (1913).

(25) To regulate or prohibit the keeping, handling and transportation of explosives and dangerous combustibles within the municipality.

(26) To regulate or prohibit the erection or maintenance, in what council deems an improper locality within the municipality, of any blacksmith shop, livery stable, cow house, cattle pen, poultry house, pigpen, privy, billboard, signboard, gas or other engine, or the use of walls and walks for signs, and to abate by summary proceedings whatever in the opinion of the council is a nuisance; provided, that nothing in this paragraph shall apply to common carriers in the construction, erection or maintenance of shops, engines, machinery, or structures upon their own property.

For a case holding that, under the legislative grant of power to the common council "to abate or cause to be abated anything which in the opinion of a majority of the whole council shall be a nuisance, " the council may abate only that as a nuisance which is recognized as such per se or branded as such by lawful statute or ordinance, see Donohoe v. Fredlock, 72 W. Va. 712, 79 SE 736 (1913).

(27) To regulate or prohibit the distribution of hand-bills, circulars and other advertisements of like kind on the streets, roads, alleys and public places, or in private yards or buildings, without first having procured the consent of the owner or occupier thereof.

(28) To prohibit within the municipality or within one mile of its corporate limits the erection or maintenance of any slaughter house, soap factory, glue factory, lampblack factory, tannery or other house, shop or factory, of like kind or character.

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(29) To establish, regulate and maintain baths, bath houses, swimming pools, drinking fountains, water troughs and public toilet stations and free public band concerts, and to regulate the time and place of bathing in pools, streams and public waters within the police jurisdiction of the municipal corporation.

(30) To prevent hogs, cattle, sheep, horses and other animals and fowls of all kinds from going at large in the municipality and to establish and maintain places for their detention, to make regulations respecting the keeping and sale of same, and to appoint a poundmaster and define his duties.

(31) To arrest, convict and punish any person for keeping an assignation house, house of ill fame, or for leasing or letting to another person any house or other building for the purpose of being used or kept as an assignation house or house of ill fame, or for knowingly permitting any house owned by him or under his control to be used as an assignation house or house of ill fame or loafing, boarding or loitering in an assignation house or house of ill fame, or frequenting the same.

(32) To arrest, convict and punish any person for importing, printing, publishing, selling or distributing any book, picture or device or other thing containing obscene language or pictures, or making indecent representations.

(33) To restrain and punish vagrants, mendicants, beggars, tramps, common prostitutes and their associates, and drunken and disorderly persons within the municipality, and to provide for their arrest and manner of punishment.

(34) To establish a board of health and invest it with the necessary power to attain its object.

(35) To establish quarantine and to erect and maintain pest houses and places of detention, and to make and enforce necessary orders for controlling or preventing the spread of infectious and contagious diseases, and for abating pestilence.

(36) To prohibit and punish by fine any person, firm or corporation knowingly bringing into the corporate limits persons who are paupers, or persons afflicted with contagious diseases, or to punish by fine, or by fine and imprisonment, any persons so bringing within the corporate limits such pauper or diseased person.

(37) To provide for the poor of the municipality, and to that end the municipality may contract with the county court [commission] of Randolph county for keeping such poor at the county poorhouse at a price and on such terms as may be agreed upon between the county court and such municipal authorities.

(38) To authorize the taking up and provide for the safekeeping and education, for such periods of time as may be deemed expedient, of all children who are destitute or are without proper parental or other care and who are growing up in mendicancy, ignorance, idleness or vice.

(39) To arrest, convict and punish any person for cruelty, unnecessarily or needlessly beating, torturing, mutilating, killing or overloading, overdriving or wilfully depriving of necessary sustenance, any horse or other domestic animals.

(40) To restrain fraudulent practices within the municipality.

(41) To arrest, convict and punish any person for gambling or keeping any gaming tables, commonly called faro bank, table and chips used in playing such game; crap table or chips used in

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playing such game; or roulette or the wheel or chips used in playing such game; or keno table or table of like kind or device used in playing the same; or table of like kind under any denomination, whether the game or games be played with cards, dice or otherwise, or any person who shall be a partner, or concerned in interest in the keeping or exhibiting of such gaming table, faro bank table, or chips, roulette table or chips, crap table or chips, keno table or devices, or keeping or maintaining any gambling house or place, or betting or gambling for money or anything of value, and to destroy such gambling paraphernalia as may be found in use on any such premises.

(42) To restrain all felons and persons guilty of offense against this state or the United States and deliver them over to the authorities or court having jurisdiction of the offense whereof such person is accused.

(43) To apprehend and punish any person, who, without a state license therefor, is guilty of carrying about his person within the municipality any revolver or other pistol, dirk, bowie knife, slingshot, razor, billy, metallic or other false knuckles, or any other dangerous or deadly weapons of like kind and character, as provided by chapter 51 of the acts of the legislature of 1909 [W. Va. Code, § 61-7-1] and the punishment therefor, whether for the first or other offense, shall be that prescribed by said chapter for any such person guilty under the misdemeanor clause provided therein, but the place of confinement of such guilty person may be in the jail or lockup of the municipality, in lieu of the county jail; provided, that the mayor of the municipality or other person exercising the functions of his office, may, in his discretion, decline to inflict the punishment herein mentioned, and instead thereof may require or hold such guilty person to answer an indictment by the grand jury of Randolph county for the violation of such law; and it shall be the duty of the prosecuting attorney of said county, when requested by the mayor of the municipality, to appear and prosecute such offending person before such mayor; provided, further, that regularly appointed police officers of the municipality, whose services are rendered to and paid for by the municipality, shall not be required to give bond, or any bond provided by said chapter 51 of the acts of the legislature of 1909 [W. Va. Code, § 61-7-2].

(44) To provide in or near the corporate limits of the municipality a cemetery or other place for the burial of the dead, and to regulate interments therein, and to guard and police the same, and to provide for the cremation and incineration of dead human bodies when from the nature of the malady or pestilence from which death ensued, the municipal board of health may direct.

(45) To regulate the erection, construction, alteration and repair of dwelling houses, buildings and other structures within the municipality and to compel the numbering of the same by the owners or occupants thereof; provided, that the provisions of this paragraph shall not apply to common carriers in the erection, construction, alteration or repair of structures upon their own property.

(46) To regulate by license and otherwise, plumbers, electricians, sewer tappers and vault cleaners, except when such persons are employed by a common carrier upon its own property.

(47) To regulate the hanging of doors and construction of stairways, elevators and fire escapes in theatres, churches, school buildings, factories and other places where many persons are received at one time, and to require the construction of fire escapes in such buildings.

(48) To establish fire limits, and to regulate the construction of buildings and designate material to be used in the construction of buildings within such limits.

(49) To regulate the building of fire walls, fireplaces, chimneys, boilers, smokestacks and stovepipes.

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(50) To take down and remove, or make safe and secure, any and all buildings hereafter erected and require the alteration and repair of any by the owners thereof, that are or may become dangerous, or to require the owners or their agents to take down and remove them or put them in a safe and sound condition at their own expense.

(51) To regulate the height, construction and inspection of all new buildings hereafter erected, and the alteration and repair of any buildings now or hereafter erected in the municipality, and to require permits to be obtained of the municipality for such building and structures, and the repair and alteration thereof, and that plans and specifications thereof be submitted to the council or some person designated by it; provided, that the provisions of this paragraph shall not apply to buildings or structures located upon the property of common carriers.

(52) To regulate the limits within which it shall be lawful to erect any steps, porticos, bay windows, bow windows, show windows, awnings, signs, columns, piers, or other projection or structural ornaments of any kind for the houses or buildings on any street.

(53) To provide for the prevention and extinguishment of fires, and for this purpose to organize, equip and govern fire companies, and to prescribe the powers and duties of such companies and department, and of the several officers thereof, and to impose on those who fail to obey any lawful command of the officers in charge of such company any penalty which the council is authorized to impose for the violation of an ordinance, and to give authority to such fire officer to direct the pulling down of any building or the destruction of any fence, wall, building or other thing if such officer deem it necessary to prevent the spreading of fire.

(54) To protect the persons and property within the corporate limits and to preserve the peace and good order therein, and for this purpose to appoint, when necessary, a police force and such other officers as may be deemed necessary.

(55) To prescribe the powers and define the duties of the officers appointed under corporate authority, fix their term of service and compensation, if not otherwise prescribed in this chapter [Charter], and to require and take from them bonds, when deemed necessary, payable to the State of West Virginia, or the City of Elkins, with such securities and in such penalties as may be prescribed, conditioned for the faithful discharge of their duties.

(56) To erect, authorize and prohibit the erection of power plants, heating plants, gasworks, electric light works or waterworks in the municipality for public service, and to erect, purchase, own or lease and maintain within or without the corporate limits of the municipality such gasworks, electric lights, power works, waterworks and reservoir to supply the municipality or its inhabitants, water, light, heat and power, and to prevent injury to the same or the pollution of the water or to impair the healthfulness thereof and may acquire land for said purposes by purchase, lease or condemnation.

(57) To grant, by ordinance or franchise, for periods not exceeding twenty-five years, the use of its streets, roads, alleys and public places, to lay pipes, conduits, manholes, drains, and other necessary fixtures and appliances, to be used for supplying the municipality and its inhabitants with steam or hot water, or both, for heat and power purposes, or both, or for illuminating purposes, and to grant by ordinance or franchise, for periods of not exceeding twenty-five years, the use of its streets, roads, alleys and public places for the construction of movable or rolling roads for the conveying or moving of passengers, freight and other property, and those in charge of the same, upon such terms and conditions as may be prescribed.

(58) To grant by ordinance or resolution permits for the temporary use of its streets, roads,

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alleys and public places for the construction of moving or rolling roads for the conveying or moving of passengers, freight, vehicles, animals or other property, upon such conditions as may be prescribed.

(59) To provide a revenue for the municipality and appropriate the same to its expense; and to cause to be assessed and collected in each year an ad valorem tax, within the limits of the general tax laws of the state, on all property in the municipality subject to state and county taxes, as valued and returned for such taxation by the county assessor.

(60) To levy an annual capitation tax of not more than two dollars upon each male resident of the municipality who has attained the age of twenty-one years, and from which persons afflicted with bodily injury and those having attained the age of fifty years shall be excepted.

Editor's note.--Sec. 2, art. 10 of the constitution of West Virginia, authorizing a capitation tax as provided in subsections (60) and (61), has been repealed.

(61) To provide for the collection of said capitation at the time, and in the manner as the regular capitation tax is collected, which may be done either through the county assessor or by any other person designated by the municipality; but if the county assessor or other person than city assessor, he shall give such bond as may be required by the council before making such collection.

(62) To issue and sell bonds in the manner provided by general laws governing the same, and in addition to other taxes, to levy for the maintenance of a sinking fund where such bonds have been issued and are unpaid, and to control such sinking fund and to make temporary loans thereof, or to make temporary investments thereof, or of any specific fund for the time such fund cannot be advantageously used for the purpose for which it was levied and collected.

(63) To provide for the rent and compensation for the use of any existing free public hospital, established or managed by a private association or corporation organized for that purpose.

(64) To provide for the removal and abatement of nuisances; and to carry out and enforce sanitary regulations.

(65) To compel the attendance at public meetings of the members of the council, or other body exercising their respective functions.

(66) To buy, lease and operate, either within or without the municipality, stone quarries, crushers and land for said purposes, for the purpose of furnishing a supply of stone or other material suitable for macadamizing or paving the streets, sidewalks and alleys and improving public property.

(67) Subject to the approval of the public service commission, the council may regulate the running of steam and electric cars over and across any street or alley, and when deemed proper by the council, it may by resolution require any railroad company or street car company to provide at its own expense a suitable watchman at any crossing of any street or alley during such hours as may be designated by the council or otherwise regulate such crossings in order to protect persons walking or driving over them.

(68) Whenever in the opinion and judgment of the council of the municipality it is necessary, it shall have power to construct such sewers as in its opinion and judgment are needful to the comfort, health, safety and welfare of the inhabitants of said municipality or of the public, and may construct such sewers at such places within or without the corporate limits, and in such manner as in the opinion and judgment of said council may be proper; but so far as practicable, shall construct such sewers under the

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streets, alleys or roads of the city; and whenever in the opinion and judgment of said council any street or alley of said city should be paved or repaired with brick, or other suitable substance for paving purposes, or surfaced and repaired with amiesite or other suitable material, the said council may cause the same to be done in such manner as in the opinion and judgment of the council is most suitable for the purpose, and whenever in the opinion and judgment of the council any sidewalks or walks of stone, brick, cement or other suitable substances, are necessary, or beneficial, and for the best interest of the inhabitants of said city, the council may order the same to be constructed in such manner and of such material as in the opinion and judgment of the council are most suitable for the purpose, and for the purpose of paying the expenses and cost of any such sewer, paving, sidewalks or footwalks, the said council may levy a special assessment for the cost thereof against the real estate benefited thereby, and which bounds or abuts thereon, and may cause such special assessment with interest thereon after thirty days from the levying of such assessment, at the rate of six per cent per annum, to be collected as city taxes are collected against real estate in said city, as provided in chapter 151 of the acts of 1901 [this Charter] , and as provided for the collection of state taxes assessed against real estate in said city; but in the case of any sewer constructed under and along any street, alley or road, or in case of any pavement constructed upon any street or alley the bounding or abutting real estate on each side of the street or alley shall be held liable to pay one-half of the cost of such sewer and pavement, repavement or surfacing of pavement heretofore laid, and in case of any sidewalks or footwalks, the real estate next adjacent thereto shall be held liable to pay the whole cost of such sidewalks or footwalks; provided, that in case of the construction of any sewer, the amount to be assessed against the abutting property shall be ascertained by taking one-half of the total costs of such sewer, including mains and laterals, on all the streets or alleys or through private property which enters into such mains, and together make one complete sewer line, and from one-half of the total cost and total length of such sewer, the cost per foot shall be ascertained. This sum shall then be multiplied by the number of feet which any lot, part of lot, or other real estate, abuts thereon which is liable to assessment under this act, and the amount so ascertained shall be assessed against the abutting property as hereinbefore provided, but no lot already having sewer service and occupied by a dwelling shall be assessed with any portion of the cost of any new sewer unless it is necessary for the owner of such lot to connect with such new sewer.

For a case holding that the language of this subsection to the effect that "no lot already having sewer service shall be assessed with any portion of the cost of any new sewer," does not apply to a property owner who has secured a connection to an unsanitary sewer, which renders necessary the construction by the city of the new sewer, see City of Elkins v. Haggerty, 111 W. Va. 422, 162 SE 313 (1932).

*For a case construing similar language in a predecessor of this subsection, that is "**** and for the purpose of paying the expenses and cost of any **** sidewalks or footwalks, the said council may levy a special assessment for the cost thereof against the real estate benefitted thereby which bounds or abuts thereon. *** and in case of any sidewalks or footwalks the real estate next adjacent thereto shall be held liable to pay the whole cost of such sidewalks or footwalks," see Lee v. City of Elkins, 99 W. Va. 201, 128 SE 83 (1925).*

For a case construing, in the light of prior state Code provisions (now W. Va. Code, § 11A-2-2), certain language of a predecessor of this subsection which is similar to language hereof, and holding that the city's right to a personal judgment was barred five years after the assessment was laid, see City of Elkins v. Stickley, 114 W. Va. 103, 170 SE 902 (1933).

For a case construing some similar language of a predecessor of this section, and holding that "a legal severance of property is not made by a mere easement over it," and that a sewer laid through an easement over a single lot under single ownership did not create separate lots abutting the sides of such easement, see City of Elkins v. Stickley, supra.

For state law, see W. Va. Code, § 8-18-1 et seq.

(69) The said city council is hereby given full right and authority to require any person or lot

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owner in said city to connect a sewer leading from his or her house or lot into any public sewer which is located in any public street or alley adjoining the same, and if such house or lot owner fails or refuses so to do after having been given reasonable notice, the said council may enter upon said lot and construct such sewers and may levy the actual cost thereof against the lot upon which the same is built and collect such cost from the owner of such lot in the same manner as city or state taxes are collected.

(70) And, provided, further, that in the case of the grading, regrading, paving, repaving, and surfacing old pavements, the cost of construction, including material and labor, grading, cuts and fills, shall be charged to the bounding and abutting property ratably, according to the extent of the several parcels of real estate adjacent thereto, and assessed and collected from the owners thereof as other assessments and taxes are collected, and the amount of such assessments against the several properties shall be ascertained by the apportionment of the total cost thereof upon any particular street or part of a street or alley so paved or improved, according to the relative frontage of each parcel to the entire extent of such work; and the council may also cause certificates of the several assessments so made, showing the separate parcels of property, the owner, amount of the assessment thereon, with such general description as will identify the property, to be prepared, certified and recorded in the deed of trust record in the office of the clerk of the county court [commission] of Randolph county, and such record shall constitute a lien upon such property in favor of the said city for the amount of such assessment and may be enforced in equity as other liens are enforced. The amount so assessed and for which such certificates are issued shall be payable in ten payments as follows: One-tenth of such amount shall be payable as soon as said assessments are laid; and a like one-tenth, together with interest on the whole remaining unpaid for one year, shall be paid on or before one year thereafter until all of such assessments are paid; providing [provided] , that any abutting owner so liable for any portion of the costs of such improvement shall have the right at any time after the same is certified as aforesaid to the treasurer for collection to anticipate the payment of any and all such assessments, and shall be allowed to pay the face of any and all such assessments with interest at six per cent per annum only to the time of such payment.

(71) When such assessments or certificates are perfected, as aforesaid, the council may by resolution entered of record by it, sell, assign or transfer to any person or persons for cash all or any of the assessments or certificates, perfected as herein provided, and apply the proceeds received thereby to the cost of such improvements, providing that the city in transferring such certificates shall not be held as guarantor or in any way liable therefor, except upon the direct action of the council, expressed by resolution of record before sale.

(72) Said certificates shall be exempt from state, county, district and municipal taxes.

(73) When all assessments are paid, the treasurer shall issue a release of such lien which may be recorded in the office of the clerk of the county court [commission].

(74) But in case of grading, paving, or repaving, or otherwise permanently improving any street or alley, before the council shall direct the undertaking of such work, it shall enter an ordinance reciting the necessity thereof and the opinion and judgment of the council favoring such work, and shall cause survey, profiles and estimates of the cost thereof to be made and filed with the council, and give notice to all parties affected thereby, by publication of notice for two successive weeks in some newspaper of general circulation in the city, describing in a general way the work to be undertaken and appointing a day after the completion of the publication of the said notice, for hearing before the council upon the advisability of undertaking said work, at which time all parties interested therein may appear, either in person or by agent or attorney and shall have access to the said surveys, plans, specifications, etc., and upon such hearing the council may undertake the said work; provided, the same is favored by three-fifths vote of the members of said council, or may decline to undertake the said work.

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(75) In case the council shall determine to undertake said work, it shall be carried on, completed and paid for as hereinbefore provided for; and in which case the certificates or liens acquired on failure of any property owner to pay his assessment and apportionment, such certificates may be issued and sold, or negotiated to the contractor doing the work, or to any other person if the council deems it expedient to do so; provided, the city, in issuing such certificates, shall not be held as guarantor or in any way liable for the payment thereof, except upon a direct action of the council expressed by resolution, of record, before such sale; provided, the city shall pay for street intersections and also engineering, supervision and inspection out of the city treasury.

(76) The council shall have the authority to pass all ordinances not repugnant to the Constitution [and] laws of the United States, and of this state, which shall be necessary or proper to carry into full effect and power, authority and capacity, the jurisdiction which is or shall be granted to or vested in the said city, or in the council, or in any officer or body of officers of said city, and to enforce any or all their ordinances by reasonable fines and penalties, and by imprisoning the offender or offenders, and upon failure to pay any fine or penalty imposed may compel the offender to labor without compensation at and upon any of the public works or improvements undertaken or to be undertaken by said city, or to labor at any work which the said council may lawfully employ [any such offender] upon at such a reasonable rate per diem as the council may fix, until any fine or fines and costs imposed upon any such offender by said city have been fully paid and discharged, after deducting reasonable charges of support while in the custody of the officers of the city; provided, however, that no fine shall be imposed exceeding one hundred dollars and costs, and that no person shall be imprisoned or compelled to labor as aforesaid for more than one hundred days for any one offense. And in all cases where a fine is imposed for an amount exceeding ten dollars and costs, or a person be imprisoned or compelled to labor as aforesaid for a term greater than ten days, an appeal may be taken from such decision upon the same terms and conditions that appeals are taken from the judgment of a justice of this state.

For constitutional provision abolishing office of justice of the peace as of January 1, 1977, see W. Va. Const., art. 8, § 15.

Such fines and penalties shall be imposed and recovered, and such imprisonment inflicted and enforced by and under the judgment of the mayor of said city; or, in case of his absence or inability to act, by the clerk of said city, or if he be unable to act, then by any member of the council to be appointed by the council for that purpose; and for his services in trying cases, whether civil, criminal or infractions of the ordinances of the city, the mayor shall be entitled to receive such fees as are paid to justices of the peace for similar services, but in cases of infractions of the ordinances of the city the mayor shall not be paid such fees unless they are collected from the defendant, and in all cases the chief of police shall be entitled to receive such fees as are paid to constables for similar services, except that for cases for the infraction of the ordinances of the city he shall not receive such fees unless collected from the defendant; and, provided, further, that the fees for making any arrest shall be one dollar, to be paid to the officer making the arrest, whether such offender be the chief of police or other officer, if collected from the defendant, but not otherwise.

For 1974 Amendment to state Constitution providing, in pertinent part, that no "judge of a municipal police or mayor's court or any officer thereof" be compensated for his services on a fee basis, but only by salary, see W. Va. Const., art. 8, § 11.

An alternative method of making certain improvements.

(77) In addition to the foregoing powers, the council shall have the full right and power to provide by ordinance for establishing an alternative method for grading, paving, repaving and surfacing streets and alleys, within the city of Elkins, and also for laying sewers and sewer mains within and also

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without the city limits where necessary to afford adequate drainage facilities to promote the health of the city, whereby the full amount of the costs thereof shall be assessed and charged to adjacent and abutting property, either in case of lots or parts of lots, or to property not laid off in lots, within the city as well as lands and property not within the city limits, in cases where it is or may become necessary to afford such adequate drainage, ratably, according to the extent of continuity of such property.

For state law, see W. Va. Code, § 8-18-1 et seq.

(78) But this alternative method shall be adopted and enforced in cases only where a majority of the owners of such adjacent and abutting property petition therefor in writing.

(79) And then in such cases the council shall prepare plans, profiles, specifications and estimates of costs and appoint a time for hearing thereon, not less than twenty days after giving written notice to all parties affected thereby, but where owners of such property are not known or do not reside in the county of Randolph, such notice may be published in a newspaper of general circulation in the county, for two successive weeks before the hearing, at which hearing all persons affected by such proposed improvement may appear in person or by agent or attorney and be heard in favor of, or in opposition thereto.

(80) If the council shall determine to undertake such work they shall advertise for bids therefor according to said plans and specifications for four successive weeks in two newspapers of general circulation, and award the contract, if satisfactory, to the lowest and best bidder. Such contract shall provide for an alternative method of payment, that is to say, those who elect to do so may pay their proper share of the total cost when the work is finished and the final estimates and assessments are made, or give negotiable notes acceptable to the contractor; and as to the shares of those who do not settle as above provided, the council shall charge them to the property and make out proper assessment certificates showing in detail the property, the work, the name of the owner, amount of the payments, divided into ten equal annual payments, and when duly certified such certificates shall be recorded in the deed of trust records of Randolph county and when so recorded shall be and constitute a lien on such property from that date until paid for such share or assessment, together with the interest thereon from the date of the assessment. And the cash so paid shall go to contractor, and the notes and certificates shall be assigned and transferred to him by the mayor when authorized by order of council and such notes and certificates may be enforced by said contractor or his assignees in any court having jurisdiction thereof. And when payment in full or in part is made, proper releases shall be executed and recorded in the record of the release of liens.

(81) The council shall provide at public expense all engineering, plans, specifications and inspection, and reserve the right of supervision and inspection of all work and material, in progress, as well as final approval of all such work, and the council shall likewise pay the full cost of paving all street and alley intersections.

(82) No part of the proceeds or funds arising from any such improvement shall be applied to any other purpose, but all such proceeds and funds shall be used and applied to the identical job and improvement from which the same arose.

(83) All assessment certificates of deferred payments that may be issued hereunder shall be exempt from taxation.

(84) In contracting such improvements, the council may agree with the contractor to accept the method of payment provided for herein, that is to say, that such contractor, upon completion of the work, shall receive the cash payments, negotiable notes, if any, and the certificates and liens, to be

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assigned and delivered to him, in full payment and discharge of his claims against the city for such improvement. And upon acceptance and receipt thereof, the city shall not be liable as assignor or otherwise for any part of such contract or work.

For state law, see W. Va. Code, § 8-18-1 et seq.

(85) All acts and parts of acts inconsistent herewith are hereby repealed. (1901, ch. 151, § 28; 1905, ch. 6; 1911, ch. 81; 1915, (Munl. Chtr.), ch. 16; 1917, ch. 115; 1921, (Munl. Chtr.), ch. 8; 1927, (Munl. Chtr), ch. 3.)

Sec. 28-(a). Authority to erect community building.

The council of the City of Elkins shall have power to erect a community and municipal building or buildings for such purposes as shall be designated by the council. The council shall have power to borrow a sum or sums not exceeding in the aggregate one hundred thousand dollars from the reconstruction finance corporation or other source to be used to pay the cost of construction and of the land upon which the building shall be erected, and may execute a lien or liens upon such land and building to secure payment of such loan or loans and may do any and all other things required by the reconstruction finance corporation or necessary and proper to obtain such loan or loans, to secure payment thereof and to build and maintain the building. The council shall make provision for the payment of such loan or loans from the income of the building but in no event shall it incur any indebtedness or issue any evidence of obligation imposing any liability upon the city or its taxpayers with respect thereto or impose any tax or assessment to provide for the payment of such loan or loans. (1933, 1st Ex. Sess., ch. 67.)

Sec. 29. Mayor' s docket and what shall be contained therein; record of cases.

A well bound book, indexed, to be denominated the "Mayor' s Docket," shall be kept in the office of the mayor in which shall be noted each case brought before or tried by him together with the proceedings therein, including a statement of the complaint, the warrant or summons, the return, the fact of appearance or nonappearance, the defence, the hearing, the judgment, the costs, and, in case the judgment be one of conviction, the action taken to enforce the same. The record of each case shall be signed by the mayor and the original papers thereof, if no appeal be taken, shall be kept together and preserved in his office. (1901, ch. 151, § 29.)

Sec. 30. Annual estimate of expenses and levy of taxes; statement of receipts and expenditures to be published annually.

The council shall cause to be made up annually and spread upon its minute book an accurate estimate of all sums which are or may become chargeable against the city and which ought to be paid within one year; and it shall order a levy at a meeting held by it in either the month of June or July of each year, of so much as will in its judgment be necessary to pay the same, such levy shall be upon all real and personal property therein subject to a state tax, and shall designate the same as the "general tax," and may include a poll tax of not exceeding two dollars each year upon each able-bodied man therein who is above the age of twenty-one years and not over fifty years of age; which poll tax shall be used exclusively upon the opening, improving and maintaining the roads, streets and alleys of the city, and shall designate the same as the "street tax"; provided, that such levy for the general tax shall not exceed one dollar on every one hundred dollars of assessed value of the property upon which the same is levied; and the said council may also impose such license tax upon dogs and other animals as they may deem proper and collect the same from the owners of such animals as other taxes are collected and prescribe such rules, regulations

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and penalties governing the payment of such tax on animals as they may deem reasonable. At least once in each year the council shall cause to be made up and published in one or more of the newspapers published in the city an accurate statement of the revenue received from all sources and of all the expenditures upon all the different accounts for the preceding year. (1901, ch. 151, § 30.)

Editor's note. --W. Va. Const. , art. 10, § 2, which authorized a capitation (poll) tax has been repealed; and art. 10, § 1 has been amended so as to limit the aggregate of taxes for any one year on personal property used for agricultural purposes and upon money and securities 50¢ per \$100 of valuation; on realty occupied by its owner for a residence to \$1 per \$100 of valuation; and to \$2 per \$100 of valuation on all other realty within a municipality. In addition to these constitutional provisions, the general laws of the state have been amended since enactment of this section in 1901 so as to render it almost wholly obsolete.

For general law as to annual financial estimate and tax levies by municipalities, see W. Va. Code, §§ 11-8-9, 11-9-14. As to dog taxes, see W. Va. Code, § 11A-1-15.

Sec. 31. City assessor--Powers and duties generally.

Editor's note. --The text of this section is omitted as obsolete. The city no longer has an assessor, as his functions have been taken over completely by the county assessor; see W. Va. Code, ch. 11, arts. 2 through 6. As to payment by county sheriff to municipal treasury of municipal taxes collected by him, see W. Va. Code, § 11A-1-15.

Sec. 32. Same--Assessment books.

Editor's note. --The text of this section is omitted for the reasons stated in the note under § 31 of this Charter.

Sec. 33. Lien for taxes, fines, etc., and enforcement thereof.

There shall be a lien on real estate within said city for city taxes assessed thereon, and for all fines and penalties assessed to or imposed upon the owners thereof, by the authorities of such city, including expenses for making sidewalks and streets and paving the same, and constructing sewers, and for furnishing water, electric lights or other public utility when furnished by said city, from the time the same are so assessed or imposed, which shall have priority over all other liens except taxes or dues due the United States and the lien for taxes due the state, county or district; and such lien may be enforced by the council in the same manner provided by law for the enforcement of a lien for county taxes, and any time after six months after such lien attaches the city may in its own corporate name proceed to the enforcement of said lien against the real estate chargeable therewith by a suit in equity. If any real estate within said city be returned delinquent for the non-payment of city taxes due thereon, a copy of such delinquent list shall be certified by the council to the auditor of this state and the same may be sold for city taxes, interest and commissions thereon in the same manner, at the same time, and by the same officers as real estate is sold for state taxes; and a return of such sales made to and deed executed therefor, if not redeemed, in the same manner and with like effect, as the return of sales of real estate sold for state taxes are made and deeds therefor executed to purchasers. (1901, ch. 151, § 33; 1911, ch. 81.)

Editor's note. --The last sentence of this section is now obsolete; see W. Va. Code, § 11A-3-1 et seq.

Sec. 34. Duties, bond, etc. , of city collector and treasurer.

It shall be the duty of the city collector and treasurer, when the extended copies of the assessor's

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books are completed, to receive a copy thereof, receipting to the council for the same, and it shall be his duty to collect from the parties the entire amount of the taxes with which they are severally charged therein, and may proceed to collect the same at any time after the first day of August, and may enforce payment thereof by levy upon the personal property and sale thereof, of the person so charged with taxes at any time after the first of October next after said taxes are assessed; said taxes shall be a lien upon the property upon which they are assessed from and after the time the assessor's books are completed, verified and returned to the city council, and shall write the word "paid" opposite the name of each person who pays the taxes assessed against him and shall also give to the person paying such taxes a receipt therefor; provided, however, that said assessor [collector] and treasurer may distrain at any time for any taxes assessed against a person who is about to remove or who has removed from said city after such taxes are assessed, and the books returned as aforesaid. He shall also receive such other moneys of the city as he is authorized by this act [Charter] to receive, and also all moneys ordered by the council to be paid to him, giving receipt therefor to the parties paying the same, and shall keep an accurate, itemized account of all moneys received by him; and his books shall at all times be open for the inspection of the mayor, council, city clerk, and to any taxpayer of the city. He shall pay out the money in his hands only upon the order of the council upon orders signed by the mayor and city clerk and keep an itemized statement of the money so paid out by him. He shall on or before the last meeting of the council in each year just before the expiration of the term of office of the mayor, and at such other times as the council may require, present to the council a full and complete statement of all the moneys with which he is chargeable or that have been received by him and not previously accounted for, and shall at the same time, in like manner, furnish a complete statement, by separate items of all disbursements made by him during such period, with his vouchers evidencing the same. He shall receive all taxes upon licenses and receipt to the party paying the same by endorsement upon the permit granted by order of the council, or mayor as the case may be.

Editor's note.--The provisions of this subsection as to assessment of property for taxes and the collection of taxes are now obsolete, inasmuch as the county assessor and the sheriff perform the duties herein imposed upon the city collector and treasurer; see W. Va. Code, § 8-13-1, ch. 11, art. 1, and ch. 11A.

He shall receive upon all moneys coming into his hands and paid out by him as his compensation for receiving and disbursing the same such sum as may be fixed by the council, not to exceed five per cent thereof. He shall upon the expiration of his term of office turn over to the council all books and other property in his possession belonging to the city, except the money in his hands, which he shall turn over to his successor upon the order of the council as hereinbefore provided; and shall, before entering upon the duties of his office, execute a bond with good security payable to said city, in a penalty of not less than double the estimated amount of money that is liable to come into his hands each year during his term of office, conditioned that he will faithfully discharge the duties of his office and account for and pay over as required by law and the orders, ordinances, rules and regulations of the council of said city, all money which shall come into his hands, which bond shall be subject to the approval of the council. He shall be chargeable with all the city taxes, levies and assessments and money of the city which shall come into his hands and shall account therefor. (1901, ch. 151, § 34.)

Editor's note.--The city collector and treasurer no longer receives any percentage of city money collected by him.

Sec. 35. License ordinances and payment of tax thereon.

The council shall prescribe by ordinance the time and manner in which licenses of all kinds shall be applied for and granted, and shall require the payment of the tax thereon to the city collector and treasurer before the delivery thereof to the person applying therefor. (1901, ch. 151, § 35.)

Sec. 36. Provisions of law applicable to licenses and expiration date of certain licenses.

The provisions of the section 29 of chapter 32 of the Code of West Virginia shall be deemed applicable to licenses of a similar character to those therein mentioned when granted by or under authority of the council of said city; licenses for the keeping of dogs, or other animals, shall also expire on the thirteenth day of April next after they are granted. (1901, ch. 151, § 36.)

Editor's note.--Chapter 32 of the state Code as of 1901 related to state licenses, and the subject matter thereof, as in effect at the time of adoption of the Official Code of West Virginia, 1931, was carried over into that Code as article 12 of Chapter 11, which article has since been repealed, and replaced by a new article 12 which related to state business franchise registration certificates. See, however, W. Va. Code, § 11-12-4 as to authority of municipalities to impose license taxes pursuant to W. Va. Code, § 8-13-4, up to the amount of state license tax in effect on January 1, 1970, "with like effect as if this article (art. 12, ch. 11) had not been enacted."

The provisions of this section as to dog taxes are completely obsolete, see W. Va. Code, § 15-20-2.

Sec. 37. Condemnation of real estate for public use.

The council shall have a right to institute and prosecute proceedings in the name of the city for condemnation of real estate for streets, alleys, roads, drains, sewers, market grounds, city prison, water works, electric light plant or other works, or purpose of public utility. Such proceedings shall conform to the provisions of chapter 42, [eminent domain] of the Code of West Virginia, and the expenses thereof shall be borne by the city, except in cases where it is proper under said chapter to charge such expenses or any part thereof against the defendant. (1901, ch. 151, § 37.)

For general law as to eminent domain, see W. Va. Code, ch. 54.

Sec. 38. Charter of South Elkins abolished.

The Charter of the Town of South Elkins is hereby abolished. (1901, ch. 151, § 38.)

Sec. 39. Ordinances, etc., not inconsistent and bonds, etc., remain in effect.

All the ordinances, by-laws, resolutions and rules of the city of Elkins in force on the day preceding the passage of this act [Charter] , which are not inconsistent therewith, shall be and remain in full force over the whole of the territory embraced in the boundary of said city as established by this act, and the officers in office in the city of Elkins at the time this act takes effect shall remain in office until their successors are elected, or appointed, and qualified under the provisions of this act; and after this act takes effect, shall have jurisdiction over the whole of the territory embraced in the boundary specified in this act; but nothing in this act shall be construed or held to in any way affect or impair any of the bonds or obligations of said city of Elkins issued or contracted prior to the passage of this act; on the contrary, all such bonds and obligations shall be and remain in full force and effect just as though this act had not been passed, except that the whole of the taxable property of persons residing within the corporate limits of said city as created by this act shall be subject to taxation to pay and discharge such bonds and obligations. (1901, ch. 151, § 39.)

Sec. 40. City to take over corporate assets and assume obligations of town of South Elkins.

The corporate authorities of the town of South Elkins shall, before July first, 1901, turn over to

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the corporate authorities of the city of Elkins all corporate assets, including money, taxes, license fees payable, and all other corporate property, to the council of the city of Elkins to be disposed of by it as corporate property now owned by said city of Elkins is disposed of; and if said town of South Elkins at the time this act [Charter] takes effect has any outstanding contracts or obligations proper for it to contract, including licenses granted, the said city of Elkins shall assume the same and carry the same into execution in manner, form and effect as contracted by said town of South Elkins. (1901, ch. 151, § 40.)

Sec. 41. Duties of council as to first election, etc.

The council in being in the city of Elkins at the time this act [Charter] shall take effect shall provide places for voting in the several wards in said city and appoint commissioners residing in each ward to hold and conduct the first election hereinbefore provided to be held, and shall pass all proper ordinances and orders to give this act full force and effect. (1901, ch. 151, § 41.)

Sec. 42. Former rights, powers, etc., of city undisturbed.

The said city shall succeed to all the rights, powers and responsibilities of the City of Elkins as they exist the day preceding the day on which this act [Charter] takes effect, and shall enjoy such rights, exercise such power and discharge such responsibilities in the same manner as the same should have been enjoyed, exercised or discharged if this act had not been passed. (1901, ch. 151, § 42.)

For a case holding that this section preserves to the city all of the rights, powers and responsibilities which it had prior to enactment of this Charter, (such rights, etc., being contained in the then W. Va. Code, ch. 47); and that by virtue of the language of § 28 of that ch. 47 (now set out in W. Va. Code 1931, as amended, § 8-12-5, subsec. (15)), the city council is empowered to "make regulations guarding against danger or damage by fire," see Harvey v. City of Elkins, 65W. Va. 305, 64 SE 247 (submitted 1907, decided 1909).

Sec. 43. Inconsistent ordinances and acts repealed.

All ordinances of the City of Elkins as they exist at the time of the passage of this act [Charter] which are inconsistent therewith are hereby abrogated, and all acts and parts of acts inconsistent with any of the provisions of this act are hereby repealed. (1901, ch. 151, § 43.)

Editor's note. --The Elkins Charter act was approved by the governor February 18, 1901, in effect ninety days from passage.

Chapter 1: GENERAL PROVISIONS.

Sections:

- 1-1 How Code designated and cited.**
- 1-2 Definitions and rules of construction.**
- 1-3 Provisions considered as continuations of existing ordinances.**
- 1-4 Catchlines and headings of portions of Code.**
- 1-5 Severability of parts of this Code, and of codes and other regulations adopted by reference.**
- 1-6 Effect of repeal or expiration of ordinance.**
- 1-7 General penalty; continuing violations.**
- 1-8 Grades and elevations--Official city base established.**

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- 1-9** **Same--Primal bench mark located.**
- 1-10** **Same--Elevations to be described in relation to official base.**
- 1-11** **Same--Fixing property elevations; cross section of pavement when street is paved.**
- 1-12** **Same--Determination of street grade.**

As to Code editor generally, see § 2-25 of this Code.

Section 1-1 How Code designated and cited.

The ordinances contained in this and the following chapters and sections shall constitute and be designated the "Code of the City of Elkins, West Virginia," and may be so cited. Such ordinances may also be cited as the "Elkins City Code."

For state law as to authority of common council to adopt a comprehensive code of ordinances, see W. Va. Code, § 8-11-4, subsec. (b).

Section 1-2 Definitions and rules of construction.

In the construction of this Code and of all other ordinances and resolutions of the common council, the following definitions and rules of construction shall be observed, unless it shall be expressly provided otherwise by any section, ordinance or resolution, unless inconsistent with the manifest intent of the common council or unless the context clearly requires otherwise:

General rule. All general provisions, terms, phrases and expressions shall be liberally construed in order that the true intent and meaning of the common council may be fully carried out. Words and phrases shall be taken in their usual sense, but technical words having a peculiar and appropriate meaning in law shall be understood according to their technical import.

For state law as to rules for construction of statutes, see W. Va. Code, § 2-2-10. As to definitions of words and phrases in the Municipal Code of West Virginia, see W. Va. Code, §§ 8-1-1, 8-1-2.

Authority of officers. Whenever authority is conferred on or an act is required to be performed by a city officer, such authority may be exercised or performed, at the instance of such officer, by a deputy, agent or subordinate, unless such authority cannot lawfully be deputed.

For state law as to acts by agent or deputy, see W. Va. Code, § 2-2-5.

Charter; the city Charter. The Charter of the City of Elkins, West Virginia, as amended and currently in effect.

City. The City of Elkins, West Virginia.

City Code; this Code. The Code of the City of Elkins, West Virginia, as amended and currently in effect.

Common council; the council. The Council of the City of Elkins, West Virginia.

Computation of time; reasonable 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 day be Sunday or a holiday, it shall also be excluded; but this provision shall not be deemed to change any rule of law applicable to bills

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of exchange or negotiable instruments; provided, that if time is expressed in hours, the whole of any Sunday or holiday shall be excluded, unless the clear intent of the council is to the contrary. In all cases where provision is made for an act to be done or notice to be given within a "reasonable time," it shall be construed to mean only such time as may be necessary, under the circumstances then and there existing, for the prompt performance of such act or the giving of such notice.

For state law relating to computation of time, see W. Va. Code, § 2-2-3.

County. The County of Randolph, West Virginia.

Gender. A word importing the masculine gender only may be construed to include the feminine and neuter as well as the masculine.

For similar state law relating to construction of statutes, see W. Va. Code, § 2-2-10, subsec. (a).

Joint authority. All words giving a joint authority to three or more persons or officers shall be construed as giving such joint authority to a majority of such persons or officers, and not to any lesser number.

For similar state law relating to construction of statutes, see W. Va. Code, § 2-2-10, subsec. (b).

Month; year; fiscal year. The word "month" shall mean a calendar month; the word "year" shall mean a calendar year; the word "year" alone shall be equivalent to the expression "year of our Lord." The fiscal year for the city and all bodies or officers collecting or disbursing funds shall begin on the first day of July and expire with the expiration of the next following thirtieth day of June.

For similar state law, see W. Va. Code, § 2-2-4.

Municipality. The city of Elkins, West Virginia.

Number. 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.

For similar state law relating to the construction of statutes, see W. Va. Code, § 2-2-10, subsec. (a).

Oath; sworn. A solemn affirmation shall be the equivalent to an oath in all cases, unless otherwise expressly provided, and the word "oath" shall be deemed to include an affirmation and the word "swear" or "sworn" to be complied with if the person referred to makes solemn affirmation.

For similar state law, see W. Va. Code, § 2-2-7.

Officers, departments, etc. Officers, departments, boards, commissions and employees referred to in this Code shall mean officers, departments, boards, commissions and employees of the City of Elkins, unless the content clearly indicates otherwise.

Owner. As applied to any property, any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or of a part of such property.

Person. A corporation, firm, partnership, association, society, club or any other group acting as a unit, as well as an individual, unless restricted within the context.

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For state law definitions of "person" relating to the construction of statutes, see W. Va. Code, § 2-2-10, subsec. (i).

Personal property. Goods, chattels, real and personal, money, credits, investments and the evidence thereof.

For state law definition of "personal property" relating to construction of statutes, see W. Va. Code, § 2-2-10, subsec. (q).

Preceding; following. Next before and next after, respectively.

For similar state law relating to construction of statutes, see W. Va. Code, § 2-2-10, subsec. (d).

Premises. When used as applicable to real property, shall include land and buildings.

Property. Real, personal and mixed property.

For state law definition of "property" relating to the construction of statutes, see W. Va. Code, § 2-2-10, subsec. (r).

Real property; real estate; land; lands. Lands, buildings, tenements and hereditaments and all rights thereto and interests therein, except chattel interests.

For state law definition of "real property" relating to the construction of statutes, see W. Va. Code, § 2-2-10, subsec. (p).

Shall; may. The word "shall" is mandatory; the word "may" is permissive.

Sidewalk. That portion of a street between the curb line or, where there is no curb, the lateral lines of a roadway and the adjacent property line, intended for the use of pedestrians. If there is no public area between the lateral lines of the roadway and the abutting property line, then that area immediately abutting the street line shall be considered sidewalk area.

Signature or subscription by mark. A mark made by a signer or subscriber who cannot write, such signer's or subscriber's name being written near the mark by a witness who shall write his own name near the signer's or subscriber's name.

For corresponding state law relating to construction of statutes, see W. Va. Code, § 2-2-10, subsec. (c).

State. The State of West Virginia.

State Code references. References to the Code of West Virginia shall be to the Official Code of West Virginia, 1931, as amended and currently in effect.

Street. Alley, avenue, boulevard, highway, road, lane, viaduct, bridge and approaches thereto, and all other public thoroughfares in the city, and the entire width thereof between abutting property lines; also a sidewalk or footpath, unless the contrary is expressed or unless such construction would be inconsistent with the intent of the common council.

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Tenant or occupant. Applied to a building or land, any person holding a written or oral lease to or who occupies the whole or part of such building or land, either alone or with others.

Tenses. The present tense includes the past and future tenses; the future includes the present.

Writing. Writing includes any form of recorded message comprehensible by ordinary visual means. Whenever any notice, report, statement or record is required or authorized by this Code or other ordinance or resolution of the city, it shall be made in writing in the English language, unless it is expressly provided otherwise. (Code 1942, ch. 1, § 1.)

For state law definition of "writing" relating to the construction of statutes, see W. Va. Code, § 2-2-10, subsec. (c).

Section 1-3 Provisions considered as continuations of existing ordinances.

The provisions appearing in this Code, insofar as they are substantially the same as those of ordinances in effect immediately preceding the effective date of this Code and included herein, shall be considered as continuations thereof and not as new enactments.

Section 1-4 Catchlines and headings of portions of Code.

The chapter, article, division and section headings of this Code are intended as mere catchwords to indicate the contents thereof and shall not be deemed or taken to be titles thereof, nor as any part thereof; nor, unless expressly so provided, shall they be so deemed when any of such chapters, articles, divisions or sections, including the headings or catchlines, are amended or reenacted.

For similar state law relating to the construction of statutes, see W. Va. Code, §§ 2-2-10, subsec. (z), 2-2-12.

Section 1-5 Severability of parts of this Code, and of codes and other regulations adopted by reference.

It is hereby declared to be the intention of the common council that the sections, subsections, paragraphs, sentences, clauses and phrases of this Code and of each of the technical codes and other regulations herein adopted by reference are severable, and that if any phrase, clause, sentence, paragraph, subsection or section of this Code or of any such technical code or other regulations shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections and sections thereof, since they would have been enacted by the common council without the incorporation therein of any such unconstitutional or invalid phrase, clause, sentence, paragraph, subsection or section. (Code 1942, ch. 1, § 2.)

Section 1-6 Effect of repeal or expiration of ordinance.

The repeal of an ordinance or its expiration, by virtue of any provision contained therein, shall not affect any right accrued, any offense committed, any penalty or punishment incurred or any proceeding

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commenced before the repeal took effect or the ordinance expired.

For similar state law as to effect of repeal or expiration of statutes, see W. Va. Code, § 2-2-8.

When any ordinance which repealed another shall itself be repealed, the previous ordinance shall not be revived without express words to that effect. (Code 1942, ch. 1, § 3.)

For similar state law as to repeal of an act repealing a statute, see W. Va. Code, § 2-2-9. As to ordinance procedures of the common council, see §§ 2-13 to 2-15 of this Code.

Section 1-7 General penalty; continuing violations.

Wherever in this Code or in any ordinance or resolution of the city council or in any rule, regulation, notice or order promulgated by any officer or agency of the city under authority duly vested in him or it, any act is prohibited or is declared to be unlawful or an offense or a misdemeanor or the doing of any act is required or the failure to do any act is declared to be unlawful or an offense or a misdemeanor, and no specific penalty is provided for the violation thereof, the violation of any such provision of this Code or of any such ordinance, resolution, rule, regulation, notice or order shall be punished by a reasonable fine, not exceeding two hundred and fifty dollars or by imprisonment for a term not to exceed thirty days or by both such fine and imprisonment. E Each day any violation of this Code or of any such ordinance, resolution, rule, regulation, notice or order shall continue shall constitute, except where otherwise provided, a separate offense. (Code 1942, ch. 1, § 4; 11-2-67.)

For charter provisions as to penalties for violations of election laws, see Char., § 11. As to penalty for violating W. Va. Code, § 61-7-1, and duty of county prosecuting attorney to prosecute if requested by mayor, see Char., § 28, subsec. (43). As to sentences by mayor to imprisonment being limited to thirty days, see Char., § 20.

For state law as to penalties authorized to be imposed, subject to certain limitations, for violations of municipal ordinances and means available to municipalities for the recovery thereof, see W. Va. Code, §§ 8-11-1, 8-12-5, subsec. (55).

As to deferred payment of fines and costs, see § 11-10 to 11-14 of this Code.

Section 1-8 Grades and elevations--Official city base established.

The official city base, or plane of reference for elevations in the city, is hereby fixed at an elevation of 1,809.895 feet above sea level, as determined by the United States coast and geodetic survey, in the adjustment made in 1903. (Code 1942, ch. 3, § 1.)

As to applications to have sidewalk grades and lines established, see § 18-22 of this Code.

Section 1-9 Same--Primal bench mark located.

The upper horizontal surface of the United States geodetic survey bench mark, a bronze tablet placed in the stone step of the west entrance of the W.M.R.R. office building standing on the northeast corner of Railroad Avenue and Third Street "1903 A. D. J. 1903," is hereby declared to be the primal bench mark of the city, and the elevation thereof is one hundred and twenty feet above the city base. (Code 1942, ch. 3, § 2.)

Section 1-10 Same--Elevations to be described in relation to official base.

All official elevations hereafter established in the city shall be described, with reference to their elevations, as compared with the official base, in feet and decimal parts of a foot. No grade of official elevation shall be established other than by ordinance and in the manner described in sections 1-8 to 1-12. (Code 1942, ch. 3, § 3.)

Section 1-11 Same--Fixing property elevations; cross section of pavement when street is paved.

All elevations established shall be fixed at the property lines, sidewalks and curb lines; but the cross section of the pavement, when a street shall be paved, shall be determined so as to conform with the nature of the material used in paving. (Code 1942, ch. 3, § 4.)

Section 1-12 Same--Determination of street grade.

The grade of the street shall be on straight lines connecting the points where the elevations are fixed as provided by this chapter; except, that where the grade breaks in a block between intersecting streets, the sidewalks and curbs shall be on vertical curves; however, the grades of such curves shall be established in conformance to sections 1-8 through this section. (Code 1942 ch. 3, § 5.)

Chapter 2: ADMINISTRATION.

Sections:

2-0A	Article I. In General
2-1	Official bonds.
2-2	Compensation of city officers and employees.
2-3	Competitive bidding--When required; publication of notice.
2-4	Same--Transmitting and receiving bids; bonds; specifications, etc.
2-5	Federal social security.
2-6	City to be participating public employer; state employees' retirement system adopted.
2-6.1	Indemnification of certain officers and employees.
2-6A	Article II. The Common Council.
2-7	Clerk of the council; records generally.
2-8	Meetings generally.
2-9	Rules.
2-10	Chief of police to attend meetings and preserve order; arrest of persons for disobedience.
2-11	Addressing the council.
2-12	Voting.
2-13	Ordinance procedures--Generally.
2-14	Same--Attestation; record of ordinances.
2-15	Same--Ordinances to repeal, amend or add to provisions of this Code, and records thereof.
2-16	Resolutions and records thereof.

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2-16A	Article III. City Officers Generally.
2-16D	Division 1. Generally.
2-17	Requirements for appointive positions.
2-17D	Division 2. Specific Officers.
2-18	Mayor.
2-19	City clerk--Election; term; qualifications.
2-20	Same--Powers and duties generally.
2-21	Same--Duties as to assessments, taxes, service charges, etc.
2-22	City collector and treasurer.
2-23	City attorney.
2-24	Public works director.
2-25	City Code editor.
2-25A	Article IV. Boards and Commissions.
2-25D	Division 1. Generally.
2-26	Attendance of members at public meetings.
2-26.1	Submission of reports and statements.
2-26D	Division 2. Board of Library Directors.
2-27	Created; composition; appointments, compensation and terms of members.
2-28	Powers and duties.
2-28D	Division 3. Planning Commission.
2-29	Created; short title.
2-30	Composition; appointments, term and compensation of members; vacancies.
2-31	Officers.
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2-33	Plans and recommendations to be submitted to mayor and council.
2-34	Traffic studies.
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2-36D	Division 4. Board of Park and Recreation Commissioners.
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2-39	Officers; bylaws, rules and regulations.
2-40	Powers and duties generally.
2-41	Appointment of superintendent or director of recreation and personnel.
2-42	Annual budget.
2-43	Authority to receive gifts and bequests.
2-44	Reports.
2-45	Fees and charges for use of recreational services and facilities.
2-46	Cooperation, etc., with other governmental units.
2-46.1	Additional powers and duties.
2-46D	Division 5. Elkins Municipal Building Commission.
2-47	Created.
2-48	Public corporation; perpetual existence.
2-49	Board.
2-50	Powers.
2-51	Indebtedness.
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2-53	Contributions.
2-54	Sale of property on direction of city council.
2-55	Transfer of property to commission.
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2-56.0D	Division 6. Municipal historic landmarks commission.
2-56a	Created.
2-56b	Composition; appointments, term and compensation of members; vacancies.
2-56c	Officers; bylaws; rules and regulations.
2-56d	Meetings; quorum; voting.
2-56e	Powers, authority and duties.
2-56eA	Article V. Parking Authority.
2-57	Established.
2-58	Composition; appointment and terms of members; vacancies.
2-59	Officers; chief administrative officer; compensation.
2-60	Powers and duties generally.
2-61	Contracts.
2-62	Jurisdiction.
2-63	Bonds.

As to animal humane officer, see § 4-13 of this Code. As to the office of building official generally, see § 5-1. As to administration and enforcement of the Building Code, see § 5-8. As to elections generally, see ch. 7. As to fire chief generally, see §§ 8-16, 8-17. As to the fire department, see §§ 8-16 to 8-25. As to firemen's civil service commission, see § 8-18. As to firemen's pension and relief fund, see §§ 8-22 to 8-25. As to department of sanitation's duties with respect to garbage collection, see § 9-7. As to municipal court, see ch. 11. As to powers and duties of nuisance abatement and enforcement officer, see § 12-8, 12-9. As to interference with city personnel generally, see § 13-6. As to police generally, see ch. 14. As to police civil service commission, see § 14-1. As to police pension and relief fund, see §§ 14-5, 14-6. As to public utility service tax, see ch. 15. As to the sanitary board, see §§ 16-11 to 16-16. As to the water committee, see § 20-2. As to board of zoning appeals, see §§ 21-65 to 21-82.

Section 2-0A Article I. In General

Editor's note. --The Elkins-Randolph County Airport Authority was established by the mutual agreement creating the joint ownership and operation and control of the Elkins-Randolph County Airport. The particulars of that agreement are not set out herein but are on file in the office of the city clerk.

For charter provisions as to corporate name and powers of city, see Char., § 1. As to general powers and duties of the common council, see Char., §§ 28, 37.

For state law as to cities, towns and villages generally, being the Municipal Code of West Virginia, see W. Va. Code, ch. 8.

Section 2-1 Official bonds.

(a) Every officer, employee or agent of the city who, in the course of his official duties, receives, handles or has custody of or control over more than one hundred dollars of city funds, negotiable instruments or securities at any time shall, before entering upon his duties as such officer, employee or agent and within ten days of his election or appointment, give bond, payable to the city, with corporate surety, in an amount no less than five hundred dollars, as shall be determined by the common council and conditioned upon the faithful performance of his duties and a true accounting of all city funds, negotiable instruments and securities received or handled by him or coming within his custody or under his control, and payment thereof to the city; provided that the bond of the city collector and treasurer shall be in an amount no less than fifteen thousand dollars; the bond of the city clerk shall be no less than fifteen thousand dollars; and provided further, that during any period when two or more positions are held by the same person, the bond for such person shall be in an amount no less than the highest amount required for any one of such positions.

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(b) The common council may adopt a system of blanket faithful performance and honesty bonding as an alternative to the individual bonds provided by subsection (a) of this section; provided, that the minimum amounts specified in subsection (a) for the positions named therein shall remain the same as therein specified.

(c) All persons hired by the city to work during the Forest Festival shall, when required by the common council, give bond, payable to the city with corporate surety, in an amount no less than ten thousand dollars, as may be specified by the common council and conditioned upon the faithful performance of their duties and the payment of any judgment or decree rendered against them for the negligent or unlawful performance of those duties.

(d) All regularly appointed police officers and all officers, employees and agents of the city who, in line of duty, are required or authorized to carry firearms, shall give bond, payable to the city, with corporate surety, in an amount no less than ten thousand dollars, as may be specified by the common council, and conditioned upon the faithful performance of their respective duties and the payment of any judgment or decree which may be rendered against them for the negligent or unlawful use or handling of such firearms and shall save the city harmless from all claims and demands whatsoever for the negligent or unlawful use or handling of such firearm.

(e) The city attorney shall approve all bonds required by this section with respect to their form and legality, and the premiums thereon shall be paid by the city. The common council shall approve all bonds required by this section with respect to their sufficiency. All bonds required by this section shall be in the custody of the city clerk; except, that the bond of the city clerk shall be in the custody of the mayor. Certified copies of all such bonds shall be filed in the county clerk's office.

(f) The common council shall have authority to increase the penalty of the bonds at any time it may deem necessary, and a failure by any city office, employee or agent to comply with the requirements of the council within a reasonable time shall be sufficient reason for declaring the office or position vacant and the council may proceed to fill such vacancy. (Code 1942, ch. 10, § 3.)

For charter provisions as to official bonds of officers, see Char., §§ 15, 16, 20, 23 and 28, subsec. (55).

For state law as to authority of city to require bonds of its officers, see W. Va. Code, § 8-12-5, subsec. (46). As to requirement that municipal officers who handle public funds give bond, see W. Va. Code, § 6-2-11. As to bonds required of police officers, see W. Va. Code, § 61-7-5. As to bonds of public officers generally, see W. Va. Code, § 6-2-1 et seq.

Section 2-2 Compensation of city officers and employees.

(a) The mayor, councilmen and other city officers and employees shall receive such salaries and wages as may be provided for them, from time to time, by the common council in the annual budget or other ordinances; provided, that the salary of no city officer shall be increased or diminished during his term.

(b) The common council may prescribe compensation, in addition to the compensation paid councilmen, to the chairman of any standing or special committee when such chairman has arduous duties to perform, beyond those expected of a councilman; when such services are performed upon any project for which a bond issue is in force, such additional compensation may be paid from the proceeds of the bond issue, unless prohibited by state law.

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(c) Except as may be provided otherwise in this Code or other ordinance, all fees paid to city officers and employees shall be deemed to be moneys belonging to the city, and shall be paid over to the city collector and treasurer, or other officer designated by this Code or other ordinance, by the recipients thereof, no less frequently than once each week. (Code 1942, ch. 4, § 3; ch. 7, § 8.)

For charter provisions as to elective officers and their salaries, see Char., § 4. As to authority of council to fix compensation of city officers generally, see Char., §§ 15, 28, subsec. (55). For state law as to authority of common council, by ordinance, to fix the compensation of city officers and employees, notwithstanding any charter provision to the contrary, see W. Va. Code, § 8-5-12.

Section 2-3 Competitive bidding--When required; publication of notice.

(a) Every contract for the procurement of goods and services by the city, except as hereinafter provided, shall be by competitive bidding and shall not be approved and let until notice of the intent to so contract and an invitation to sealed bids shall have been advertised once per week, for a period of two successive weeks, in one newspaper of general circulation in the city, the last of which publications shall occur no less than five days prior to the meeting at which the bids are to be opened and examined; provided, that the above requirements shall not apply to any contract for a gross amount of less than two thousand dollars; nor shall this section preclude the use by the city of or be applicable to the purchasing of goods or services through the state director of the purchasing division of the state department of finance and administration as provided by the Code of West Virginia, section 5A-3-9.

(b) The provisions of subsection (a) of this section shall not be applicable when the common council, by vote, finds (1) that compliance therewith would be inimical to the public welfare, (2) that procurement of the contemplated goods or services is of such urgency as to brook no delay, (3) that other circumstances exist which would render the interests of the city better served by noncompliance than by compliance with subsection (a) of this section, (4) that as a practical matter it is determined that there exists only one supplier of the goods or services sought to be obtained, (5) that the goods or services sought to be obtained are for the purpose of maintenance or repair of existing city goods or equipment, or (6) that no suppliers of the goods or services sought to be obtained are located within the general circulation area of any of the city newspapers.

In the event that the common council finds that item (6) above is applicable, the council may direct that written invitations to submit sealed bids, under such terms as the council may require, be made to any known suppliers of the goods or services sought to be obtained located outside of the general circulation area of aforesaid newspapers.

(c) Notwithstanding other provisions of this section, in any instance that a purchase of goods or services by the city is required under the provisions of this section to be made upon competitive bids, such purchase shall be made from a vendor resident in the city if such bid does not exceed the lowest qualified bid from a nonresident vendor by more than two percent of the latter bid, and if such resident vendor has made written claim for such preference at the time the bid was submitted.

A vendor shall be deemed to be a resident of the city if such vendor is an individual, partnership, association or corporation that maintains an active, bona fide place of business within the city and maintains therein a representative inventory of the commodities on which the bid is submitted and, in the case of a corporation, is duly qualified to do business in the state as is in good standing under the laws of the state and under the ordinances of the city. (Code 1942, ch. 4, § 1, rule 41; 11-1-79.)

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For state law as to authority of city to require competitive bidding for purchases of supplies, etc., see W. Va. Code, § 8-12-10. As to availability to municipalities of facilities of state division of purchases, see W. Va. Code, § 5A-3-9.

Section 2-4 Same--Transmitting and receiving bids; bonds; specifications, etc.

The form and manner of transmitting and receiving bids under the provisions of section 2-3, the amount of deposit or performance bond, if any, to accompany such bids, the terms, specifications, reservation of right to reject bids or waive irregularities therein shall be determined by the common council prior to each respective advertisement for bids and, insofar as is practical, be stated in the published notice.

Section 2-5 Federal social security.

(a) This section is adopted pursuant to the provisions of article 7, chapter 5 of the Code of West Virginia, and shall be construed to render it in conformance with that article and the applicable federal law and agreement mentioned in section 5-7-3 of the Code of West Virginia.

(b) All services which constitute employment, as defined by section 5-7-2 of the Code of West Virginia, and which are performed in the employ of the city in a nonproprietary capacity and, in addition, in a proprietary capacity for the operation and maintenance of the city water works, a municipally owned public utility, and the department of sanitation, a municipally owned project, shall be covered by this plan.

(c) It is a further purpose of this section to obtain the coverage of a federal old age and survivors' insurance, commonly called social security, for both the nonproprietary employees of the city and the proprietary employees of the city who engage in the operation and maintenance of the city water works, a municipally owned public utility, and the department of sanitation, a municipally owned project, and another municipally owned project, the city municipal airport, subject to the approval of the state agency, as defined by section 5-7-2 of the Code of West Virginia, to be effective hereby from January 1, 1951; except the city municipal airport, which is to be effective January 1, 1953, and thereafter as a regular part of the city budget for which levy is made and as a regular part of the expenditures of the city water works, department of sanitation and the city municipal airport, to be derived from its revenue.

(d) The common council hereby declares that the plans for extending these federal social security benefits to all eligible city officers and employees, as heretofore submitted to and approved by the state auditor in his capacity as the "state agency," shall continue in full force and effect and that the city shall conform to all applicable provisions of sections 5-7-1 through 5-7-10 of the Code of West Virginia.

Editor's note.--The plans herein referred to are on file in the office of the city clerk.

(e) The mayor, the city clerk and the city collector and treasurer shall be, ex officio, the social security committee, which committee shall administer the plan in such methods as may be found by the "state agency," as defined by subsection (d) of section 5-7-2 of the Code of West Virginia, to be necessary for the proper and efficient administration of the plan.

(f) The city shall make such reports, in such form and containing such information, as the state agency may, from time to time, require, and shall comply with such provisions as the state agency or

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as the federal agency, mentioned in subdivision (5) of subsection (a) of section 5-7-5 of the Code of West Virginia, may, from time to time, find necessary to ensure the correctness and veracity of such reports.

(g) The city agrees to pay into the contribution fund, as defined by section 5-7-6 of the Code of West Virginia, such amounts as are required to be paid by subsections (c) and (d) of section 5-7-5 of the Code of West Virginia.

(h) The "state agency" is authorized to terminate this plan in its entirety, if it finds that there has been a failure to comply substantially with any provisions contained in this plan or any provisions of article I, chapter 5 of the Code of West Virginia, and necessary federal laws and regulations, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and consistent with applicable federal law. (11-29-50; 4-16-53.)

Section 2-6 City to be participating public employer; state employees' retirement system adopted.

The common council, having elected on July 1, 1961, by vote of three-fifths of its members, to have the city become a participating public employer and thereby include its eligible officers and employees in the membership of the state employees' retirement system, hereby declares that the city shall continue to be a participating public employer and shall conform to all applicable provisions of sections 5-10-1 through 5-10-51 of the Code of West Virginia.

For state law as to municipalities becoming participating public employers within state public employees retirement system, see W. Va. Code, §§ 5-10-16, 8-22-1.

As to firemen's pension and relief fund, see §§ 8-22 to 8-25 of this Code. As to police pension and relief fund, see §§ 14-5, 14-6.

Section 2-6.1 Indemnification of certain officers and employees.

The common council hereby authorizes the city, acting by and through the common council, to contract and expend public funds from the general fund of the city for the purpose of one or more policies of public liability insurance providing the city and the officers, agents and employees for the city, as hereinafter enumerated, insurance coverage for legal liability of the city and such officers, agents and employees for bodily injury, personal injury or damage, including but not limited to false arrest and false imprisonment, and property damage, and affording the city and its designated officers, agents and employees insurance coverage and indemnification against any and all legal liability arising from, growing out of, by reason of or in any way connected with any acts or omissions of the city or its officers, agents or employees, as enumerated herein, in the performance of their official duties.

Such policy or policies of public liability insurance shall provide coverage and indemnification for the following officers, agents and employees of the city:

Members of the common council, mayor, city clerk, treasurer, assistant treasurer, public works director, police chief, fire chief, municipal judge and city attorney.

The officers, agents and employees of the city enumerated above shall not be required to share in the cost of providing such policies of public liability insurance. (5-28-78, § 3.)

Section 2-6A Article II. The Common Council.

For charter provisions as to municipal authorities, their salaries, and composition of the common council, see Char., § 4. As to the qualifications of mayor and councilmen, see Char., § 6. As to election and term of mayor, see Char., § 8. As to election and term of councilmen, and filling vacancy in office of councilman, see Char., § 9. As to disqualification of councilmen, see Char., § 9. As to removal of elective and appointive officers for malfeasance, etc., see Char., § 15. As to oath of officers, see Char., §§ 17, 23. As to when term of office begins, see Char., § 18. As to result of failure to qualify for office, see Char., § 19. As to duty of mayor to make recommendations to the council, see Char., § 20. As to exercise by the council of city's corporate powers, see Char., § 5. As to powers and duties of common council generally, see Char., §§ 15, 28, 35 and 37.

For state law as to composition of municipal governing bodies and the qualifications and election of mayor, councilmen and recorder, see W. Va. Code, § 8-5-7. As to oath of office, see W. Va. Code, § 8-5-8. As to terms of office, see W. Va. Code, § 8-5-9. As to filling vacancies in office, see W. Va. Code, § 8-5-10. As to compensation of officers, see W. Va. Code, § 8-5-12. As to powers and duties of council with respect to ordinances, see W. Va. Code, § 8-11-1 et seq. As to general and specific duties, etc., of common council, see W. Va. Code, § 8-12-1 et seq.

Section 2-7 Clerk of the council; records generally.

The city clerk shall be ex officio clerk of the common council and shall keep all records of the council, as required by the city Charter and general laws of the state, as well as by this Code and other ordinances, resolutions and orders of the common council; and he shall, in general, perform for the council such duties as are normally performed by recording and corresponding secretaries. (Code 1942, ch. 6, § 3.)

For charter provisions that record of proceedings, ordinances, resolutions, etc., be properly kept and indexed, and open to inspection by persons interested, see Char., § 23. As to duty of city clerk to keep records of the common council, see Char., §§ 23, 27. As to requirement that, at each meeting of the council, the minutes of the last meeting be read, corrected and authenticated, see Char., § 24.

For state law as to records required to be kept by municipal governing bodies; and requirement for reading, correcting and authenticating minutes of meetings, see W. Va. Code, § 8-9-3. As to duty of municipal recorders (clerks) to keep the records of governing bodies, see W. Va. Code, § 8-10-3.

Section 2-8 Meetings generally.

(a) Regular meetings. There shall be a regular meeting of the common council on the first and third Thursdays of each month, at 8:00 P.M.; provided, that when a first or third Thursday of any month falls upon a holiday, the council may, by resolution or by motion duly put, carried and entered in the minutes, designate another day for such meeting.

(b) Special or adjourned meetings. There may be a special or adjourned meeting of the common council held at any time fixed by the council.

(c) Special called meetings. There may be special called meetings of the common council at any time fixed by the mayor or by any three members of the council; but there shall be a notice, in writing, of any such called meeting, served upon every member of the council by the chief of police, at least two hours before the time at which such meeting is called; and in such notice it shall be clearly

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stated for what purpose the meeting is called; and at such meeting no other matter shall be considered, except by the unanimous consent of all the members present.

(d) Notice of special called meetings. It shall be a part of the public duty of the chief of police to serve the notice required by subsection (c) of this section; but no notice shall be required to be given to any member of the council of the time of holding any regular meeting or any meeting called by the council or any adjourned meeting.

(e) Place of meetings. All meetings of the common council shall be held in the council chamber at city hall; provided, that the council may designate another place, open to the public and within the city when, in the opinion of a majority of the members, the council chambers would not be adequate to accommodate the number of persons expected to be present for a meeting, or when, for other good reason, the council chamber is not deemed suitable.

(f) Open to public; exceptions. All meetings of the common council shall be open to orderly members of the public; provided, that the council may, during any meeting, resolve itself into a committee of the whole and, thereupon, go into executive session, as provided by section 6- 9A-4 of the Code of West Virginia; at which time, the committee may exclude from attendance all nonmembers of the committee whose presence is not necessary for the consideration of such subject as have been referred to the committee; and provided further, that no final decision shall be made or vote or action taken upon any matter until the meeting has been reopened to the public and the committee of the whole has resumed its identity as the common council. (Code 1942, ch. 4, § 1, rules 1 through 3, 5, 36.)

For charter provisions as to duty of common council to ordain time and places for regular meetings; to provide by ordinance for the calling of special meetings; and authority of members present to compel the attendance of absent members under reasonable penalties, see Char., § 26. As to the quorum, see Char., § 22. As to city clerk being acting mayor during absence or disability of mayor or when office of mayor is vacant, see Char., § 21.

For state law as to who presides at meetings of municipal governing bodies and what constitutes a quorum, see W. Va. Code, § 8-9-1. As to requirements for open meetings of governing bodies, with exceptions, see W. Va. Code, ch. 6, art. 9A.

Section 2-9 Rules.

(a) The common council may, by resolution, adopt such rules as may be deemed desirable for the conduct of its meetings, the transaction of its business and the official conduct of its members, and may include therein reasonable penalties for the violation thereof; but no such rule shall be inconsistent with the state law, the Charter or this Code. Such rules may include, among other subjects, the following:

(1) The appointment, jurisdiction and duties of standing and special committees of the council.

(2) Attendance at meetings of the council by members and by others.

For charter provisions as to authority of common council to compel attendance of its members at meetings, see Char., §§ 26, 28, subsec. (65).

(3) Investigations and hearings, the compulsory attendance thereof of witnesses and the production of books and papers thereof as evidence.

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For state law as to authority of common council to investigate and inquire into all matters of concern to the city and its inhabitants, see W. Va. Code, § 8-12-5, subsec. (48). As to power of common council to compel attendance of witnesses and production of books and papers, see W. Va. Code, § 8-12-3, subsec. (c).

- (4) Parliamentary procedure.
- (5) The preservation of order at meetings.
- (6) The manner and form of petitions, applications and other papers intended for presentation to the council, and procedures relating thereto.

For state law as to authority of common council to make all needful bylaws and rules to carry into effect the authority granted to it by law, see W. Va. Code, §§ 8-11-1, 8-12-5, subsecs. (45), (55).

(b) Until such time as the common council shall adopt rules pursuant to the provisions of subsection (a) of this section, the rules of the council in force immediately preceding the effective date of this Code and which are not codified herein or in conflict herewith shall continue in full force and effect.

See Code 1942, ch. 4, § 1, as amended 12-7-61, less rules 1, 2, 3, 5, 14, 15, 22, 23, 25, 32 through 37 and 41.

Section 2-10 Chief of police to attend meetings and preserve order; arrest of persons for disobedience.

It shall be the duty of the chief of police, or of some one of his assistants to be designated by him, to attend all meetings of the common council and to preserve order both in the council chamber and in the vicinity thereof, and to enforce all orders of the presiding officer by arresting, without warrant, anyone who refuses to obey any order given by the presiding officer; and the person so arrested shall be held in custody until such time as he can be taken before a court having jurisdiction over the premises, to then be dealt with according to law. (Code 1942, ch. 4, § 1, rule 37.)

Section 2-11 Addressing the council.

(a) Privilege of citizens and taxpayers to be heard; limitation on time to speak. Any citizen or taxpayer of the city may be heard either in person or by counsel upon any matter introduced or pending before the common council; but no speech or hearing shall exceed ten minutes, except by the unanimous consent of the council.

(b) Citizens or counsel to speak only once on one subject at any one meeting. No citizen of the city or his counsel shall speak more than once on one subject at any one meeting of the common council, except by unanimous consent.

(c) Manner of addressing council. Any person, before addressing the council, shall rise to his feet, respectfully address the presiding officer and remain standing while delivering his address.

(d) Order of recognition. If two or more persons desire to address the common council at the same time, the presiding officer shall recognize the person who first addressed the chair, and the other

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person shall at once be seated. (Code 1942, ch. 4, § 1, rules 25, 33 through 35.)

Section 2-12 Voting.

(a) Method. All votes taken in the common council, except for the election of city officers, shall be by yeas and nays; but, upon the demand of the mayor, any member made before such vote is taken, the roll shall be called and a record made by the city clerk of the vote of every member voting.

(b) Roll calls. All roll calls made for a vote in the common council shall be made alphabetically, and every member shall vote when his name is called, unless personally interested in the matter being voted upon or excused from voting by the council.

(c) Councilmen to elect city officers by ballot. The city officers who are appointed by the common council shall be elected by ballot, and no person shall be declared elected unless he receives a majority of the votes cast. (Code 1942, ch. 4, § 1, rules 14, 15, 32.)

For charter provision as to mayor voting in council only to break a tie, see Char., § 25. As to requirement for majority vote unless otherwise provided, see Char., § 26. As to recording of ayes and noes upon call of any member, see Char., § 24.

For state law prohibiting member of municipal governing body from voting on any subject on which he may be interested other than as a citizen, see W. Va. Code, § 8-9-1. As to requirement that yeas and nays be recorded upon call of any member, see W. Va. Code, § 8-9-3.

Section 2-13 Ordinance procedures--Generally.

(a) It shall not be necessary, except where otherwise provided by state law or by this Code, for the common council 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 shall be adopted in accordance with the following requirements, except where different or additional requirements are specified in other provisions of state law or 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 fewer than two meetings of the common council, with at least one week intervening between each meeting, unless a member of the council 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 city, is to be finally adopted, the common council shall cause notice of the proposed adoption of such proposed ordinance to be published as a Class I-O legal advertisement, in compliance with the provisions of article 3, chapter 59 of the Code of West Virginia, and the publication area for such publication shall be the city. 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 city, 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. Such 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

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finally adopted.

(b) The common council may adopt, by ordinance, building codes, housing codes, plumbing codes, sanitary codes, electrical codes, fire prevention codes or any other technical codes dealing with the general public health, safety or welfare or a combination thereof, as the manner prescribed by this subsection. Before any such ordinance shall be adopted, the code shall be either printed or typewritten and shall be presented in pamphlet form to the common council 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 such code in full, but shall merely identify such code. The vote on the adoption of such ordinance shall be as on any other ordinance. After the adoption of the ordinance, such code or codes shall be certified by the mayor and shall be filed as permanent records in the office of the city clerk, who shall not be required to transcribe and record such code 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 adopted, 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 city, which notice shall also state where, within the city, the code or codes will be available for public inspection.

(c) The common council 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 common council

(2) When otherwise provided by state law.

The nature of any such emergency enactment shall be set out in full in the ordinance. (Code 1942, ch. 4, § 1, rules (22), (23).

For state law as to ordinances and ordinance procedures, see W. Va. Code, § 8-11-1 et seq. For state law basis of this section, see W. Va. Code, § 8-11-4.

As to effect of repeal or expiration of ordinance, see § 1-6 of this Code.

Section 2-14 Same--Attestation; record of ordinances.

Each ordinance, upon its final passage, shall be signed by the presiding officer of the common council and attested to by the city clerk, who shall then number it consecutively in relation to other ordinances, and record it in the record of ordinances.

Section 2-15 Same--Ordinances to repeal, amend or add to provisions of this Code, and records thereof.

(a) Each bill which proposes an ordinance to repeal, amend or add to any portion of this Code, and each bill which proposes an ordinance of a general and permanent nature, suitable for inclusion in this Code though constituting new subject matter not therein contained, shall be so drafted as to specify the specific section numbers, subsections, etc., of this Code which are to be repealed or amended and,

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with respect to additions and to new subject matter, as to provide appropriate chapter, article, section, etc., numbers therefor; and each amendment of and addition to this Code shall be set out in full, and appropriate chapter and article headings and section catchlines shall be included.

(b) Upon the adoption of an ordinance to repeal, amend or add to any portion of this Code or to include new subject matter in this Code, the city clerk shall separate the several chapters, articles, sections, etc., of such ordinance and enter them in their proper places in each file copy of this Code, and shall remove therefrom any portion so repealed or amended and, in the margin of each insertion in the file copies of this Code, he shall note and initial the date of passage, effective date and number of the amending or repealing ordinance.

(c) Items removed from the file copies of this Code, pursuant to subsection (b) of this section, shall be maintained by the city clerk in a separate, loose-leaf volume, arranged properly according to their respective chapters, articles, sections, etc., and each item so removed from the file copies of this Code shall, in the margin of each such item, be noted and initialed by the city clerk to show the effective date and the number of both the enacting and repealing or amending ordinances. The volume in which such repealed and amended items are to be included shall be known as the "Record of Repealed and Amended Portions of the Code of the City of Elkins, West Virginia," the purpose of which shall be to enable city officers, and other persons interested, to ascertain the status of this Code at any given time in the past.

(d) The requirements of subsection (b) of this section are in addition to the requirement that each ordinance, upon adoption, shall be included in the record of ordinances.

Section 2-16 Resolutions and records thereof.

(a) Each resolution shall, before its introduction, be reduced to writing and, when adopted, shall be signed by the presiding officer and attested to by the city clerk, who shall then date and number it and file it in his office in a book for that purpose, which shall be known as the record of resolutions.

(b) Resolutions and portions of resolutions which are repealed or amended by subsequent resolutions or ordinances shall be noted and initialed in the margin thereof by the city clerk, so as to show the date and number of the repealing or amendatory ordinance or resolution, but shall not be removed from the record of resolutions.

Section 2-16A Article III. City Officers Generally.

Section 2-16D Division 1. Generally.

For charter provisions as to city officers generally, elective and appointive; and authority of common council to prescribe their duties, terms of office, bond, compensation, etc., see Char., §§ 7, 15 and 28, subsec. (55). As to dual office holding, see Char., § 7. As to filling vacancies in offices, see Char., § 14. As to removal of officers for malfeasance, etc., see Char., § 15. As to oath of office, see Char., §§ 17, 23. As to when term of office begins, see Char., § 18. As to result of officer failing to qualify, see Char., § 19.

For state law as to oath of office, see W. Va. Code, §§ 6-1-3, 8-5-8. As to terms of office, see W. Va. Code, § 8-5-9. As to filling vacancies in elective offices, see W. Va. Code, § 8-5-10. As to authority of common

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council, by ordinance, to determine and prescribe offices and positions to be filled; the qualifications, powers, duties, etc., of those to be appointed or elected, etc., see W. Va. Code § 8-5-11. As to compensation of officers and employees, see W. Va. Code, § 8-5-12. As to procedure for removal from office, see W. Va. Code, § 6-6-7. As to public officers generally, see W. Va. Code, ch. 6.

Section 2-17 Requirements for appointive positions.

All appointive officers of the city to be appointed by the common council pursuant to the Charter, including the chief of police, the city attorney, the superintendent of streets, the commissioner of waterworks, the city collector and treasurer, the city clerk, the city engineer and other permanent officers appointed in the city by the common council, shall be elected by the council. (Code 1942, ch. 4, § 2.)

Section 2-17D Division 2. Specific Officers.

Section 2-18 Mayor.

The mayor shall be the chief executive officer of the city and the head of the city government. He shall take care that all provisions of this Code and other ordinances, resolutions and orders of the common council are faithfully executed; he shall faithfully perform the duties and exercise the powers prescribed for the mayor by the Charter; and he shall preside over all meetings of the common council. The mayor shall have such additional powers and perform such additional duties as may be prescribed for mayors and other chief executive officers of municipalities by applicable provisions of state law, and as may be prescribed by this Code and by other ordinances, resolutions and orders of the common council.

For state law as to powers and duties of municipal mayors generally, see W. Va. Code, § 8-10-1. As to qualifications of municipal mayors, see W. Va. Code, § 8-5-7, subsec. (c). As to term of office, see W. Va. Code, § 8-5-9. As to filling vacancy in elective office, see W. Va. Code, § 8-5-10.

Section 2-19 City clerk--Election; term; qualifications.

The city clerk shall be elected by the council at its first regular meeting in December, 1914, and every second year thereafter, for a term of two years. He shall be a qualified voter of the city at the time of his election. His term of office shall begin on the first day of January next succeeding his election, and he shall hold office for the term for which he was elected and until his successor is elected and qualified, unless sooner removed for cause by the city council. (Code 1942, ch. 6, § 1.)

Section 2-20 Same--Powers and duties generally.

The city clerk shall be custodian of the city seal and of all records, books, documents and papers for which custody is not otherwise provided, and he shall certify to all true copies thereof and charge such fees therefor as may be prescribed by this Code or other ordinances of the common council. The city clerk shall issue all city permits not issued by other city officers and keep full and accurate records thereof, and he shall serve as recording secretary to the common council. The city clerk shall have such other powers and perform such other duties as may be provided for municipal clerks and recorders in applicable provisions of state law, and as may be prescribed by this Code and other ordinances, resolutions and

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orders of the common council.

The city clerk shall keep accurate records of every transaction in relation to the affairs or business of the city which come within the purview of his office, and such records shall be kept under proper headings, and shall be legible, intelligible and comprehensive. (Code 1942, ch. 6.)

For charter provisions requiring common council to appoint a qualified voter to office of city clerk, to serve at the pleasure of common council and until a successor is appointed and qualified, see Char., § 7. As to city clerk being custodian of bonds and of copies of oaths of office taken by city officers, see Char., § 17. As to powers and duties of city clerk, see Char., §§ 21, 23, 24. As to city clerk being acting mayor when mayor absent, ill or disabled or when office of mayor is vacant, see Char., § 21. As to transcripts of records certified by city clerk under the city seal being deemed prima facie correct when sought to be presented as evidence in court, see Char., § 23. As to signatures of city clerk and mayor being required on orders to city collector and treasurer to pay out city money, see Char., §§ 27, 34.

For state law as to powers and duties of municipal recorders generally, see W. Va. Code, § 8-10-3.

Section 2-21 Same--Duties as to assessments, taxes, service charges, etc.

(a) The city clerk shall annually, not later than the seventh day of March, procure from the county assessor a certified statement showing, in separate amount, the aggregate value of all real and personal property within the city which is subject to taxation by the city, and showing the classification of such property for tax purposes, as provided by section 11-3-6 of the Code of West Virginia. Upon procurement of such list from the county assessor, the city clerk shall place such list before the common council at its next regular meeting.

(b) The city clerk shall make out, on blanks provided for the purpose, all assessments, allowances and orders of the common council and shall place such forms into the hands of the city collector and treasurer for collection, charging him with all such forms and taking his receipts therefor. The city clerk shall keep, in a well-bound book kept for that purpose, a full, accurate and complete list of taxes, water rents, fines, licenses and other orders placed by him into the hands of the city collector and treasurer. (Code 1942, ch. 6.)

For state law providing that assessment of property for taxation by municipalities generally shall be governed by the provisions of W. Va. Code, chapters 11 and 11A, see W. Va. Code, § 8-13-1. As to assessment of dogs, see W. Va. Code, § 19-20-2. As to classification of property for levy purposes, see W. Va. Code, § 11-8-5.

Section 2-22 City collector and treasurer.

(a) General powers, duties, etc. The city collector and treasurer shall collect assessments, levies, licenses, water rents and all other bills, accounts and charges placed into his hands by the common council or by the city clerk and as may be required by law, and shall duly give receipt therefor. He shall be chargeable with all such taxes, levies, licenses, water rents, charges or other collections placed in his hands for collection, and shall account therefor to the common council, as required by law.

(b) Keeping or paying out money. The city collector and treasurer shall act as treasurer and shall issue all checks when properly signed by the mayor and city clerk and when he has sufficient funds in hand to so pay. He shall keep all money collected by him in banks in so the city. He shall not pay out

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any of such funds except upon such orders as are herein specified and as allowed by law.

(c) Monthly reports to council; settlement of accounts. Upon the request of the mayor or a member of council, the city collector and treasurer will make a report to the common council, at its first regularly scheduled meeting following such request, regarding the status of city accounts.

The collector and treasurer shall make full settlement of his accounts as required by the rulings of the state tax commissioner and by the laws of the state and as the common council, by resolution, may require.

(d) Records. The city collector and treasurer shall keep complete and accurate fiscal accounts and records, as required by law and as prescribed by the state tax commissioner and other state officers having authority to prescribe therefor, and in accordance with directives from the common council.

(e) Rules, etc., to which collector subject. The city collector and treasurer shall be subject to the provisions of the city Charter and to the acts of the legislature relating to such officer and his duties, and also to all applicable provisions of this Code and other ordinances, resolutions and orders of the common council.

(f) Election; term; qualifications. The city collector and treasurer shall be elected by the city council at the first regular meeting held in the month of September of each odd year, or as soon thereafter as practicable. He shall be a citizen and qualified voter of the city at the time of his election, and shall hold office, during the pleasure of the council, for a term of two years or until his successor is elected and qualified. The term of his office shall commence on the first of October next succeeding his election.

(g) Oath of office. Before entering upon the discharge of his duties, the city collector and treasurer shall take and subscribe the oath of office required by law in such cases for the faithful performance of his duties. (Code 1942, ch. 7, § 2; 5-7-81.)

For charter provisions requiring common council to appoint a qualified voter to office of city collector and treasurer, to serve at the pleasure of the common council and until his successor is appointed and qualified, see Char., § 7. As to duty of city collector and treasurer to keep all city money, and to pay out money only on orders signed by mayor and city clerk, see Char., §§ 27, 34. As to fidelity bond required to be given by city collector and treasurer, see Char., §34. As to powers and duties of city collector and treasurer, see Char., §§ 15, 34, 35.

For state law as to powers and duties of municipal treasurers, see W. Va. Code, §§ 8-13-15, 8-13-16. As to payment of money from municipal treasuries, see W. Va. Code, § 8-13-22.

Section 2-23 City attorney.

The council shall appoint a city attorney, who shall be an attorney at law, admitted to practice in the State of West Virginia, and he shall be the head of the department of law of the city. He shall be the legal adviser, attorney and counsel for the city and for the officers of the departments thereof in matters relating to their official duties. He shall prosecute and defend all suits, actions and procedures for and on behalf of the city, shall prepare all contracts, bonds and other instruments, in writing, in which the city is concerned and shall endorse on each his approval of the form and correctness thereof. He shall, if required by the mayor, appear and assist in the prosecution of persons arrested for violating the laws and ordinances of the city or those laws of the state over which the municipal court may have jurisdiction. The mayor or any member of the common council may require the opinion of the city attorney, in writing, upon any question of law involving his powers and duties. The term of office shall be for one year

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commencing on April 1 of each year, and he shall receive such compensation as shall be deemed appropriate. (Code 1942, ch. 8, § 1.)

For charter provisions requiring common council to appoint a qualified voter to the office of city attorney, to serve at the pleasure of the council and until his successor is appointed and qualified, see Char., § 7.

Section 2-24 Public works director.

The common council may appoint a public works director, who shall serve during such periods as the council may prescribe and who shall be paid such sum as the council may determine from time to time.

The public works director shall maintain on file in his office copies of plans and specifications for street and sidewalk construction and for the construction of other public improvements, works and buildings not required to be filed elsewhere, as well as copies of all plans, plats, drawings and diagrams which, by law, this Code or other ordinance, require his approval. He shall maintain a record of street grades and bench marks within the city and such other records of an engineering or topographical nature as may be of use to the city or to any of its officers or employees in the discharge of their official duties. Except as may be otherwise provided by law, this Code or other ordinance, the public works director shall supervise all engineering, construction and surveying work done by or for the city, shall perform such other duties as may be required of him by the common council and shall make a monthly report to the common council, advising it of the status of such projects as he is currently supervising. (Code 1942, ch. 9, § 1; 7-19-79.)

Section 2-25 City Code editor.

(a) The city attorney shall be, ex officio, the City Code editor. As such, he shall prepare or cause to be prepared supplements to, or otherwise revise, this Code, noting the sections which have been repealed, generally updating this Code, and including, at his discretion, updated annotations of court decisions or citations to other laws. He may make and enter into all contracts and execute, acknowledge and deliver all instruments necessary or incidental to the performance of his duties under this section, subject to the availability of funds appropriated for such purposes.

(b) In performing his duties and exercising his authority under this section, the city code editor shall not alter the sense, meaning or effect of any act of the common council, but he may:

- (1) Renumber and rearrange sections or parts of sections.
- (2) Transfer sections or divide sections, so as to give distinct subject matters separate section numbers, but without changing the meanings thereof.
- (3) Insert or change the wording of headnotes and catchlines.
- (4) Change reference numbers to agree with renumbered chapters or sections.
- (5) Substitute the proper section or chapter number for the terms "this ordinance," "the preceding section," etc.

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- (6) Strike out figures where they are merely a repetition of written words, and vice versa.
- (7) Change capitalization for the sake of uniformity.
- (8) Correct manifest typographical and grammatical errors.
- (9) Make any other purely formal or clerical changes in keeping with the purposes of the revision.

(c) The city code editor shall omit all titles of ordinances, all enacting, resolving and repealing clauses, all appropriation measures, all temporary ordinances, all declarations of emergency and all validity, declaration of policy and construction clauses, except when the retention thereof is necessary or desirable to preserve the full meaning and intent of the common council; and he may add such editor's notes as he deems appropriate.

Section 2-25A Article IV. Boards and Commissions.

Section 2-25D Division 1. Generally.

Section 2-26 Attendance of members at public meetings.

Each board, commission or other body established by this Code or by other ordinance or resolution of the common council is hereby vested with the authority to require the chief of police to compel the attendance of its members at any public meeting, except as to any such member who has been excused from attendance by the presiding officer of such board, commission or other body, and except as to any such member who, by reason of illness or physical disability, is unable to attend any such meeting.

The common council reserves the right to suspend or revoke the appointment of any member of any board, commission or other body established by this Code or by other ordinance or resolution of the common council who, without having been properly excused and being physically fit, fails to attend two or more public meetings of such board, commission or other body in any one calendar year.

For charter provisions as to authority of common council, by ordinance, to provide for the compulsory attendance at public meetings of the members of the bodies exercising, respectively, functions of the common council, see Char., § 28, subsec. (65).

Section 2-26.1 Submission of reports and statements.

Each board, commission or other body established by this Code or other ordinance or resolution of the common council shall promptly submit all reports or statements that are required of it by this Code, state law or other ordinances, resolutions or orders of the common council.

No funds shall be released for the use of any such board, commission or other body until all such reports or statements have been submitted.

Section 2-26D Division 2. Board of Library Directors.

For charter provisions as to authority of common council to establish, maintain and regulate free public libraries, and to receive money therefor, etc., see Char., § 28, subsec. (5).

For state law as to public libraries generally, see W. Va. Code, ch. 10, art. 1. As to the interstate library pact, see W. Va. Code, ch. 10, art. 1A. As to authority of common council to operate, etc., a public library and appoint and support a library board, see W. Va. Code, § 8-12-5, subsecs. (38) and (39).

Section 2-27 Created; composition; appointments, compensation and terms of members.

There is hereby created a board of library directors of the city. Such board shall consist of five members. Initially, one member shall be appointed to serve for one year; one member shall be appointed to serve for two years; one member shall be appointed to serve for three years; one member shall be appointed to serve for four years; and one member shall be appointed to serve for five years, and thereafter their successors shall be appointed for terms of five years each. All appointments shall be made by the common council and all directors so appointed shall serve without compensation and at the will and pleasure of council. (10-20-66.)

Section 2-28 Powers and duties.

The board of library directors, with respect to any public library established pursuant to the provisions of section 28, subsection (5) of the city Charter or section 10-1-2 of the Code of West Virginia, shall have the powers and perform the duties prescribed for municipal boards of library directors by article 1, chapter 10 of the Code of West Virginia, and shall conform to the requirements and limitations of that article in all respects.

Section 2-28D Division 3. Planning Commission.

For state law as to urban and rural planning and zoning generally, see W. Va. Code, ch. 8, art. 24. As to municipal planning commissions, see W. Va. Code, § 8-24-4 et seq.

Section 2-29 Created; short title.

There is hereby created a municipal planning commission in and for the city, pursuant to the provisions of section 8-24-5 of the Code of West Virginia. The title of the commission shall be the "Planning Commission of the City of Elkins", and it shall be known as the planning commission. (6-5-47; Code 1949, Supp., ch. 24, § 1.)

Section 2-30 Composition; appointments, term and compensation of members; vacancies.

The planning commission shall consist of one councilman and the mayor or another administrative officer of the city, each to be appointed by the common council, for a term coextensive with his term as councilman or administrative officer, unless removed for cause prior to the expiration of such term; and seven resident freeholders, five of whom must have been residents of the city for at least ten years prior to nomination and appointment, herein referred to as "citizen members", who shall be

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nominated by the mayor and appointed by the common council, each for a term of three years and until his successor has been duly appointed and qualified, unless removed for cause prior to the expiration of his term of office. Vacancies in the citizen membership shall be filled for the unexpired term only.

Members of the commission shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties. (6-5-47; Code, 1949 Supp., ch. 24, §§ 2, 3.)

For state law basis of this section, and requirement that citizen members be appointed so as to be representatives of various segments of the population, see W. Va. Code, § 8-24-5.

Section 2-31 Officers.

At its first regular meeting in each year, the planning commission shall elect from its members a president and a vice president; and the vice president shall have the authority to act as president during the absence or disability of the president. The city clerk shall act as clerk of the commission. (6-5-47; Code 1943 Supp., ch. 24, § 3.)

For state law basis of this section, see W. Va. Code, §8-24-11.

Section 2-32 Plans and recommendations.

The duties of the planning commission shall be to prepare plans and make recommendations to the common council for the improvement and development of the whole or any portion of the city and of any land outside the city which, in the opinion of the commission, bears relation to the planning of the city; provided, that the duties of the planning commission shall not extend beyond the territorial limits of the city, except as concerns the municipal airport and the flood control project, and except insofar as is reasonably necessary to protect the community, within and without the corporate limits, against inadequate streets, highways, alleys, water lines and sewers, and against inadequately or improperly planned and zoned territory within the city limits. Such plans shall show recommendations for or concerning any public building, public memorial, new streets, alleys, water lines, sewers, lights, bridges, parks, parkways, playgrounds and any other public areas or public improvements. (6-5-47; Code, 1949 Supp., ch. 24, § 4.)

Section 2-33 Plans and recommendations to be submitted to mayor and council.

Whenever the planning commission shall have agreed upon a plan and recommendation for the development or improvement of the city or any portion thereof, such plan shall be submitted to the mayor and common council for their consideration and action. (6-5-47; Code, 1949 Supp., ch. 24, § 5.)

Section 2-34 Traffic studies.

The planning commission shall also make studies of vehicular and pedestrian traffic and parking regulations, and report to the mayor and common council its findings, from time to time, with recommendations in relation thereto and suggested improvements therein. (6-5-47; Code, 1949 Supp., ch. 24, § 6.)

Section 2-35 Prior council approval of expenses and contracts.

The planning commission shall not incur any debt or expense chargeable to or for which the city may be liable or responsible, nor enter into any contract for the services of any engineer, clerk or other help without first having had and obtained the consent and approval of the common council in each instance, manifested by an order duly approved by the council for payment thereof, and so entered in the minute records of the council. (6-5-47; Code, 1949 Supp., ch. 24, § 7.)

Section 2-36 Additional powers and duties.

The planning commission shall have such further powers and perform such further duties with respect to municipal planning and zoning as may be specified for municipal planning and zoning commissions in article 24 of chapter 8 of the Code of West Virginia, and shall conform to the requirements and limitations contained in that article.

Section 2-36D Division 4. Board of Park and Recreation Commissioners.

For state law as to the board of park and recreation commissioners, see W. Va. Code, §§ 8-21-1 to 8-21-14. As to public recreation and playgrounds generally, see W. Va. Code, §§ 10-2-1 to 10-2-5.

Section 2-37 Creation.

There is hereby created a board of park and recreation commissioners, for the purpose of establishing, constructing, improving, extending, developing, maintaining and operating a city public park and recreation system. (2-1-68, § 1.)

Section 2-38 Composition; compensation; terms; vacancies.

The board of park and recreation commissioners shall consist of five persons, serving without compensation, who shall be appointed by the common council and who, at the time of their appointment, shall be residents and freeholders of the city. Membership on the common council shall not disqualify any member for appointment to the board, if otherwise qualified; however, not more than two members of the common council may be so appointed. The term of the board membership of any such member of the common council so appointed shall continue during his term as a member of the common council and until his successor is appointed. The terms of other appointed members shall be for six years and until their successors have been duly appointed; except, that the members of such board first appointed shall be appointed for such terms that the term of one member shall expire annually thereafter. When any member of the board, during his term of office, shall cease to be a resident and freeholder of the city, he shall thereby be disqualified as a member of the board and his office shall thereupon become vacant. When a vacancy occurs on the board by reason of death, resignation, change of residence from the city, failure to remain a freeholder of the city or due to any other cause, the remaining members of the board shall appoint a successor, or if there should be no members left on the board, the common council shall appoint successors, and in either event, the appointments shall be for the unexpired term or terms. (2-1-68, § 1; 7-19-79.)

Section 2-39 Officers; bylaws, rules and regulations.

The board of park and recreation commissioners shall organize by electing one of its members president and by installing such other officers as may be necessary. The board shall have the power to adopt bylaws, rules and regulations for the proper conduct of public recreation for the city. (2-1-68, § 3.)

Section 2-40 Powers and duties generally.

(a) The board of park and recreation commissioners shall be responsible for all policies, rules and regulations relating to the administration of a public recreation program.

(b) The board of park and recreation commissioners shall provide, conduct and supervise public playgrounds, athletic fields, recreation centers and other recreational facilities and activities on any of the properties owned or controlled by the city or on other properties, with the consent of the owners and authorities thereof. It shall have the power to conduct any form of recreational activity which will constructively and wholesomely employ the leisure time of the people. (2-1-68, §§ 2,4.)

For state law as to general powers of the board, see W. Va. Code, § 8-21-10.

Section 2-41 Appointment of superintendent or director of recreation and personnel.

The board of park and recreation commissioners shall have the power to appoint a superintendent or director of recreation who shall be trained and properly qualified for such work; and, upon the recommendation of the superintendent or director, such other personnel as may be required. (2-1-68, § 5.)

Section 2-42 Annual budget.

The board of park and recreation commissioners shall annually submit a budget to the mayor and common council for their approval. (2-1-68, § 6.)

Section 2-43 Authority to receive gifts and bequests.

The board of park and recreation commissioners may solicit or receive any gifts or bequests of money or other personal property or any donations to be allocated, permanently or temporarily, in principal or by interest, to playgrounds or for other recreational purposes. (2-1-68, § 7.)

Section 2-44 Reports.

The board of park and recreation commissioners shall make to the mayor and common council full and complete annual and other required reports, and shall also make reports requested by other governmental agencies. (2-1-68, § 8.)

Section 2-45 Fees and charges for use of recreational services and facilities.

The board of park and recreation commissioners upon the recommendation of the superintendent or director of recreation, shall have the authority to levy fees and charges which it deems appropriate to provide recreational services or facilities. (2-1-68, § 9.)

Section 2-46 Cooperation, etc., with other governmental units.

The board of park and recreation commissioners is authorized to work jointly with other municipal departments or political subdivisions to provide, establish, operate, conduct and maintain a supervised recreation system and to acquire, operate, improve and maintain property, both real and personal, for parks, playgrounds, recreation centers and other recreation facilities and activities. (2-1-68, § 10.)

Section 2-46.1 Additional powers and duties.

The board of park and recreation commissioners shall have such further powers and perform such further duties with respect to the establishing, constructing, improving, extending, developing, maintaining and operating a city public park and recreation system as may be specified for such a board in article 21 of chapter 8 of the Code of West Virginia, and shall conform to the requirements and limitations contained in that article. (7-19-79.)

Section 2-46D Division 5. Elkins Municipal Building Commission.

Section 2-47 Created.

There is hereby created a municipal building commission for the city which shall be known as "Elkins Municipal Building Commission." (9-2-76, § 1.)

Section 2-48 Public corporation; perpetual existence.

The commission shall be a public corporation and shall have perpetual existence. (9-2-76, § 2.)

Section 2-49 Board.

All property, powers and duties and the management and control of the commission shall be vested in a board of three members appointed by the city council for terms of five years. Members first appointed shall serve respectively for terms of one year, two years and three years. Thereafter, members shall be appointed for terms of five years each. Vacancies shall be filled by appointment for the unexpired term only. As the term of each initial appointee expires, the successor to fill the vacancy created by such expired term, shall be appointed for a term of five years. No more than two of the members of such board shall be from the same political party, and no member of such board shall hold any office, other than the office of notary public, or employment under the United States of America, the state, any county or political subdivision thereof, or of any political party. All members of such board shall be residents of the

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city. No member of such board shall receive any compensation for his services as such, but each member shall be reimbursed by the commission for any reasonable and necessary expenses actually incurred in the discharge of his duties as a member of the board. (9-2-76, § 3.)

Section 2-50 Powers.

The commission shall have plenary power and authority to:

- (a) Sue and be sued;
- (b) Contract and be contracted with;
- (c) Adopt, use and alter a common seal;
- (d) Make and adopt all necessary, appropriate and lawful bylaws and rules and regulations pertaining to its affairs;
- (e) Elect such officers, appoint such committees and agents and employ and fix the compensation of such employees and contractors as may be necessary for the conduct of the affairs and operations of the commission;
- (f) Acquire, purchase, own and hold any property, real or personal; and acquire, construct, equip, maintain and operate public buildings, structures, projects and appurtenant facilities of any type for which the governmental body or bodies creating such commission are permitted by law to expend public funds (all hereinafter in this article referred to as facilities);
- (g) Apply for, receive and use grants-in-aid, donations and contributions from any source, including but not limited to the United States of America or any department or agency thereof, and accept and use bequests, devices, gifts and donations from any source whatsoever;
- (h) Sell, encumber or dispose of any property, real or personal;
- (i) Issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with exercising powers as provided herein;
- (j) Raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of Article 16, Chapter 8 of the West Virginia Code, and to the extent provided by section 2-51, without regard to the limitations specified in said Article 16, and the commission is hereby declared to be a "governing body" as that term is used in Article 16 only;
- (k) Exercise the power of eminent domain in the manner provided for in West Virginia Code, Chapter 54 for business corporations, for the purposes set forth in subsection (f) of this section, which purposes are hereby declared public purposes for which private property may be taken;
- (l) Lease its property or any part thereof, for public purposes, to such persons and upon such terms as the commission deems proper, but when the city is a lessee under any such lease, such lease must contain a provision granting the city the option to terminate such lease during any fiscal year covered thereby; and

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- (m) Do all things reasonable and necessary to carry out the foregoing powers. (9-2-76, § 4.)

Section 2-51 Indebtedness.

No statutory limitation with respect to the nature of amount of indebtedness which may be incurred by municipalities or other public or governmental bodies shall apply to the indebtedness of the commission. No indebtedness of any nature of the commission shall constitute an indebtedness of the municipality or a charge against any property of said municipality. No obligation or indebtedness incurred by the commission shall give any right against any member of the city council or any member of the Commission. The rights of creditors of the commission shall be solely against the commission as a corporate body and shall be satisfied only out of property held by it in its corporate capacity. (9-2-76, § 5.)

Section 2-52 Surplus funds.

If the commission should realize a surplus over and above the amount required for the maintenance, improvement and operation of its facilities and for meeting all required payments on its obligations, it shall set aside such a reserve for future operations, improvements and contingencies as it shall deem proper and shall then apply the residue of such surplus, if any, to the payment of any recognized and established obligations not then due; and after all such recognized and established obligations have been paid and discharged in full, the commission shall, at the end of each fiscal year, set aside the reserve for future operations, improvements and contingencies, as aforesaid, and then pay the residue of such surplus, if any, to the city. (9-2-76, § 6.)

Section 2-53 Contributions.

Contributions may be made to the commission from time to time by the city council and such other persons that may desire to do so. All funds received by the commission shall be deposited in such banking institution or banking institutions as the commission may determine and shall be withdrawn therefrom in such manner as the commission may direct. The commission shall keep strict account of all of its receipts and expenditures and shall quarterly report to the counties, municipalities, persons, firms or corporations which have made contributions to it. Such report shall contain an itemized account of the commission's receipts and disbursements during the preceding quarter. Such report shall be made within sixty days after the end of the quarter. Within sixty days after the end of each fiscal year, the commission shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding year and publish the same as a Class II-O legal advertisement in compliance with the provisions of Article 3, Chapter 59 of the Code of West Virginia. The publication area for such publication shall be each county in which the commission's facilities are located. The books, records and accounts of the Commission shall be subject to audit and examination by the state tax department and by other proper public officials or bodies in the manner provided by law. (9-2-76, § 7.)

Section 2-54 Sale of property on direction of city council.

In the event a majority of the city council shall so direct in writing and if all indebtedness of the commission has been paid in full, the commission shall sell, or transfer all or any of its properties and

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assets so directed and distribute the proceeds thereof, if any, to the city.
(9-2-76, § 8.)

Section 2-55 Transfer of property to commission.

The city is hereby empowered and authorized to convey or transfer to the commission property of any kind, which has been acquired by the city, to carry out the purposes of the commission. When property is conveyed or transferred as aforesaid, the city and the commission shall agree in writing at the time the conveyance or transfer is made as to the fair market value of such property. (9-2-76, § 9.)

Section 2-56 Workmen' s compensation.

The commission shall subscribe to the workmen' s compensation fund of the state and pay all necessary premiums thereto, to the end that all eligible employers of such commission shall be covered by workmen' s compensation. (9-2-76, § 10.)

Section 2-56.0D Division 6. Municipal historic landmarks commission.

Section 2-56a Created.

There is hereby created a municipal historic landmarks commission for the city which shall be known as the "Elkins municipal historic landmarks commission." (1-5-84.)

Section 2-56b Composition; appointments, term and compensation of members; vacancies.

This historic landmarks commission shall consist of five members appointed by the mayor, a majority of whom shall be residents of the city of Elkins. Initially, one member shall be appointed to serve one year; one member shall be appointed to serve for two years; one member shall be appointed to serve for three years; one member shall be appointed to serve for four years; and one member shall be appointed to serve for five years. As the term of each initial appointee expires, the successor shall be appointed for a term of five years.

Vacancies shall be filled by appointment by the mayor for the unexpired term.

No member of such board shall receive any compensation for his services as such, but each member shall be reimbursed for any reasonable and necessary expenses actually incurred in the discharge of his duties as a member of the board. (1-5-84.)

Section 2-56c Officers; bylaws; rules and regulations.

At its first regular meeting in each year, the commission shall elect from its members a president and a secretary. The commission shall have the power to adopt bylaws and rules and regulations for the conduct of its affairs. The bylaws may provide for the election of additional officers. (1-5-84.)

Section 2-56d Meetings; quorum; voting.

The commission shall hold at least ten regular meetings per year which meetings shall take place at City Hall or at such other place as the president may direct. A majority of the members of the commission shall be necessary to constitute a quorum for the transaction of business. No member shall vote upon any matter or proposition in which he may be interested other than as a citizen. No action of the commission shall be official unless authorized by a majority of all members of the commission at the meeting at which any vote is taken. (1-5-84.)

Section 2-56e Powers, authority and duties.

The commission shall have power and authority within the jurisdictional limits of the city and within the limits of available funds, to:

(1) Make a survey of, and designate as historic landmarks, buildings, structures and sites which constitute the principal historical and architectural sites which are of local, regional, statewide or national significance. No building, structure or site shall be deemed to be an historic one unless it has been prominently identified with, or best represents, some major aspect of the cultural, political, economic, military or social history of the locality of Elkins; the region, the state or nation, or has had a major relationship with the life of an historic personage or event representing some major aspect of, or ideals related to, the history of the locality of Elkins, region, state of nation. In the case of buildings or structures which are to be so designated, they shall embody the principal or unique features of an architectural type or demonstrate the style of a period of our history or method of construction, or serve as an illustration of the work of a master builder, designer or architect whose genius influenced the period in which he worked or has significance in current time;

(2) Prepare a register of buildings, structures and sites which meet the requirements of subsection (1) of this section, publish lists of such properties and, with the consent of the property owners, inspect such properties from time to time and publish a register thereof from time to time setting forth appropriate information concerning the registered buildings, structures and sites;

(3) With the consent of the property owners, certify and mark with appropriately designed markers, buildings, structures and sites which it has registered;

(4) Establish standards for care and management of certified landmarks and withdraw such certification for failure to maintain the standards so prescribed.

(5) Acquire by purchase, gift, or lease and administer registered landmarks and easements, and interests therein, both real and personal;

(6) Lease or sell property so acquired under terms and conditions designed to insure the proper preservation of the landmark in question;

(7) Establish historic districts for registered landmarks, utilizing the same guidelines set forth in said subsection (1) above, and designate the area thereof by appropriate marker;

(8) Identify historical districts for registered landmarks and aid and encourage the municipality and county in which the district or landmark is located to adopt rules and regulations for the preservation of historical or architectural values;

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(9) Prepare and place historical markers on or along the highway or street closest to the location which is intended to be identified by such markers;

(10) Seek the advice and assistance of individuals, groups and departments and agencies in the government who or which are conducting historical preservation programs and coordinate the same insofar as possible;

(11) Seek and accept gifts, bequests, endowments and funds from any and all sources for the accomplishment of the functions of the commission;

(12) Adopt rules and regulations concerning the operation of the commission, the functions and responsibilities of its officers, employees, assistants and other personnel and such other matters as may be necessary to carry out the purpose of this division;

(13) Adopt such other rules and regulations as may be deemed necessary to effectuate the purposes of this division, but no such rules and regulations shall be inconsistent with the provisions of this division or with any plan of the planning commission of the city.

(14) To employ, within the limits of funds available therefor, such employees, assistants, technical personnel and consultants as are necessary to discharge the duties and responsibilities of the commission;

(15) Keep an accurate and complete record of all commission proceedings;

(16) Make an annual report to the common council of the city concerning the operation of the commission and the status of the commission's activities in all matters pending before it.

(17) Exercise such additional powers, authority and duties as may be provided by the provisions of Article 26a of chapter 8 of the West Virginia Code. (1-5-84.)

Section 2-56eA Article V. Parking Authority.

Section 2-57 Established.

There is hereby established and continued in the city, a parking authority as provided in Article 16, section 4 of Chapter 8 of the Official Code of West Virginia as amended. (3-5-70, § 1.)

Section 2-58 Composition; appointment and terms of members; vacancies.

The parking authority shall be composed of five members who shall be appointed by the common council, of whom one shall be appointed for three years, two for two years and two for one year, and the mayor of the city who shall be an ex-officio member thereof, without a vote. Upon the expiration of each term, except for the mayor, and for each succeeding term thereafter, the successor shall be appointed for a term of three years. The mayor's term shall coincide with his tenure of office and shall terminate coincidentally with his termination of office as mayor. Vacancies in the parking authority shall be filled in the same manner as the original appointments and, except for the Mayor's term, shall be for the

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remainder of the unexpired term. (3-5-70, § 2.)

Section 2-59 Officers; chief administrative officer; compensation.

The common council shall designate one of the members of the parking authority as chairman, each year. The city clerk is hereby designated as treasurer of the parking authority.

The parking authority shall adopt rules of procedure, organize and designate one of its members as secretary. The mayor is hereby designated as the chief administrative officer of the authority.

Members of the authority shall receive no salary but shall be reimbursed for expenses incurred in the performance of their duties. (3-5-70, § 3.)

Section 2-60 Powers and duties generally.

The parking authority shall have such powers as are granted by and subject to the limitations of Article 16, Chapter 8 of the Official Code of West Virginia as amended, or as may be hereafter amended. (3-5-70, § 4.)

Section 2-61 Contracts.

The parking authority shall have power to take all steps and proceedings and to make and enter into all contracts or arguments necessary or incidental to the performance of its duties in the execution of its powers under this article and as provided by statute; provided, that any contract relating to the financing or the acquisition, construction, extension or improvements of off-street parking facilities or of any trust indenture relating thereto shall be approved by the common council of the city. (3-5-70, § 5.)

Section 2-62 Jurisdiction.

The parking authority shall be limited to the acquisition, construction, operation and extension and improvement of off-street parking facilities within the city and shall have no authority over on-street parking or on-street traffic within the city. (3-5-70, § 6; 7-19-79.)

Section 2-63 Bonds.

Any bond issued pursuant to this article shall be found by and subject to all the covenants, agreements and provisions of the ordinance authorizing the issuance of revenue bonds to finance such off-street parking and the provisions of this article shall be enforceable by the holders of such revenue bonds. (3-5-70 § 7.)

Chapter 3: ALCOHOLIC BEVERAGES.

Sections:

3-0A Article I. In General.

- 3-1 Definitions.**
- 3-2 Tax imposed; exception.**
- 3-2.1 License required for distributing or retailing wine; fees; license period; separate license required for each place of business.**
- 3-3 Intoxication or drinking in public places; violation.**
- 3-4 False statement in application for license.**
- 3-4A Article II. Nonintoxicating Beer.**
- 3-5 License--Required; application.**
- 3-6 Same--Issuance.**
- 3-7 Same--Tax imposed; computation for less than full year.**
- 3-8 Same--Subject to conditions for state licenses.**
- 3-9 Additional tax; return and affidavit; collection; lien.**
- 3-9A Article III. Private Clubs.**
- 3-10 City license--Required.**
- 3-11 Same--Application; fee.**
- 3-12 Same--Issuance; application; expiration; renewal; transferability.**
- 3-13 Same--Schedule of fees; partial fees.**
- 3-14 Same--Violation of requirement.**
- 3-15 Same--Revocation.**
- Section 3-0A Article I. In General.**

For state Liquor Control Act, see W. Va. Code, ch. 60. For state Nonintoxicating Beer Act, see W. Va. Code, ch. 11, art. 16.

Section 3-1 Definitions.

For the purposes of this chapter, words and phrases defined by sections 11-16-2, 60-1-5 and 60-7-2 of the Code of West Virginia shall have the meanings ascribed to them therein. (6-1-67, § 1.)

Section 3-2 Tax imposed; exception.

Pursuant to the provisions of Chapter 8, Article 13 section 7 of the Code of West Virginia of 1931, as last amended, there is hereby imposed a tax of five percent of the retail purchase price of any and all intoxicating liquors purchased from the alcohol beverage control commission or from any person licensed to sell wine at retail to the public under the provision of chapter 60, article 8 of the Code of West Virginia, within the corporate limits of the city; Provided that such tax shall not be levied or collected on intoxicating liquors, other than wine, sold by or purchased from holders of a license issued under the provisions of chapter 60, article 7 of the Code of West Virginia; and further provided, that such tax shall be collected upon all sales of wine to holders of a license issued under the provisions of chapter 60, article 7 of the Code of West Virginia from a wine distributor licensed pursuant to the provisions of chapter 60, article 3 et seq. of the Code of West Virginia.

Such tax shall be levied upon the purchaser of said intoxicating liquor or wine and shall be added to and collected with the retail purchase thereof. Such tax shall be received by the city from the State Treasury pursuant to the rules and regulations adopted by the alcohol beverage control commission. (7-1-47; Code, 1949 Supp., ch. 12, § 6; 6-6-63; 6-17-65; 6-18-81; 8-18-83.)

Editor's note --At the time of enactment of the ordinance codified in this section, and again at the*

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time of the 1963 and 1981 amendments thereof, certified copies of the ordinance were sent to the state alcohol beverage control commissioner as required by W. Va. Code, § 8-13-7. For state law as to tax upon liquor sold at state store located beyond but within one mile of corporate limits of any municipality, for the benefit of such municipality, see W. Va. Code, § 60-3-9d.

Section 3-2.1 License required for distributing or retailing wine; fees; license period; separate license required for each place of business.

No person shall engage in business as a distributor or retailer of wine as provided by chapter 60, article 8 of the West Virginia Code of 1931, as last amended, within the corporate limits of the city, without first obtaining a license from the city, nor shall a person continue to engage in any such activity after his license has expired, been suspended or revoked. No person may be licensed in more than one of such capacities at the same time.

The city shall collect an annual fee for license issued under this section as follows:

- (a) Five hundred dollars per year for a distributor's license.
- (b) One hundred fifty dollars per year for a retailer's license.

The license period shall begin on the first day of July of each year commencing with July 1, 1982, and if the initial license is granted for less than a year, the fee shall be computed in proportion to the number of quarters remaining the fiscal year, including the quarter in which application is made.

A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

A copy of the ordinance codified in this chapter imposing the tax shall be certified by the mayor to the West Virginia Alcohol Beverage Commission and to the tax commissioner. (7-16-81; 9-2-82.)

Section 3-3 Intoxication or drinking in public places; violation.

- (a) It shall be unlawful for any person to:
 - (1) Appear in a public place in an intoxicated condition.
 - (2) Drink alcoholic liquor in a public place other than a business establishment duly licensed by the state to sell alcoholic liquor or nonintoxicating beer for consumption on its premises.
 - (3) Drink alcoholic liquor in a motor vehicle on any highway, street, alley or in a public garage.
 - (4) Tender alcoholic liquor to another person in a public place.
- (b) Any officer of the law is hereby authorized and empowered to arrest and to hold in custody, without a warrant, until complaint may be made before the municipal judge and a warrant issued, any person who, in the presence of such officer of the law, violates any one or more of the provisions of

subsection (a) of this section.

For corresponding state law, and penalties for violation, see W. Va. Code, § 60-6-9. As to profane swearing and drunkenness, see W. Va. Code, § 61-8-15.

Section 3-4 False statement in application for license.

It shall be unlawful for any applicant for any license under this chapter to knowingly make any false statement of any material fact in his application for such license.

Section 3-4A Article II. Nonintoxicating Beer.

For charter provisions as to authority of common council by ordinance to prescribe the time and manner in which licenses shall be granted, and to require the payment of the tax thereon to the city collector and treasurer before delivery of the license, see Char., § 35, and, see also, Char., § 28, subsec. (19).

For state Nonintoxicating Beer Act, see W. Va. Code, ch. 11, art. 16. As to exclusion of nonintoxicating beer from regulations of state Liquor Control Act, see W. Va. Code, § 60-1-7. As to unlawful acts of holders of state nonintoxicating beer licenses, see W. Va. Code, § 11-16-13.

Section 3-5 License--Required; application.

No nonintoxicating beer, as defined by section 11-16-2 of the Code of West Virginia, shall be sold, delivered or otherwise distributed within the city without a city license having been obtained therefor. Such license shall designate the name of the licensee and, if a different person, the name of the party obtaining the license, the particular place where nonintoxicating beer shall be sold and the time for which the license shall run, the kind of license and any other specifications which may be required by the state tax commissioner on similar licenses issued by the state. The applicant shall make application in writing, under oath, answering such questions as are provided in the application to the state tax commissioner for a state license. (Code 1942, ch. 16, § 1.)

For state law as to form and contents of application for state license, and bond required by state, see W. Va. Code, § 11-16-12.

Section 3-6 Same--Issuance.

The city clerk shall issue the license applied for when the application has been filed and upon presentation to him of a license duly issued to the applicant by the state and of the license tax for the city license. (Code 1942, ch. 16, § 2.)

Section 3-7 Same--Tax imposed; computation for less than full year.

There is hereby levied and imposed an annual license tax upon all dealers in and of nonintoxicating beer, which license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year and, if granted for a shorter period, the tax shall be computed

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quarterly, in proportion to the remainder of the fiscal year, as follows:

(a) Retail dealers shall be divided into two classes, A and B:

(1) Class A. In the case of a Class A retail dealer, the license fee shall be one hundred dollars for each place of business; the license fee for social, fraternal or private clubs not operating for profit and having been in continuous operation for two years or more immediately preceding the date of application, shall be one hundred dollars; except, that railroads operating in the city may dispense nonintoxicating beer upon payment of an annual license tax of ten dollars for each dining, club or buffet car in which such beverage is dispensed. Class A licenses issued for social, fraternal or private clubs and for railroad dining, club or buffet cars, as herein provided, shall authorize the licensee to sell nonintoxicating beer at retail, for consumption only on the licensed premises where sold. All other Class A licenses shall authorize the licensee to sell nonintoxicating beer at retail, for consumption on or off the licensed premises.

(2) Class B. In the case of a Class B retailer, there shall be two types of Class B license. The fee for a Class B license authorizing the sale of unchilled beer only shall be fifteen dollars. The fee for a Class B license authorizing the sale of both chilled and unchilled beer shall be one hundred dollars. A Class B license shall authorize the licensee to sell non-intoxicating beer at retail in bottles, cans or other sealed containers only, and only for consumption off the licensed premises. Sales under this license, to any person at any one time, must be in lesser quantities than five gallons. Such license may be issued only to the proprietor or owner of a grocery store. For the purposes of this article the term "grocery store" means and includes any retail establishment commonly known as a grocery store or delicatessen, where food or food products are sold for consumption off the premises.

(b) In the case of a distributor, the license fee shall be two hundred fifty dollars; for each place of business.

(c) In the case of a brewery with its principal place of business located in the city, the license fee shall be five hundred dollars for each place of manufacture. (Code 1942, ch. 16, § 3; 1949 Supp. , App., art. I, § 1; 6-15-61.)

For state law as to authority of city to impose the license taxes herein levied, see W. Va. Code, § 11-16-17. For state law provisions corresponding to this section, see W. Va. Code, § 11-16-4.

Section 3-8 Same--Subject to conditions for state licenses.

The license for the sale, delivery or distribution of nonintoxicating beer shall be issued for the same period as that issued by the state for corresponding state licenses, and shall be subject to revocation or cancellation for the same reasons or cause as would subject a state license to revocation or cancellation. (Code 1942, ch. 16, § 5.)

Section 3-9 Additional tax; return and affidavit; collection; lien.

Every person required, under the provisions of article 16, chapter 11 of the Code of West Virginia, to make return for and affidavit of the amount of non-intoxicating beer sold for the purpose of additional tax, shall make report and affidavit for the same period to the city clerk, who shall assess the additional tax at the rate and in the amount taxed by the state, and shall certify the additional tax to the city treasurer and collector for collection. Upon failure to pay such additional tax within thirty days the tax shall be collected as are other delinquent taxes or by any appropriate remedy in a court of competent

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jurisdiction. In addition thereto, there shall be a similar lien for the city taxes upon the same property as for state taxes, but such lien shall be subsequent to the lien for state taxes. (Code 1942, ch. 16, § 6.)

Section 3-9A Article III. Private Clubs.

For charter provisions as to authority of common council, by ordinance, to prescribe the time and manner in which licenses shall be granted, etc., see Char., § 35, and, see also, Char., § 28, subsec. (19).

For state law as to licensing of private clubs to sell intoxicating liquors, see W. Va. Code, § 60-7-1 et seq. As to prohibited acts by licensee, see W. Va. Code, § 60-7-12.

Section 3-10 City license--Required.

No licensee authorized by the state to sell alcoholic liquors as provided by article 7, chapter 60 of the Code of West Virginia shall do so within the corporate limits of the city without first having obtained a city license issued by the city clerk as hereinafter provided. (6-1-67, § 2.)

Section 3-11 Same--Application; fee.

(a) Application for a license to operate a private club shall be made on such forms as may be prescribed by the city clerk and shall include:

- (1) The name of the applicant.
- (2) If such application be an unincorporated association, the names and addresses of the members of its governing board.
- (3) If such applicant be a corporation, the names and addresses of its officers and directors.
- (4) The place at which such applicant will conduct its operations.
- (5) The number of members of the applicant.
- (6) The name or names of any national organization with which the applicant is affiliated.
- (7) The size and nature of the dining and kitchen facilities operated by the applicant.
- (8) Such other information as the city clerk may reasonably require.

(b) Such application shall be verified by each member of the governing board of the applicant if an unincorporated association or, if the applicant be a corporation, by its officers and members of its board of directors. Such application shall be accompanied by the license fee hereinafter prescribed. (6-1-67, § 3.)

Section 3-12 Same--Issuance; application; expiration; renewal; transferability.

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(a) The city clerk shall withhold issuing such license until such time as the applicant exhibits a valid private club license, issued by the West Virginia alcohol beverage control commissioner. Upon the exhibition thereof by the applicant or within thirty days thereafter, the city clerk shall issue the city license, unless it shall appear from the investigation conducted by the city clerk that the application submitted by the applicant contains one or more material inaccuracies or false statements; in which event, the city clerk shall refuse to issue such license until such time as the applicant has corrected such inaccuracies or false statements.

(b) Any license issued pursuant to an application received hereunder shall authorize the licensee to sell alcoholic liquors at only one location specified in the license.

(c) Any license issued hereunder shall expire on the thirtieth day of June next following the date of issue, and may be renewed upon the same showing as required for the issuance of the initial license, and the payment of such fees as hereinafter prescribed.

(d) A license issued under the provisions of this article shall not be transferable with regard to either licensee or location.

(e) The city clerk shall attach to any license issued hereunder a copy of this article, together with a notice advising the licensee to fully acquaint himself with the provisions of this article. (6-1-67, § 4.)

Section 3-13 Same--Schedule of fees; partial fees.

(a) The annual license fee for a license issued under the provisions of this article to a fraternal or veteran's organization or a nonprofit social club shall be three hundred seventy-five dollars.

(b) The annual license fee for a license issued under the provisions of this article to a private club other than a private club of the type specified in subsection (a) of this section shall be five hundred dollars if such private club has fewer than one thousand members, and one thousand two hundred fifty dollars if such private club has one thousand or more members.

(c) The fee for any such license issued following January 1 of any year and to expire on June 30 of such year shall be half those prescribed by subsection (a) or (b) above, as may be applicable to the particular type of group making a license application, as aforesaid. (6-1-67, § 5; 5-21-81.)

For state law as to authority of city to enact this section, see W. Va. Code, § 60-7-7. For provisions of state law corresponding to this section, see W. Va. Code, § 60-7-6.

Section 3-14 Same--Violation of requirement.

Any person authorized by the state to sell alcoholic liquors pursuant to the provisions of article 7, chapter 60 of the Code of West Virginia, who shall do so within the corporate limits of the city without first having obtained a city license therefor shall, upon conviction of such violation of this chapter, be punished by a fine of not less than five hundred dollars nor more than one thousand five hundred dollars, or by imprisonment for a period not to exceed thirty days, or by both such fine and imprisonment. The municipal court of the city shall have jurisdiction to hear and determine all cases brought hereunder. For the purposes of the section, a licensee shall be deemed to include any agent, employee or member of such licensee who shall, on such licensee's premises, sell alcoholic liquors, as provided by the Code of West

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Virginia, chapter 60, article 7, without having obtained a city license as hereinbefore provided. (6-1-67, § 6.)

Section 3-15 Same--Revocation.

Upon final conviction of a licensee or of any employee thereof acting within the scope of his employment of a violation of any provision of this article, or upon final conviction of a licensee or of any employee thereof acting within the scope of his employment of any violation of any ordinance of the city relating to the regulation, control or sale of alcoholic liquors, the city clerk shall revoke the licensee's city license. Such license so revoked shall not be reissued or reinstated for one year from the date of such revocation. Upon final conviction of any licensee or of any employee thereof acting within the scope of his employment as aforementioned, the city clerk shall, in writing, immediately advise the state alcohol control commissioner thereof. (6-1-67, § 8.)

Chapter 4: ANIMALS AND FOWL.

Sections:

4-0A	Article I. In General.
4-1	Keeping of hogs or pigs.
4-2	Structures, enclosures, etc., where animals or fowl are kept.
4-3	Certain animals running at large.
4-4	Hitching, etc.
4-5	Cruelty.
4-6	Poisoning.
4-7	Birds and wild fowl.
4-8	Fighting gamecocks or keeping cockpits.
4-9	Disposal of dead animals.
4-10	Staking cows or other animals on streets or property of another.
4-11	Exhibiting stallion, jack or bull.
4-12	Slaughtering.
4-13	Administration and enforcement of chapter; humane officer; state law applicable.
4-13A	Article II. Dogs
4-14	Definition.
4-15	Annual head tax--Imposed; duty of keepers to report to county assessor; dog tags.
4-16	Same--Failure to pay.
4-17	Running at large.
4-18	Barking or howling.
4-18A	Article III. Impoundment.
4-19	Conditions; procedure; alternative procedure.
4-20	Notice to owners or persons in charge.
4-21	Redemption; costs.
4-22	Disposition of unredeemed animals and fowl.
4-23	Disposition of proceeds of sale.
4-24	Prosecution of violations.
4-25	Interference with pound and with release of animals.

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As to disposition of carcasses generally, see § 9-2 of this Code. As to animals on sidewalks, see § 18-4.

Section 4-0A Article I. In General.

For charter provisions as to authority of city to regulate, etc., the keeping of animals and fowl, etc., see Char., § 28, subsecs. (12), (24), (26), (30) and (39).

For state law as to authority of city to regulate or prohibit the keeping of animals and fowl, see W. Va. Code, § 8-12-5, subsec. (26). As to diseases among domestic animals, see W. Va. Code, § 19-9-1 et seq. As to general stock law, see W. Va. Code, § 19-18-1 et seq.

Section 4-1 Keeping of hogs or pigs.

No person shall keep any hog or pig within the city. This section shall not apply to hogs or pigs kept at commercial stock yards, to be sold at auction. (Code 1942, ch. 20, § 4; 12-1-49.)

Section 4-2 Structures, enclosures, etc., where animals or fowl are kept.

(a) It shall be unlawful for any person to erect or maintain any poultry house, cowshed or cattle pen within twenty feet of any street in the city, or to erect or maintain such house, shed or pen at any place within the city, although more than twenty feet from any street, if such structure is an annoyance to any person rightfully using his property within the city and in no event shall any such structure be erected unless the person responsible therefor has obtained a permit therefor from the common council, and the granting of such permit shall not deprive the council of the right to require that the structure be removed if it proves to be an annoyance to any person rightfully using his own property within the city. Anyone violating the provisions of this section shall be liable to a fine of not more than one hundred dollars or imprisonment for not more than thirty days or both and, further, to have the poultry house, cowshed or cattlepen removed at his own expense.

(b) Each stable, shed, pen, coop and other structure, enclosure or place where any animal or fowl is kept shall be so located and of such construction as to have sufficient sanitary drainage to keep it dry at all times; and it shall be the duty of each person owning, harboring or keeping any animal or fowl to maintain such enclosure or other place where such animal or fowl is kept in a clean and sanitary condition at all times, free of any unwholesome or offensive substance, liquid or odor and in such condition as not to constitute a nuisance. (Code 1942, ch. 20, § 5.)

For charter provisions as to authority of common council to enact ordinances to prevent injury or annoyance to the public or individuals from anything offensive or unwholesome, see Char., § 28, subsec. (24). For same provisions of general state law, see W. Va. Code, § 8-12-5; subsec (13).

Section 4-3 Certain animals running at large.

It shall be unlawful for any person to permit any horse, pony, mule, jack, jennet, swine, cow, cattle, hog, pig, shoat, goat, livestock, poultry or other fowl which is within his custody or under his control to run at large within the city; and any such animal or fowl found at large within the city may be taken up and impounded, as provided by this chapter. (Code 1942, ch. 20, § 6; 3-2-72.)

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Section 4-4 Hitching, etc.

No person shall leave any horse or other animal standing without being securely hitched or fastened, unless left in the custody of some competent person. (Code 1942, ch. 20, § 1.)

Section 4-5 Cruelty.

No person within the city shall cruelly or needlessly beat, torture, mutilate, kill, overload or overdrive any domestic animal or fowl, nor wilfully deprive any domestic animal or fowl of necessary sustenance or shelter. (Code 1942, ch. 20, § 3.)

For state law as to authority of common council to enact this section, see W. Va. Code, § 8-12-5, subsec. (27). For state law as to malicious killing of, and cruelty to, animals, see W. Va. Code, §§ 61-3-27, 61-8-19.

Section 4-6 Poisoning.

No poisoned meat nor any poisonous substance shall be cast into any of the streets, public places, lots or buildings in the city for the purpose of destroying dogs or other animals.

For state law as to malicious killing of animals by poison or otherwise, see W. Va. Code, § 61-3-27.

Section 4-7 Birds and wild fowl.

No person shall, at any time, kill or injure any wild bird of any kind or injure or destroy the nests or eggs of any wild bird or fowl, except, that birds of prey, crows and English sparrows may be killed at any time and their nests and eggs may be destroyed; provided, that if under the law of the state it is at any time lawful to catch or kill any wild fowl or birds, such birds or fowl may, during such time, be caught or killed within the city. (Code 1942, ch. 23, § 10.)

For state law definitions as to game birds, protected birds and unprotected birds, see W. Va. Code, § 20-1-2. As to the hunting and killing of birds generally, see W. Va. Code, § 20-2-1 et seq.

Section 4-8 Fighting gamecocks or keeping cockpits.

No person shall keep any cockpit or cause any gamecock s to fight, or knowingly permit any such act to be done on his premises. (Code 1942, ch. 23, § 20.)

For state law prohibiting cockfighting, and penalty for violation, see W. Va. Code, § 61-8-19.

Section 4-9 Disposal of dead animals.

Any person knowing of the existence of or finding the carcass of a dead animal within the city shall immediately notify the mayor, chief of police or a police officer thereof and state the location thereof. It shall be the duty of such officer to immediately notify the owner of such animal, if such owner

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be known. If such owner is not known, it shall be the duty of the chief of police to burn or remove such carcass beyond the city as soon as is practicable and to bury it, at least three feet deep, at the expense of the city. If the owner of such animal is thereafter ascertained, the reasonable expense of the removal and burial thereof shall be paid by such owner to the city collector and treasurer. It shall be the duty of the chief of police, where the owner of such dead animal is known, to make out an itemized statement of the expenses of the removal and burial of such dead animal and deliver such account to the city collector and treasurer to be collected by him as city taxes are collected. If the owner of such dead animal is not known, the chief of police shall report an itemized account of the expenses of the removal and burial of such animal to the city council, to be allowed and paid out of the city treasury. (Code 1942, ch. 14, § 16.)

Section 4-10 Staking cows or other animals on streets or property of another.

It shall be unlawful for any person to stake out any cow or other animal on the property of another without such property owner's consent, or upon any street or public place in the city or upon property belonging to the city and, in all cases, it shall be unlawful to stake any cow or other animal in any place when such placement is to the annoyance of another. (Code 1942, ch. 20, § 2.)

Section 4-11 Exhibiting stallion, jack or bull.

No person shall exhibit any stallion, jack or bull upon any street, public park or in any public square, nor within sight of any residence within the city. (Code 1942, ch. 23, § 18.)

Section 4-12 Slaughtering.

No person shall, without the consent of the common council, keep any slaughterhouse or slaughter any animals within the city. (Code 1942, ch. 14, § 6.)

Section 4-13 Administration and enforcement of chapter; humane officer; state law applicable.

The provisions of this chapter shall be administered and enforced by a city humane officer, who shall be appointed by the common council. For these purposes, the city humane officer shall have and exercise such powers as may be reasonably necessary, including those specified for humane officers of counties in article 10 of Chapter 7 of the Code of West Virginia; and all provisions of article 10 of chapter 7 of the Code of West Virginia which are applicable to and within the city are hereby adopted. (Code 1942, ch. 20, § 6; 3-2-72.)

For charter provisions as to authority of common council to prescribe the powers and define the duties, etc., of the officers appointed under corporate authority, see Char., § 28, subsec. (55). For general law as to authority of common council, by ordinance, to determine and prescribe offices which are to be filled by appointment, powers and duties, etc., see W. Va. Code, § 8-5-11.

Section 4-13A Article II. Dogs

For state law as to authority of city to regulate or prohibit the keeping of dogs, see W. Va. Code, § 8-12-5, subsec. (26). As to required vaccination of dogs for rabies, see W. Va. Code, § 19-20A-1 et seq.

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As to dogs generally, see W. Va. Code, § 19-20-1 et seq.

Section 4-14 Definition.

For the purposes of this chapter, the term "dog" shall mean a dog of either sex, unless otherwise specified.

Section 4-15 Annual head tax--Imposed; duty of keepers to report to county assessor; dog tags.

(a) There is hereby imposed an annual head tax of three dollars on each dog, male or female, within the city, which tax the county assessor and his deputies, at the time they are making assessment of the personal property within the county, shall assess and collect from the owner, keeper or person having in his possession or allowing to remain on any premises under his control any dog above the age of six months. It shall be the duty of each owner, keeper or harbinger of any dog above the age of six months to report such dog to the county assessor at the time the annual assessment of personal property is made.

(b) At the same time as the head tax is assessed, the assessor and his deputies shall, on forms prescribed under section 19-20-4 of the Code of West Virginia, take down the age, sex, color, character of hair (long or short) and breed (if known) and the name and address of the owner, keeper or harbinger thereof. When the head tax is paid, the officer to whom payment is made shall issue a certificate of registration and a registration tag for such dog. The person reporting such dog to the county assessor shall then attach to the collar of each such dog the proper registration tag and retain within his possession the certificate of registration for each such dog.

(c) In addition to the assessment and registration above provided for, whenever a dog either is acquired or becomes six months of age after the assessment of the personal property of the owner, keeper or harbinger thereof, the owner, keeper or harbinger of such dog shall, within ten days after the acquisition or maturation, register such dog with the assessor and pay the head tax thereon unless the prior owner, keeper or harbinger paid the head tax.

(d) The annual head tax on dogs imposed under subsection (a) of this section shall be for a fiscal year ending June 30

(e) The assessor collecting the head tax on dogs shall be allowed a commission of ten percent upon all such taxes collected by him, and shall turn over to the city collector and treasurer ninety percent of the taxes levied hereunder and collected by him. (Code 1942, ch. 20, § 8; 9-3-81.)

For state law as to authority of city to impose head tax on domestic animals, see W. Va. Code, § 8-13-10. As to duty of county assessor to collect municipal head taxes on dogs and turn over proceeds, less commission, to municipal treasuries, and to issue dog registration tags and certificates, see W. Va. Code, § 19-20-2. As to required anti-rabies vaccination of dogs, see W. Va. Code, § 19-20A-1 et seq.

Section 4-16 Same--Failure to pay.

Any person owning, keeping or maintaining a dog within the city limits who fails to pay a head tax thereon, whether or not the tax is demanded by the county assessor, may be arrested and brought before the municipal court and fined a sum not to exceed ten dollars for each dog, which fine shall be in

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payment of the head tax for such dog for the fiscal year in which the fine may be enforced. (Code 1942, ch. 20, § 8.)

Section 4-17 Running at large.

(a) Any person who owns, keeps or harbors a dog within the city shall keep such dog confined to the premises owned or occupied by him and shall not permit such dog to run at large; provided, that a dog shall not be deemed to be at large when held on leash by and under the control of a responsible person, and a currently valid registration tag and currently valid vaccination tag displayed on the collar of such dog, as provided by section 19-20A-4 of the Code of West Virginia. (Code 1942, ch. 20, § 6; 3-2-72.)

(b) It shall be unlawful for any owner or person in control of a dog to:

(1) Knowingly or willfully allow his/her dog to defecate on private property of other persons without their consent of the consent of personsl having control of the premises.

(2) Knowingly or willfully allow his/her dog to defecate on public property; except that defecation by a dog on public property shall not constitute a violation of this section if the owner of the dog immediately removes the material defecated and disposes of it in a safe and sanitary manner. (05-05-94.)

(1, Amended, 05/05/1994)

Section 4-18 Barking or howling.

(a) No person shall keep any barking or howling dog within the city nor permit any dog owned or controlled by him to bark or howl continuously.

(b) The owner of any dog in violation of this section shall, upon conviction of such violation, be fined not less than ten dollars and not more than one hundred dollars. (Code 1942, ch. 20, § 7; 11-19-70.)

Section 4-18A Article III. Impoundment.

Editor's note. --This article constitutes a complete revision of Code, 1942, ch. 20, § 6, as amended 3-2-72, and ch. 20, § 9.

For charter provisions as to authority of city to prevent animals and fowl of all kinds from going at large, and to maintain a pound for their detention, regulate the keeping and sale of impounded animals and fowl, and to appoint a poundmaster and define his duties, see Char., § 28, subsec. (30).

For state law as to authority of city to regulate or prohibit the keeping of animals or fowl and to provide for the impounding, sale or destruction of animals or fowl kept contrary to law or found running at large, see W. Va. Code, § 8-12-5, subsec. (26). As to impoundment and disposition of dogs, see W. Va. Code, §§ 19-20-6a through 19-20-8a. As to impoundment, redemption and sale of animals under the general stock law, see W. Va. Code, §§ 19-18-6 through 19-18-10.

Section 4-19 Conditions; procedure; alternative procedure.

Any animal or fowl found at large within the city contrary to any provision of this chapter shall

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be considered abandoned and may be taken up by the city humane officer or, upon his request, by any city police officer, and impounded at a place designated for such purpose by the common council or by the mayor; provided, that if an animal found at large in violation of this chapter is rabid, vicious or otherwise constitutes a danger to human life or limb, the officer may destroy such animal by shooting if it cannot safely be captured and made secure; and provided further, that when the ownership of such animal or fowl is known to the officer and the animal or fowl is not rabid or vicious and does not otherwise constitute a danger to human life or limb, the officer may, in lieu of impounding such animal or fowl, notify the owner thereof to retrieve it promptly and confine it on his own premises and, in such case, the officer may cite such owner for violation of this chapter.

Section 4-20 Notice to owners or persons in charge.

(a) If the owner or person in charge of any animal or fowl impounded under the provisions of this article is known to the impounding officer, the impounding officer shall promptly notify him of such impoundment, so as to inform him of

- (1) The animal or fowl impounded, and a description thereof.
- (2) The date of impoundment.
- (3) The place of impoundment.
- (4) The reason for impoundment.
- (5) The procedure for redemption of his animal or fowl.
- (6) The costs for redemption.

(7) The consequences of failure to redeem the impounded animal or fowl, including sale at auction after ten days, or other authorized disposition.

(b) If the owner or person in charge of any animal or fowl impounded under the provisions of this article is unknown to the impounding officer and cannot be ascertained by reasonable effort within twenty-four hours, the animal warden shall, within two days following such impoundment, post notices on the city hall bulletin board and at three other public places within the city, each such notice to contain all the information required by items (1) through (7) of subsection (a) of this section.

Section 4-21 Redemption; costs.

The owner or person entitled to possession of any animal or fowl impounded under the provisions of this article may redeem such animal or fowl at any time prior to the sale or other disposition thereof by the city, upon satisfactory proof of his right to possession and payment to the city of:

- (1) The expense, if any, incurred in making the impoundment.
- (2) The expense incurred for sustenance, shelter and care of the impounded animal or fowl.
- (3) The expense incurred for giving notice.

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(4) The expense incurred for advertising a sale, retention of an auctioneer and related items.

(5) Any other expense actually incurred by the city; provided, that no animal shall be redeemed for less than five dollars, and no fowl shall be redeemed for less than two dollars.

Section 4-22 Disposition of unredeemed animals and fowl.

(a) Upon giving or posting of notice to the owner or person in charge of an impounded animal or fowl, as provided by section 4-20, the city humane officer shall, except as provided by subsection (c) of this section, post notices on the city hall bulletin board and three other public places within the city, to inform the public of a description of the impounded animal or fowl and to state that such animal or fowl will be offered for sale at public auction to the highest bidder, at a designated place within the city, at a designated time at least seven days subsequent to the date of posting such notices, unless it shall have been redeemed prior to the time designated for the sale thereof.

(b) Animals and fowl advertised for sale as provided in subsection (a) of this section shall, unless redeemed as provided by this article, be sold by the city at public auction to the highest bidder at the time and place designated by the notice of sale; but if there be no bona fide bid for any animal or fowl so put up for auction, such animal or fowl shall be disposed of as provided by subsection (d) of this section.

(c) If, in the judgment of the city humane officer, any animal or fowl impounded would not sell at public auction for a price sufficient to cover the costs of such sale, he shall notify the chief of police. If the chief of police shall concur in such judgment, such animal or fowl shall not be advertised for sale, but shall be disposed of as provided by subsection (d) of this section.

(d) Impounded animals and fowl not sold at public auction shall be released by the city humane officer to responsible persons who want them, upon payment to the city of the expense, if any, incurred in making the impoundment, and the expense incurred for sustenance, shelter and care; provided, that the city humane officer may, in the exercise of sound discretion, waive such payment or any part thereof in the case of minors or institutions; and provided further, that any person to whom an animal or fowl is released shall first agree to comply with all provisions of this chapter. Animals and fowl for which there are no responsible applicants shall be destroyed in a humane manner. However, no animal or fowl shall be released or destroyed under this subsection until it shall have been impounded for at least seven days.

Section 4-23 Disposition of proceeds of sale.

The proceeds of each sale of an impounded animal or fowl shall be paid into the city treasury and shall be applied to:

(1) The expense incident to the sale.

(2) The expense, if any, incident to apprehension and making the impoundment.

(3) The expense of giving notice.

(4) The expense incurred for sustenance, shelter and care.

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(5) The residue, if any, shall be paid to the owner of the animal or fowl, if known and, if he not be known, the residue shall be held in escrow for ninety days and shall be paid within such period upon application by the person entitled thereto, upon satisfactory proof of such entitlement and, if there be no such applicant within such ninety-day period, such residue shall be credited to the general fund of the city.

Section 4-24 Prosecution of violations.

Neither the impoundment of an animal or fowl nor the sale thereof nor the payment of any redemption fee shall serve to bar prosecution of any person for the violation of any provision of this chapter which may have resulted in such impoundment.

Section 4-25 Interference with pound and with release of animals.

It shall be unlawful for any person, without proper authority, to release or cause to be released any animal or fowl impounded pursuant to this article, or to in any way interfere with the operation or maintenance of the place of impoundment designated by the common council or by the mayor or to molest or injure any animal or fowl therein impounded.

Chapter 5: BUILDINGS.

Sections:

5-0A	Article I. In General
5-1	Office of building official.
5-1.1	Office of building inspector.
5-2	Permit--Required; exceptions.
5-3	Same--Application; plans and specifications; application for variance.
5-4	Same--Fees.
5-5	Same--Same--Prior payment.
5-6	Same--Issuance; denial; form.
5-6.1	Inspection of buildings while under construction; stop-work orders.
5-6.2	Refund of building permit fee; water and sewer tap fees; imposition of processing fee.
5-6.3	Building projects which do not alter existing exterior structures--Permit issuance authority.
5-6A	Article II. Building Code.
5-7	Adopted.
5-8	Administration and enforcement.
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5-9	Code adopted.
5-9A	Article IV. Repair, Closing, Demolition, Etc., of Buildings Unfit for Human Habitation.
5-10	Enforcement agency--Created; composition; officers; etc.
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5-12	Inspections and reports.
5-13	Order to owner and tenant.
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5-15A	Article V. Signs and Billboards.
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5-17	Permit--Required.
5-18	Same--Application.
5-19	Same--Issuance; time limit for beginning work.
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5-21	Same--Revocation.
5-22	Unsafe and unlawful signs.
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5-25	Projecting signs.
5-26	Billboards.
5-27	Nonconforming existing signs.
5-27.1	Signs advertising garage sales and other sales of personal property.
5-27A	Article VI Certification of Electricians.
5-28	Generally.

Section 5-0A Article I. In General

For charter provisions as to authority of common council to regulate the construction, alteration and repair of dwellings, buildings and other structures, etc., within the city, see Char., § 28, subsec. (45) and, see also, subsecs. (11), (12), (47), (49) and (50). As to authority of common council to regulate the construction and inspection of new buildings and the alteration and repair of all buildings, etc., and to require building permits, plans and specifications, etc., see Char, § 28, subsec. (51). For state law as to authority of city to provide for the regular building of houses and other structures, see W. Va. Code, §§ 8-12-5, subsec. (28), and 8-15-1. As to authority to regulate the construction, repair and alteration of structures of every kind within the city and to regulate electric wiring and plumbing, see W. Va. Code § 8-12-13. As to authority of city council to provide for elimination of health and safety hazards, see W. Va. Code, § 8-12-5, subsec. (23).

Section 5-1 Office of building official.

The office of building official is hereby created, to be headed by the building official and having such other personnel as may, from time to time, be authorized by the common council. The chairman of the building committee shall serve as ex officio building official.

Section 5-1.1 Office of building inspector.

(a) Appointment; delegation of authority. The office of building inspector is hereby created to be headed by the building inspector who shall be appointed by the common council and who shall hold such office at the pleasure of council and shall receive such compensation as council may determine from time to time. He may delegate the authority vested in him to such deputies, assistants, inspectors and other personnel as may, from time to time, be assigned to his office or, with the approval of the mayor, to other city officers and employees.

(b) Administrative duties. The building inspector shall receive applications for all permits and certificates required by this chapter, unless otherwise provided; and to enable him to enforce

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compliance with law, remove illegal conditions, secure the necessary safeguards during construction or require adequate exit facilities in buildings and structures, he shall issue such orders or notices as may be necessary. He shall keep comprehensive records of applications, of permits issued and of certificates, orders and notices issued. He shall retain, on file, copies of required plans and all documents relating to building work for as long as the work may continue and for a reasonable time thereafter. All such records shall be open to public inspection, for good and sufficient reason, at the office hours observed by the city, but shall not be removed from the City Hall.

(c) Duties as an inspecting officer. The building inspector 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 referred to in this chapter or chapter 21 of this Code and render written reports thereon. He shall make the inspections required under the provisions of the Building Code and other technical codes adopted by this chapter. He shall have the authority to enter any building, structure or premises at any reasonable hour, upon proper identification and in compliance with all applicable provisions of law. (4-1-82.)

For state law as to authority of city to provide for entering and inspecting private premises in the enforcement of city ordinances, see W. Va. Code, § 8-12-15.

Section 5-2 Permit--Required; exceptions.

No person shall, within the city, move any house or other building from one location to another, or demolish any building or other structure or erect, construct, install, repair, alter or enlarge any building or other structure or any electrical wiring, apparatus or appliance, any gas system, apparatus or appliance or any plumbing system or fixture which is or is to become a part of any building or structure, except pursuant to a city building permit first issued to him for such purpose; provided, that minor repairs, the total estimated cost of which does not exceed two hundred dollars for both materials and labor and which do not constitute an alteration of the things repaired may be made without such permit; and provided further, that such repairs without such permit shall conform to the requirements of the Building Code and any other applicable technical code adopted by this chapter.

For state law as to authority of city to require building permits, see W. Va. Code, § 8-12-14.

Section 5-3 Same--Application; plans and specifications; application for variance.

Applications for building permits shall be submitted in writing, on forms provided by the city, to the building inspector. Each such application shall state the location of the proposed project, the character, design and purpose thereof, the materials proposed to be used and the manner in which the work shall be done; and the building inspector may require that detailed plans and specifications be submitted, in duplicate, with the application. The building inspector may require such other information as may be necessary to enable him to determine whether the proposed project meets all requirements of state law, this Code and other ordinances.

When detailed plans and specifications are submitted, one set thereof shall be retained by the building inspector and the other set shall be kept at the location of the work being done pursuant thereto.

No application for a variance, as provided in chapter 21 of this Code, shall be made until after an application for a building permit in accordance with this section shall have first been made. (4-1-82.)

Section 5-4 Same--Fees.

The common council may, by ordinance, establish and, from time to time, amend schedules of fees for permits, certificates and inspections required by this chapter or by the Building Code or any other technical code adopted by this chapter; and until such a schedule is adopted pursuant to this section, the fees in effect immediately prior to the effective date of this Code are hereby continued in full force and effect. (Code 1942, ch. 22, § 8; 4-7-60.)

Section 5-5 Same--Same--Prior payment.

No building permit shall be issued until the fee prescribed therefor, if any, shall have been paid; nor shall an amendment to a permit be approved until the additional fee, if any, due to an increase in the estimated cost of the building or structure, shall have been paid.

Section 5-6 Same--Issuance; denial; form.

(a) Upon a determination by the building inspector that the proposed project, if undertaken and completed according to the statements contained in the application and in accordance with the plans, specifications and other papers accompanying the application, would meet all requirements of state law, this Code, the Building Code or other technical codes adopted by this chapter, and upon a determination that the application has been properly filed and the required fee has been paid, the building inspector shall so advise and recommend to the building committee that the permit be issued. The building inspector shall recommend that a permit be denied when he has determined that the above requirements would not be met; provided, that the building inspector may permit any application to be amended by the applicant so as to meet such requirements.

(b) The building committee shall review the application for building permits and the recommendations of the building inspector and shall finally approve such permits for issuance. ~~Upon such approval by the building committee a building permit shall be issued by the common council.~~ [Deleted September 20, 2012.)

(c) Building permits shall be in such form as may be prescribed by the building inspector, unless otherwise provided by the common council. The application for a building permit, as well as its accompanying plans, specifications and other papers, if any, as approved by the building inspector, shall be deemed to be an integral part of the permit. (4-1-82.)

Section 5-6.1 Inspection of buildings while under construction; stop-work orders.

The building inspector or his representative shall inspect all construction of buildings and the performance of the work described in the building permit application. If at any time he finds that the construction or the work does not comply with any provision of this Code or other pertinent laws, or he finds that the construction or the work being done differs from the description of the construction or work contained in the building permit application, or he finds that the cost of the construction or work being performed exceeds the estimated cost set forth in the building permit application, he may order that the construction or work be stopped until compliance has been satisfactorily made or an amended building

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permit approved and additional fee, if any, paid, as the case may be. (1-4-84.)

Section 5-6.2 Refund of building permit fee; water and sewer tap fees; imposition of processing fee.

(a) Upon request for the withdrawal of any application for a building permit, water tap or sewer tap, whether or not such application has been approved, and request for a refund of the fee paid therefor, the city collector and treasurer shall make refund of such fee previously paid by the applicant; provided, however, that an administrative fee of five dollars shall be withheld and not refunded to cover the cost of processing the application.

(b) Prior to making the refund provided for in subsection (a) above, the city treasurer and collector shall ascertain that no work has been commenced under such building permit and that no water or sewer tap has been made. The city treasurer and collector shall advise the building inspector, the water department and/or the sewer department, as the case may be, of such refund having been made. (7-19-84.)

Section 5-6.3 Building projects which do not alter existing exterior structures--Permit issuance authority.

(a) The city building inspector is hereby given authority to issue building permits on proposed projects which do not alter, in any manner, existing exterior structures of buildings or which do not, in any way impact upon existing zoning laws or regulations.

(b) Further, no building permit shall be issued by the city building inspector unless all other laws, ordinances and requisitions are complied with.

(c) In the event the city building inspector refuses to issue a building permit on a proposed project, the owner of such project may appeal to the Elkins city council within ten days from such refusal or at the next regular scheduled meeting of the Elkins city council. (8-4-88, §§ 1--3.)

Section 5-6A Article II. Building Code.

For charter provisions as to authority of common council to regulate the construction, alteration and repair of dwellings, buildings and other structures, etc, within the city, see Char., § 28, subsec. (45) and, see also subsecs. (11), (12), (47), (49) and (50). As to authority of common council to regulate the construction and inspection of new buildings and the alteration and repair of all buildings, etc., and to require building permits, plans and specifications, etc., see Char., § 28, subsec. (51).

For state law as to authority of common council to provide for the regular building of houses and other structures, see W. Va. Code, § 8-12-5, subsec. (28). As to authority of common council to enact building regulations, require building permits and make inspections of construction work, etc., see W. Va. Code, §§ 8-12-13 through 8-12-15.

Section 5-7 Adopted.

Repealed by Ordinance 041: April 18, 2006

[Ordinance 041 adopted "the current edition of the International Residential Code and International Building Code," repealed this section of code, and created new sections 5.31-5.37.

Ordinance 110, adopted January 30, 2012, updates those sections to read: "The standards and requirements as set out and published by the International Code Council, and American National Standards Institute, and the National Fire Protection Association, as listed..., and as adopted by the State Fire Commission with an effective date of July 1,2010, shall have the same force and effect as if set out verbatim in this section."]

~~For the purpose of establishing rules and regulations for the safe construction, alteration, moving, demolition, use, occupancy and maintenance of buildings and structures and of the plumbing, gas and electrical systems, fixtures, installations and apparatus therein, connected thereto or used in conjunction therewith, the common council hereby adopts that certain publication recommended by the American Insurance Association, titled "National Building Code," being the 1967 edition thereof. (Code 1942, ch. 22, § 9; 7-1-65.)~~

~~For state law as to authority of common council to adopt a building code by reference, see W. Va. Code, § 8-11-4, subsec. (b).~~

Section 5-8 Administration and enforcement.

The building official shall administer and enforce the provisions of the Building Code and of all other technical codes adopted by this article for the enforcement of which no other officer is designated by the city council; and the fire chief, chief of police and city health officer shall, upon request, cooperate in the administration and enforcement of the technical codes adopted by this article.

Section 5-8A Article III. Minimum Housing Standards.

For charter provisions as to authority of common council to regulate the construction, alteration and repair of dwellings, buildings and other structures, etc., within the city, see Char., § 28, subsec. (45) and, see also, subsecs. (11), (12), (47), (49) and (50). As to authority of common council to regulate the construction and inspection of new buildings and the alteration and repair of all buildings, etc., and to require building permits, plans and specifications, etc., see Char., § 28, subsec. (51).

Section 5-9 Code adopted.

There is hereby adopted by the common council that publication referred to as the "APHA-PHS Recommended Housing Maintenance and Occupancy Ordinance 1969," published by the American Public Health Association and the Public Health Service. (7-1-65.)

Section 5-9A Article IV. Repair, Closing, Demolition, Etc., of Buildings Unfit for Human Habitation.

For state law as to ordinances regulating repair, closing, etc., of buildings unfit for human habitation, see W. Va. Code, § 8-12-16.

Section 5-10 Enforcement agency--Created; composition; officers; etc.

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There is hereby created a board to be known as the enforcement agency, the members of which shall be the mayor, the town engineer or building inspector and one member at large, to be selected by and to serve at the will and pleasure of the mayor. The ranking health officer and fire chief shall be ex officio members of the enforcement agency. The mayor shall be the chairman of the enforcement agency, and the members shall select a clerk to keep a complete record of the business thereof including minutes of all meetings, hearings, notices, complaints and orders. A majority vote of the members shall decide all questions arising. (10-17-63.)

Section 5-11 Same--Powers generally.

The enforcement agency as a body or such of its members as may be designated shall have authority to investigate dwellings and building conditions and conduct hearings; provided, that any entrance upon premises for the purpose of making examinations shall be made in such manner as to cause the least possible inconvenience to the persons in possession. (10-17-63.)

Section 5-12 Inspections and reports.

(a) Upon complaint of any citizen of the city that any dwelling or building within the city is unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other condition prevailing in any building, whether used for human habitation or not, which would cause such buildings to be unsafe, unsanitary, dangerous or detrimental to the public welfare, the property against which the complaint is issued shall be inspected by the board hereinafter created and to be known and designated as the enforcement agency.

(b) If, upon inspection by the enforcement agency of the property against which a complaint is made, it is its finding that the property is unsafe, unsanitary, dangerous or detrimental to the public welfare, the enforcement agency shall cause its findings as to the conditions of such property and its recommendation as to whether the dwelling or building should be repaired or demolished to be made in writing and filed with the records of the enforcement agency. (10-17-63.)

Section 5-13 Order to owner and tenant.

If the report of the findings of the enforcement agency shows that the dwelling or building is unsafe, unsanitary, dangerous or detrimental to the public welfare and the recommendation of the enforcement agency is that the dwelling or building should be repaired or demolished, the enforcement agency shall immediately cause to be served on the owner of the premises, or his agent, and the tenant an order requiring the owner to appear before the enforcement agency, at the time and place fixed in the order, to show cause, if they can, why the dwelling or building against which the complaint is made should not be repaired or demolished, as the case may be, stating the reason therefor; provided, that a copy of such order shall be posted in a conspicuous place on the premises affected by the complaint and order; provided, further, that in the event the owner of the building is unknown or a nonresident of the state or it is impossible to get personal service on the owner or his agent, the enforcement agency shall cause such order to be published in a newspaper published and of general circulation in the city once a week for two successive weeks, which publication shall have the same effect as if personal service was had on the owner of the dwelling or building. (10-17-63.)

Section 5-14 Hearing; order to repair, alter, demolish, etc., building; repair, demolition, etc , by city; lien.

Pursuant to the order served or published as provided in section 5-13, a hearing shall be held before the enforcement agency, at the time and place fixed by such order, at which hearing the owner of the dwelling or building affected shall be given an opportunity to be heard and to make any proper legal defense, and after which the enforcement agency shall enter an order as to its decision. If its decision is against the owner of the property, the order shall direct whether the dwelling or building shall be repaired, altered, improved, vacated, removed or demolished. The order shall state a reasonable time for compliance therewith by the owner and shall state that if the owner does not comply with the order as directed, the enforcement agency shall carry out the enforcement of its own order by causing to be made the repairs, alterations, improvements or vacating or removal or demolishing of the dwelling or building, and the costs for the same, including the costs of the proceedings herein provided, after the sale of salvaged material is credited to the account, shall be a lien against the real property upon which such costs were incurred. The enforcement agency shall cause such lien to be recorded in the deed of trust books in the office of the clerk of the county court, within thirty days after the work has been completed and the total costs therefor ascertained. (10-17-63.)

Section 5-15 Appeals.

Any owner of a dwelling or building who is proceeded against under and by virtue of this article shall have the right to appeal to the circuit court for a temporary injunction restraining the enforcement agency pending final disposition of the cause, and hearings shall be had by such courts within twenty days, or as soon thereafter as possible. (10-17-63.)

Section 5-15A Article V. Signs and Billboards.

Section 5-16 "Sign" defined.

As used in this article, unless the context otherwise indicates, the term "sign" shall mean and include every sign, billboard, ground sign, wall sign, roof sign, fin sign, illuminated sign, projecting sign, pole sign, temporary sign, marquee sign, awning sign, canopy sign, street clock or other structure, erected for the purpose of advertising or promoting the interests of any other person, when such "sign" is located out of doors in view of the general public. Ornamental trim which is made a part of any building or structure is not to be construed to be a "sign." (11-19-59)

Section 5-17 Permit--Required.

Except as otherwise provided in this article, it shall be unlawful for any person to erect, enlarge or relocate within the city any sign, without first obtaining a sign permit from the building inspector and making payment of the fee required by section 5-20. (11-19-59.)

Section 5-18 Same--Application.

Application for sign permits shall be made upon blanks provided by the building inspector and

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shall contain the following information:

- (a) Name, address and telephone number of the person making the application.
- (b) Location of building, structure or lot to which or upon which the sign is to be erected or attached.
- (c) Size and type of materials to be used in construction.
- (d) Name of person erecting the sign.
- (e) Statement that consent of the owner or lessee of the premises upon which the sign is to be erected, or his authorized agent, has been secured. (11-19-59.)

Section 5-19 Same--Issuance; time limit for beginning work.

It shall be the duty of the chairman of the building committee, upon the filing of an application for a sign permit, to investigate the same, and if it shall appear that the proposed sign is in compliance with all the requirements of this article, the Building Code and the Zoning Ordinance, the council shall then issue the sign permit. If the work authorized under the sign permit has not been started within six months after the date of issuance, such permit shall become null and void. (11-19-59.)

Section 5-20 Same--Fees.

Except for signs specifically exempted from the requirement of permits and permit fees, every applicant for a sign permit, at the time of making application therefor, shall pay to the city treasurer a building permit fee of one dollar, plus one-eighth of one percent of the total cost of such sign. (11-19-59.)

Section 5-21 Same--Revocation.

The building inspector is hereby authorized and empowered to revoke any permit issued by him upon failure of the holder thereof to comply with any provision of this article. (11-19-59.)

Section 5-22 Unsafe and unlawful signs.

The owner of any sign, including supporting structures, shall keep the same in a safe condition and in good repair at all times. If the building inspector shall find that any sign regulated herein is unsafe, insecure, damaged or a menace to the public, he shall give written notice to the sign owner and to the property owner. If such sign owner fails to remove or alter the sign so as to comply with the standards set forth in this article within thirty days after such notice, the building inspector may cause such sign to be removed or altered to comply at the expense of the sign owner or owner of the property upon which it is located. The building inspector may cause any sign which is an immediate peril to persons or property to be removed summarily and without notice. (11-19-59.)

Section 5-23 Exemptions.

(a) The provisions and regulations of this article shall not apply to the following signs; provided, that such signs shall be subject to the provisions of section 5-22:

(1) Real estate signs not exceeding twelve square feet in area, which advertise the sale, rental or lease of the premises upon which such signs are located.

(2) Professional name plates not exceeding two square feet in area.

(3) Bulletin boards not over fifteen feet in area for public, charitable or religious institutions, when the same are located on the premises of such institutions.

(4) Signs denoting the architect, engineer or contractor, when placed upon work under construction and not exceeding fifteen square feet in area.

(5) Professional occupation signs, denoting only the name and profession of an occupant in a commercial building, public institutional building or dwelling house, and not exceeding four square feet in area for each occupant therein.

(6) Memorial signs or tablets, names of buildings and dates of erection when cut into any masonry surface or when constructed of bronze or other incombustible materials.

(7) Traffic or other municipal signs, legal notices or railroad crossing signs as may be approved by the city council.

(8) Signs of public service companies indicating danger and aids to service or safety.

(b) Painting or repainting of an advertising structure or the changing of the advertising copy or message thereon shall not be considered an erection or alteration which requires a sign permit, unless a structural change is made. (11-19-59.)

Section 5-24 Liability for damages.

The provisions of this article shall not be construed as relieving or limiting in any way the responsibility or liability of any person erecting or owning any sign for personal injury or property damage resulting from the placing of such sign, or resulting from the negligence or willful acts of such person, his agents, employees or workers in the construction, maintenance, repair or removal of any sign erected in accordance with a permit issued hereunder; nor shall this article be construed as imposing upon the city or its officers or employees any responsibility or liability by reason of the approval of any signs, materials or devices under the provisions of this article. (11-19-59.)

Section 5-25 Projecting signs.

(a) The term "projecting sign," as used in this section, shall include any sign which is attached to a building or other structure and which extends beyond the line of such building or structure to which it is attached, other than a pole sign or wall sign.

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(b) Every projecting sign shall be placed at least ten feet above the public sidewalk over which it is erected and shall not extend nearer the curb face than eighteen inches. Every projecting sign erected over public driveways, alleys and thoroughfares shall be placed not less than fifteen feet above the level of the same. (11-19-59.)

Section 5-26 Billboards.

Outdoor advertising (billboards) shall be permitted only in districts where other businesses are allowed by the zoning regulations of the city. (11-19-59.)

Section 5-27 Nonconforming existing signs.

The provisions of this article with reference to existing signs not conforming to this article shall not be construed to have a retroactive effect; except, that the enlargement or removal to other premises of any such signs will make such signs subject to the provisions of section 5-17. The provisions of this section shall not exempt the owner of any nonconforming signs from the requirements of section 5-24. (11-19-59.)

Section 5-27.1 Signs advertising garage sales and other sales of personal property.

(a) Any person who posts, hangs or otherwise erects any type of sign, including but not limited to signs which advertise yard sales, garage sales, porch sales, moving sales or any other sale of personal property, shall remove such sign within twenty-four hours from the time such sale is concluded. Further such person shall include on sign their name, address and telephone number and failure to do so shall result in immediate removal of such sign.

(b) Any person who violates this section shall be fined the sum of twenty-five dollars. (9-1-88, §§ 1, 2.)

Section 5-27A Article VI Certification of Electricians.

Section 5-28 Generally.

(a) No electrical work shall be performed within the jurisdictional limits of the city by an electrical contractor or electrician, as those terms are defined in subsection (b) hereof, unless such electrical work is performed by an electrician holding an unexpired certificate of competency for the level of electrical work in question issued by the state fire marshal in accordance with the provisions of subsection (c) of section 8-12-14a of the Code of West Virginia, and the standards and procedures of the state fire marshal relating thereto.

(b) As used herein, "electrical contractor" means any person who engages in the business of or employs others for the construction, alteration or repair of any electrical wiring used for the purpose of furnishing heat, light or power; "electrician" means any individual who, either on his own or as an employee of an electrical contractor, is engaged in the construction, alteration or repair of any electrical wiring used for the purpose of furnishing heat, light or power; and "electrical" pertains to the installation

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of wires and conduits for the purpose of transmitting electricity, the installation of fixtures and equipment in connection therewith, or both; provided, that the terms "electrical contractor" and "electrician" shall not be construed so as to apply to (1) any electrician who performs electrical work with respect to any property owned or rented by him, (2) any electrician who performs electrical work at any manufacturing plant or other industrial establishment as an employee of the person operating such plant or establishment, (3) any electrician who, while employed by a person engaged in the business of selling appliances at retail, performs electrical work with respect to installation and repair of appliances as part of his regular duties, (4) any electrician who, while employed by a public utility or any of its affiliates, performs electrical work in connection with the furnishing of public utility service, or (5) any electrician who, while employed as a member of a permanent maintenance staff of an institution or business enterprise, as part of his regular duties performs electrical work with respect to property owned by his employer.

(c) No electrician holding an unexpired certificate of competency shall be required to obtain any type of municipal electrician's license as a condition precedent to performing electrical work within the city or pay any license fee therefor.

(d) Every person or corporation who shall apply for a building permit for the construction, repair or alteration of any structure within the city, which construction, repair or alteration shall include electrical work as defined herein, shall describe the nature of the electrical work to be performed, shall provide the name of the electrician who shall perform it, and, if applicable, shall provide evidence that such electrician holds an unexpired certificate of competency for the level of electrical work to be performed. Compliance with this section, if applicable, shall be a condition precedent to the issuance of such building permit.

(e) Any person who performs electrical work within the city without compliance with the provisions of this section shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars. (8-18-78, §§ 1 to 5; 7-19-79.)

For state law as to authority of city to require certification of electricians, see W. Va. Code, § 8-12-14a.

[For sections 5.31-5.37, created by Ordinance 140, see note at section 5.7.]

Chapter 6: BUSINESS LICENSES, REGULATIONS AND TAXES.

Sections:

6-0A	Article I. Licenses Generally
6-1	Required; compliance with chapter.
6-2	Issuance; payment of tax.
6-3	Record, collection.
6-4	Multiple requirement.
6-5	Term; minimum tax.
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6-7	Limitations to privilege.
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6-9	Issuance of duplicate; fee.
6-10	False statements.
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6-13	Issuance of other licenses.
6-14	"Business" defined.
6-14.01	Fees--Owning and operating coin operated merchandise, service, music and amusement devices or vending machines.
6-14.02	Same--Coin-operated laundries, coin-operated auto wash and other coin-operated cleaning devices.
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- 6-43 Interest.**
- 6-44 Penalties.**
- 6-45 Administrative authority.**
- 6-46 Tax year.**
- 6-47 Tax cumulative.**
- 6-48 Violations.**

Section 6-0A Article I. Licenses Generally

For charter provision that common council shall prescribe the time and manner in which licenses shall be granted, and shall require payment of tax thereon before delivery of license, see Char., 35. As to authority to require license for certain purposes and to impose tax on such licenses, see Char., 28, subsecs. (13), (15), (16), (17), (19) and (46).

For state law as to authority of city to require a city license for anything for which a state license is required, unless prohibited by general law, and to impose a reasonable tax thereon not in excess of the state tax see W. Va. Code, 8-13-4, as modified by W. Va. Code, 11-12-4. As to authority of city to impose business and occupation tax on businesses and occupations taxed by the state, see W. Va. Code, 8-13-5, as modified by W. Va. Code, § 11-13-25.

Section 6-1 Required; compliance with chapter.

It shall be unlawful for any person to engage in or prosecution within the city any business, trade, occupation, profession, calling, vocation or activity for which the payment of any city license tax or fee is required or for which a city license certificate is required without having paid to the city such license tax or fee or without holding an appropriate, currently valid city license certificate, as provided by this chapter; and the fulfillment of all terms and conditions of such license certificate and the provisions of this chapter relating thereto shall be conditions precedent to engaging in or persecuting within the city and such business, trade, occupation, profession, calling, vocation or activity. (6-20-57.)

Section 6-2 Issuance; payment of tax.

The licenses provided for in this article shall be issued in the form of a certificate by the city collector and treasurer to any person making proper application therefor on forms to be prescribed and furnished by the city collector and treasurer and tendering the license tax and a filing tax fee of fifty cents for each license certificate requested. The city collector and treasurer shall collect in full the proper taxes and fees and determine to his satisfaction that all the conditions precedent to the granting of such license have been fulfilled by the applicant before issuing a certificate of license. (Code 1942, ch. 6 § 5; 5-21-81.)

Section 6-3 Record, collection.

There shall be kept by the city clerk, in a well-bound book or sturdy file to be known and designated as the "License Record," a record of all licenses issued, when and to whom issued, dates of issue and duration of licenses, license numbers and for what purposes issued, and the city clerk shall therein charge the city collector and treasurer with all licenses placed in his hands for collection, with order dates and amounts, as well as any and all transfers thereof. (Code 1942, ch. 6, § 8.)

Section 6-4 Multiple requirement.

Except as may be provided otherwise in this Code or other ordinance, any person who, at more than one fixed place of business within the city, engages in or prosecutes any business, profession, calling, vocation, trade or activity for which a city license is required, or who, within the city, engages in or prosecutes more than one type of business, profession, calling, vocation, trade or activity for which a city license is required, shall obtain a separate license and pay the prescribed tax or fee therefor for each such fixed place of business and for each such business, profession, calling, vocation, trade or activity.

Section 6-5 Term; minimum tax.

Except as may be otherwise expressly provided herein, all annual licenses issued under the provisions of this chapter shall be valid for a period of one year, beginning on the first day of July and ending on the thirtieth day of the following June; provided, however, that the fee for any such license issued following the first day of January of any year and to expire on the thirtieth day of June of such year shall be one-half of the annual license fee prescribed in this Article. (6-20-57, art. 1, § 7; 7-3-86, § 1.)

Section 6-6 Exhibition.

Every person to whom a license shall be issued under the provisions of this article shall keep such certificate posted in a conspicuous position in the place where the privileges of such license are exercised; except as may be otherwise specifically provided by this article.

Section 6-7 Limitations to privilege.

Every license issued under the provisions of this article shall confer a personal privilege only to transact the business, activity, trade, occupation, profession, calling or vocation which may be the subject of the license and shall not be exercised except by the person holding the license, nor be assignable.

Section 6-8 Effect of change in partners or name of firm.

No changes in the name of a firm, nor the taking in of one or more new partners, nor the withdrawal of one or more members of the firm, as 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.

Section 6-9 Issuance of duplicate; fee.

Any person losing, misplacing or destroying any license or certificate issued under the provisions of this chapter may, by application to the city clerk, procure a duplicate thereof, upon satisfactory proof of the loss of the original, upon the payment to the city clerk of a fee of two dollars for the issuance thereof.

Section 6-10 False statements.

It shall be unlawful for any person to knowingly make any false statement in any application for a

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city license, a city business franchise registration certificate, in any tax return, report or in any other statement relating to any activity licensed by the city and which is required to be made to any city officer or agency.

Section 6-11 Unlawful acts.

Nothing in this article and no payment or 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. (6-20-57, art. 1, § 6.)

Section 6-12 Confidentiality of statements.

All returns and statements made by licensees and taxpayers pursuant to this chapter to city officers and employees shall be regarded as confidential, except in compliance with a judicial order or as may be required by the proper administration hereof, and no city officer, agent or employee or former city officer, agent or employee shall divulge facts or information obtained by way of the administration of this chapter.

Section 6-13 Issuance of other licenses.

Nothing contained in this article shall be construed to forbid or prohibit the issuing of city licenses for the conduct of any other business or for any other thing for which a state license is required; but full power and authority is reserved for the common council to adopt any other ordinances or regulations in respect to the conduct of any other business or the operation of any other thing within the city not enumerated in this chapter and the licensing of which is permitted by the laws of the state. (6-20-57, art. 1, § 9.)

Section 6-14 "Business" defined.

For the purposes of this article, "business" shall mean any business, whether a person is engaged expressly or impliedly holds himself out as engaged in business, or supplies 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 or merchandise of any kind or provides a service of any kind; provided, that "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; or any business the gross income of which is less than four thousand dollars per license year. "Gross income" shall mean 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.

For similar state law, see W. Va. Code, § 11-12-2.

Section 6-14.01 Fees--Owning and operating coin operated merchandise, service, music and amusement devices or vending machines.

The annual license fee to own and operate a coin operated baggage or parcel checking machine or device which is used for the storage of baggage or parcels of any character shall be fifty cents for each section of any such device which is operated on the coin-in-the-slot principle; the annual license fee to own and operate any coin operated toilet locker or device, sanitary napkin device or bed vibrator device shall be fifty cents for every such locker or device.

The annual license fee to own and operate a total of twenty or more coin operated amusement or music devices of the following types shall be: One cent devices, fifty dollars; five cent devices, one hundred fifty dollars; ten cent devices, two hundred twenty-five dollars; and over ten cent devices, three hundred dollars. The operator of more than one type of such devices shall pay the highest fee prescribed. The license fee to own and operate less than twenty amusement or music devices shall be upon a per device basis as follows: One cent devices, two dollars; five cent devices, five dollars; ten cent devices, ten dollars; and over ten cent devices, twelve dollars and fifty cents. Any device taking more than one denomination of coin shall be licensed on the basis of the largest denomination of coin taken or the total of the coins necessary to make the device function or operate.

The annual license fee to own and operate a total of twenty or more coin operated merchandise or service devices of the following types shall be: One cent devices, fifty dollars; five cent devices, one hundred dollars; ten cent devices, one hundred fifty dollars; and over ten cent devices, two hundred fifty dollars. The operator of more than one type of such devices shall pay the highest fee prescribed. The license fee to own and operate less than twenty merchandise or service devices shall be upon a per device basis as follows: One cent devices, two dollars; five cent devices, five dollars; ten cent devices, ten dollars; and over ten cent devices, twelve dollars and fifty cents. Any device taking more than one denomination of coin shall be licensed on the basis of the largest denomination of coin taken or the total of the coins necessary to make the device function or operate.

No license fee shall be required of stores or businesses owning and operating such machines or devices owned by them in their own licensed stores; provided, that where the principal business is the operation of the machines or devices, licenses shall be obtained as outlined above.

The provisions of this section shall not be applicable to any pay telephone, postage stamp vending machines or currency changing machines operated on the coin-in-the-slot principle.

Section 6-14.02 Same--Coin-operated laundries, coin-operated auto wash and other coin-operated cleaning devices.

The annual license fee to own coin-operated devices which wash, dry, clean or dry clean items of any description, including clothing, household items, automotive vehicles or boats, or dispense merchandise for use in such washing, drying, cleaning or dry cleaning, shall be as follows: Upon ten or more machines, in any one location, the annual license fee shall be thirty dollars; upon less than ten machines, in any one location, the annual license fee shall be three dollars for each machine; provided, that in no instance shall the annual license fee be less than fifteen dollars.

No machine or device licensed under the provisions of this section shall be subject to the license fees and taxes imposed by section 6-14.1.

Section 6-14.03 Same--Circuses, carnivals and other itinerant public shows--Generally.

The license to exhibit a circus or menagerie, a circus and menagerie combined, wild west show or other itinerant show not exhibited in a theatre, opera house or other permanent place for public shows shall be based upon the number of railroad cars or motor trucks used to transport the property or equipment of such shows, but not including railroad cars or motor trucks used to transport the personnel thereof. If railroad cars are used, the fee shall be four dollars for each car for each day on which any performance is given; if motor trucks are used, the fee shall be three dollars for each truck for each day on which any performance is given.

The license fee to exhibit a street or other carnival shall be five dollars a week for each entertainment, performance or exhibition given at or in the vicinity of any such carnival. Each such entertainment, performance or exhibition shall require a separate license, whether or not shown under the same canvas and whether or not exhibited for additional compensation; and upon any such entertainment, performance or exhibition being concluded, so that an additional fee for admission is charged, an additional license fee shall be required for any further or additional entertainment, performance or exhibition. To operate any riding device of any kind at or in the vicinity of any street or carnival show, the fee shall be ten dollars a week for each such device.

To keep or maintain any concession stand selling services, goods, wares or merchandise, such as food, soft drinks, ice cream, candy floss and the like, at or in the vicinity of such street or carnival show, the fee shall be five dollars a week for each such concession. To maintain any concession stand, such as ball games, bingo, cane rack, penny pitch-till-you-win, striking machine, weighing machine, shooting gallery, artful dodger, bumper, fish pond, dart game or other legitimate games of skill, none of which shall be controlled by the operator, at or in the vicinity of any street or carnival show, the fee shall be ten dollars a week for each such concession. To operate or maintain a candy wheel or any other legitimate merchandise wheels, when operated without control of the operator, the license fee shall be twenty-five dollars a day. To operate or maintain rides of all kinds, the license fee shall be ten dollars each a week.

Section 6-14.03a Same--Same--Filing with city collector and treasurer of list of all rides and concessions; bond for municipal taxes.

The proprietor, professional director, manager, owner of the rides or other person who owns the predominant percentage thereof (hereinafter referred to as "person") shall be responsible for the purchase and display of all applicable licenses provided for in this article. Such person shall furnish to the city collector and treasurer's office prior to the first performance at any location a list of the rides, concessions and other attractions to be displayed along with a statement indicating the duration of the performance at any location, and shall post a five thousand dollar cash bond or a five thousand dollar surety bond, the sufficiency of such surety to be solely in the discretion of the city collector and treasurer or his authorized representative as surety for all municipal taxes. If such person has not made an accounting with the city collector and treasurer's office within five days after the last performance as indicated in the document filed with the city collector, the city may elect to forfeit the bond under the terms and conditions thereof without further notice to the principal on the bond. (5-21-81.)

Section 6-14.04 Same--Trading stamps.

The annual license fee to sell or offer for sale merchants' trading stamps, premium stamps or

stamps or certificates of like nature, or to undertake to redeem such stamps or certificates in money or goods, shall be one hundred seventy-five dollars; provided, that this section shall not apply to any coupon or similar device issued and redeemed by a manufacturer or packer.

Section 6-14.05 Same--Fortune-telling, mind reading, etc.

The annual license to act as a fortune-telling, palmist, phrenologist, spiritualist, medium, clairvoyant, mind reader or any other person who performs the art or profession of telling the past or forecasting the future shall be two hundred dollars.

Section 6-14.06 Same--Wholesale or subjobber dealers in cigarettes.

(a) For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them by this subsection:

Cigarette. Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette.

Package. The individual package, box or other container in or from which retail sales of cigarettes are normally made or intended to be made.

Sale. Selling, exchange, transfer of title, barter, gift, offer for sale or distribution.

Sale by wholesaler or subjobber. Any bona fide transfer of title to cigarettes by a wholesaler or subjobber for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business.

Subjobber or subjobber dealer. Any person who purchases stamped cigarettes from any other person who purchases from the manufacturer, when such other person is located in any state which levies an excise tax on cigarettes, and who purchases such cigarettes solely for the purpose of bona fide resale to retail dealers or to other wholesalers.

Wholesaler or wholesaler dealer. Any person who purchases unstamped cigarettes directly from the manufacturer.

(b) The annual license fee as a wholesaler or subjobber dealer to sell cigarettes shall be divided into three classes, as follows:

(1) Class A--All dealers who sell annually up to seven hundred fifty thousand packages of cigarettes, one hundred dollars.

(2) Class B--All dealers who sell annually from seven hundred fifty thousand packages of cigarettes to one million five hundred thousand packages, two hundred dollars.

(3) Class C--All dealers who sell annually more than one million five hundred thousand packages of cigarettes, three hundred fifty dollars, plus a fee of fifty cents for each license issued.

Section 6-14.07 Same--Junk dealers and their agents.

(a) For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them by this subsection:

Itinerant junk collector. Any person who gathers junk from place to place with the aid of a cart or vehicle hand drawn or propelled, who has no fixed place of business.

Junk. Old or scrap gold, copper, brass, rope, rags, batteries, paper, rubber, automobile parts, iron, steel and other old scrap ferrous or nonferrous metals.

Junk dealer. Any person engaged in the business of buying or selling junk.

Junk dealer's agent. Any person who buys or sells junk for or on behalf of a junk dealer, but the term shall not be construed to include any person regularly employed upon a salary by a regularly licensed junk dealer engaged in such business within the city.

Nonresident junk dealer or nonresident junk dealer's agent. Any person who acts as a junk dealer or junk dealer's agent who is a non-resident of the city, and any firm so engaged whose members are nonresidents of the city, and any corporation which has not been admitted to hold property and transact business in the city.

(b) The annual license fee to act as a resident junk dealer shall be twenty-five dollars; to act as a junk dealer's agent, ten dollars; to act as a non-resident junk dealer or his agent who buys or solicits for the purchase of junk within the city, one hundred fifty dollars; and to act as an itinerant junk collector, two dollars.

Section 6-14.08 Same--Hawkers and peddlers.

(a) The annual license fee to act as a hawker and peddler, if the person licensed travels without a vehicle, shall be ten dollars, if he travels with a motor vehicle of not more than one-half ton capacity, fifteen dollars; if he travels with a vehicle of more than one-half ton capacity, but not exceeding one ton capacity, fifty dollars; if he travels with a vehicle of more than one ton capacity, but not exceeding two tons capacity, one hundred dollars; and if he travels with a vehicle of more than two tons capacity, one hundred fifty dollars, plus one hundred dollars for each additional ton or fraction thereof over two tons capacity; and the person licensed shall pay at the same rate for each and every motor vehicle so used. Such person shall carry his license in some conspicuous place in his vehicle or about his pack.

When used in this section, the term "sale" shall mean and include both sales for money payment or for barter, and offers to make any such sale and offers to render any service or the rendering thereof.

Any person who shall carry goods, wares, or merchandise from place to place, either in person or by agent or employee, and sell, for delivery at the same time, any such goods, wares, or merchandise to any purchaser, at wholesale or retail, and any person who shall solicit for the purpose of rendering any service, shall be deemed a hawker or peddler under this section.

(b) The provisions of this section shall not apply to any person who sells any goods, wares or merchandise to be delivered in the future; or to any of the following who offer immediate delivery of the

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goods, wares or merchandise being sold:

(1) Any person or persons engaged within this county in the business or calling of agriculture, horticulture or grazing, who sells or sell individually or collectively, one or more for the other or others, the products derived from his or their business or calling aforesaid;

(2) Any person engaged in the maintenance or operation of a retail merchandise store to exchange goods, wares, or merchandise from such store for agricultural, horticultural or grazing products, or to resell any such products received in due course of such business; nor to any other retail business concern, established and operating continuously for one year or more within this state in the sale of any product or products over regular route;

(3) Any wholesaler or jobber selling soft drinks or nonintoxicating beer for which he is duly licensed under other provisions of this code;

(4) Any person who sells petroleum products, ice, wood, meat, milk, ice cream, bread, cakes, pies, and other bakery products, butter and eggs, manufactured, grown or produced by any such person and not purchased by him for resale;

(5) Any sales by societies, groups or organizations acting for charitable, religious or benevolent purposes;

(6) Any agent or salesman selling manufactured products, except green groceries and canned or bottled fruit products, produced by his employer, and who sells the same to retail dealers for the purpose of resale. (2-16-84)

Section 6-14.09 Same--Pawnbrokers.

The annual license fee to engage in the business of pawnbroker shall be one hundred dollars. The term "pawnbroker" shall include any person engaged in the business of lending money on deposit or pledge of personal property or other valuable thing, other than securities or printed evidence of indebtedness, or in the business of purchasing personal property, such as articles made of or containing gold, silver, platinum or other precious metals or jewels of any description, for the purpose of reducing or smelting them into any form different from their condition or construction when purchased and reselling or marketing the product.

Section 6-14.10 Same--Theaters and other permanent places for public shows.

A theater, opera house or other permanent place for public shows may be kept or maintained upon the payment of a license fee of twenty dollars for three months, thirty dollars for six months and forty dollars for one year; provided, that if such theater, opera house or other permanent place for public shows is conducted outside of but within one mile of the corporate limits of the city, the license fee shall be the same as if such performance were given within the city or town; provided, further, that any theater, opera house or other permanent place for public shows, including drive-in theaters kept, maintained or operated in such a location as to be exempt from the foregoing provisions of this section shall pay an annual license fee of fifty dollars.

Section 6-14.11 Same--Collection agencies.

The annual license fee to engage in the business of a collection agency within the city shall be one hundred dollars. For the purposes of this section, solicitation or collection by or through an agent operating within the city shall be considered to be engaging in the business of a collection agency within the city.

Section 6-14.12 Same--Employment agents.

The annual license fee to conduct the business of an employment agent, to receive applications for employment or to hire or contract with persons for employment shall be two hundred dollars; except, that the annual license fee for an agency or registry for the employment of registered professional nurses, practical nurses or undergraduate nurses shall be twenty-five dollars; provided, that this section shall not apply to any such agency or registry operated by a registered professional nurses' association or any district subdivision thereof for the exclusive benefit of its registrants and not for profit.

Section 6-14.13 Same--Bowling lanes and billiard, pool or bagatelle tables.

The annual license fee to keep or maintain a bowling lane or a billiard, pool or bagatelle table, or table of like kind, for public use, where any charge is made for the use of the same, shall be twenty-five dollars; but, if more than one of such lanes or tables are kept or maintained in the same building by the same person, the fee shall be twenty-five dollars for the first one and fifteen dollars for each additional one.

Section 6-14.14 Business registration certificate required.

(a) Business registration certificate required. No person shall, without a business registration certificate, engage in or prosecute within the city and business, trade, occupation, profession, calling, vocation or activity, without obtaining a business registration certificate from the city.

(b) Application for business registration certificate. Any person making and filing the proper application for a business registration certificate on forms to be prescribed and furnished by the city treasurer shall be provided a certificate if the city treasurer determines to his satisfaction that all of the conditions precedent to the granting of such certificate have been fulfilled by the applicant before issuing the certificate of registration. A certificate shall not be issued unless the applicant presents a valid and current business franchise registration certificate issued by the state nor shall a certificate be issued if the Elkins municipal business and occupation taxes of the applicant are not paid on a current basis.

(c) Time for which registration certificate granted; power of city treasurer to cancel certificate. All annual certificates issued under this section shall be for a period of one year beginning the first day of July and ending the thirtieth day of the following June.

If a registrant shall at any time knowingly or wilfully file false data or information required by section 6-14.14 (b), or shall wilfully refuse or neglect to file any tax report or to pay the tax, additions to tax penalties, or interest, or any part thereof, required by Article II of this chapter, the City Treasurer may cancel his certificate. Before canceling any such certificate, the tax commissioner shall set a hearing as hereinafter prescribed and notify the person by certified mail not less than twenty days prior to the

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hearing date to appear and show cause why such registration certificate should not be canceled.

(d) Business certificate a personal privilege not assignable; change of name, location, ownership, etc. Every business certificate issued under the provisions hereof shall confer a personal privilege only to transact the business, activity or trade, which may be the subject of the business certificate and shall not be exercised except by the persons holding the same and shall not be assignable to any other person.

Changes in the name of the person or change of location, or address, or changes in ownership of the business or changes in real parties of interest shall be considered a cessation of the business and a new certificate shall be required. Changes of partners or members of firms or officers of a corporation shall not require a new certificate to be issued.

(e) Display of registration certificate. Any person to whom a certificate of registration shall be issued shall keep such certificate posted in a conspicuous position in the place where the privilege of such business is exercised. Such certificate of registration shall be produced for inspection whenever required by the city, treasurer, or by any law enforcement officers of the city.

(f) Hearing; appeal. Any person adversely affected by refusal of the city treasurer or his representative, to issue a business registration certificate or to renew this certificate may request a hearing before the city treasurer if such request is made within thirty days from receipt of written notice of the refusal. A person may appeal the administrative decision of the city treasurer by taking appeal to the Circuit Court of Randolph County within thirty days after being served with notice of the city treasurer's administrative decision.

(g) Issuance fee. The City Treasurer, in his discretion, may impose an issuance fee in an amount not to exceed five dollars to cover administrative and clerical costs of administering this section. (6-18-81; 2-5-87.)

Section 6-14.15 Fees--Itinerant Vendors.

(a) When used in this section the terms "itinerant vendor" shall mean and include all persons who engage or conduct within this City, either in one place, or in traveling from place to place, a temporary or transient business of selling goods, wares and merchandise; and who, for the purpose of carrying on such business, use, lease or occupy either in whole or in part, a room, building or other structure, or who use, lease or occupy for such purposes a room or rooms at any hotel, motel or lodging house, for the exhibition and sale of such goods, wares and merchandise; and the person so engaged shall not be released from the provisions of this section by reason of association temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as part of the business of, or in the name of, any local dealer, trader, merchant or auctioneer.

The provisions of this section shall not apply to sales made to persons by commercial travelers, or selling agents in the usual course of business, nor to bona fide sales of goods, wares or merchandise by sample for future delivery; nor to hawkers or peddlers in the streets, roads, or highways, from packs or vehicles, nor to persons selling meat or the produce of the farm, garden, dairy, nor to any sales of goods, wares and merchandise on the ground of any agricultural association during the continuance of any annual fair held by such association; nor to any sales by societies acting for charitable, religious or benevolent purposes; nor to judicial sales directed by law, or under the orders of any court; nor to the sales of the common necessities of life in any public market place.

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(b) No itinerant vendor shall advertise, represent or hold forth a sale of goods, wares or merchandise as a bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver, attorney, manufacturer's wholesale or closing out sale, or the sale of any goods damaged by smoke, fire, water or otherwise, unless before so doing he shall state in writing, under oath, to the city collector and treasurer at the time he makes application for a license, hereinafter provided for, all the facts relating to the reason and character of such special sale as advertised, held forth, or represented, including a statement of the names of the persons from such goods, wares or merchandise were purchased, and the date of the delivery of the same to the person applying for license; the place, if any, where such goods, wares or merchandise were previously exposed for sale, and such details as are necessary to exactly locate and fully identify all such goods, wares and merchandise proposed to be sold. And such itinerant vendor shall also include in such statement the name and residence of the owner or owners in whose interest the business is conducted, to be kept on file in the office of the city collector and treasurer and a record shall be kept by said collector and treasurer of all such statements, in convenient form and open to public inspection.

(c) The annual license fee to carry on the business of itinerant vendor shall be five hundred dollars.

(d) Every itinerant vendor who sells or exhibits for sale at public or private sale, any goods, wares or merchandise without first obtaining a license therefor, and in all other respects complying with the provisions of this article, or who makes any false statement in reference to the matter set out in subsection (b) hereof, or who fails to comply with the requirements of this article, and every person, whether principal or agent, who, by circular, handbills, newspaper, or in any manner advertises such sale, as herein described, before proper licenses are issued to the vendor and before he has complied with the provisions of this article, shall be guilty of a violation of this article, and shall be punished accordingly. (3-15-84.)

Section 6-14A Article II. Business and Occupation Tax.

For state law as to authority of city to impose business and occupation tax on businesses and occupations taxed by state, see W. Va. Code, § 8-13-5, as modified by W. Va. Code, § 11-13-25. For state business and occupation tax, see W. Va. Code, ch. 11, art. 13.

Section 6-15 Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Business. Any activity engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect, excluding a casual sale by a person who is not engaged in the business of selling the type of property involved in such casual sale, but including the production of natural resources or manufactured products which are used or consumed by the producer or manufacturer and the activities of a banking business or financial organization.

Banking business or financial organization. Any bank, banking association, trust company, industrial loan company, small loan company or licensee, building and loan association, savings and loan association, finance company, investment company, investment broker or dealer, and any other similar business organization at least ninety percent of the assets of which consists of intangible personal property and at least ninety percent of the gross receipts of which consists of dividends, interest and other

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charges derived from the use of money or credit.

Contracting. The furnishing of work or materials and work in the fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure or any part thereof, or for the alteration, improvement or development of real property.

Gross income. The gross receipts of a taxpayer, other than a banking or financial business, received as compensation for personal services, and the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property, real or personal, or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments, however designated, and including all interest, carrying charges, fees or other similar income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his business, and extension of credit in connection with the sale of any tangible personal property or service, and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expenses whatsoever. "Gross income" of a banking or financial business is specified in section 11-13-2K of the Code of West Virginia.

Gross proceeds of sales. The value, whether in money or other property, actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind.

"Gross income" and "gross proceeds of sales" limited as to construction. The terms "gross income" and "gross proceeds of sales" shall not be construed to include the following:

- (1) Cash discounts allowed and taken on sales.
- (2) The proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit.
- (3) The amount allowed as "trade-in value" for any article accepted as part payment for any article sold.
- (4) Excise taxes imposed by the state.
- (5) Money or other property received or held by a professional person for the sole use and benefit of a client or another person or money received by the taxpayer on behalf of a bank or other financial institution for the repayment of a debt of another.

Person; company. Any individual, firm, copartnership, joint adventure, association, corporation, trust or any other group or combination acting as a unit, unless the intention to give a more limited meaning is disclosed by the context.

Sale; sales; selling. Any transfer of the ownership of or title to property, whether for money or in exchange for other property.

Selling at wholesale; wholesale sales.

- (1) Sales of any tangible personal property for the purpose of resale in the form of tangible personal property.

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(2) Sales of machinery, supplies or materials which are to be directly consumed or used by the purchaser in the conduct of any business or activity which is subject to the tax imposed by this article or by article 12A, chapter 11 of the Code of West Virginia.

(3) Sales of any tangible personal property to the United States of America, its agencies and instrumentalities or to the state, its institutions or political subdivisions.

Service business or calling. All activities engaged in by a person for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible property, but not the services rendered by an employee to his employer. This term shall include, but not be limited to:

(a) Persons engaged in manufacturing, compounding or preparing for sale, profit or commercial use, articles, substances or commodities which are owned by another or others.

(b) Persons engaged as independent contractors in producing natural resource products which are owned by another or others as personal property, immediately after such products are severed, extracted, reduced to possession and produced.

(c) The repetitive carrying of accounts in the regular course and conduct of business, and extension of credit in connection with the sale of any tangible personal property or service, except as to persons taxed by the state, pursuant to the provisions of section 11-13-2k of the Code of West Virginia.

Taxpayer. Any person liable for any tax hereunder.

Tax year; taxable year. Either the calendar year or, when permission is obtained from the tax commissioner to use such fiscal year as the tax period in lieu of the calendar year, the taxpayer's fiscal year. (5-2-68, § 1; 7-1-76, § 1.)

For corresponding definitions in state business and occupation tax law, see W. Va. Code, § 11-13-1.

Section 6-16 Imposition of privilege tax.

There is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amounts to be determined by the application of rates against values or gross income as set forth in sections 6-17 through 6-25 of this article.

If any person liable for any tax under section 6-17 or 6-18 shall ship or transport his products or any part thereof out of the city without making sale of such products, the values of the product 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 by those sections, unless another measure of the tax is expressly provided. The city collector and treasurer shall prescribe equitable and uniform rules for ascertaining such value.

In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation 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 city collector and treasurer 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

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of similar products of similar quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

Gross income included in the measure of the tax under sections 6-17 and 6-18, 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.

A person exercising any privilege taxable under sections 6-17 or 6-18 and engaging in the business of selling his natural resources or manufactured products at retail in this city shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed by section 6-19 for the privilege of engaging in the business of selling such natural resources or manufactured products at retail in the city. But any person exercising any privilege taxable under sections 6-17 or 6-18 and engaging in the business of selling his natural resources or manufactured products to producers or natural resources, manufacturers, wholesalers, jobbers, retailers or commercial consumers for use or consumption in the purchaser's business shall not be required to pay the tax imposed by section 6-19.

Manufacturers exercising any privilege taxable under section 6-18 shall not be required to pay the tax imposed by section 6-19 for the privilege of selling their manufactured products for delivery outside the city, but the gross income derived from the sale of such manufactured products outside the city shall be included in determining the measure of the tax imposed on such manufacturer by section 6-18.

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 6-17, and using or consuming such products in his business or transferring or delivering such products as any royalty payment, in kind, or similar payment 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 similar quality or character by other taxpayers, which rules the city collector and treasurer shall prescribe. (5-2-68, § 2; 7-19-79, § 1.)

For corresponding provisions of state business and occupation tax law, see W. Va. Code, § 11-13-2.

Section 6-17 Coal and other natural resource products.

Upon every person engaging or continuing with the city in the business of producing for sale, profit or commercial use any natural resource products, there is levied a tax, the amount of such tax to be equal to the value of the articles produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided, multiplied by the respective rates, as follows:

- (a) Coal, sixty-nine hundredths of one percent.
- (b) Limestone or sandstone, quarried or mined, one percent.
- (c) Oil, one and ninety-four hundredths of one percent.
- (d) Natural gas, in excess of two hundred fifty dollars, three and eighty-eight hundredths of one percent.

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- (e) Blast furnace slag, one and ninety-four hundredths of one percent.
- (f) Sand, gravel or other mineral product not quarried or mined, one and ninety-four hundredths of one percent.
- (g) Timber, one percent.
- (h) Other natural resource products, one and thirty-eight hundredths of one percent.

The measure of this tax shall be 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 the city; provided, that for the purposes of the production-of-oil classification and the production-of-natural-gas classification, as set forth in this section, multiple co-owners of oil or natural gas, in place, lessees thereof, or other vested with the title and ownership to part or all of the oil and gas as personal property, immediately after severance, extraction, reduction to possession and production, except royalty recipients, in kind, shall be deemed to be a "group or combination acting as a unit" and one "person," as defined by section 6-15, if not otherwise defined therein, whenever engaged in the business of producing oil or natural gas through common use, by joint or separately executed contracts, of the same independent contractor driller or operator's services; and notwithstanding the provisions of private contracts for separate deposit of gross receipts in separate members' accounts or for members of such group or combination to take in kind any proportionate part of such natural resources.

Lessees, sublessees or other denominated lessees are considered to be producers of all the oil and natural gas produced, regardless of any payment, in kind, to lessors, sublessors or other denominated lessors of a part of such natural resources as rents or royalties. (5-2-68, § 2a; 7-1-76, § 3; 7-19-79, § 2.)

For corresponding provisions of state business and occupation tax law, see W. Va. Code, 11-13-2a.

Section 6-18 Manufactured or compounded products; exception.

Upon every person engaging or continuing within the 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 part, any article, substance, commodity or electric power not produced by public utilities taxable under other provisions of this article, there is levied a tax, the amount of such tax to be equal to the value of the 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 person compounding or preparing such substance, except as hereinafter provided, multiplied by a rate of nineteen hundredths of one percent. The measure of this tax shall be the value of the entire product manufactured, compounded or prepared in the city for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the city. However, the dressing and processing of poultry and turkeys by a person, firm or corporation, which poultry and turkeys are to be sold on a wholesale basis by such person, firm or corporation shall not be considered as manufacturing or compounding, but the sale of these products on a wholesale basis shall be subject to the same tax as is imposed on wholesalers or jobbers as provided by section 6-19.

It is further provided, however, that in those instances in which the same person partially manufactures, compounds or prepares products within the city and partially manufactures, compounds or prepares such products outside the city, the measure of his tax under this section shall be that proportion of the sale price of the product that the payroll cost of manufacturing within the city bears to the entire

payroll cost of manufacturing the product; or, at the option of the taxpayer, the measure of his tax under this section shall be the proportion of the sales value of the articles that the cost of operations in the city bears to the full cost of the manufacture of the articles. (5-2-68, § 2b; 7-1-76, § 3; 7-19-79, § 3.)

For corresponding provisions of state business and occupation tax law, see W. Va. Code, § 11-13-2b.

Section 6-19 Selling tangible property; exceptions.

Upon every person engaging or continuing within the city in the business of selling any tangible property whatever, real or personal, including the sale of food and the services incident to the sale of food in hotels, 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 stock, bonds or other evidences of indebtedness, there is likewise hereby levied and shall be collected a tax equivalent to twenty-five hundredths of one percent of the gross income of such business; except, that in the case of a wholesaler or jobber, the tax shall be equal to thirteen hundredths of one percent of the gross income of such business. (5-2-68, § 2c; 7-1-76, § 3; 7-19-79, § 4.)

For corresponding provisions of state business and occupation tax law, see W. Va. Code, § 11-13-2c.

Section 6-20 Public service or utility.

Upon any person engaging or continuing within the 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 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:

- (a) Street and interurban and electric railways, sixty-three hundredths of one percent.
- (b) Water companies, two percent, except as to income from municipally owned water plants.
- (c) Electric light and power companies, two and seventy-five hundredths of one percent on sales and demand charges for domestic purposes and commercial lighting; one and eighty-eight hundredths of one percent on sales and demand charges for all other purposes, except as to income from municipally owned plants producing or purchasing and distributing electricity.
- (d) Natural gas companies, one and ninety-four hundredths of one percent on the gross income, such gross income for this purpose to be determined by deducting from gross income all sales to consumers the amount of the tax paid by the taxpayers under this article.
- (e) Toll bridge companies, one and fifty-five hundredths of one percent and upon all other public service or utility business, one and thirty-one hundredths of one percent.

The measure of this tax shall not include gross income derived from commerce between the state and other states of the United States, or between the state and foreign countries. The measure of the tax under this section shall include only gross income received from the supplying of public services. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed by the appropriate section or sections of this article. (5-2-68, § 2d; 7-1-76, § 3; 7-19-79, § 5.)

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For corresponding provisions of state business and occupation tax law, see W. Va. Code, § 11-13-2d.

Section 6-21 Contracting.

Upon every person engaging or continuing within the city in the business of contracting, the tax shall be equal to one percent of the gross income of such business. (5-2-68, § 2e; 7-1-76, § 3; 7-19-79, § 6.)

For corresponding provisions of state business and occupation tax law, see W. Va. Code, § 11-13-2e.

Section 6-22 Service, business or calling not otherwise specifically taxed.

Upon every person engaging or continuing within the city in any service, business or calling not otherwise specifically taxed under this article, there is hereby levied and shall be collected a tax equal to fifty hundredths of one percent of the gross income of any such business. (5-2-68, § 2g; 7-1-76, § 3; 7-19-79, § 7.)

For corresponding provisions of state business and occupation tax law, see W. Va. Code, § 11-13-2h.

Section 6-23 Amusements.

Upon every person engaging or continuing within the city in the business of operating a theatre, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, racetrack, radio broadcasting station or any other place at which amusements are offered to the public, the tax shall be equal to thirty-one hundredths of one percent of the gross income of such business. (5-2-68, § 2f; 7-1-76, § 3; 7-19-79, § 8.)

Section 6-24 Rentals, royalties, etc.

Upon every person engaging or continuing within the city in the business of collecting income from the use of real or personal property or having any interest therein, whether by lease, hire, conveyance or otherwise and whether the return be in the form of rentals, royalties, fees, interest or otherwise, the tax shall be fifty hundredths of one percent of the gross income of any such activity. (5-2-68, § 2h; 7-1-76, § 3; 7-19-79, § 9; 10-18-79.)

Section 6-25 Banking and other financial businesses; legislative findings.

Upon every person engaging or continuing within the city in the business of banking or financial business, the tax shall be equal to sixty-one hundredths of 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, that gross income shall not include the following:

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(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.

(c) Interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by nontransients; and provided, further, that all interest derived on activities exempt under this paragraph 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 sections 6-17 to 6-22, inclusive, of this article.

The common council hereby finds and declares that it is the intent of the council to subject national banking associations and other financial organizations to the tax imposed by this article, in accordance with the authorization contained in section 5219 of the Revised Statutes of the United States as amended by Public Law 91-156 enacted December 24, 1969. (7-1-76, § 2.)

For corresponding provisions of state business and occupation tax law, see W. Va. Code, § 11-13-2k.

Section 6-26 Exemptions--Generally.

There shall be an exemption in every case of ten dollars in 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 ten dollars that the period of time the privilege is exercised bears to a whole year. Only one exemption shall be allowed to any one person, however many privileges taxable hereunder he exercises.

The provisions of this article shall not apply to the following:

(a) Insurance companies which pay the state a tax upon premium; provided, 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 or offices, in this state, whether such income be in the form of rentals or royalties.

(b) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members.

(c) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit; provided, that such exemption shall not extend to that part of the gross income arising from the sale of alcoholic liquor, food and related services of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of article 7, chapter 60, of the Code of West Virginia.

(d) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes.

(e) Production credit association, organized under the provisions of the federal "Farm Credit Act of 1933."

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(f) Any credit union organized under the provisions of chapter 31 or any other chapter of the Code of West Virginia; provided, that the exemptions of this paragraph shall not apply to corporations or cooperative associations organized under the provisions of article 4, chapter 19 of the Code of West Virginia.

(g) Gross income arising from the sale of radio and television broadcasting time. (5-2-68, § 3; 7-1-76, § 3; 7-19-79, § 10.)

For corresponding provisions of state business and occupation tax law, see W. Va. Code, § 11-13-3.

Section 6-27 Same--Interstate and foreign commerce.

The measure of the tax assessed by 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. (5-2-68, § 15.)

Section 6-28 Normal tax.

(a) Definition. When used in this section, the phrase "normal tax" shall mean the tax computed by the application of rates against values or gross income, as set forth in sections 6-17 to 6-25, inclusive, of this article, less exemption at the rate of ten dollars annually or at the rate of eighty-three cents per month, for the period the person taxed is actually engaged in business.

(b) Computation. The normal tax shall be computed by the application of rates against values or gross income as set forth in sections 6-17 to 6-25, inclusive, of this article. (7-1-76, § 3; 7-19-79, § 11.)

For corresponding provisions of state business and occupation tax law, see W. Va. Code, § 11-13-3b.

Section 6-29 Credit for industrial expansion; regulations.

(a) There shall be allowed as a credit against tax imposed by this article the amount determined under article 13C of chapter 11 of the Code of West Virginia, relating to tax credit for industrial expansion.

(b) The city collector and treasurer shall prescribe such regulations as may be necessary to carry out the purposes of this section and article 13C of chapter 11 of the Code of West Virginia.

For corresponding provisions of state business and occupation tax law, see W. Va. Code, § 11-13-3C.

Section 6-30 Computation; payment.

The taxes levied hereunder 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 such quarter, make out an estimate of the tax for which he is liable for such quarter,

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verify such estimate by oath and mail such estimate, with a remittance in the form required by section 6-37, for the amount of the tax, to the office of the city collector and treasurer. The city collector and treasurer, if he deems it necessary to ensure payment of the tax, may require return and payment under this section for other than quarter-year periods. In estimating the amount of the tax due for each quarter, the taxpayer may deduct one fourth of the total exemption allowed for the year. When the total tax for which any person is liable under this article does not exceed the sum one hundred dollar in any one year, the taxpayer may pay the tax quarterly as aforesaid or pay the tax at the month next following the close of the calendar year. (5-2-68, § 4; 6-5-80.)

For corresponding provisions of state business and occupation tax law, see W. Va. Code, § 11-13-4.

Section 6-31 Return and remittance.

Thirty days after the end of the tax year or prior thereto, each person liable for the payment of a tax under this article shall make a return showing the gross proceeds of sales or 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 deduct the amount of quarterly payments as hereinbefore provided, if any, and transmit with his report a remittance in the form required by section 6-37, covering the residue of the tax chargeable against him to the office of the city collector and treasurer; 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 a corporation. If made on behalf of a partnership, joint adventure, association, trust or any other group or combination 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 oath may be made by any duly authorized agent. The city collector and treasurer, for good cause shown, may extend the time for making the annual return on the application of any taxpayer and grant such reasonable additional time within which to make the return as may, by him, be deemed advisable. (5-2-68, § 5.)

For corresponding provisions of state business and occupation tax law, see W. Va. Code, § 11-13-5.

Section 6-32 Mathematical errors; collection of balance due.

(a) Mathematical error. When it appears to the city collector and treasurer that the taxpayer has made a mathematical error (including an overstatement of the credit for the amount paid as estimated tax), the city collector and treasurer shall correct such error and notify the taxpayer, in writing, of the deficiency in the tax. The taxpayer shall have fifteen days after receipt of such notice within which to pay such deficiency. If the taxpayer fails to pay such deficiency within fifteen days, the city collector and treasurer shall make an assessment of such deficiency in accordance with section 6-23 and shall give the taxpayer written notice thereof.

(b) Collection of balance due. If a taxpayer files a mathematically correct return which reflects a balance due of any tax administered under this article, and if full payment thereof has not been made, the city collector and treasurer shall notify the taxpayer, in writing, of the amount of tax, additions to tax, penalties or interest due. The taxpayer shall have fifteen days after receipt of such notice within which to make payment. If the taxpayer fails to make payment within such fifteen-day period, the city collector and treasurer shall proceed under section 6-37 to collect the amount due. (6-4-81.)

For corresponding provisions of state law, see W. Va. Code, § 11-10-6.

Section 6-33 Assessment for insufficient return--Generally.

(a) Generally. If the city collector and treasurer believes that any tax imposed under this article has been insufficiently returned by a taxpayer, either because the taxpayer has failed to properly remit the tax, or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous, he may proceed to investigate and determine or estimate the tax liability and make an assessment therefor.

(b) Abatement or amendment of assessment. The city collector and treasurer may abate or amend, in whole or in part, any assessment whenever he ascertains that such assessment is improper or incomplete in any material respect. (6-4-81.)

For corresponding provisions of state law, see W. Va. Code, § 11-10-7.

Section 6-34 Same--Notice; petition for reassessment.

The city collector and treasurer shall give the taxpayer written notice of any assessment or amended assessment made pursuant to this article. Unless the taxpayer to whom a notice of assessment or amended assessment, is given shall, within thirty days after service thereof, either personally or by certified mail, file with the city collector and treasurer a petition in writing, verified under oath by the taxpayer or his duly authorized agent, having knowledge of the facts, setting forth with particularity the items of the assessment objected to, together with the reasons for the objections, the assessment or amended assessment shall become final and not subject to either administrative or judicial review under the provisions of sections 6-35 and 6-36. The amount of an assessment or amended assessment shall be due and payable on the day following the date upon which the assessment or amended assessment becomes final. (6-4-81)

For corresponding provisions of state law, see W. Va. Code, § 11-10-8.

Section 6-35 Same--Hearing procedure.

When a petition for reassessment provided for in section 6-34, or a petition for refund or credit provided for in section 6-40, is filed within the time prescribed by such sections for such filing, the city collector and treasurer shall assign a time and place for a hearing upon the same and shall notify the petitioner of such hearing by written notice at least twenty days in advance thereof. Such hearing shall be held within ninety days from the date of filing the petition or other written request for hearing unless continued by agreement of the parties or by the city collector and treasurer for good cause.

The hearing shall be informal and shall be conducted in an impartial manner by the city collector and treasurer or a hearing examiner designated by him. If the hearing is on a petition for reassessment the burden of proof shall be upon the taxpayer to show the assessment is incorrect and contrary to law, either in whole or in part. If the hearing is on a petition for refund or credit, the petitioner shall also have the burden of proof.

After any hearing as above provided for, the city collector and treasurer shall, within a reasonable time, give notice in writing of his decision. Unless an appeal from the decision of the city collector and treasurer rendered in any such hearing is taken, pursuant to the provisions of section 6-36, within thirty

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days after service of such notice, the tax commissioner's decision shall become final and conclusive and not subject to either administrative or judicial review. The amount, if any, due the city under such decision shall be due and payable on the day following the date upon which such decision becomes final. The amount if any, due the taxpayer under such decision shall be promptly refunded or the same may be credited pursuant to section 6-40. (6-4-81.)

For corresponding provisions of state law, see W. Va. Code, § 11-10-9.

Section 6-36 Same--Appeals to circuit court.

(a) Right of appeal. A taxpayer may appeal the administrative decision of the city collector and treasurer issued under section 6-35 or section 6-41 by taking appeal to the circuit court of the county within thirty days after being served with notice of the administrative decision of the city collector and treasurer.

(b) Petition for appeal. The appeal proceeding shall be instituted by filing a petition with the circuit court, or the judge thereof in vacation, within the thirty-day period prescribed in subsection (a) of this section. The clerk of the circuit court shall, within ten days after date the petition is filed, serve the city collector and treasurer with a copy of the same by registered or certified mail. This petition shall be in writing, verified under oath by the taxpayer or his duly authorized agent, having knowledge of the facts, set forth with particularity the items of the administrative decision or the assessment objected to, together with the reasons for such objections.

(c) Appeal bond. Before the appeal is heard, the taxpayer shall file with the clerk of the circuit court a cash bond or a corporate surety bond approved by the clerk. The surety must be qualified to do business in the state. These bonds shall be conditioned that the taxpayer shall perform the orders of the court. The penalty of this bond shall be not less than the total amount of tax, additions to tax, penalties and interest for which the taxpayer was found liable in the administrative decision of the city collector and treasurer; provided, that the circuit court may stay the collection of the tax without the requirement of a bond upon a proper showing by the taxpayer that the properties of the taxpayer are sufficient to secure performance of the court's orders or that the ends of justice will be served thereby.

(d) Appeal. The court shall hear the appeal and determine anew all questions submitted to it on appeal from the determination of the city collector and treasurer. In such appeal a certified copy of the city collector's and treasurer's notice of assessment and administrative decision thereon shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of this article. The court shall render its decree thereon and a certified copy of such decree shall be filed by the clerk of the court with the city collector and treasurer who shall then correct the assessment in accordance with the decree. An appeal may be taken by the taxpayer or the city collector and treasurer to the supreme court of appeals of the state. (6-4-81.)

For corresponding provisions of state law, see W. Va. Code, § 11-10-10.

Section 6-37 Collection.

(a) Generally. The city collector and treasurer shall collect the taxes, penalties and interest imposed by this article. In addition to all other remedies available for the collection of debts due the city, the city collector and treasurer may proceed by foreclosure of the lien provided in section 6-38 or by distraint and sale under section 6-39.

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(b) Prerequisite to final settlement of contracts with nonresident contractor; liability of user.

(1) Any person contracting with a nonresident contractor subject to the taxes imposed by this article shall withhold payment, in the final settlement of such contract, of such sufficient amount, not exceeding six percent of the contract price, as will in such person's opinion be sufficient to cover such taxes, until the receipt of a certificate from the city collector and treasurer to the effect that the above referenced taxes imposed against the nonresident contractor have been paid or provided for.

(2) If any person shall fail to withhold as provided herein, such person shall be personally liable for the payment of all such taxes attributable to the contract, not to exceed six percent of the contract price. The same shall be recoverable by the city collector and treasurer by appropriate legal proceedings.

(c) Prerequisite to final settlement of contract with city. All officers, employees 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 city collector and treasurer, to the effect that all taxes levied or assessed under this article against the contractor with respect to such contracts have been paid.

(d) Limited effect of tax commissioner's certificates. The certificates of the city collector and treasurer provided for in subsections (b) and (c) of this section shall not bar subsequent investigations, assessments, refunds and credits with respect to the taxpayer.

(e) Payment when person sells out or quits business; lien.

(1) If any person subject to any tax administered under this article sells out his or its business or stock of goods, or ceases doing business, any tax, penalties or interest imposed by this article shall become due and payable immediately and such person shall, within thirty days after selling out his or its business or stock of goods or ceasing to do business, make a final return and pay any tax which may be due. The unpaid amount of any such tax shall be a lien upon the property of such person.

(2) The successor in business of any such person shall withhold so much of the purchase money as will satisfy any tax, penalties and interest which may be due until the former owner shall produce a receipt from the city collector and treasurer evidencing the payment thereof. If the purchaser of a business or stock of goods shall fail to withhold purchase money as provided above, and if any such tax, penalties and interest remain unpaid after expiration of the thirty-day period allowed for payment thereof, the purchaser shall be personally liable for the payment of any such tax, penalties and interest and the same shall be recoverable by the city collector and treasurer by action as provided by this section.

(f) Injunction. If the taxpayer fails for a period of more than sixty days to fully comply with any of the provisions of this article or of any other article of this chapter to which this article is applicable, the city collector and treasurer may institute a proceeding to secure an injunction to restrain the taxpayer from doing business in the city until the taxpayer fully complies with the provisions of this article.

(g) Costs. In any proceeding under this section, upon judgment or decree for the city collector and treasurer, or city, he, or it, shall be awarded his costs. (7-19-79, § 12; 6-4-81.)

For corresponding provisions of state law, see W. Va. Code, § 11-10-11.

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Section 6-38 Liens.

(a) Generally. Any tax, penalties or interest due and payable 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 the real and personal property of the taxpayer.

(b) Duration. The lien created by this section shall continue until the liability for the tax, penalties and interest is satisfied or becomes unenforceable by reason of lapse of time.

(c) Recordation. The lien created by this section shall be subject to the restrictions and conditions embodied in section 38-10C-1 et seq. of the Code of West Virginia and any amendment made or which may hereafter be made thereto.

The city collector and treasurer, for the more effective collection of the tax, may file with the clerk of the county commission a certified copy of an assessment of taxes under this article. A certificate so filed shall be recorded in the book in which similar certificates of the state are recorded, and shall thereafter constitute binding notice of the lien created by this article upon all lands of the taxpayer located within the county as against all parties whose interest arose after such recordation.

(d) Release. The city collector and treasurer, pursuant to rules or regulations prescribed by him, may issue his certificate of release of any lien created pursuant to this section when the debt is adequately secured by bond or other security. He shall issue his certificate of release when the debt secured has been satisfied. The certificate of release shall be issued in duplicate. One copy shall be forwarded to the taxpayer, and the other copy shall be forwarded to the clerk of the county commission of the county wherein the lien is recorded. The clerk of the county commission shall record the release without payment of any fee and such recordation shall constitute a release and full discharge of the lien. (6-4-81.)

For corresponding provisions of state law, see W. Va. Code, § 11-10-12.

Section 6-39 Distraint.

If any tax administered under this article is required to be paid at the time a return is filed and if any portion of such tax is not so paid, or if an assessment of tax is made by the city collector and treasurer and notice thereof is given as required by this article and such assessment has become final and is not subject to administrative or judicial review, the city collector and treasurer may issue a warrant directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property, including intangibles represented by negotiable evidences of indebtedness, of the taxpayer owning the same found within his county for the payment of the amount of all taxes, penalties and interest accrued and unpaid under this article. The sheriff shall return such warrant to the city collector and treasurer and pay to him the money collected by virtue thereof by the time specified in the warrant, but not later than sixty days from the date of such warrant. If a warrant is returned not satisfied in full, the city collector and treasurer may proceed to enforce the claim for taxes by civil action (6-4-81.)

For corresponding provisions of state law, see W. Va. Code, § 11-10-13.

Section 6-40 Refunds or credits for overpayments; limitations.

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(a) Generally. In the case of overpayment of any tax, penalties or interest imposed by this article, the city collector and treasurer shall, subject to the provisions of this article, refund to the taxpayer the amount of the overpayment or, if the taxpayer so elects, apply the same as a credit against the taxpayer's liability for such tax for other periods. The refund or credit shall include any interest due the taxpayer under the provisions of section 6-43.

(b) Claims. No refund or credit shall be made unless the taxpayer has timely filed a claim for refund or credit with the city collector and treasurer. A person against whom an assessment or an administrative decision has become final shall not be entitled to file a claim for refund or credit with the city collector and treasurer as prescribed herein. The city collector and treasurer shall determine the taxpayer's claim and notify the taxpayer in writing of his determination.

(c) Petition; hearing. If the taxpayer is not satisfied with the city collector's and treasurer's determination of his claim for refund or credit, or if the city collector and treasurer has not determined the taxpayer's claim within ninety days after such claim was filed, the taxpayer may file with the city collector and treasurer, either personally or by certified mail, a petition for refund or credit; provided, that no petition for refund or credit may be filed more than sixty days after the taxpayer is served with notice of denial of his claim. The petition for refund or credit shall be in writing, verified under oath by such taxpayer or his duly authorized agent having knowledge of the facts, and shall set forth with particularity the items of the determination objected to, together with the reasons for the objections. When a petition for refund or credit is properly filed, the procedures for hearing and for decision prescribed in section 6-35 shall be followed.

(d) Appeal. An appeal from the city collector and treasurer's decision upon the petition for refund or credit may be taken by the taxpayer in the same manner and under the same procedure as that set forth in section 6-37 relating to an appeal from the city collector and treasurer's decision on a petition for reassessment, but no bond shall be required of the taxpayer.

(e) Decision of court. Where the appeal is to review an administrative decision on a petition for refund or credit, the court may determine the legal rights of the parties but in no event shall it enter a judgment for money.

(f) Payment of refund or establishment of credit. The city collector and treasurer shall promptly make a refund or establish a credit, as requested by the taxpayer, for any amount finally administratively or judicially determined to be an overpayment of any tax administered under this article and shall pay such refund out of the fund into which the amount so refunded was originally paid.

(g) Forms for claim; where return shall constitute claim. The city collector and treasurer may prescribe by rule or regulation the forms for claims for refund or credit.

(h) Remedy exclusive. The procedure provided by this section shall constitute the sole method of obtaining any refund or any credit, it being the intent hereof that the procedure set forth in this article shall be in lieu of any other remedy.

(i) Erroneous refund or credit. If the city collector and treasurer believes that an erroneous refund has been made or an erroneous credit has been established, he may proceed to investigate and may make an assessment or institute civil action to recover the amount of such refund or credit. (6-4-81.)

For corresponding provisions of state law, see W. Va. Code, § 11-10-14.

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Section 6-41 Limitations on assessment.

The amount of tax, penalties and interest imposed by this article shall be assessed within three years after the due date of the returns; provided, that in the case of a false or fraudulent return filed with the intent to evade tax, or in case no return is filed, the assessment may be made at any time. (6-4-81.)

For corresponding provisions of state law, see W. Va. Code, §11-10-15

Section 6-41.1 Prerequisite to final settlement with nonresident contractor.

Any person contracting with a nonresident person engaged in a business or service within the city, which business or service is taxed under the provisions of this article, shall withhold payment in sufficient amount to cover taxes assessed by this article in the final settlement of such contracts until the receipt of a certificate from the city collector and treasurer to the effect that all taxes levied and accrued under this article against the contractor have been paid.

If any person shall fail to withhold payment as provided herein he shall be personally liable for the payment of all such taxes and the same shall be recoverable by the city by appropriate legal proceedings. (5-2-68, § 16; 5-25-78, § 21; 7-19-79, § 12.)

For corresponding provisions of state law, see W. Va. Code, § 11-10-11, subsec. (b).

Section 6-42 Limitations on collection.

(a) Where assessment is issued. Every proceeding instituted by the city collector and treasurer for the collection of the amount found to be due under an assessment which has become final of any tax, penalties or interest imposed by this article, irrespective of whether such proceeding shall be instituted in a court or by utilization of other methods provided by law for the collection of such tax, additions to tax, penalty or interest, shall be brought or commenced within five years after the date on which such assessment has become final.

(b) Where assessment is not issued. Every proceeding instituted by the city collector and treasurer for the collection of the amount determined to be due by methods provided by law other than the issuance of an assessment, of any tax, penalties or interest imposed by this article, irrespective of whether such proceeding shall be instituted in a court or by utilization of other methods provided by law for the collection of such tax, penalties or interest, shall be brought or commenced within five years after the date on which the taxpayer filed the annual return required to be filed by this article.

(c) Exception as to false or fraudulent return or no return. In the case of the filing of a false or fraudulent return, or in case no return is filed, the limitations specified in this section shall not apply. (6-4-81.)

For corresponding provisions of state law, see W. Va. Code, § 11-10-16.

Section 6-43 Interest.

(a) Underpayments. In the case of an underpayment of estimated tax by a person who is taxable

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under the provisions of this article, there shall be added to the amount of tax due under section 6-30, from the date such tax should have been paid, interest in the amount of eight percent per annum. An underpayment of estimated tax means the application of rates set forth in this article against estimated values or gross income which constitutes less than eighty percent of actual receipts.

(b) Erroneous refund or credit. If any refund is made or credit is established upon an erroneous claim for refund or credit, interest on such amount refunded or credited at the rate of eight percent per annum shall be paid by the claimant from the date the refund was made or the credit was taken to the date such amount is recovered.

(c) Overpayments. Interest shall be allowed and paid at the rate of eight percent per annum upon any amount which has been finally administratively or judicially determined to be an overpayment in respect of the tax administered under this article. Such interest shall be allowed and paid for the period commencing with the date of the filing by taxpayer of a claim for refund or credit with the city collector and treasurer and ending with the date of final administrative or judicial determination of overpayment. The city collector and treasurer shall, within thirty days after such final determination of entitlement to refund, make a refund or establish a credit as requested by the taxpayer. Whenever the city collector and treasurer fails or refuses to make any such refund or establish such credit within such thirty-day period, the interest provided herein shall commence to accrue anew until performance by the city collector and treasurer. The acceptance of such refund check or credit shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(d) Applicable rules.

(1) No interest payable on tax refunded or credited within ninety days after claim for refund or credit is filed. In the event of any overpayment of any tax under this article, where the city collector and treasurer issues his requisition or establishes a credit as requested by the taxpayer within ninety days after the date of the filing by the taxpayer of a claim for refund or credit, no interest shall be allowed under this section.

(2) Interest treated as tax. Interest prescribed under this section on any tax shall be collected and paid in the same manner as taxes.

(3) No interest on interest. No interest under this section shall be imposed on the interest provided by this section.

(4) Interest on penalties. Interest shall be imposed under subsection (a) of this section on any assessable penalty only if such penalty is not paid within fifteen days from the date of notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(5) Payments made within fifteen days after notice and demand. If notice and demand is made for payment of any amount, and if such amount is paid within fifteen days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand. (6-4-81.)

For corresponding provisions of state law, see W. Va, Code, § 11-10-17.

Section 6-44 Penalties.

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(a) Failure to collect, account for and pay over tax, or attempt to defeat or evade tax. Any person required to collect, account for and pay over any tax due under this article, who willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable for a money penalty equal to the total amount evaded, or not collected, or not accounted for and paid over.

(b) Collection of penalty. Any money penalty may be collected in the same way as the tax imposed by this article. (6-4-81.)

For corresponding provisions of state law, see W. Va. Code, § 11-10-19.

Section 6-45 Administrative authority.

(a) Regulations and forms. The city collector and treasurer shall administer and enforce the tax to which this article applies and, in connection therewith, shall prescribe all necessary forms. The city collector and treasurer may make all needful rules and regulations in conformance to this article and to corresponding regulations of the state tax commissioner and as provided in the State Administrative Procedures Act, section 29A-1-1 et seq. of the Code of West Virginia.

(b) Investigations. For the purpose of ascertaining the correctness of any tax return or assessment and for the purpose of making an estimate of any taxpayer's liability for any tax under this article, and for the further purpose of conducting the hearings provided for in section 6-35, the city collector and treasurer shall have the power to examine or cause to be examined, by any agent or representative designated by the city collector and treasurer, any books, papers, records, memoranda, inventory or equipment bearing upon the matters required to be included in the tax return, may make test checks of tax yield, and may require the attendance of the person rendering the tax return or the attendance of any other person having knowledge of the matters contained therein and may take testimony and may require material proof with power to administer oath to such person or persons.

(c) Returns by city collector and treasurer. If any taxpayer fails to file a return at the time required by law or by regulation made under authority of law, the city collector and treasurer may proceed to make a return from any information available.

(d) Secrecy of returns. (1) Except when required in an official investigation into the amount of tax, and except as provided in subsection (e) of this section, it shall be unlawful for any officer or employee of the city to divulge or make known in any manner the tax return or any part thereof of any individual, firm or corporation, or disclose information concerning the personal affairs of any individual or the business of any single firm or corporation, or disclose the amount of income or any particulars set forth or disclosed in any report, declaration or return required to be filed with the city collector and treasurer by this article or by any rule or regulation of the city collector and treasurer issued hereunder.

(2) Any person protected by the provisions of this article may, in writing, waive the secrecy provisions of this subsection for such purpose and such period as he shall therein state, and the city collector and treasurer, if he so determines, may thereupon release to designated recipients such taxpayer's return or other particulars filed under the provisions of this article.

(3) This subsection shall not be construed to prohibit the publication or release of statistics so classified as to prevent the identification of particulars filed under the provisions of this article.

(4) Any officer or employee or former officer or former employee of this city who violates

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this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined not more than one thousand dollars or imprisoned for not more than thirty days, or both, together with costs of prosecution.

(e) Reciprocal exchange. The city collector and treasurer may permit the proper officer of the United States, the state or any political subdivision of the state, or his authorized representative, to inspect reports, declarations or returns filed with the city collector and treasurer or may furnish to such officer or representative a copy of any such document provided such other jurisdiction grants substantially similar privileges to the city collector and treasurer.

(f) Inspection of business and occupation tax returns by State Tax Commissioner. The treasurer of this city shall, upon the written request of the State Tax Commissioner or his designated agent, allow such commissioner or his duly authorized agent to inspect and make copies of the city business and occupation tax returns filed by taxpayers of this city, for the purpose of securing information for state tax purposes provided the state allows the mayor of this city the right to inspect or make copies of the state business and occupation tax returns of such taxpayer. (6-4-81; 6-16-83, § 1.)

For corresponding provisions of state law, see W. Va. Code, § 11-10-5.

Section 6-46 Tax year.

The assessment of taxes herein made and the returns required therefor shall be for the year ending on December 31. If the taxpayer, in exercising a privilege taxable under this article, keeps the books reflecting the same on a basis other than the calendar year, he may, with the assent of the city collector and treasurer, make his annual returns and pay taxes for the year covering his accounting period, as shown by the method of keeping his books. (6-4-81.)

For corresponding provisions of state law, see W. Va. Code, § 11-13-9.

Section 6-47 Tax cumulative.

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 taxed, may exercise the privilege for the current tax year upon the condition that he shall pay the tax accruing under this article. (6-4-81.)

Section 6-48 Violations.

It shall be unlawful for any person to refuse to make the return required by this article 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 any person to aid or abet another in any attempt 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 a 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. And any person violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than

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one hundred dollars or imprisoned for no longer than thirty days, or punished by both such fine and imprisonment, at the discretion of the municipal court, within the limitations aforesaid. (5-2-68, § 19; 6-4-81.)

For corresponding provisions of state business and occupation tax law, see W. Va. Code, § 11-13-21.

Chapter 7: ELECTIONS.

Superseded by Ordinance 043: September 21, 2006.

Sections:

- ~~7-1 Applicability of state law; duties of common council and city clerk.~~
- ~~7-2 Voter eligibility.~~
- ~~7-3 Registration of voters.~~
- ~~7-4 Voting precincts.~~
- ~~7-5 Calling of election.~~
- ~~7-6 Filing announcement of candidacy; requirements; filing fees.~~
- ~~7-7 Election of mayor and councilmen.~~
- ~~7-8 Ballot commissioners; selection; duties generally.~~
- ~~7-9 Election commissioners and clerks; instruction; vacancies.~~
- ~~7-10 Compensation of election officials; expenses.~~
- ~~7-11 Electronic voting systems.~~
- ~~7-12 Tie votes.~~
- ~~7-13 Contested elections.~~
- ~~7-14 Absentee voting.~~

~~——— For charter provision that the elective officers of the city be a mayor and two councilmen from each ward, see Char., § 4. As to qualifications of mayor and councilmen, see Char., § 6. As to date of election and term of office of mayor, see Char., § 8. As to date of election and terms of office of councilmen, see Char., § 9.~~

~~——— For the West Virginia Election Code, see W. Va. Code, ch. 3. As to expenses of municipal primary and general elections, see W. Va. Code, § 8-5-14. As to judicial review of orders of common council relating to city elections, see W. Va. Code, § 8-5-16.~~

~~As to election of city clerk, see § 2-19 of this Code.~~

Section 7-1 Applicability of state law; duties of common council and city clerk.

~~——— (a) The provisions of chapter 3 of the Code of West Virginia referring to elections, insofar as such provisions can be applied within the city and insofar as not otherwise provided by the city Charter or this Code, shall govern the conduct of city elections.~~

~~——— For state law basis of this subsection, see W. Va. Code, §§ 8-5-6 and 8-5-14.~~

~~——— (b) The powers and duties prescribed for county commissions by chapter 3 of the Code of West Virginia shall be exercised and performed by the common council for the purpose of all city elections, and the powers and duties prescribed for clerks of circuit courts and clerks of county commissions by chapter 3 of the Code of West Virginia shall be exercised and performed by the city clerk for the purpose of all city elections, except as may be provided otherwise in the city Charter. (12-4-80)~~

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~~———— For charter provisions as to applicability of state election laws to city elections, see Char., § 11.~~

Section 7-2 Voter eligibility.

~~———— Citizens of the state shall be entitled to vote at all municipal elections held within the precincts of the city in which they respectively reside. But no person who has not been registered as a voter as required by state law or this Code, or who is a minor under the age of eighteen years, or of unsound mind, or who is under conviction of treason, felony or bribery in an election, or who is not a bona fide resident of the state and the city, shall be permitted to vote at such election while such disability exists. (12-4-80.)~~

~~———— For state law as to persons entitled to vote, see W. Va. Code, § 3-1-3.~~

Section 7-3 Registration of voters.

~~———— (a) ——— For the conduct of all city elections, the system of "permanent registration of voters" is hereby adopted, as required by section 8-5-13 of the Code of West Virginia.~~

~~———— (b) ——— No voter otherwise qualified shall be permitted to vote at any election unless he shall have been duly registered, and only those persons who possess the constitutional and statutory qualifications for voting shall be permitted to register; except, that minors, otherwise qualified, who shall have attained the age of eighteen years by the time of the next ensuing election, may be permitted to register.~~

~~———— No voter so registered shall be required to register again for any election while he continues to reside at the same address or, having moved from such address to another address within the city, is properly transferred according to the provisions of subsection (d) of this section.~~

~~———— Registration shall be made in the office of the clerk of the county commission.~~

~~———— (c) ——— No person may vote in an election when he has registered or his voter registration has been altered, amended or corrected within a period of thirty days next preceding such election, but this inhibition shall not prevent, during such period of thirty days, additional registrations and changes in voter registrations with reference to future elections. If, during such period of thirty days preceding an election, a voter is registered or his voter registration is altered, amended or corrected, he shall not be permitted or qualified to vote at such election.~~

~~———— For corresponding provisions of state election law, see W. Va. Code, § 3-2-30.~~

~~———— (d) ——— Registration transfers. Whenever a voter removes his residence from one place to another within the city, he shall request that the change be made on his registration record. Such request shall be made by filling in and, if he is able, signing under oath or affirmation the necessary form, which may be procured in person or by mail from the office of the clerk of the county commission.~~

~~———— Transfers of the registration record may be made throughout the year except during the thirty days immediately preceding any election, and if the voter shall move from one precinct to another within the city during the thirty day period, he shall, for that election only, vote in the precinct from which he moved. If any voter shall move from one place to another within the precinct in which he is registered, whether within or more than thirty days preceding any election, he shall be permitted to vote in that~~

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~~precinct, and the election commissioners upon request of the registrant shall make entry of such change of residence upon the voter's registration record in accordance with procedures prescribed by the secretary of state.~~

~~———— (e) Municipal precinct registration records. At least three days prior to every city election it shall be the duty of the city clerk to procure from the municipal precinct file in the office of the clerk of the county commission the registration records necessary for the conduct of such election.~~

~~———— Such records shall, within ten days after the date of the city election, be returned to the office of the clerk of the county commission by the city clerk.~~

~~———— In case of a contested election, the registration record of any challenged voter shall be made available by the clerk of the county commission to the common council upon its request. Such record shall be returned to the office of the clerk of the county commission within a reasonable time after the contest shall have been finally decided.~~

~~———— *For corresponding provisions of state law, see W. Va. Code, §3-1-27.*~~

~~———— (f) Absentee registration. Any person who possesses the qualifications for registration, but who is absent from the city and county on account of occupation, or for any other necessary cause, including service in the armed forces of the United States, may at any time register by mail according to the procedure prescribed by the secretary of state. (12-4-80.)~~

~~———— *For corresponding provisions of state law, see W. Va. Code, § 3-2-23,*~~

Section 7-4 Voting precincts.

~~———— (a) There shall be the following five voting precincts established in the city for the purpose of city elections:~~

~~———— First ward voting precinct: For all voters in the first ward.~~

~~———— Second ward voting precinct: For all voters in the second ward.~~

~~———— Third ward voting precinct: For all voters in the third ward.~~

~~———— Fourth ward voting precinct: For all voters in the fourth ward.~~

~~———— Fifth ward voting precinct: For all voters in the fifth ward.~~

~~———— (b) Polling places. The common council, before each election, shall secure, for each voting precinct in the city, a suitable room or building in which to hold the election and shall cause the same to be suitably provided with heat, drinking water, light and a sufficient number of booths or compartments, each containing a table, counter or shelf, and furnished with proper supplies for preparing ballots, or at/in which voters may conveniently prepare their ballots, so that in the preparation thereof they may be secure from the observation of others. The number of such booths or compartments shall not be less than two nor more than five. Such room or building shall be located in such precinct; provided, however, that upon a determination of the common council that a suitable room or building in which to hold the election is not reasonably available in such precinct than the common council may secure a suitable room or building in which to hold the election for such precinct in an adjacent precinct in the city. (12-4-80.)~~

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~~— For state law as to duty of common council to provide by ordinances for making precincts coincide, as nearly as possible, to the boundaries of precincts established by the county, see W. Va. Code, § 3-1-6. As to designation and arrangement of polling places, see W. Va. Code, § 3-1-23.~~

Section 7-5 Calling of election.

~~— The common council shall issue the call for each election not later than January 7 next preceding each election.~~

~~— The call shall set forth the date of the election, the time and the procedure for filing certificates of candidacy, the filing fees and such other information as council may deem appropriate. The common council shall cause the call of election to be published one time in a newspaper of general circulation in the city within five days after the call is issued and shall cause the same to be posted at the front door of City Hall. (12-4-80.)~~

Section 7-6 Filing announcement of candidacy; requirements; filing fees.

~~— (a) Any person who is eligible to hold office as mayor or as a member of the common council may file a certificate with the city clerk declaring himself a candidate for election to such office. Such certificate shall be substantially in the following form:~~

~~— "I, _____, hereby certify that I am a candidate for election to the office of Mayor/Councilman of _____ Ward, and desire my name printed on the ballot to be voted at the city election to be held on the _____ day of March, 19____; that I am a legally qualified voter of the City of Elkins; that the address of my residence in the City of Elkins is _____; that I am eligible to hold the office; and that I am a candidate therefor in good faith.~~

Candidate

~~— Signed and acknowledged before me this _____ day of _____, 19____.~~

Signature and official title
of certifying officer."

~~— Such announcement shall be signed and acknowledged by the candidate before some officer qualified to administer oaths, who shall certify the same.~~

~~— Such certificate shall be filed with the city clerk not later than twenty five days before the day of holding of the election, and must be received by the clerk before Midnight, Eastern Standard Time, of that day or, if mailed, shall be postmarked before that hour; provided, however, that if the above set forth last day for filing is a Saturday or Sunday, such certificate shall be filed and must be received by the clerk before Midnight, Eastern Standard Time, of the following Monday or, if mailed, shall be postmarked~~

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~~before that hour.~~

~~———— (b) ——— Every person who becomes a candidate for election to office in any election shall, at the time of filing the certificate of announcement as required in this section, pay a filing fee as follows:~~

~~———— (1) ——— A candidate for the office of mayor shall pay a fee of fifty dollars.~~

~~———— (2) ——— A candidate for the office of councilman shall pay a fee of twenty-five dollars. (12-4-80.)~~

~~Section 7-7 Election of mayor and councilmen.~~

~~———— (a) ——— On the first Tuesday in March, 1981, and every two years thereafter on the first Tuesday in March, there shall be elected by the qualified voters of the city a mayor and such other officers as may be prescribed by ordinance as provided for in section 7 of the Charter. The mayor shall hold his office for the term of two years, commencing on April 1 after his election and continuing until his successor shall have been elected and qualified.~~

~~———— (b) ——— On the same day mentioned in subsection (a) of this section, one member of the common council shall be elected in each ward of the city, who shall hold his office for the term of four years, commencing on April 1 after his election and continuing until his successor shall have been elected and qualified.~~

~~———— (c) ——— At the city election to be held in the year 1987, and at each such election held thereafter, the person receiving the highest number of votes cast for the office of mayor and the person receiving the highest number of votes cast for the office of councilman in each ward shall be elected. (12-4-80; 12-18-86, § 1.)~~

~~Section 7-8 Ballot commissioners; selection; duties generally.~~

~~———— (a) ——— The city clerk and two persons appointed by the common council, who shall be qualified voters of the city, shall constitute a board of ballot commissioners, of which board the clerk shall be chairman. Ballot commissioners shall be appointed between January 15 and 30 in each year in which an election is to be held, for a term of two years beginning on February 1 next ensuing. They shall perform the duties of such commissioners at all regular and special elections held in the city during their term of office.~~

~~———— *For corresponding provisions of state law, see W. Va. Code, § 3-1-19.*~~

~~———— (b) ——— The board of ballot commissioners shall cause to be printed in large, clear type, on cards, instructions for the guidance of voters in preparing their ballots. They shall furnish twelve of such cards to the commissioners of election at the same time they deliver to them the ballots for the precinct. The commissioners of election shall cause to be posted one of such cards in each place or compartment provided for the preparation of ballots, and the others in and about the polling place, and one or more of the cards outside of the sixty foot limit provided for in section 3-1-37 of the Code of West Virginia, on the day of election. Such cards shall contain full instructions to the voters as to what shall be done:~~

~~———— (1) ——— To obtain ballots for voting;~~

~~———— (2) ——— To prepare the ballots for deposit in the ballot boxes; and~~

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~~———— (3) ——— To obtain a new ballot in place of one accidentally spoiled.~~

~~———— Such cards shall contain a copy of the second paragraph of section 3-9-2 of the Code of West Virginia and a copy of sections 5, 6, 8 and 9 of article 9 of chapter 3 of such Code.~~

~~———— The ballot commissioners shall also cause to be printed, on a different color paper than the official ballot, ten or more copies of the ballots provided for each voting place at each election therein, which shall be designated sample ballots and shall be furnished and posted with the cards of instruction at each voting place.~~

~~———— For corresponding provisions of state law, see W. Va. Code, § 3-1-20.~~

~~———— (c) ——— It shall be the duty of the board of ballot commissioners to provide printed ballots for every election for public officers in which the voters or any of the voters within the city participate, and cause to be printed, on the appropriate ballot, the name of every candidate, but in no case shall the ballot contain any title, position, rank, degree or such, including but not limited to doctor, reverend, Ph.D., or the equivalent, whose name has been filed with the city clerk as provided in this chapter.~~

~~———— The printing of the ballots, and all other printing caused to be done by the board of ballot commissioners, shall be contracted for with the lowest responsible bidder. Ballots other than those caused to be printed by the board of ballot commissioners shall not be cast, received or counted in any election.~~

~~———— For corresponding provisions of state law, see W. Va. Code, § 3-1-21.~~

~~———— (d) ——— It shall be the duty of the board of ballot commissioners to appoint one or more of the commissioners of election at each precinct of the city to attend at the office of the city clerk at least the day before each election to receive the ballots, ballot boxes, poll books, registration records and forms and all other supplies and materials for conducting the election at the respective precincts and to deliver the same, such receipt and delivery to be made in the manner prescribed by section 3-1-24 of the Code of West Virginia.~~

~~———— For corresponding provisions of state law, see W. Va. Code, § 3-1-24.~~

~~———— (e) Between the twenty fifth and the tenth days next prior to the date of the election, the ballot commissioners shall prepare from the lists and certificates of announcements a sample official ballot, placing thereon the names of all the candidates for office. At least ten days before an election to fill any public office at which the voters of the city are entitled to vote, the city clerk shall cause to be published the sample official ballot as a class II 0 legal advertisement in compliance with the provisions of section 59-3-1 et seq. of the Code of West Virginia, and the publication area for such publication shall be the city. The second publication shall be on the last day upon which each newspaper is published before the election.~~

~~———— For corresponding provisions of state law, see W. Va. Code, §§ 3-5-10 and 3-6-3.~~

~~———— (f) The provisions of chapter 3 of the Code of West Virginia with respect to the duties of ballot commissioners, so far as applicable, shall apply to city elections. (7-19-79; 12-4-80.)~~

Section 7-9 Election commissioners and clerks; instruction; vacancies.

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~~—— (a) Generally. At its first regular meeting of the month next preceding the date on which any election is to be held, the common council shall appoint a uniform election board, consisting of three election commissioners and two poll clerks, to conduct each election in each precinct of the city in which an electronic voting system has been adopted and is to be used. At such meeting the councilmen from each ward shall submit a list of persons to be appointed by the common council to serve as election officials in their ward.~~

~~—— The common council shall call the necessary meeting or meetings for the instruction of all election officials in the use of the electronic voting system. Such meeting or meetings shall be held and the proper instruction given not less than seven days prior to any election in which the electronic voting system is to be used. No election officer, upon being so notified to appear for instruction, shall fail without just cause to do so. If any officer does so fail to appear, the common council may appoint some other qualified person and such person, after instruction, shall act in the place of the defaulting officer.~~

~~—— For corresponding provisions of state law, see W. Va Code, § 3-4A-14.~~

~~—— (b) Qualifications. No person shall be eligible to be appointed as a commissioner of election or as a poll clerk in any election precinct who is not a qualified voter in the ward in which such precinct is situated; or who has anything of value bet or wagered on the result; or who is a candidate to be voted for at the ensuing election; or who is addicted to drunkenness; or who is not of good character and standing.~~

~~—— (c) Oaths; authority to administer. Each commissioner of election and poll clerk, appointed or selected as aforesaid shall, before entering upon the discharge of his duties, take and subscribe an oath, respectively, to the following effect:~~

(Commissioner's Oath)

State of West Virginia →
County of Randolph → ss:
City of Elkins →

~~—— I, _____, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State; that I will faithfully and impartially discharge the duties of commissioner of election assigned by law; that I will not knowingly permit any person to vote who is not qualified, and will not knowingly refuse the vote of any qualified voter, or cause any delay to a person offering to vote further than is necessary to procure satisfactory information of the qualification of such person as a voter; that I have been a resident of the State of West Virginia for one year, and of the City of and Ward in which I am to act as commissioner of election, for sixty days next preceding this date; that I will not disclose nor communicate to any person how any voter has voted at such election, nor how any ballot has been folded, marked, printed or stamped; that I have nothing of value bet or wagered upon the result of said election; that I have not received any promise, agreement or understanding that I am to receive appointment as deputy from any candidate to be voted for at such election; that I do not have any agreement, understanding or arrangement that I shall receive any sum of money or any portion of the salary, fees or emoluments of any office for which any candidate is to be voted for at such election, should such candidate be elected to such election or any subsequent election; that I am not a candidate at this election. So help me God.~~

~~—— Subscribed and sworn to before me this _____ day of _____
19____.~~

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Signature and official title of person
before whom sworn.

(Clerk's Oath)

State of West Virginia →
County of Randolph →
City of Elkins

I, _____, do solemnly swear that I will faithfully and honestly discharge my duties as clerk of the election now about to be held in precinct No. _____, in the City of Elkins, County of Randolph, State of West Virginia; that I will not disclose nor communicate to any person how any elector voted, or how any ballot was folded, marked, printed or stamped; that I do not have any promise, agreement or understanding that I am to be appointed to any position by any candidate to be voted for at such election; that I do not have any agreement, understanding or arrangement that I shall receive any sum of money or any portion of the salary, fees or emoluments from any office for which any candidate is to be voted for at such election, should such candidate be elected at such election or any subsequent election. So help me God.

Subscribed and sworn to before me this _____ day of _____ 19____.

Signature and official title of person
before whom sworn.

Such oaths may be taken before any person authorized to administer oaths, but if no other person be present at any place of holding any election, they may be taken before, and administered by, one of the commissioners of such election so appointed, who in turn may take the same before another of such commissioners. Either of the commissioners may administer the oaths to the poll clerks. For the purpose of this chapter all commissioners of election are authorized to administer oaths. Such oaths shall appear completed and certified on one of the poll books of every election precinct.

(d) The provisions of chapter 3 of the Code of West Virginia pertaining to the duties of election officers in conducting electronic voting system elections shall, insofar as applicable, apply to city elections. (7-19-79; 12-4-80.)

For corresponding provisions of state law, see W. Va. Code, §§ 3-1-29 and 3-1-30.

Section 7-10 Compensation of election officials; expenses.

Each ballot commissioner shall be allowed and paid a sum, to be fixed by the common council, not exceeding twenty five dollars for each day he shall serve as such, but in no case shall a ballot commissioner receive allowance for more than ten days' services for any one election. Each commissioner of election and poll clerk shall be allowed and paid a sum, to be fixed by the common council, not exceeding twenty five dollars for one day's services for attending the school of instruction for election officials and a sum not exceeding fifty dollars for his services at any one election.

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~~—— The compensation of election officers, cost of printing ballots and all other expenses incurred in holding and making the return of elections shall be audited by the common council and paid out of the city treasury. (12-4-80.)~~

~~—— For corresponding provisions of state law, see W. Va. Code, § 3-1-44.~~

Section 7-11 Electronic voting systems.

~~—— The common council adopts for use in all city elections the electronic voting system which has been adopted for use by the county commission upon such terms and conditions as may be agreed upon between the county commission and the city.~~

~~—— The provisions of section 3-4A-1 et seq. of the Code of West Virginia, relating to electronic voting systems, shall, insofar as applicable, apply to city elections. (12-4-80.)~~

Section 7-12 Tie votes.

~~—— Whenever two or more persons receive an equal number of votes for mayor or councilman, such tie shall be decided by ballot of the common council in existence at the time the election is held. (12-4-80.)~~

~~—— For charter provisions as to determination of tie votes, see Char., § 12.
For state law as to tie votes, see W. Va. Code, § 8-5-15.~~

Section 7-13 Contested elections.

~~—— All contested elections shall be heard and determined by the common council in existence at the time the election is held, and the contest shall be made and conducted as provided for by state statutes for county and district offices. The council, by their proceedings in such cases, shall, as nearly as is practicable, conform to similar proceedings of the county commission in such cases. (12-4-80.)~~

~~—— For charter provisions as to determination of contested elections, see Char., § 13.
For state law as to contested elections, see W. Va. Code, § 8-5-17.~~

Section 7-14 Absentee voting.

~~—— The provisions of chapter 3, article 3 of the Code of West Virginia relating to absentee voting, so far as applicable and except where clearly not adaptable, shall apply to all city elections. (12-4-80.)~~

~~—— For state law basis of this section, see W. Va. Code, § 3-3-13.~~

Chapter 7A: FARMERS' MARKET.

Sections:

- 7A-1 Establishment authorized.**
 - 7A-2 Sale of products--Restrictions on commissions.**
 - 7A-3 Market compliance with local and state laws generally.**
 - 7A-4 Sellers and growers--Compliance with regulations required.**
 - 7A-5 Location.**
 - 7A-6 Schedule of operation.**
 - 7A-7 Administration.**
 - 7A-8 Permits generally.**
 - 7A-9 Sale of fruits, vegetables, baked goods and wild edibles.**
 - 7A-10 Suspension of permit.**
 - 7A-11 Permittee of suspended permit--Restrictions.**
 - 7A-12 Trespassing--Violation--Penalty.**
 - 7A-13 Appeal of permit denial or suspension--Hearing.**
- Section 7A-1 Establishment authorized.**

The establishment of a farmer's market in the city for the sale of fresh fruits, vegetables, baked goods, and wild edibles by the growers or producers thereof within a thirty-mile radius of the city is hereby authorized. Said market shall be known as the Farmers' Market of the city. (7-5-84, § 1.)

Section 7A-2 Sale of products--Restrictions on commissions.

Farm products may be sold or offered for sale at said market only by the grower thereof or by members of his immediate family or by his salespeople. No commission shall be paid by the growers or received by other persons involved in the transactions occurring at said market, except such commissions as are paid to the Elkins Farmers Market Association for the privilege of selling at the market. There shall be no resale made at said market. (7-5-84, § 2.)

Section 7A-3 Market compliance with local and state laws generally.

Said market and all products sold or disposed of or offered for sale in said market shall be subject to inspection under, and shall comply with, and be subject to all local ordinances and regulations and all state laws governing the marketing of such products or governing the inspection, quality, standardization, weights, measures, quarantine, sanitation, marketing and sale of such products offered for sale by private individuals, firms or corporations. (7-5-84, § 3.)

Section 7A-4 Sellers and growers--Compliance with regulations required.

All federal, state laws and regulations, as well as all local ordinances and regulations applicable to said market and the products offered for sale therein shall be complied with by the sellers, and growers utilizing the facilities of said market shall keep the premises used by them in a clean and sanitary condition, and shall remove all fruit and vegetables, cuttings, trimmings, and wrappings and containers at the close of each day. (7-5-84, § 4.)

Section 7A-5 Location.

The Farmers' Market shall be located within the municipal parking lot at the corner of Third

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Street and Railroad Avenue, or at such other place as the common council may determine by resolution. (7-5-84, § 5.)

Section 7A-6 Schedule of operation.

The Farmers' Market shall operate between July 1 and November 1 of each year and shall operate in the following days during the following hours:

Wednesday and Saturday between the hours of 6:30 A.M. and 1:00 P.M. (7-5-84, § 6; 8-1-85.)

Section 7A-7 Administration.

The administration of said Farmers' Market when established shall be administered by the Elkins Farmers' Market Association. Supervision of the administration of said Farmers' Market shall be undertaken by the building inspector of the city.

The Elkins Farmers' Market Association is hereby authorized to make such rules and regulations as it shall deem proper for the conduct of said market and for the maintenance of sanitary conditions therein and for the identification of persons offering products for sale in said market, which said rules shall not be in conflict with the provisions of this chapter, but shall be in furtherance thereof. Said rules and regulations shall be subject to approval of the common council prior to taking effect. (7-5-84, § 7.)

Section 7A-8 Permits generally.

Permits to use the market facility shall vest in the permittee the privilege of entering on the market premises and making use of the market facilities only upon the following terms and conditions:

(a) Participation will be granted upon the proper filing of application with the city treasurer which meets the requirements thereof, for which there will be no permit fee required.

(b) The granting of a written permission by the permittee, given concurrently with the application for a permit to use and enjoy the market facilities, for the duly authorized representative of the association to enter on land owned or possessed in whole or in part, by the permittee at all reasonable times for the purpose of determining what fruits or vegetables, other than wild edibles, have been produced on such land. Such license to enter on the land of the permittee shall be given expressly in consideration of the granting of the permit applied for and shall be irrevocable during such period that the permit is in full force and effect.

(c) Compliance with the requirements of all ordinances relating to the operation, use and enjoyment of the facilities of the market premises.

(d) Compliance with all rules and regulations of the Association regarding use of the market facilities.

(e) Permits shall be prominently displayed on the permittee's vehicle on market days. (7-5-84, § 8; 8-1-85.)

Section 7A-9 Sale of fruits, vegetables, baked goods and wild edibles.

No person shall sell, keep for sale, or offer to sell fruits, vegetables, baked goods or wild edibles except under the authority of a duly issued and validly subsisting permit and pursuant to the terms and conditions thereof.

No permittee nor any of his agents or employees shall bring onto the market premises, keep in his possession, offer to sell or sell any fruits and vegetables, other than wild edibles, which have not been produced on land owned or possessed by the permittee.

Persons acting under a duly issued, valid and subsisting permit may bring into the market premises, keep in their possession, offer to sell or sell only such fruits and vegetables, other than wild edibles which has been produced on land owned or possessed by the permittee. Whenever a permittee, either by himself or through his agents and employees, brings onto the market premises, or has in his possession on said premises, or sells or offers to sell fruits and vegetables which, except for wild edibles, had not been produced on land belonging to that permittee, the city building inspector may immediately suspend permittee's permit to use the market premises for a period of not less than seven days and no more than fourteen days thereafter. (7-5-84, § 9.)

Section 7A-10 Suspension of permit.

Whenever a permittee refuses permission to the duly authorized representative of the Association to enter on land owned or possessed, in whole or in part by said permittee, in breach of the license to enter as provided in section 7.1-8(b), the city building inspector, upon being so advised, may indefinitely suspend the permit belonging to said permittee. (7-5-84 § 10.)

Section 7A-11 Permittee of suspended permit--Restrictions.

A permittee of a suspended permit shall not enter onto market premises for any purpose during such period of time as the permit is suspended. A permittee whose permit has been suspended shall be ineligible to apply for a new permit during such period as his permit is under suspension. Upon a second violation of this chapter, the permittee's permit shall be suspended for the remainder of the year. (7-5-84, § 11.)

Section 7A-12 Trespassing--Violation--Penalty.

Any person entering the market premises in violation of the provisions of this chapter, any permittee entering the market area while his permit is suspended, and any person remaining on said premises after being ordered to leave by the duly authorized representative of the Association, is hereby declared to be a trespasser and is guilty of a misdemeanor and upon arrest and conviction shall be punished by a fine of not more than one hundred dollars. (7-5-84, § 12.)

Section 7A-13 Appeal of permit denial or suspension--Hearing.

Any applicant denied a permit or any permittee whose permit has been suspended may

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immediately file an appeal with the municipal court. The municipal court shall set a time for hearing that appeal, which shall be within five days of the date of filing thereof.

The applicant or permittee shall be notified of the time and place of said hearing in advance thereof, and shall be entitled to appear at the hearing and be heard. After such hearing, the municipal court may concur to the action of suspension by the city, or he may overrule the suspension and order that the permit be immediately granted or restored.

(7-5-84, § 13.)

Chapter 8: FIRE PROTECTION.

Sections:

8-0A	Article I In General.
8-1	Secs 8-1 to 8-4 Reserved.
8-5	Installation of storage tanks for certain flammable liquids prohibited; exception.
8-6	Fire seasons; outdoor fires.
8-7	Burning paper, refuse, etc., in streets.
8-7A	Article II. Fire Prevention Code.
8-8	Adopted; filed; applicability; short title.
8-9	Administration and enforcement.
8-10	Definitions.
8-11	Amendments.
8-12	Storage of explosives, flammable liquids and gases, district established; approval of building permits.
8-13	Modifications.
8-14	Appeals.
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8-15A	Article III. Fire Department.
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8-18	Firemen' s civil service commission.
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8-21	Obedience to officers at scene of Fire.
8-21D	Division 2 Firemen' s Pension and Relief Fund.
8-22	Establishment and maintenance.
8-23	Board of trustees.
8-24	Secs 8-24, 8-25 Reserved for future legislation.
8-25A	Article IV Fire Protection Service Assessments.
8-26	Findings of common council; special assessments.
8-27	Assessment--Levied; rate of assessment.
8-28	Same--Collection; refund.
8-29	Definitions.
8-30	Assessment--Protest: corrections.
8-31	Assessment--Rules and regulations generally.
8-32	Same--Collection year.
8-33	Same--Appropriation of revenue.
8-34	Same--Other taxes.
8-35	Same--Exemptions.

- 8-36 Same--Avoidance of payment.**
8-37 Enforcement of collection; penalty.

As to the Building Code, see §§ 5-7, 5-8 of this Code. As to giving false alarms and reports, see § 13-4.

Section 8-0A Article I In General.

For state law as to authority of common council to enact ordinances to prevent injury to the public or individual from anything dangerous; to regulate the keeping of gunpowder and other combustibles; and to make regulations guarding against danger or damage by fire, see W. Va. Code, § 8-12-5, subsecs. (13) to (15). As to authority of common council to enact ordinances to provide for the elimination of hazards to the public safety and to abate public nuisances, see W. Va. Code, § 8-12-5, subsec. (23). As to authority to enact ordinances to protect the public safety, see W. Va. Code, § 8-12-5, subsec. (44). As to plenary power of common council to provide for the prevention and extinguishment of fires, see W. Va. Code, § 8-15-1. As to state Fire Prevention and Control Act, see W. Va. Code, §29-3-1 et seq.

Section 8-1 Secs 8-1 to 8-4 Reserved.

Section 8-5 Installation of storage tanks for certain flammable liquids prohibited; exception.

It shall be unlawful for any person to install in any residential district of the city, as designated on the official zoning map of the city, any fuel storage tank for the purpose of storing flammable liquids for use as motor vehicle fuels. The term "flammable liquids" shall include gasoline and all other petroleum products used as fuel for motor vehicles; provided, however, that nothing herein contained shall prohibit any person from installing a fuel storage tank for the purpose of storing fuel heating oil to be used solely for the furnishing of heat to dwellings or buildings located on the property on which such storage tank is installed.

It shall be the duty of the fire chief to administer and enforce compliance with the provisions of this section. (7-5-79, §§ 1, 2.)

Section 8-6 Fire seasons; outdoor fires.

(a) The periods of each year between March 1 and May 31, inclusive, and October 1 and December 31, inclusive, are hereby designated as fire seasons. No person shall, during any such fire season, except between the hours of 5:00 P.M. and 6:00 A.M., set on fire or cause to be set on fire within the city any forest land, grassland, grain, stubble, slash, debris or other flammable material, if it is located in a place from which it is reasonable to expect that the fire may spread to any adjoining property. Any person who sets or causes to be set such a fire during any period of time permitted by this section shall not leave such fire unattended and shall completely extinguish such fire before 5:00 A.M. If damage to the property of another results from any such fire during a fire season, it shall be prima facie evidence that the person who set such fire or caused such fire to be set violated the provisions of this section.

For corresponding provisions of state law, see W. Va. Code, § 20-3-5.

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(b) Any person who shall violate the provisions of this section shall, upon conviction, be fined not less than ten dollars nor more than one hundred dollars for each offense.

(c) The provisions of this section shall be deemed to be in addition to any requirement imposed by the Fire Prevention Code adopted by this article, but shall supersede any provision of such Fire Code in conflict with this section. (3-7-63.)

Section 8-7 Burning paper, refuse, etc., in streets.

No person shall burn any shavings, paper, house sweepings or other thing upon any street or sidewalk or upon any public pavement, nor shall such refuse be burned at such a place where such burning would endanger any building. (Code 1942, ch. 17, § 10.)

Section 8-7A Article II. Fire Prevention Code.

Superseded by Ordinance 110; April 1, 2010.

For charter provisions as to authority of common council to regulate the construction, alteration and repair of dwellings, buildings and other structures, etc., within the city, see Char., § 28, subsec. (45) and, see also, subsecs. (11), (12), (47), (49) and (50). As to authority of common council to regulate the construction and inspection of new buildings and the alteration and repair of all buildings, etc., and to require building permits, plans and specifications, etc., see Char., § 28, subsec. (51).

~~— For state law as to authority of city to regulate the erection, construction, repair or alteration of structures of wood or other combustible material, see W. Va. Code, § 8-12-13. As to authority of common council relating to buildings, safety hazards and nuisances generally, see W. Va. Code, § 8-12-5, subsecs. (23), (28). As to authority of state fire marshal to promulgate rules relating to buildings, see W. Va. Code, §§ 29-3-4a, 29-3-4b. As to authority of city to require permit for construction, alteration or repair of buildings or equipment, see W. Va. Code, § 8-12-14. As to authority to inspect private premises, see W. Va. Code, § 8-12-15. As to Fire Prevention and Control Act, see W. Va. Code, §§ 29-3-1 to 29-3-30.~~

Section 8-8 Adopted; filed; applicability; short title.

~~— There is hereby adopted by the common council, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, that certain code known as the Fire Prevention Code, recommended by the American Insurance Association, being particularly the 1970 abbreviated edition thereof and the whole thereof, save and except such portions as are hereinafter deleted, modified or amended by section 8-9, of which code no fewer than two copies, each certified by the mayor, are now and shall remain on file in the office of the city clerk and shall there be available to the public for inspection and use during all regular business hours; and such code is hereby incorporated in and made a part of this section as if fully set out herein; and from the date on which this City Code shall take effect, the provisions of the Fire Prevention Code shall be controlling within the limits of the city.~~

~~— The code adopted by this section shall be known and may be cited as the "Fire Prevention Code." (7-1-65; 4-2-70, § 1.)~~

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~~— For state law as to authority of common council to adopt Fire Prevention Code by reference, see W. Va. Code, § 8-11-4, subsec. (b).~~

Section 8-9 Administration and enforcement.

~~— The Fire Prevention Code shall be administered and enforced by the fire chief. (4-2-70, § 2.)~~

Section 8-10 Definitions.

~~— Wherever the word "municipality" is used in the Fire Prevention Code, it shall be construed to mean the City of Elkins. (4-2-70, § 3.)~~

Section 8-11 Amendments.

~~— The Fire Prevention Code adopted by this article shall be amended as follows:~~

~~— (a) Article 5, section 52, is amended to read:~~

~~— "Section 52, Permits Required.~~

~~— "a. Written permits shall be required for all sections of Article 5."~~

~~— (b) Article 12, subsection c. of section 121 is hereby deleted.~~

~~— (c) Article 16, section 160, subsection a. is hereby amended by adding thereto the following: "Burning within the city limits of grass from lawns, leaves, wood and papers will be permitted with an approved container type of burner on Tuesday, Wednesday, and Thursday of each week. Containers shall be inspected by the fire department. During Fire Season burning shall not be permitted until after 5:00 P.M. to conform to state laws. Exposed burning, such as brush, etc., shall be only with written permit for each burning, to be allowed only on Tuesday Wednesday and Thursday. Permits to be issued by the fire chief or his designated representatives." (4-2-70, § 5; 6-18-70.)~~

Section 8-12 Storage of explosives, flammable liquids and gases, district established; approval of building permits.

~~— The limits referred to in section 53b of the Fire Prevention Code, in which the storage of explosives and blasting agents is prohibited; the limits referred to in section 74a of the Fire Prevention Code, in which the storage of Class I liquids in outside, aboveground tanks is prohibited; and the limits referred to in section 114 of the Fire Prevention Code, in which the bulk storage of liquefied petroleum gas is restricted, are hereby established as follows:~~

~~— From the railroad tracks, south on Randolph Avenue to High Street, west on High Street to Davis Street, north on Davis Street to Savannah Street, south on Savannah Street to the Tygart Valley River, west along the Tygart Valley River to Railroad Avenue, north on Railroad Avenue to Randolph Avenue.~~

~~— The fire chief or his representative shall inspect and approve all building permits in this area.~~

~~(4-2-70, § 4.)~~

Section 8-13 Modifications.

~~———— The fire chief, with the approval of the common council, shall have the power to modify any of the provisions of the Fire Prevention Code, upon application in writing by the owner or lessee of any property affected thereby, or by the duly authorized agent of such owner, when there are practical difficulties in the way of carrying out the strict letter of the Code; provided, that the spirit of the 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 fire chief thereon shall be entered upon the records of the department, and a signed copy shall be furnished the applicant. (4-2-70, § 6.)~~

Section 8-14 Appeals.

~~———— Whenever the fire chief shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the Fire Prevention Code do not apply or that the true intent and meaning of the Code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire chief to the common council, within thirty days from the date of the decision appealed. (4-2-70, § 7.)~~

Section 8-15 Violations.

~~———— (a) Any person who shall violate any of the provisions of the Fire Prevention Code or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build 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 who shall fail to comply with such an order as affirmed or modified by the common council or by a court of competent jurisdiction within the time fixed therein, shall severally for each such violation and noncompliance respectively, be punishable by a fine of not less than five dollars nor more than fifty dollars or by imprisonment for not less than five days nor more than thirty days or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violation or defect within a reasonable time; and when not otherwise specified, each ten days that prohibited conditions are maintained shall constitute a separate offense.~~

~~———— (b) The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions. (4-2-70, § 8.)~~

Section 8-15A Article III. Fire Department.

For state law as to authority of common council to provide for the prevention and extinguishment of fires, to procure proper engines and implements, to provide for the organization, equipment and government of a volunteer or paid fire department, etc., see W. Va. Code, § 8-15-1. As to authority to use fire equipment three miles beyond city limits, see W. Va. Code, § 8-15-3. As to volunteer fire companies, see W. Va. Code, §§ 8-15-4 to 8-15-8. As to paid fire departments and civil service, see W. Va. Code, § 8-15-9 et seq. As to authority of local fire departments, see W. Va. Code, ch. 29, art.

3A.

Section 8-15D Division 1 Generally.

Section 8-16 Fire chief--Office established; powers and duties generally.

The office of fire chief is hereby established. The fire chief shall be the chief of the fire department and the commanding officer thereof, and shall be responsible to the mayor and the common council for the administration, training, discipline, morale and effective deployment and utilization of the members of the department and for the maintenance and effective deployment and utilization of the property, equipment and apparatus of the fire department.

The fire chief shall have all such powers as may be necessary and lawful to meet the responsibilities imposed upon him by this section, including but not limited to the following:

(a) He shall have absolute command, control, management, assignment to duties and supervision of every officer, member and employee of the fire department during a fire, at all practices and drills and during all hours when such personnel are on duty.

(b) He shall have absolute control, authority and command of the police officers present at the scene of any fire during the time and continuance of any fire or conflagration, and all orders issued by him to such police officers and to other persons present shall be by them explicitly obeyed and performed.

(c) He shall have supervision over the engine houses, trucks and all apparatus and equipment belonging to the fire department. He shall be responsible for the serviceable condition of all equipment belonging to the fire department and he shall be responsible that every piece of fire apparatus is equipped at all times with the necessary wrenches and all other equipment belonging to that piece of apparatus and necessary to the successful fighting of fire.

(d) He shall have supervision over all repairs to apparatus and the charge of all supplies, and shall issue them, at his own discretion or upon the authority of the common council, to the units of the fire department, taking from such units the receipts of the commanding officer of the unit to which the supplies are issued. He shall have sole control, management and command at fires and alarms of fire over all apparatus and equipment belonging to the fire department. Whenever any purchases are to be made and when the fire apparatus used by the department requires attention or repairs, he shall make a report and recommendations to the common council unless the repairs needed are of a character which will require immediate attention.

(e) He shall have authority to direct the pulling down or destroying of any fence, house, building or other thing, if deemed necessary to prevent the spreading of a fire.

For state law as to authority of common council to give authority to fire department officers to pull down structures when deemed necessary to prevent spread of fire, see W. Va. Code, §§ 8-15-1, 8-15-2.

(f) He shall be responsible for the keeping of necessary records for the fire department, which records shall be subject to the inspection of the mayor and the members of the common council at any time. Such record shall list and note, inter alia, the state of repair of all property belonging to the fire department. He shall record, and communicate monthly to the common council, a report of all fires

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occurring since the previous report, the units and personnel responding to alarms, the loss and insurance as far as has been ascertained, the causes of any such fires and such suggestions as he may deem advisable to bring the number of fires to a minimum. He shall also keep at his office such books or other records as the common council may prescribe.

Section 8-17 Same--Power as to repair or removal of fire hazards.

Whenever the fire chief, acting in his capacity as assistant to the state fire marshal, shall find any building or other structure on property of any kind, or any other object of any kind or any place or condition which, for want of repairs or by reason of age or dilapidated condition or from any other cause or condition or for any reason whatever, is especially conducive or liable to fire or liable to cause a fire and which is so located or constructed as to endanger it or other property or life, he shall order such condition or thing to be remedied or such building or buildings, structures or property to be repaired and remedied and, if not so repaired and remedied, to be torn down and removed, and he shall proceed to enforce his order according to the provisions of article 3, chapter 29, of the Code of West Virginia. (11-15-62.)

Section 8-18 Firemen' s civil service commission.

The firemen' s civil service commission, existing immediately prior to the effective date of this Code, is hereby continued in full force and effect; and all the pertinent provisions of sections 8-15-11 through 8-15-27, inclusive, of the Code of West Virginia are hereby adopted by the common council and made applicable to the regular members of the fire department who are paid on a full-time basis from city funds and to applicants for such regular membership. (3-3-60.)

Editor' s note.--The firemen' s civil service commission was established in this city for regular, full-time paid members of the fire department, under the provisions of W. Va. Code, prior chapter 8, article 6A, since superseded by the sections mentioned in the text of this section.

Section 8-19 Using or tampering with city fire equipment.

No person shall use any fire apparatus or equipment of the city for any private purpose, nor shall any person wilfully and without proper authority remove, take away, tamper with, keep or conceal any tool, piece of equipment, appliance or other article used in any way by the fire department.

Section 8-20 Riding upon fire apparatus.

It shall be unlawful for any unauthorized person to ride upon any fire apparatus of the city at any time; and no person, other than those assigned to such apparatus, shall be authorized to ride thereon while such apparatus is responding to a fire alarm, except by authority of the fire chief.

Section 8-21 Obedience to officers at scene of Fire.

Every person present at the scene of a fire shall be subject and obedient to the orders of any police officer or member of the fire department there present as to any matter relating to the

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extinguishment of the fire, the removal and protection of property or the maintenance of order; and it shall be unlawful for any person present at the scene of any fire to disobey any such lawful order of any police officer or member of the fire department there present.

Section 8-21D Division 2 Firemen' s Pension and Relief Fund.

Editor' s note. This division was enacted in 1953 pursuant to authority of article 6 of the then chapter 8 of the Code of West Virginia; and all references herein to the Code of West Virginia have been revised so as to refer to the Code of West Virginia as in effect upon the cut-off date of this city Code. For state law relating to municipal firemen' s pension and relief funds, see W. Va. Code, §§ 8-22-16 to 8-22-28. As to duty of common council to levy annual tax for fund, see W. Va. Code, § 8-22-19. As to federal social security benefit, see § 2-5 of this Code. As to participation of city in state employment employees' retirement system, see § 2-6.

Section 8-22 Establishment and maintenance.

A firemen' s pension and relief fund is hereby established, pursuant to the authority of section 8-22-16 of the Code of West Virginia, for the purposes enumerated in article 22, chapter 8 of that Code. Such fund shall consist of gifts, grants, devises and bequests of money and real and personal property, upon such terms as to the investment and expenditure thereof as may be fixed by the grantors thereof or determined by the board of trustees of the fund, plus other funds, assessments and levies, as provided in section 8-22-19 of the Code of West Virginia. (5-7-53, § 1.)

Section 8-23 Board of trustees.

The board of trustees of the firemen' s pension and relief fund shall be composed and have the powers and duties provided for such boards by sections 8-22-17 and 8-22-18 of the Code of West Virginia.

Section 8-24 Secs 8-24, 8-25 Reserved for future legislation.

Section 8-25A Article IV Fire Protection Service Assessments.

Editor' s note. --The ordinance codified in this article, and each of the amendments to section 2, thereof, was published as a class II legal advertisement in compliance with the provisions of W. Va. Code, § 8-13-13, and no petition was filed within fifteen days after expiration of such publications. For state law as to authority of common council to impose upon users of municipal fire protection services a reasonable charge therefor, see W. Va. Code, § 8-13-13.

Section 8-26 Findings of common council; special assessments.

In the judgment of the common council the public health, safety, welfare and well-being of the citizens of this city demand the continuance, maintenance and improvement of the essential service of fire protection within the city, and the public revenues of the city are not sufficient, having regard to other

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necessary costs and expenses, for the purpose of providing adequate fire protection within the city. Therefore it appears necessary, under the provisions of section 8-13-13 of the Code of West Virginia, that, in order to provide additional revenues for the continuance, maintenance and improvement of the essential and special service of fire protection within the city, it is necessary that there be imposed upon the users of such special service such rates, fees and rentals as are required to pay a part of the cost of the special service of fire protection. The proceeds and revenues received and collected from such rates, fees and rentals from the users of such special service shall be used and expended for the continuance, maintenance and improvement of the special service of fire protection and the facilities required therefor within the city, and for no other purpose.
(5-16-63, § 1.)

Section 8-27 Assessment--Levied; rate of assessment.

There is hereby imposed and levied upon the respective owners of all buildings as users of fire protection service a fee of three and one-quarter cents per square feet of the building per year; provided, however, no fee shall be imposed and levied on any building which contains less than one hundred fifty square feet.

Square footage shall be determined as of July 1, 1983, and as of July 1st of each succeeding year. The city collector and treasurer shall mail the assessments imposed by this article to the users on or before October 15, 1983, for 1983, and on or before September 1st of each year thereafter. (9-8-83, § 2.)

Section 8-28 Same--Collection; refund.

(a) The fee hereby imposed and levied shall be collected by the city collector and treasurer in two semi-annual installments. The first installment shall be payable on October 1st of each fiscal year and an equal second installment shall be payable on April 1st of each fiscal year. Such installments shall become delinquent thirty days after the due dates; provided, however, that in the year 1983 the first installment shall be due and payable thirty days after mailing; and, further, provided, that no user shall be required to pay the second installment of the 1983 fee and the payment of the same is hereby exonerated and the collection thereof is hereby waived.

(b) As soon as practicable after the final adoption of the ordinance codified in sections 8-27 through 8-31 and 8-37, the city collector and treasurer shall ascertain the names of all users, if any, who, at the time of adoption of said ordinance, shall have paid the second installment of the 1983 fee, and the said city collector and treasurer shall refund to each user who shall have paid such second installment the amount thereof so paid.

(c) The exoneration of the payment of the second installment of the fire service fee and the waiver of the collection thereof, as provided in subsection (a) above, shall be applicable only to the payment and collection of the second installment of the 1983 fee. (9-8-83, § 3; 3-15-84, § 1.)

Section 8-29 Definitions.

(a) Building. Any structure, shelter, support, or property of any kind; and when separated by party walls without opening, each portion of such building so separated shall be deemed a separate building.

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(b) Square footage. All space within a building provided, however, that the areas of attics, basements and garages, attached or detached, shall not be included as part of the total square footage. Square footage shall be fixed and determined by the city collector and treasurer, and, in fixing and determining square footage, the collector and treasurer may make or cause to be made such reports, investigations, surveys and measurements as may be requisite and, as an aid, may consult the square footage records maintained by the State Tax Department and the assessor of Randolph County.

(c) User. Any person, individual, firm, partnership, corporation, joint venture, association, trust or other entity owning any building situated within the corporate limits of the city. (9-8-83, § 4.)

Section 8-30 Assessment--Protest: corrections.

(a) Any person aggrieved by any such fee may protest the same in writing under oath, setting forth the grounds for such protest.

Such written protest must be filed with the city collector and treasurer not later than October 1st of each fiscal year; provided, however, in the year 1983 such written protests must be filed not later than thirty days after mailing.

Upon receipt of such protest the city collector and treasurer shall report the same to the common council, which shall fix a date for a public hearing thereon. Any such person shall have the right to be heard concerning such protest in person or by agent or attorney at such hearing. Protests shall be made on written forms of the city collector and treasurer.

(b) If the common council, after due hearing, finds any such fees or assessments due to be erroneous, it shall correct such errors as the circumstances require, and, when so corrected, the assessment shall relate back to the date when it was originally made as provided herein. (9-8-83, § 5.)

Section 8-31 Assessment--Rules and regulations generally.

The city collector and treasurer shall make and promulgate, from time to time, suitable regulations governing the services hereby provided, the making of statements of accounts, the collection thereof, and such other rules and regulations as he may deem proper or necessary for the enforcement of this article. (9-8-83, § 6.)

Section 8-32 Same--Collection year.

The collection year for the purposes of the assessments imposed by this article shall be the fiscal year running from July 1 of each calendar year to June 30 of the following calendar year. (5-16-63, § 9.)

Section 8-33 Same--Appropriation of revenue.

The funds, money and revenues received from the collection of the rates, fees and rentals herein provided shall be used only for the continuance, maintenance or improvement of the essential or special service of fire protection within the city and no part of such funds, money or revenues shall be used for any other municipal purpose. (5-16-63, § 7.)

Section 8-34 Same--Other taxes.

The rates, and rentals imposed, levied and assessed by this article shall be in addition to all other licenses and taxes levied under the statutes of the state, this Code or other ordinances of the city, and 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. (5-16-63, § 14.)

Section 8-35 Same--Exemptions.

No building, improvement or structure, and no tangible personal property, goods or chattels located within the city, shall be exempt from the rates, fees or charges provided by this article, whether the title or ownership thereof and therein be vested in the United States of America, the state or any political subdivision thereof, or whether the property be used for educational, literary, scientific, religious, charitable or cemetery purposes, or otherwise be exempt from the payment of real or personal property taxes under the provisions of article X of the constitution of the state. (5-16-63, § 15.)

Section 8-36 Same--Avoidance of payment.

It shall be unlawful for any person to refuse to pay the rates, fees or rentals provided for herein, or for any person to aid or abet another person to avoid the payment of such fees or rentals imposed by this article. (5-16-63, § 12.)

Section 8-37 Enforcement of collection; penalty.

The fees imposed, levied and assessed under the provisions of this article are hereby declared to be a debt and personal obligation of the building owner owing to the city, and the city collector and treasurer may enforce this liability by appropriate civil action in any court of competent jurisdiction.

A penalty of five percent of the fee shall be imposed for any default for a period of thirty days or less in payment of such fee, and for each succeeding thirty days, or portion thereof, elapsing thereafter before payment there shall be an additional penalty of one percent. (9-8-83 § 7.)

Chapter 8A: FLOOD DAMAGE PREVENTION.

Sections:

8A-0A	Article I. General Provisions.
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8A-6	Revisions of floodplain.
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8A-8	Floodway (F1).
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8A-21	Inspection and revocation.
8A-22	Fees.
8A-22A	Article VIII. Appeals and Penalties.
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8A-24	Appeals review criteria.
8A-25	Penalties.
8A-25A	Article IX. Severability and Municipal Liability.
8A-26	Severability.
8A-27	Municipal liability.
Section 8A-0A Article I. General Provisions.	

Section 8A-1 Intent.

The intent of this chapter is to:

- (a) Promote the general health, welfare, and safety of the community.
- (b) Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- (c) Minimize danger to public health and safety by protecting water supply, sanitary sewage disposal, and natural drainage.
- (d) 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. (2-19-87, § 1.1.)

Section 8A-2 Abrogation and greater restrictions.

This chapter supersedes any ordinances currently in effect in flood prone areas. However, any

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underlying ordinance shall remain in full force and effect to the extent that those provisions are more restrictive. (2-19-87, §1.2.)

Section 8A-3 Applicability.

Provisions of all other codes, ordinances, and regulations shall be applicable insofar as they are consistent with the provisions of this Ordinance and the municipality's need to minimize the hazards and damage resulting from flooding. (2-19-87, § 1.3.)

Section 8A-3A Article II. Definitions.

Section 8A-4 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Base flood. The flood which has been selected to serve as the basis upon which the floodplains management provisions of this chapter and other ordinances have been prepared; for purposes of this chapter; the one-hundred year flood.

Base flood elevation. The one-hundred-year flood elevation. Within the approximated floodplain the base flood elevation shall be established as a point on the boundary of the approximated floodplain which is nearest to the construction site in question.

Building permit officer. The building inspector of the city or his duly authorized designee.

Development. Any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operation.

Flood. A general and temporary inundation of normally dry land areas.

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

Floodproofing. Any combination of structural and non-structural additions, changes or adjustments to properties and structures which reduce or eliminate flood damage to lands, water and sanitary facilities, structures, and contents of buildings.

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. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than one hundred eighty consecutive days. For insurance purposes the term manufactured home does not include park trailers, travel trailers, and other similar vehicles.

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Manufactured home park/subdivision. A parcel or contiguous parcel of land divided into two or more manufactured home lots for rent or sale.

New construction. Structures for which the start of construction as herein defined commenced on or after the effective date of the ordinance codified in this chapter. This term does not apply to any work on a structure existing before the effective date of said ordinance.

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.

Person. Any individual or group of individuals, corporation, partnership, association, or other entity, including state and local governments and agencies.

Principally above ground. Where at least fifty-one percent of the actual cash value of a structure, less land value, is above ground.

Start of construction. The first placement of permanent construction of a structure (other than a manufactured home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. 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 as a part of the main structure. For a structure (other than a manufactured home) without a basement or poured footings, the "start of construction" includes the first permanent framing or assembly of the structures or any part thereof on its piling or foundation. For manufactured homes not within a manufactured home park or manufactured home subdivision, "start of construction" means the affixing of the manufactured home to its permanent site. For manufactured homes within manufactured home parks or manufactured home subdivisions, "start of construction" is the date on which the construction of facilities for servicing the site on which the manufactured home is to be affixed (including at a minimum the construction of streets, whether final site grading or the pouring of concrete pads, and installation of utilities) is completed.

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

Substantial improvement. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty 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.

For the purpose 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. (2-19-87, art. 2.)

Section 8A-4A Article III. Establishment of the Floodplain District.

Section 8A-5 Established.

The floodplain district shall include all areas subject to inundation by the waters of the one-hundred-year flood.

The source of this delineation shall be the Flood Insurance Study for the city of Elkins, Randolph County, West Virginia, as prepared by the Federal Emergency Management Agency, Federal Insurance Administration.

The floodplain district shall be comprised of three subdistricts as follows:

(a) Floodway (F1): that portion of the floodplain district required to carry and discharge the waters of the one-hundred-year flood without increasing the water surface elevation at any point more than one foot above existing conditions, and demonstrated in the Flood Insurance Study referenced above.

(b) Floodway fringe (F2): those portions of land within the floodplain district subject to inundation by the one-hundred-year flood, lying beyond the floodway in areas where detailed study data and profiles are available.

(c) Approximated floodplain (F3): those portions of land within the floodplain district subject to inundation by the one-hundred-year flood, where a detailed study has not been performed, but where a one-hundred-year floodplain boundary has been approximated. (2-19-87, § 3.1.)

Section 8A-6 Revisions of floodplain.

The delineation of the floodplain may be revised, amended and modified by the common council in compliance with the National Flood Insurance Program when:

(a) There are changes through natural or other causes;

(b) Changes are indicated by future detailed hydrologic and hydraulic studies.

All such changes shall be subject to the review and approval of the Federal Insurance Administrator. (2-19-87, §3.3.)

Section 8A-7 Boundary dispute.

Should a dispute concerning any district boundary arise, an initial determination shall be made by the building permit officer. Any party aggrieved by this decision may appeal to the common council. The burden of proof shall be on the appellant. (2-19-87, § 3.4.)

Section 8A-7A Article IV. Utilization of the Floodplain District.

Section 8A-8 Floodway (F1).

General requirement. In the floodway no development shall be permitted which would result in any increase in the base flood elevation during the occurrence of the base flood discharge. When a developer proposes to offset the effects of development in the floodway by construction of stream improvements, he shall submit an engineering study prepared by a registered professional engineer which fully evaluates the effects of such construction. The report shall use the base flood as herein defined as the basis of analysis. All adjacent communities and the State Coordinating Office shall be notified by the developer by certified mail of all such intended activities prior to any alteration or relocation of a watercourse and shall submit copies of such notification to the Federal Insurance Administration. In addition, the developer shall assure the city of Elkins, in writing, that the flood carrying capacity within the altered or relocated portion of the watercourse in question will be maintained.

All uses, activities, and other developments shall be undertaken in strict compliance with the floodproofing and related provisions contained herein, and in all other applicable codes, ordinances and regulations. (2-19-87, §4.1.)

Section 8A-9 Floodway fringe (F2) and approximated floodplain (F3).

In the floodway fringe and approximated floodplain any development and/or use of land shall 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. For any manufactured home park or subdivision with the floodway fringe or approximated floodplain, the owner or operator of the mobile home park or subdivision shall file with the disaster preparedness authorities of Randolph County, and the city of Elkins, an evacuation plan which indicates alternate vehicular access routes.

In addition, whenever a developer intends to alter or relocate a watercourse within the floodway fringe or approximated floodplain, 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 of Elkins, in writing, that the flood carrying capacity within the altered or relocated portion of the watercourse in question will be maintained. (2-19-87, § 4.2.)

Section 8A-9A Article V. Criteria for Building and Site Plan Approval.

Section 8A-10 General.

Building permits are required in order to determine whether all new construction or substantial improvement are:

(a) Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement;

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- (b) Constructed with materials and utility equipment resistant to flood damage;
- (c) Constructed by methods and practices that minimize flood damage. (2-19-87, § 5.1.)

Section 8A-11 Basic format.

The basic format of the building permit shall include the following:

- (a) Name and address of applicant.
- (b) Name and address of owner of land on which proposed construction is to occur.
- (c) Name and address of contractor.
- (d) Site location.
- (e) Brief description of proposed work and estimated costs.
- (f) A plan of the site showing the exact size and location of the proposed construction as well as any existing buildings or structures. (2-19-87, § 5.2.)

Section 8A-12 Elevation and floodproofing information.

Depending on the type of structure involved, the following information shall also be included in the building permit for work within the floodplain district.

- (a) For structures to be elevated to the base flood elevation.
 - (1) A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
 - (2) A determination of elevations of the existing ground, proposed finished ground and lowest floor, certified by a registered professional engineer, surveyor or architect.
 - (3) Plans showing the method of elevating the proposed structure, including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measure, etc. When required by the permit officer these plans shall be prepared by a registered professional engineer or architect.
 - (4) 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.
- (b) For structures to be floodproofed to the base flood elevation (nonresidential structures only):
 - (1) Place 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.

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(2) A determination of elevations of existing ground, proposed finished ground, lowest floor, and flood-proofing limits; certified by a registered professional engineer, surveyor, or architect.

(3) A certificate prepared by the registered professional engineer or architect who prepared the plans in subdivision (1) of this subsection, that the structure in questions, together with attendant utility and sanitary facilities is designed so that:

(A) Below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water.

(B) 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. (2-19-87, §5.3.)

Section 8A-13 Site plan criteria.

The owner or developer of any proposed subdivision, manufactured home park/subdivision or other developments shall submit a site plan to the permit officer which includes the following information:

(a) Name of engineer, surveyor, or other qualified person responsible for providing the information required in this section.

(b) A map showing the location of the proposed subdivision and/or development with respect to the municipality's flood-prone areas, proposed lots and sites, fills, flood or erosion protective facilities and areas subject to special deed restrictions. In addition, it is required that all subdivision proposals and other proposed new developments greater than fifty lots or five acres, whichever is lesser, shall include base flood elevation data.

(c) Where the subdivisions and/or development lists partially or completely to the flood-prone 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-prone areas.

(d) A map showing the location of the proposed subdivision and/or development with respect to the municipality's flood-prone 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 fifty lots or five acres, whichever is lesser, shall include base flood elevation data.

(e) Where the subdivision and/or development lies partially or completely in the floodprone 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 feet depending upon the slope of the land and identify accurately the boundaries of the flood-prone areas. (2-19-87, § 5.4.)

Section 8A-13A Article VI. Specific Requirements.

Section 8A-14 Design and construction standards.

(a) Basement and lowest floors.

All new construction and substantial improvements of residential structures must have the lowest floor (including basement) elevated to the base flood elevation. All new construction and substantial improvements of nonresidential structures must have the lowest floor (including basement) elevated to 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 8.1-12(b).

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

(2) Fill shall consist of soil or rock materials only. Sanitary land fills shall not be permitted.

(3) Fill material 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, structures and manufactured homes.

(1) All buildings and structures shall be constructed and placed on the lot so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of floodwater.

(2) Manufactured homes shall be elevated on compacted fill or on pilings so that the lowest floor of each manufactured home will be at the base flood elevation.

(3) When manufactured homes are to be elevated on pilings, lots shall be large enough to permit steps, piles shall be placed in stable soil no more than ten feet apart, and reinforcement shall be then ten feet apart, and reinforcement shall be provided for pilings more than six feet above the ground level.

(4) All manufactured homes shall be provided with adequate drainage and access for a manufactured home hauler.

(d) Anchoring.

(1) All buildings and structures shall be firmly anchored in accordance with accepted

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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 by providing over-the-top and frame ties to ground anchors. Specifically:

(A) Over-the-top ties shall be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations or one additional tie per side for manufactured homes less than fifty 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 fifty feet long requiring four additional ties per side.

(C) All components of the anchoring system shall be capable of carrying a force of four thousand eight hundred pounds.

(D) Any additions to a manufactured home shall be similarly anchored.

(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 the base flood elevation.

(f) Utility and facility requirements.

For all proposed subdivisions, manufactured home parks or subdivisions or other development the permit officer shall require:

(1) All new or replacement water systems, located in the floodplain district, whether public or private, shall be floodproofed to the base flood elevation.

(2) All new or replacement sanitary disposal system, located within the floodplain district, whether public or private, shall be floodproofed to the base flood elevation.

(3) All other new or replacement public and/or private utilities and facilities shall be elevated or floodproofed to the base flood elevation.

(g) Drainage.

Adequate drainage shall be provided to reduce exposure to flood hazards. (2-19-87, § 6.1.)

Section 8A-14A Article VII. Administration.

Section 8A-15 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 or relocation of any structure (including manufactured homes) within the floodplain district, unless the necessary permits have been obtained from the permit officer. In addition, where land is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a site plan must be submitted to, and approved by, the permit officer prior to any development. (2-19-87, § 7.1.)

Section 8A-16 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 this 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. (2-19-87, § 7.2.)

Section 8A-17 Application procedures.

Application for a building permit and site plan approvals shall be made, in writing, to the permit officer, and shall include all information stipulated under Article V of this chapter. (2-19-87, § 7.3.)

Section 8A-18 Changes.

After the issuance of a building permit or site plan approval by the federal 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 officers. (2-19-87, § 7.4.)

Section 8A-19 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 process. This placard shall show the number of the building permit, the date of its issuance and be signed by the permit officer. (2-19-87, § 7.5.)

Section 8A-20 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 building permit officer. (2-19-87, § 7.6.)

Section 8A-21 Inspection and revocation.

During the construction period, the building permit officer or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided by the permit application and with all applicable laws and ordinances. In the event the building permit officer discovers that the work done does not comply with the permit application or any applicable laws and ordinances, or that there has been a false statement and/or misrepresentation by any applicant, the building permit officer shall revoke the building permit and report such fact to the common council for whatever action it considers necessary. (2-19-87, § 7.7.)

Section 8A-22 Fees.

Applications 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 building permit officer at the following rates:

<u>Estimated Cost</u>	<u>Fee</u>
\$ 0.00 to \$200.00	\$0.00
201.00 to 1,000.00	5.00
Each additional \$1,000.00 or part thereof beyond the first \$1,000.00.	1.00

(2-19-87, § 7.8.)

Section 8A-22A Article VIII. Appeals and Penalties.

Section 8A-23 Appeals.

Whenever any person is aggrieved by a decision of the building permit officer with respect to the provision of this chapter, it is the right of that person to appeal to the common council. Such appeal must be filed, in writing within thirty days after the determination by the building permit officer. Upon receipt of such appeal, the common council 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 of the appeal shall be given to all parties at which time of they may appear and be heard. The determination by the common council shall be final in all cases. (2-19-87, § 8.1.)

Section 8A-24 Appeals review criteria.

All appeals contacting only the permit fee established by the building permit officer may be handled at the discretion of the common council.

All decisions on appeals to all other provisions of this chapter not covered in section 8.1-23 shall adhere to the following criteria:

- (a) An affirmative decision shall not be issued by the common council within the designated

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floodway if any increase in flood levels during the base flood discharge would result.

(b) A decision may be issued by the common council for the construction and substantial improvement to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation in conformance with the procedures of paragraph (c), (d), (e) and (f) of this section.

(c) Affirmative decisions shall only be issued by the common council upon (i) a showing of good sufficient cause, (ii) a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and (iii) 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.

(d) Affirmative decisions shall only be issued upon determination that it is the minimum necessary, considering the flood hazard, to afford relief;

(e) The common council shall notify the applicant in writing over the signature of a community official that (i) the issuance of a decision to allow construction of a structure below the base flood elevation will result in increased premium rates for flood insurance, (ii) such construction below the base flood elevation will increase risks to life and property. Such notification shall be maintained with a record of all decisions as required in paragraph (d) of this section; and

(f) The common council shall (i) maintain a record of all decisions including justification for their issuance, and (ii) report such decisions issued in its annual report submitted to the Federal Insurance Administration. (2-19-87, § 8.2.)

Section 8A-25 Penalties.

Any person who fails to comply with any or all of the requirements or provisions of this chapter or direction of the building permit officer or any other authorized employees of the municipality shall be guilty of not less than twenty-five dollars nor more than three hundred dollars plus costs of presentation, in default of such payment such person shall be imprisoned for a period not to exceed ten days. Each day during which any violation of this chapter continues shall constitute a separate offense. In addition to the above penalties all other actions are hereby reserved including any action in equity for the proper enforcement of this chapter. The imposition of a fine or penalty for any violation of, or noncompliance with, this chapter shall not excuse the violation or noncompliance or permit it to continue; and all such persons shall be required to correct or remedy such violations or noncompliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered, or relocated, in noncompliance with this chapter may be declared by the common council to be a public nuisance and abatable as such. (2-19-87, § 8.3.)

Section 8A-25A Article IX. Severability and Municipal Liability.

Section 8A-26 Severability.

If any section, subsection, paragraph, sentence, clause or phrase of this chapter shall be declared invalid for any reason whatever, each decision shall not affect the remaining portions of this chapter

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which shall remain in full force and effect, and for this purpose the provisions of this chapter are hereby declared to be severable. (2-19-87, § 9.1.)

Section 8A-27 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 as to the practicability or safety of the proposed use, and shall create no liability upon the city, its officials or employees. (2-19-87, § 9.2.)

Chapter 9: GARBAGE, REFUSE AND WEEDS.

Sections:

9-0A	Article I. In General.
9-1	Definitions.
9-2	Disposition of carcasses and offensive matter.
9-3	Prohibited disposition of refuse generally.
9-4	Contamination of water supply.
9-5	Lawful disposal of refuse.
9-5A	Article II. Garbage Collection.
9-6	Service to be provided by city; exceptions.
9-7	Department of sanitation; rules and regulations.
9-8	Provision of trash receptacles.
9-9	Rates for city service--Designated.
9-10	Same--Authority of director of public works.
9-11	Same--Consequences of nonpayment.
9-12	Private disposition.

As to burning paper, refuse, etc., in streets, see .§ 8-7 of this Code. As to nuisances generally, see ch. 12. As to sewers and sewage generally, see ch. 16.

Section 9-0A Article I. In General.

For charter provisions as to authority of common council to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome, see Char., § 28, subsec. (24).

For state law as to authority of the common council to prohibit the accumulation and require the disposal of garbage and refuse, and to provide for the elimination of public health and safety hazards and to abate nuisances, see W. Va. Code, § 8-12-5, subsecs. (10), (23).

Section 9-1 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Garbage. All putrescible wastes, except sewage and body wastes, including vegetable and animal offal and the carcasses of small animals, kitchen and table refuse, swill and every accumulation of both

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animal and vegetable matter that attends the preparation, decay or storage of meats, fish, fowl, birds or vegetables and all such substances from all public and private establishments and from all residents, but excluding recognizable industrial byproducts.

Refuse. Garbage and trash.

Trash. All nonputrescible wastes, including discarded and abandoned articles. (Code 1942, ch. 14, § 18; 6-15-50, § 1; 12-5-68, § 1.)

Section 9-2 Disposition of carcasses and offensive matter.

(a) No person shall allow any dead animal or any decaying substance of any kind, or any filth, brush, garbage, trash or waste of any kind to remain on his premises or on any premises under his control, or cast such matter upon the land or lot of another or upon any street, lot, park or public place.

(b) No person, who was the owner or custodian thereof, shall permit the carcass of any dead animal to remain in the city after receiving notice that such animal is dead. Such owner or custodian shall promptly, at his own expense, cause the carcass of such animal to be removed to beyond the city limits and buried at least three feet under ground or, in lieu thereof, shall cause the carcass to be removed to the sanitary landfill site operated by the sanitation department. (Code 1942, ch. 14, § 15; 5-5-60.)

Section 9-3 Prohibited disposition of refuse generally.

It shall be unlawful for any person to throw, place or scatter any garbage, trash, ashes or other refuse over or upon any premises, street, sidewalk, gutter or drain, public or private or adjacent thereto and with or without the intent to later remove or burn such matter, or to suffer or permit the accumulation of refuse on any premises owned, occupied or controlled by him to become or remain offensive, unsanitary or unsightly, or unsafe to public health or hazardous as to fire. (6-15-50, §§ 3, 15, 17.)

Section 9-4 Contamination of water supply.

It shall be unlawful for any person to throw or deposit or to cause to be thrown or deposited or to permit to be thrown or deposited any refuse, sewage or pollutant into any well, cistern, spring, reservoir or other source of water supply to any person or into any stream running through or adjacent to the city.

It shall be unlawful for any person to dump into the Tygarts Valley River or onto the banks thereof, between the upper and lower flood control dams within the corporate limits of the city any trash, weeds, grass or debris, garbage or other refuse which would be carried downstream and stop up the outlet tubes in the protection dam. (1949 Supp., ch. 23, § 15a; 2-17-49; 6-15-50, § 3.)

Section 9-5 Lawful disposal of refuse.

Nothing in this article shall be construed to prohibit the lawful disposal of garbage, trash or other refuse at places designated for such purposes by governmental authority, or to prohibit such disposal in standard domestic incinerators constructed for the purpose, which have been inspected by and approved as safe by the fire chief. (6-15-50, § 16.)

Section 9-5A Article II. Garbage Collection.

For state law as to authority of the common council to prohibit the accumulation and require the removal of garbage, refuse, etc., and to maintain facilities for the removal and destruction of garbage and refuse, see W. Va. Code, § 8-12-5, subsecs. (10), (11). As to authority to impose special service charges for municipal services such as the collection and disposal of garbage and refuse, see W. Va. Code, § 8-13-13.

Section 9-6 Service to be provided by city; exceptions.

No person shall engage in the business of collecting and disposing garbage or refuse, or shall collect or dispose of garbage or refuse within the city limits except the city; provided, that farmers and other persons who desire to collect garbage for the feeding of hogs or other animals and fowl may, upon application to the mayor, be authorized to do so, under such regulations as the mayor may prescribe; but such farmers and other persons shall make no charge nor receive any compensation whatever for garbage service to or from any person. (6-15-50, § 4; 12-5-68, § 4.)

Section 9-7 Department of sanitation; rules and regulations.

There shall be a department of sanitation under the supervision and direction of the director of public works. The department of sanitation, with the approval of the common council, shall be adequately equipped and supplied with personnel and equipment to properly and satisfactorily carry out the essential public service of collecting, removing and disposing of refuse produced in the households and places of business of the citizens of the city. The mayor or other duly authorized officer, with the approval of the common council, shall have the authority to prescribe, publish, promulgate and enforce any and all reasonable rules and regulations deemed by him necessary or proper, consistent with state law, this Code and other ordinances, to carry out the objects and purposes thereof and for the safety and health of the citizens of the city with respect to the collection, removal and disposal of refuse as herein defined; and it shall be unlawful for any person to violate or fail to comply with any such rules and regulations as approved by the common council. (6-15-50, §§ 6, 7.)

Section 9-8 Provision of trash receptacles.

Every person in the city who produces or accumulates garbage shall have it removed in the manner prescribed by this article and shall provide a suitable garbage can or receptacle, to be approved by the director of public works, in which such garbage shall be deposited as it, from time to time, is made or accumulates, and a separate receptacle in which shall be deposited all crockery, glass, glass bottles, tin cans and other similar articles which are subject to being collected. (6-15-50, § 5.)

Section 9-9 Rates for city service--Designated.

The common council shall, from time to time, establish the charges that will be imposed for garbage and refuse collection services. A current list of such charges shall be maintained in the office of the city clerk where it shall be available for public inspection during normal city office hours.

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At no time, however, shall rates which are disclosed to be producing less revenue than is required to meet all obligations and costs involved in rendering such service be continued.

Section 9-10 Same--Authority of director of public works.

The director of public works is authorized and empowered to prescribe rates for the removal and disposal of other refuse materials not expressly mentioned in section 9-9. If the number of times for the weekly collection of garbage set out in that section shall prove burdensome and a good service can be given by collections a lesser number of times weekly, the director may, at his discretion, modify section 9-9 accordingly in such cases. (6-15-50, § 11.)

Section 9-11 Same--Consequences of nonpayment.

Upon the failure of any person receiving such service to pay therefor when due, the city may discontinue such service after appropriate notice. (6-15-50, § 10.)

Section 9-12 Private disposition.

Private scavengers, pushcart operators and private garbage collectors are hereby prohibited from engaging in the business of transporting or disposing of raw or prepared garbage and refuse containing organic wastes, putrid matter and wastes or excreta subject to putrifaction. (6-15-50, § 8.)

Chapter 10: HEALTH AND SANITATION.

Chapter 11: MUNICIPAL COURT.

Sections:

11-0A	Article I. In General.
11-1	Created; presiding judge.
11-2	Judge--Oath of office; bond.
11-3	Same--Powers and duties generally.
11-4	Docket; allocation of fees, fines and costs.
11-5	Record of traffic cases; traffic violations bureau.
11-6	Appeals; minimum fine.
11-7	Enforcement and collection of fines, costs and fees.
11-8	Costs--Generally.
11-9	Same--Arrest fee; police pension fee.
11-9.1	Additional court costs upon certain convictions.
11-9A	Article II. Deferred Payment of Fines and Costs.
11-10	When permitted.
11-11	Determination of ability to pay; questionnaire.
11-12	Payment of fine as condition to probation or suspension of sentence.
11-13	Good behavior as condition to deferred payment.
11-14	Procedure upon default in payment.
Section 11-0A Article I. In General.	

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Editor's note.--This article is a revision of Code 1942, ch. 5, as amended through Dec. 22, 1973.

For state law providing that, notwithstanding any charter provision to the contrary, any municipality may provide by ordinance for the creation and maintenance of a municipal court, etc., and to authorize such court and the judge thereof to exercise such jurisdiction, judicial powers and duties as set forth in W. Va. Code, § 8-10-1 and similar or related provisions contained in its municipal charter, see W. Va. Code, § 8-10-2.

Section 11-1 Created; presiding judge.

There is hereby created the municipal court of the city, which shall be presided over by the municipal court judge or judges.

The common council shall appoint a qualified person or persons to the office of municipal court judge, to serve in such office at the pleasure of the common council. In the event that the common council shall appoint more than one person to act as municipal court judge, it shall appoint one of such persons to act as chief judge. (1-6-83.)

Section 11-2 Judge--Oath of office; bond.

No person shall exercise any power or perform any duty as municipal court judge until he has qualified for such office by taking the oath of office and by giving the bond required by section 8-10-1 of the Code of West Virginia, and by giving such other faithful performance and true accounting bond as may be required by the common council under which he shall be responsible for all city funds coming into his hands by virtue of his office.

Section 11-3 Same--Powers and duties generally.

The municipal court judge shall be a conservator of the peace within the city and, insofar as any ordinance of the city is concerned, shall have and exercise all such powers and duties in criminal cases as a magistrate may lawfully exercise under the statutes of the state; and he shall also be, ex officio, a magistrate within the city and shall, within the city, have and exercise all the powers relating to crime and perform all duties fixed by law upon a magistrate; except, that he shall have no jurisdiction over civil cases. The municipal court judge shall have such further powers and perform such other duties as may be, from time to time, prescribed or conferred by any law of the state or by ordinance of the city, as well as the judicial powers conferred upon the mayor by the city Charter, insofar as such Charter provisions are not in conflict with the state Constitution or any state statute which takes precedence over the city Charter.

For charter provisions as to judicial powers of the mayor, see Char., § 20, and cross references thereunder to the state Constitution, art. 8, §§ 11, 15; and, see also, Char., § 28, subsecs. (43), (76).

Section 11-4 Docket; allocation of fees, fines and costs.

There shall be a docket of the municipal court, and it shall be the duty of the municipal court judge to docket fully thereon all cases in the court, and to show thereon all fees, fines and costs adjudged and collected. The municipal court judge shall, at least once a month, make a written report to the city

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collector and treasurer, showing all receipts for the previous month, and shall deliver and pay over to the city collector and treasurer all money so received and to which the city is entitled.

For charter provisions as to maintenance of and entries to be made in the "mayor's docket;" and signature on and preservation of records of cases in the "mayor's court," see Char., § 29.

Section 11-5 Record of traffic cases; traffic violations bureau.

The municipal court judge shall keep or cause to be kept a record of every traffic complaint and other legal form of traffic charge deposited with or presented to the municipal court or its traffic violations bureau, if and when he shall establish such bureau, and shall keep a record of every official action by the court or its traffic violations bureau in reference thereto, including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal, and the amount of fine or forfeiture resulting from every traffic complaint deposited with or presented to the court or traffic violations bureau.

For state law basis of this section, see W. Va. Code, § 17C-19-8.

Section 11-6 Appeals; minimum fine.

(a) Every person sentenced by the municipal court judge to imprisonment or to the payment of a fine of ten dollars or more shall be allowed an appeal to the circuit court of Randolph County; the procedure upon appeal from the municipal court shall be the same as that for an appeal from a magistrate's court.

(b) In no case shall a fine of less than ten dollars be imposed if a defendant, his agent or attorney objects thereto.

Section 11-7 Enforcement and collection of fines, costs and fees.

Subject to the provisions of article II of this chapter, upon failure to pay any fine or costs adjudged against him, a defendant may be confined to the city or county jail until such fine and costs are paid, but not exceeding thirty days.

In addition to the power of imposing imprisonment for nonpayment of fines as above set forth, the municipal court judge shall have the same authority and power in collection of fines, fees and costs as are given to a magistrate under the laws of the state. (Code 1942, ch. 23, § 53; 11-2-67.)

Section 11-8 Costs--Generally.

The city shall be entitled to and the municipal court judge may tax, in all cases appearing before him involving violations of city ordinances, the same costs, fees and allowances and in the same amounts as a magistrate may tax. (11-12-67.)

Section 11-9 Same--Arrest fee; police pension fee.

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There shall be taxed as part of the costs, whenever there is a conviction for violation of the city laws or ordinances, an arrest fee of one dollar and a police pension fee of one dollar. The arrest fee shall be paid into the general funds of the city and the pension fee shall be paid into the policemen's pension and relief fund. (Code 1942, ch. 10, § 1.)

For state law as to arrest fee, payable into the policemen's pension and relief fund, see W. Va. Code, § 8-22-20.

Section 11-9.1 Additional court costs upon certain convictions.

(a) Pursuant to the provisions of West Virginia Code sections 8-11-1 and 8-11-1a, there is hereby imposed, in addition to any other costs which may lawfully be imposed, an additional cost of twenty-two dollars upon the conviction for violation of a municipal ordinance, except that such additional cost shall not be assessed for a traffic offense that is not a moving violation or an offense for which the ordinance does not provide for a period of incarceration. Of the twenty-two dollars imposed as an additional cost two dollars shall be an administrative cost to be retained by the city.

(b) The clerk of the municipal court, or such person designated to receive fines and costs, shall at the end of each month pay into the regional jail and prison development fund in the state treasury an amount equal to twenty dollars of the costs collected in each proceeding except for traffic offenses that are not moving violations: provided, that in a case where a defendant has failed to pay all costs assessed against him, no payment shall be made to the regional jail and prison development fund unless and until the defendant has paid all costs which, when paid, are available for the sum and benefit of the city. (8-6-87.)

Section 11-9A Article II. Deferred Payment of Fines and Costs.

Section 11-10 When permitted.

Whenever a person is convicted in the municipal court of a violation of this Code or other ordinance or any rule, regulation, notice or order promulgated pursuant to the authority thereof and such person is sentenced to pay a fine or costs, and it shall appear to the court, on its own motion or on motion of the defendant, that such defendant is unable to pay such fine or costs forthwith, the court may order the defendant to pay such fine or costs in installments or upon such other terms and conditions or within such period of time as may enable the defendant to pay such fine or costs,

Section 11-11 Determination of ability to pay; questionnaire.

(a) In determining whether a defendant is unable to pay a fine or costs forthwith, the court may require such defendant to file a petition, under oath, with the court, upon a form provided by the court, setting forth the financial condition of the defendant.

(b) Such form shall be a questionnaire and shall include, but shall not be limited to:

(1) The name and residence of the defendant and his occupation, if any.

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- (2) His family status and the number of persons dependant upon him.
- (3) His monthly income.
- (4) Whether his dependents are employed and, if so, their approximate monthly income.
- (5) His banking accounts, if any.
- (6) Real estate owned by the defendant or any interest he may have in real estate.
- (7) Income produced therefrom.
- (8) Any independent income accruing to the defendant; tangible and intangible personal property owned by the defendant or in which he may have an interest.
- (9) A statement listing the approximate indebtedness of the defendant to other persons.
- (10) The payment plan of the defendant, should the court exercise its discretion in permitting the payment of such fine or costs in installments or other conditions to be fixed by the court. At the end of such form there shall be printed in bold face type, in a distinctive color, the following:

"THIS STATEMENT IS MADE UNDER OATH. ANY FALSE STATEMENT OF A MATERIAL FACT TO ANY QUESTION CONTAINED HEREIN SHALL CONSTITUTE FALSE SWEARING AND SHALL BE AN OFFENSE AGAINST THIS SECTION. THE MAXIMUM PENALTY IS \$100 FINE OR THIRTY DAYS IN JAIL, OR BOTH."

A copy of the petition shall be retained by the defendant.

(c) If the defendant is unable to read or write, the court, or the clerk, may assist the defendant in completing the petition and require him to affix his mark thereto. The consequences of the making of a false statement shall be explained to such defendant.

(d) Any defendant who shall knowingly make a false statement of a material fact to any question contained in the questionnaire authorized by this section shall be guilty of false swearing under this section and, upon conviction, shall be subject to a fine not exceeding one hundred dollars or thirty days imprisonment or both such fine and imprisonment.

Section 11-12 Payment of fine as condition to probation or suspension of sentence.

If a defendant is sentenced to pay a fine or costs and payment of the fine or costs is ordered to be made on an installment basis or on other conditions under the provisions of section 11-10, and if the defendant is also placed on probation or imposition of the execution of sentence is suspended, the court may make payment of the fine a condition to probation or suspension of sentence.

Section 11-13 Good behavior as condition to deferred payment.

If a defendant is permitted to pay a fine and/or costs on an installment basis or under such other conditions as the court shall fix under the provisions of section 11-10, the court may require, as a condition, that the defendant be of peaceful and good behavior until the fine and/or costs are paid.

Section 11-14 Procedure upon default in payment.

When any person sentenced to pay a fine or costs defaults in the payment of any such fine or costs or any installment thereof, the court may issue a summons for such person to appear before the court for a hearing on the question of whether such person's failure to pay any installment was attributable to intentional refusal to comply with the prior order of the court or to lack of a good-faith effort to comply therewith. The court may, after such hearing, order that the person in default be allowed additional time for payment, may reduce or remit the amount of the fine or costs or the unpaid portion thereof in whole or in part or, upon a finding that the default was intentional or due to the lack of a good-faith effort to comply with the prior order of the court, may order such person confined for a period of up to thirty days, as the court, at its discretion, shall determine.

Chapter 12: NUISANCES.

Sections:

12-0A	Article I. In General.
12-1	Operation of coin-operated music devices between 12:00 Midnight and 7:00 A.M.
12-2	Places of assignation, prostitution, gambling, etc.
12-3	On another's premises.
12-4	Unlawful acts--Extent of jurisdiction.
12-5	Same--Enumerated.
12-6	Stagnant water and putrid matter.
12-7	Supplemental nature of chapter.
12-7A	Article II. Abatement.
12-8	Enforcement officers--Inspections.
12-9	Same--Right of entry.
12-10	Notice to cease and desist.
12-11	Notice to abate; appeal.
12-12	Recourse of city when notice to abate is ignored.
12-13	Service of written notices; confirmation of oral notices.
12-14	Article does not prohibit arrest.

For charter provisions as to authority of common council to enact ordinances to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome, see Char., § 28, subsec. (24). As to authority of common council to abate by summary proceedings whatever in the opinion of the council is a nuisance, see Char., § 28, subsecs. (26) and (64).

For state law as to authority of common council to provide for the elimination of hazards to the public health and safety and to abate or cause to be abated anything which in the opinion of the council is a public nuisance, see W. Va. Code, § 8-12-5, subsec. (23). As to disposal of abandoned or junked motor vehicles, vehicle tires and household appliances, see W. Va. Code, §§ 17-24-1 to 17-24-13.

For a case holding that under the provisions of Charter, § 28, subsecs. (11), (24) and (26), that the common council shall have the power "to regulate the making of division fences and party walls by the owners of adjoining and adjacent premises and lots; to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome; and to abate by summary proceedings whatever in the opinion of the council is a nuisance", the council may abate only that as a nuisance which is recognized as such per se or branded as such by a lawful statute or ordinance, see Donohoe v.

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Fredlock, 72W. Va. 712, 79 SE 776 (1913).

As to garbage, refuse and weeds generally, see ch. 9 of this Code. As to abandonment of refrigerators, etc., see § 13-1. As to sewers and sewage disposal generally, see ch. 16.

Section 12-0A Article I. In General.

Section 12-1 Operation of coin-operated music devices between 12:00 Midnight and 7:00 A.M.

It shall be unlawful for any person to operate or offer or maintain for public use any coin-operated device, machine or mechanism to procure or reproduce music or singing between the hours of 12:00 Midnight and 7:00 A.M. Any violation of this section is hereby declared to be a nuisance. (8-1-57.)

Section 12-2 Places of assignation, prostitution, gambling, etc.

Whoever shall erect, establish, conduct, maintain, use, own or lease any building, structure or place for the purpose of lewdness, assignation, prostitution, gambling, illegal sale of whiskey, or indecent exposure of the person on such premises, or whoever permits profane, vulgar or obscene language upon any such premises, whereby such language may be heard by adjoining neighbors or persons upon the street, shall be guilty of a nuisance, and the building, structure or place, or the ground upon which such lewdness, assignation, prostitution, gambling, illegal sale of whiskey, profane, vulgar and obscene language, or indecent exposure of the person on such premises is conducted, permitted, carried on, continued or exists, and the furniture, musical instruments and contents of such structure are hereby declared to be a nuisance, and may be abated as herein provided. (Code 1942, ch. 14, § 47.)

Section 12-3 On another' s premises.

No person shall create a nuisance on the lot of another. (Code 1942, ch. 14, § 42.)

Section 12-4 Unlawful acts--Extent of jurisdiction.

It shall be unlawful for any person to cause, harbor, commit, 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 this Code or other ordinance of the city at any place within the city, or at any place beyond the city limits which is owned by the city or over which the city has a right-of-way, or at any other place beyond the city limits but within one mile thereof and not in any other incorporated municipality, and whereon the powers and authority granted by this chapter cannot be reasonably and efficiently exercised by confining the exercise thereof within the corporate limits of the city.

For state law as to extraterritorial jurisdiction of common council, see W. Va. Code, §§ 8-12-5, subsec. (43) and 8-12-19.

Section 12-5 Same--Enumerated.

The following acts when committed or conditions when existing, within the city or within the area surrounding the city and within the extraterritorial jurisdiction of the city, as provided in section 12-4

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are hereby defined and declared to be nuisances:

(a) An act committed or aided or assisted to be committed by any person, or substance, 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 or safety.

(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, unhealthful, injurious or annoying to the public.

(c) All properties with vegetation growing thereon being lawns, weeds, shrubs, trees and appendages of, or to realty 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, unhealthful, injurious, unsightly or annoying to the public.

(d) All ponds or pools of stagnant water and all foul or dirty water or liquid when discharged through any drain, pipe or spout or when thrown 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 offensive 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.

(f) All sidewalks, gutters or curbstones permitted to remain in an unsafe condition or out of repair.

(g) All stables, cattle yards, hog, sheep or cow pens or yards for poultry or other places where animals are kept, permitted by the owner thereof or the person responsible therefor to be in such a condition as to become offensive, annoying or injurious to the public.

(h) All houses, buildings, structures or enclosures used for special storage of powder, dynamite or other explosive or highly flammable substances or gases, except those maintained pursuant to a permit issued by a competent authority.

(i) Any litter, trash, garbage or refuse or any abandoned, unlicensed motor vehicle or any part thereof, which is or may be offensive to the neighborhood or citizens generally, or which may afford a harboring or breeding place for vermin, insects, reptiles or rodents, or which, in any way, may constitute a fire, health or safety hazard.

(j) Any trees, shrubbery, etc., growing on private property, the roots of which clog or choke any public sewer belonging to the city, or damage the streets or sidewalks of the city.

For charter provisions as to authority of common council to declare as public nuisances any trees, shrubbery, etc., growing on private property within the city, the roots of which clog or choke any public sewer belonging to the city, or damage the streets or sidewalks of the city, and provide for the removal or destruction of such trees or shrubbery, see Char., § 28, subsec. (4).

(k) Collections of water which are or are likely to become breeding places for mosquitoes.

(l) Accumulation of manure from horses, mules, cows, chickens or other animals or birds or

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accumulations of any other material in which flies may breed.

- (m) Any closet not connected with a city sewer and which is not flyproof below the seat.
- (n) Common drinking cups in public places.
- (o) Common or roller towels in public places.
- (p) Open wells and springs within the city.
- (q) Animals dead within the city, other than those slaughtered for human consumption.
- (r) Improperly constructed or managed swimming pools or public bathing places.

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 by common law of the state, when committed, omitted or existing within the city or within the extraterritorial jurisdiction of the city council, as provided by section 12-4, is hereby declared to constitute a nuisance. (Code 1942, ch. 14, § 46; 5-2-74; 7-6-89, § 1.)

Section 12-6 Stagnant water and putrid matter.

No person owning or in possession of any lot, house, building or enclosure shall allow or suffer to exist in or upon such premises any stagnant water, animal or vegetable matter or other substance liable to become putrid, offensive, annoying or unhealthful. Persons owning or in possession of any real estate shall provide proper and adequate drainage therefor so that no offensive, baneful or disagreeable liquids shall flow or seep into any street. Any violation of this section is hereby declared to be a nuisance.

Section 12-7 Supplemental nature of chapter.

Various nuisances are defined and prohibited in other chapters of this Code, and it is the intent of the common council in enacting this chapter, to make it supplemental to those other chapters in which nuisances are defined and prohibited; and the provisions of this chapter relating to the abatement of nuisances shall be regarded as alternate methods and procedures for the abatement of nuisances in those instances where other methods and procedures for abatement are provided.

Section 12-7A Article II. Abatement.

For charter provisions as to authority of common council to abate by summary proceedings whatever in the opinion of the council is a nuisance, see Char., § 28, subsecs. (26) and (64).

For state law as to authority of common council to provide for the abatement of nuisances, see W. Va. Code, § 8-12-5, subsec. (23).

Section 12-8 Enforcement officers--Inspections.

- (a) It shall be the duty of the chief of police, the fire chief and the building official to cause

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inspections to be made, from time to time, within the city and, when such officers deem it in the interests of the city so to do, within the extraterritorial jurisdiction of the city as provided in section 12-4, to determine whether any condition exists or any activity is being practiced which constitutes a nuisance; and each such officer shall cause an investigation to be made, upon written complaint made by any responsible person.

(b) Each officer mentioned in subsection (a) of this section shall, for the purposes of this chapter, be designated as an "enforcement officer." (Code 1942, ch. 14, § 43.)

Section 12-9 Same--Right of entry.

Enforcement officers shall have the right to enter upon private premises for the purposes specified in section 12-8, upon proper identification and in compliance with all applicable provisions of law. Unless it appears probable that advance warning would defeat the purpose of such entry, the occupants of premises to be entered shall be given reasonable notice in advance and, in any case, it shall be unlawful for any owner or occupant to prevent such entry which is sought to be made in compliance with law.

For state law as to authority of common council to provide for entering and inspecting private premises to enforce city ordinances, see W. Va. Code, § 8-12-15.

Section 12-10 Notice to cease and desist.

If, at any time, an enforcement officer shall find that an activity or practice which constitutes a nuisance is occurring within the city or within the area surrounding the city and within the extraterritorial jurisdiction of the city as provided by section 12-4, he shall, promptly and by the most expeditious means, notify the violator to cease and desist such nuisance forthwith.

Section 12-11 Notice to abate; appeal.

If, at any time, an enforcement officer shall find that a condition which constitutes a nuisance exists within the city or within the area surrounding the city within the extraterritorial jurisdiction of the city as provided by section 12-4, he shall give notice in writing to the owner, occupant or person in charge of the premises upon which such condition exists, stating therein the condition which constitutes a nuisance, and directing such addressee to remedy the condition within the time stated in such notice, which shall be not more than ten days; and it shall be unlawful for any such owner, occupant or person in charge to fail to comply with the terms of such notice; provided, that any owner, occupant or person in charge may, within two days from the service thereof, appeal to the common council, in which case the terms of such notice shall be stayed pending action of the council, which action shall be final; provided further, that if the enforcement officer shall state in such notice that the condition which constitutes a nuisance is such as to be an imminent hazard to the health, safety or welfare of the public or of any person within or near the premises upon which such nuisance exists, the addressee shall comply with the terms of such notice. (Code 1942, ch. 14, § 44.)

Section 12-12 Recourse of city when notice to abate is ignored.

(a) Upon the failure of any person to whom notice has been given pursuant to section 12-11 to

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comply with the terms of such notice or with the terms imposed by the common council on appeal, as the case may be, the enforcement officer shall forthwith direct the appropriate city officer to remedy the condition which is the subject of such notice, and the expense incurred by the city in so doing shall be charged to the addressee of such notice, as well as to the owner of the premises which is the subject of such notice, jointly or severally, to be collected as city taxes or in any other manner authorized by law for the collection of money due the city.

(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. (Code 1942, ch. 14, § 44.)

Section 12-13 Service of written notices; confirmation of oral notices.

(a) Written notices provided for in this article may be served in any manner authorized by law for the service of process in civil cases, including service by publication against nonresidents and parties unknown or whose address is unknown.

(b) Oral notices given pursuant to section 12-10 shall promptly be confirmed in writing, which shall be served as provided in subsection (a) of this section. (Code 1942, ch. 14, § 45.)

Section 12-14 Article does not prohibit 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.

Chapter 13: OFFENSES--MISCELLANEOUS.

Sections:

13-0A	Article I. In General.
13-1	Abandoning refrigerators, etc.
13-1.1	Assault; battery.
13-2	Damaging, etc., markers or tombstones.
13-3	Damaging, etc., property.
13-4	Giving false alarms and reports.
13-5	Bathing in Tygarts Valley River.
13-5.1	Firearms--Shooting in city or police jurisdiction.
13-5.2	Fireworks.
13-5.3	Indecent exposure.
13-6	Interfering, etc., with city personnel.
13-6.1	Intoxication in public.
13-7	Loitering.
13-7.1	Petit larceny.
13-8	Poolrooms, bowling alleys, etc.--Closing time; allowing minors.
13-9	Posting without consent; interfering with posted notices.
13-9.1	Shoplifting.
13-10	Spitting in public.
13-11	Street carnivals, parades or exhibitions.

- 13-12 **Shopping carts--Removing.**
 - 13-13 **Trains--Exceeding speed limit.**
 - 13-14 **Watercourses, wells, drains, etc.**
 - 13-15 **Weapons--Furnishing minor with dangerous weapons.**
 - 13-16 **Same--Brandishing or exposing; threatening or causing breach of peace.**
 - 13-17 **Same--Carrying without license or other authorization.**
 - 13-17A **Article II. Regulation of Presence and Conduct of Minors on Streets and Public Places.**
 - 13-18 **Definitions.**
 - 13-19 **Curfew imposed; exceptions.**
 - 13-20 **Unlawful acts--By persons having charge of public places.**
 - 13-21 **Same--By parent, guardian, custodian, etc.**
 - 13-22 **Sponsors of evening functions may notify police of such functions,**
 - 13-23 **Violations by minor; authority and duties of police.**
 - 13-24 **Violations generally; penalties.**
- Section 13-0A Article I. In General.**

Section 13-1 Abandoning refrigerators, etc.

It shall be unlawful for any person to leave or permit to remain outside any dwelling, building or other structure or within any unoccupied or abandoned dwelling, building or other structure under his control, in a place accessible to children, any abandoned, unattended or discarded icebox, refrigerator or other container which has an airtight door or lid, which may not be released from the inside and having an interior space large enough to permit a child or other person to be locked or entrapped therein, without first removing the door or lid therefrom; or, being the owner, tenant, occupant, manager or person in control of the place where such ice box, refrigerator or other container has been discarded, abandoned or otherwise disposed of, to knowingly permit such discarded, abandoned or unattended ice box, refrigerator or other container to remain on premises owned, leased, occupied, managed or controlled by him without removing its door or lid so as to make such container unusable or ineffective, as set forth above.

Any person violating any provision of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or be imprisoned for not more than thirty days or be punished by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. (10-16-58,)

For state law requiring doors to be removed from abandoned appliances, and penalty for violation, see W. Va. Code, § 61-2-26.

Section 13-1.1 Assault; battery.

(a) Assault. If any person unlawfully attempts to commit a violent injury to the person of another or unlawfully commits an act which places another in reasonable apprehension of immediately receiving a violent injury, he shall be guilty of a misdemeanor.

(b) Battery. If any person unlawfully and intentionally makes physical contact of an insulting or provoking nature with the person of another or unlawfully and intentionally causes physical harm to another person, he shall be guilty of a misdemeanor. (5-21-81.)

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For corresponding provisions of state law, see W. Va. Code, § 61-2-9.

Section 13-2 Damaging, etc., markers or tombstones.

No person shall injure, mutilate, deface, remove or destroy any tombstone or monument in any cemetery, nor on any land or lot corner or line mark, without the consent of all persons interested therein. (Code 1942, ch. 23, § 16.)

For state law as to removal, injury to or destruction of property, or monuments designating land boundaries, and penalty for violations, see W. Va. Code, § 61-3-30.

Section 13-3 Damaging, etc., property.

(a) No person shall, knowingly and without proper authority, use, tamper with, render inoperative, destroy, damage, remove, deface, molest or otherwise interfere with any personal property of another, whether public or private.

(b) No person shall, knowingly and without proper authority, destroy, damage, deface, molest or otherwise interfere with, or trespass upon, any real property of another, whether public or private.

(c) It shall be unlawful for any person to trespass, injure, mutilate, injure or destroy any fruit, ornamental or shade tree standing upon or along any street or sidewalk or within any park, cemetery, public square or ground within the city. (Code 1942, ch. 23, §§ 29, 49,)

For charter provisions as to authority of common council to enact ordinances to protect property, see Char., § 28, subsec. (54).

For state law as to crimes against property generally, see W. Va. Code, ch. 61, art. 3.

Section 13-4 Giving false alarms and reports.

(a) No person shall knowingly give or cause to be given any false alarm of fire or catastrophe.

(b) No person shall knowingly give or cause to be given any false alarm of explosion or impending danger of explosion.

(c) No person shall knowingly give or cause to be given any false alarm of the need for police protection, assistance or investigation, or any false report to the police department.

(d) No person shall knowingly give or cause to be given any false alarm of the need for an ambulance or medical assistance. (Code 1942, ch. 23, § 19.)

For state law as to false alarm of fire, and penalty for violation, see W. Va. Code, § 29-3-22a. As to false reports concerning bombs and other explosive devices, and penalty for violation, see W. Va. Code, § 61-6-17.

Section 13-5 Bathing in Tygarts Valley River.

No person shall bathe at any time in that part of the Tygarts Valley River which is above the intake of the city waterworks, nor below that intake between the hours of 5:00 A.M. and 9:00 P.M. (Code 1942, ch. 23, § 7.)

Section 13-5.1 Firearms--Shooting in city or police jurisdiction.

No person, except officers of the law in the discharge of their official duty, shall shoot or discharge any gun, pistol or other firearm within the city or its police jurisdiction without the consent of the city council. (Code 1942, ch. 23, § 42.)

Section 13-5.2 Fireworks.

It shall be unlawful for any person to shoot or discharge within the city any firecracker, skyrocket, squib or other fireworks of any kind or character.

It shall be unlawful for any person to sell or expose for sale within the city any firecracker, skyrocket, squib or other fireworks of any kind or character.

Any person found guilty of any offense under this section shall be fined not less than one nor more than thirty dollars and may be confined in the city jail not to exceed thirty days. (Code 1942, ch. 23, § 21.)

For state law as to fireworks generally, see W. Va. Code, §§ 29-3-23 to 29-3-26.

Section 13-5.3 Indecent exposure.

No person shall make any indecent exposure of his person, or any part of his person, upon any street, alley, road or other public place, or in any private place to the annoyance of another. (Code 1942, ch. 23, § 28.)

For state law as to indecent exposure, see W. Va. Code, § 61-8B-10.

Section 13-6 Interfering, etc., with city personnel.

No person shall carelessly or willfully interfere with, hinder or obstruct any officer or employee of the city who is engaged in, en route to or returning from the performance of official duty, whether such interference, hinderance or obstruction be by threat, assault or other means. (Code 1942, ch. 23, § 30.)

For state law as to obstructing officer, and penalty for violation, see W. Va. Code, § 61-5-17,

Section 13-6.1 Intoxication in public.

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No person shall appear upon any street, alley, road or other public place in a state of intoxication. (Code 1942, ch. 23, § 31.)

Section 13-7 Loitering.

(a) Any person or group of persons on public property, including streets, sidewalks and curbs, or on private property which is open for business to the public, or on or in a vehicle that is on public property or private property which is open for business to the public, who loiters in a manner which is prohibited by this section shall move on or separate when required to do so by any member of the police department.

(b) Loitering which is prohibited is defined as loitering so as to create a breach of the peace, disturbance or annoyance to the comfort and repose of any person, or to obstruct free passage of pedestrians or vehicles, or to obstruct, molest or interfere with any person lawfully in any public place or on any private property open for business to the public, by conduct including the making of unsolicited remarks of any offensive, disgusting or insulting nature or which are calculated to annoy or disturb any person in whose hearing they are made.

(c) Any act prohibited hereby shall be deemed a misdemeanor.

Section 13-7.1 Petit larceny.

If any person shall commit simple larceny of goods or chattels the value of which is less than two hundred dollars, such person shall be guilty of a misdemeanor, designated petit larceny. (5-21-81.)

For corresponding provisions of state law, see W. Va. Code, § 61-3-13.

Section 13-8 Poolrooms, bowling alleys, etc.--Closing time; allowing minors.

All poolrooms and bowling alleys shall be closed not later than 12: 00 Midnight. It shall be unlawful for any owner or manager of any poolroom, bowling alley or similar tables and games to allow any person under the age of sixteen years to be in or loiter around his place of business. (Code 1942, ch. 23, § 41.)

Section 13-9 Posting without consent; interfering with posted notices.

No person shall, without the consent of the owner of the property involved, post any notice, advertisement, picture or other thing upon any bridge, building, fence, window, wall, pole, post or other place.

No person shall tear down, mutilate or destroy any notice, advertisement, sign or other representation which was legally and properly posted. (Code 1942, ch. 23, § 3.)

For charter provisions authorizing common council to enact this subsection, see Char., § 28, subsec. (27).

Section 13-9.1 Shoplifting.

(a) Definitions. When used in this section, the following terms shall have the following meanings:

(1) "Shoplifting" shall consist of any one or more of the following acts:

a. For any person willfully to take possession of any merchandise offered for sale by any store with the intention of converting the same to the use of such person without paying to the owner the value thereof.

b. For any person willfully to conceal upon his person or otherwise any merchandise offered for sale by any store with the intention of converting the same to the use of such person without paying to the owner the value thereof.

c. For any person willfully to alter any label, price tag or marking upon any merchandise offered for sale by any store with the intention of depriving the owner of all or some part of the value thereof.

d. For any person willfully to transfer any merchandise offered for sale by any store from the container in or on which the same shall be displayed to any other container with intent to deprive the owner of all or some part of the value thereof.

(2) "Store" shall mean any store or mercantile establishment in which merchandise is displayed for sale in such manner as to be readily accessible to persons shopping therein.

(3) "Merchandise" shall include goods and wares.

(4) "Owner of merchandise" shall include the owner and any other person, firm or corporation having the right to offer the same for sale as agent, consignee or in other capacity under any agreement with the owner of such merchandise.

(5) "Value of merchandise" shall mean the sale price of any merchandise which a person shall convert to his own use in committing an act of shoplifting defined in subparagraphs a and b of paragraph (1) of this subsection, or in the event a person shall commit an act of shoplifting defined in either subparagraph c or d of paragraph (1) of this subsection, then the "value of merchandise" shall mean the sale price of that part of the merchandise of which the owner has been deprived in consequence of the commission of such act of shoplifting.

(b) Penalties. If any person shall commit an act of shoplifting as defined in this section, for the first offense he shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the city jail for not more than thirty days or by fine of not more than three hundred dollars, or by both such fine and imprisonment.

If any person shall commit an act of shoplifting as defined in this section, for the second or subsequent offenses he shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the city jail for not more than thirty days or by fine of not more than five hundred dollars, or by both such fine and imprisonment.

(c) Concealment of merchandise. If any person shall willfully conceal upon his person or otherwise merchandise belonging to any store and for which such person has not paid the purchase price

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in full, either upon or away from the store premises, there shall be a prima facie presumption that such person has concealed such merchandise with the intent of converting the same to his own use within the meaning of the definition of shoplifting contained in subsection (a) of this section.

(d) Shoplifting to constitute breach of peace; detention. An act of shoplifting as defined herein, is hereby declared to constitute a breach of the peace and any owner of merchandise, his agent or employee, or any law-enforcement officer, except a constable, 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. (5-21- 81.)

For state law as to shoplifting, see W. Va. Code, § 61-3A-1 et seq.

Section 13-10 Spitting in public.

It shall be unlawful for any person to spit upon any sidewalk in the city or upon the floor or other portion of any public conveyance used and operated within the city for the purpose of conveying passengers, or to expectorate in or about any public place of building, to the annoyance of any person rightfully there, or so as to endanger the health of any person, or upon any steps, hallways or other part of any hotel, store, office building or other place of business, entertainment or worship where guests or the public are or have the right to go. (Code 1942, ch. 23, § 45.)

Section 13-11 Street carnivals, parades or exhibitions.

(a) Permit required. No street carnival shall be permitted to exhibit upon the streets or elsewhere within the city without having first obtained a permit from the city and having paid the license fee as required in chapter 6 of this Code.

(b) Permission of council. No street parade, advertising or other exhibition or the exhibition of natural or artificial curiosities shall be conducted within the city without first having obtained permission from the council, and, in all such cases when permission is given by the council, the parade, advertising or other exhibition, shall be done in conformity to the directions of the council. (Code 1942, ch. 23, § 47.)

For charter provisions as to authority of common council to enact this subsection, see Char., § 28, subsec. (13).

Section 13-12 Shopping carts--Removing.

It shall be unlawful for any person to remove a grocery or shopping cart from the premises or business place wherein such cart is provided and used, without written consent of the owner or manager of such premises or business place. (8-16-73.)

Section 13-13 Trains--Exceeding speed limit.

No person shall run any locomotive or train in the city at a greater rate of speed than four miles

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per hour without, at the same time, ringing a bell thereon or giving some similar signal. (Code 1942, ch. 23, § 44.)

Section 13-14 Watercourses, wells, drains, etc.

(a) Changing, diverting or obstructing stream, sewer, drain, etc. No person shall, without the consent of the common council and the consent of all persons affected thereby, change the natural course of any stream of water or the natural course of any drainage, nor shall any person obstruct or divert any gutter, watercourse, drain, sewer, water pipe, sink, catch basin, drain pipe or other thing used to conduct water within the city.

(b) Contaminating wells, streams, etc. No person shall cast any dead animal or any unwholesome or poisonous thing of any kind into any spring, well, cistern, reservoir, running stream or river within the city. (Code 1942, ch. 23, §§ 14, 15.)

Section 13-15 Weapons--Furnishing minor with dangerous weapons.

No person shall sell, give or furnish to any minor any revolver, pistol, dirk, bowie knife, razor, slung shot, billy, metallic or other false knuckles or any gunpowder or other high explosive of similar character. (Code 1942, ch. 23, § 23.)

Section 13-16 Same--Brandishing or exposing; threatening or causing breach of peace.

It shall be unlawful for any person armed with a pistol, gun or other dangerous or deadly weapon, whether licensed to carry the same or not, to carry, expose, brandish or use such weapon in a way or manner to cause or threaten a breach of the peace. (5-21-81.)

For corresponding provisions of state law, see W. Va. Code, § 61-7-10.

Section 13-17 Same--Carrying without license or other authorization.

It shall be unlawful for any person, without a state license therefor or except as provided in sections 3, 4, 5 and 6 of article 7, chapter 61 of the Code of West Virginia, to carry about his person any revolver or pistol, dirk, bowie knife, slung shot, razor, billy, metallic or other false knuckles, or other dangerous or deadly weapon of like kind or character. (5-21-81.)

For corresponding provisions of state law, see W. Va. Code, § 61-7-1.

Section 13-17A Article II. Regulation of Presence and Conduct of Minors on Streets and Public Places.

Section 13-18 Definitions.

For the purposes of this article, the following words and phrases shall have the meanings

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respectively ascribed to them by this section, but such definitions shall not be held to modify or affect in any way the legal interpretations of such terms or words where used in other regulations:

Custodian. Any person over the age of eighteen years who is in loco parentis to a minor.

Guardian. Any person other than a parent who has legal guardianship of a minor.

Minor. Any person under the age of eighteen years.

Parent. A natural or adopted parent of a minor.

Public place. Any street, alley, highway, sidewalk, park, playground, parking area or lot, business or place to which the general public has access and a right to resort for business attendance or other lawful purposes. Public place shall include, but not be limited to, any street, shop, restaurant, tavern, cafe, theatre, drugstore, poolroom, shopping center or any other place devoted to business, amusement or entertainment of the general public. It shall also include the front, rear and sidewalk areas of the above. (3-6-80.)

Section 13-19 Curfew imposed; exceptions.

It shall be unlawful for any minor to remain, idle, wander, loiter, stroll, play or be in or at or upon any public place, either on foot or, without a set destination, in any motor vehicle or on any bicycle or other conveyance in the city between the hours of 11: 00 P .M. and 6: 00 A.M. of the following day unless:

(a) Accompanied by parents, guardian, custodian or other adult person having legal custody or control of such minor;

(b) Unless the minor is on an emergency errand;

(c) Unless the minor is returning to his place of residence from attendance at a school, church, athletic or recreational function or activity at which the minor' s attendance is authorized by his parents, guardian, custodian or other adult person having legal custody or control of such minor; or

(d) Where the presence of such minor is connected with or required by some lawful employment, trade, profession or occupation.

All minors shall be required to leave and not be on or about any public place within one-half hour of the termination of any of the functions or activities herein mentioned. (3-6-80.)

Section 13-20 Unlawful acts--By persons having charge of public places.

It shall be unlawful for any person having charge of any public place to knowingly permit or suffer the presence therein of minors between the hours as designated and set forth in section 13-19 herein except as may be authorized and permitted by the provisions thereof. (3-6-80.)

Section 13-21 Same--By parent, guardian, custodian, etc.

It shall be unlawful for the parent, guardian, custodian or other adult person having legal custody or control of any minor to suffer, permit or allow, or be inefficient or ineffective in the control of minors so as to permit or allow such minor to be on any street or sidewalk or on or in or about any public property or public place within the city, except as provided in section 13-19, in violation of this article. (3-6-80.)

Section 13-22 Sponsors of evening functions may notify police of such functions,

To facilitate in the enforcement of the provisions of this article and to enable minors not to be stopped by police, the sponsor of any special function, activity or entertainment of any church, school, club or other organization that requires minors to be out past the curfew hour may register the event in advance with the chief of police or his designee. The registration shall state the time the function, activity or entertainment shall be expected to end. Minors who attend the function, activity or entertainment shall be required to be off the streets, sidewalks or public places within one-half hour after the function, activity or entertainment is ended. (3-6-80)

Section 13-23 Violations by minor; authority and duties of police.

(a) Any police officer, upon finding a minor to be in or on any public place as hereinbefore defined in violation of this article, shall ascertain the name and address of such minor, advise the minor that he is in violation of this article and direct the minor to proceed at once to his home or place of abode. The police officer shall further immediately report, or attempt to report, such action to the parents, guardian, custodian or person having legal custody or control of such minor by either telephoning or personally contacting them.

(b) If such minor refuses to heed such a warning by any such police officer or refuses to give such police officer his correct name and address, or if the minor has been the subject of a prior curfew warning that same night, then the minor shall be taken to his place of residence, if the same can be determined, otherwise to the police department and the parents, guardian, custodian or other adult person having the legal care and custody of such minor shall be notified to come to the police department and take charge of the minor. If the parents, guardian, custodian or other person having the legal care and control of such minor cannot be located or fails to come and take charge of the minor, the minor shall be dealt with in accordance with the juvenile laws of the state, but in no event shall be placed in confinement or jail for violation of the provisions of this article. (3-6-80.)

Section 13-24 Violations generally; penalties.

Any parent, guardian, custodian or other adult person having the legal custody and control of a minor who is guilty of any violation of the provisions of this article, or any person operating or having charge of any public place who knowingly permits or suffers the presence of minors on his premises in violation of the provisions of this article, shall be subject to a fine of not more than one hundred dollars or by imprisonment in the city jail for a period of not more than thirty days, or by both such fine and imprisonment.

Any minor who violates any provision of this article shall be dealt with and proceeded against in

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such manner as may be authorized by the juvenile laws of the state. (3-6-80.)

Chapter 14: POLICE.

Sections:

14-0A	Article I. In General.
14-1	Civil service commission.
14-2	Chief of police.
14-3	Department; powers and duties generally.
14-4	Special officers.
14-4A	Article II. Pension and Relief Fund.
14-5	Established; sources; powers and duties.
14-6	Board of trustees.

As to municipal court, see ch. 11 of this Code. As to police pension fee added to court costs, see § 11-9. As to giving false alarms and reports, see § 13-4. As to motor vehicles and traffic generally, see ch. 19.

Section 14-0A Article I. In General.

For charter provisions as to authority of common council to appoint a police force and such other officers as may be necessary to protect persons and property within the city and to preserve the peace and good order, see Char., § 28, subsec. (54). As to mayor having control over the city police, with authority to appoint special police officers when he deems it necessary, see Char., § 20.

For state law as to authority of city to establish, equip and maintain a police department, see W. Va. Code, § 8-14-1. As to municipal police departments generally, see W. Va. Code, § 8-14-1 et seq. As to authority of mayor over police force and to appoint special police officers, see W. Va. Code, § 8-10-1. As to execution of warrants and service of process by police officers anywhere in the county, see W. Va. Code, § 8-10-1. As to extraterritorial jurisdiction of city for police purposes, see W. Va. Code, § 8-12-5, subsec. (48), 8-12-19.

Section 14-1 Civil service commission.

The policemen's civil service commission existing immediately prior to the effective date of this Code is hereby continued in full force and effect; and all the pertinent provisions of sections 8-14-6 through 8-14-23, inclusive, of the Code of West Virginia are hereby adopted by the common council and made applicable to the regular members of the police department, except the chief of police, and to applicants for such regular membership. (Code 1942, ch. 10, § 1.)

Editor's note.--The policemen's civil service commission was established in this city under the provisions of W. Va. Code, prior chapter 8, article 5A, since superseded by the sections mentioned in the text of this section.

Section 14-2 Chief of police.

The chief of police shall be the commanding officer of the police department and, under the general direction of the mayor, he shall be responsible to the mayor and to the common council for the

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administration, training, discipline, morale and effective deployment and utilization of the members of the police department and of the property and equipment of the police department, for the enforcement of the laws of the state and ordinances of the city, the prevention of crime, the protection of persons and property and the maintenance of peace and order within the city.

For charter provisions as to qualifications, appointment and term of office of chief of police, see Char., § 7. As to powers and duties of chief of police generally, see Char., § 1.5.

As to arrest of persons for disobedience at common council meetings, see § 2-10 of this Code.

Section 14-3 Department; powers and duties generally.

The police department and the members thereof shall, under the overall direction of the mayor and the immediate direction of the chief of police, protect persons and property and preserve law and order within the city and, for such purposes, all police officers shall have the powers and authority conferred upon municipal police officers by state law.

Members of the police department shall be vigilant in the enforcement of the laws of the state, as they may be applicable within the city, and the provisions of this Code and other ordinances of the city. They shall cooperate with other city officers and employees.

In addition to their duties assigned by the head of the police department or by the mayor, the police secretary and the police radio operators shall have the authority to collect all costs, fines, forfeitures and penalties which may be payable to the municipal court. The monies so collected shall be accounted for and paid over to the municipal judge or city treasurer as soon after their collection as is practicable. (2-21-80.)

For state law as to powers, authority and duties of members of municipal police departments, see W. Va. Code, § 8-14-3. As to exercise of authority beyond city limits for one mile, see W. Va. Code, § 8-12-19.

Section 14-4 Special officers.

(a) Appointment; term, compensation. If at any time, in the opinion of the mayor, extra policemen are necessary for the protection of persons and property or for the preservation of the peace and order, he shall appoint such number of extra policemen as, in his judgment, are necessary. Any extra policeman so appointed shall hold office during the term for which he was appointed, unless sooner removed from his office by the mayor or common council, and shall have the same power to arrest persons as is exercised by the chief of police and shall have general power to preserve the peace and order of the city. For their services, such extra policemen shall receive such sum as the mayor shall prescribe.

(b) Indemnity bond. The mayor shall require each such special officer to give bond in the penalty of not less than three thousand five hundred dollars with good security approved by the mayor, conditioned that such special officer shall indemnify and save the city harmless on account of any unlawful or improper acts done by him and to satisfy and pay any damages that may be sustained by any person by reason of any unlawful or improper act done by him while acting as such special police officer; and, if he is authorized to carry a firearm, his bond shall be in amount not less than the amount specified in subsection (c) of section 2-1, and with the additional condition specified in subsection (c) of section 2-1. (Code 1942, ch. 10, §§ 4, 7.)

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For charter provisions as to authority of common council to require officers to give faithful performance bonds, see Char., § 15. As to whom official bonds shall be payable, and proceedings on bonds, see Char., § 16.

For state law as to authority of city to require bonds of its officers, see W. Va. Code, § 8-12-5, subsec. (46). As to requirement that municipal officers who handle public funds give bond, see W. Va. Code, § 6-2-11. As to bonds required of police officers, see W. Va. Code, § 61-7-5, As to bonds of public officers generally, see W. Va. Code, § 6-2-1 et seq.

Section 14-4A Article II. Pension and Relief Fund.

For state law relating to municipal policemen' s pension and relief funds, see W. Va. Code, §§ 8-22-16 to 8-22-28. As to duty of common council to levy annual tax for fund, see W. Va. Code, § 8-22-19.

As to federal social security benefit, see § 2-5 of this Code. As to participation of city in state employees' retirement system, see § 2-6.

Section 14-5 Established; sources; powers and duties.

A policemen' s pension and relief fund is hereby established, pursuant to the authority of section 8-22-16 of the Code of West Virginia, for the purposes enumerated in article 22 of chapter 8 of that Code. Such fund shall consist of any gift, grant, devise or bequest of any money or real or personal property, upon such terms as to the investment and expenditure thereof as may be fixed by the grantor thereof or determined by the board of trustees of the fund, plus other funds, assessments, fees and levies as provided in sections 8-22-19 and 8-22-20 of the Code of West Virginia.

Such fund shall be administered as provided by the Code of West Virginia. (Code 1942, 1949 Supp., ch. 10, § 9.)

Section 14-6 Board of trustees.

There shall be a board of trustees for the policemen' s pension and relief fund which shall be composed and have the powers and duties as are provided by sections 8-22-17 and 8-22-18 of the Code of West Virginia.

Chapter 15: PUBLIC UTILITY SERVICE TAX.

Sections:

- | | |
|-------------|--|
| 15-1 | Definitions. |
| 15-2 | Imposed; amount. |
| 15-3 | Collection; time of payment; accounting; reports. |
| 15-4 | Maintenance and inspection of records. |
| 15-5 | Exemptions. |
| 15-6 | Liability; enforcement authority. |
| 15-7 | Enforcement provisions; penalties. |
| 15-8 | Notice to utilities. |

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For state law as to authority of city to levy and collect an excise tax on the privilege of purchasing, using or consuming public utility services and tangible personal property from public utilities, etc., see W. Va. Code, § 8-13-5a.

Section 15-1 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Public utility service. Any service or tangible personal property purchased within this city from a seller, as hereinafter in this section defined, namely: telephone service; electric service; gas service, including bottled or liquid gas, if the seller thereof is classified as a public utility subject to the jurisdiction of the state public service commission; water service and sanitary sewer service if purchased, used or consumed within the corporate limits of this city.

Purchaser. Any person who purchases, uses or consumes a public utility service.

Seller. Any person, whether a public service corporation, a municipality or private corporation, classified as a public utility and subject to the jurisdiction of the state public service commission, who sells, furnishes or supplies a public utility service.

User. 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. (5-3-71, § 1.)

Section 15-2 Imposed; amount.

There is hereby imposed and levied upon every purchaser of a public utility service an excise tax upon the privilege of purchasing, using or consuming, within the corporate limits of the city, such public utility service. Such tax shall be in the amount of two percent of the charge, exclusive of any federal or state tax thereon imposed upon the purchaser, made by the seller against the purchaser with respect to each public utility service, which tax, in every case, shall be collected by the seller and paid by the purchaser upon the amount of each 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. The tax imposed and levied by this chapter is in addition to all other taxes imposed and levied by this city. In the event the amount of the charge for any single public utility service exceeds the sum of twenty thousand dollars in any given calendar month to any single purchaser, no tax shall be imposed for such additional purchase, use or consumption in excess of the amount of twenty thousand dollars. In the event more than one public utility shall furnish the identical public utility service to the same purchaser, the purchaser shall be entitled to group such services as a single public utility service in calculating the amount of the charges in any calendar month for such public utility service. (5-3-71, § 2.)

Section 15-3 Collection; time of payment; accounting; reports.

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, and 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

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amount of tax shown by such report to have been collected by the city on or before the last day of the second calendar month following the month in which collected, as well as the name and address of any purchaser who has failed or refused to pay the tax so imposed and levied. The required reports shall be in the form prescribed by the city collector and treasurer. (5-3-71, § 3.)

Section 15-4 Maintenance and inspection of records.

Every seller shall maintain complete records showing all purchases of public utility service within the corporate limits of the city, which records shall show the charge made against each purchaser, the dates such public utility service was furnished, the date of payment therefor and the amount of tax imposed hereunder, and such records shall be kept open for inspection by the duly authorized agents of the city at reasonable times, and the duly authorized agents of the city 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. (5-3-71, § 4.)

Section 15-5 Exemptions.

The tax hereby imposed and levied shall not apply to the following transactions, which transactions are hereby exempted from such tax:

- (a) Purchases of public utility service for resale.
- (b) Purchases of public utility service by the United States of America, the State of West Virginia and the political subdivisions, municipalities, boards, commissions, authorities and public corporations thereof.
- (c) Purchases of tangible personal property, such as appliances, 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 or tolls for telephone calls to points outside the corporate limits of the city.
- (e) Nonrecurring charges incidental to the furnishing of public utility service. (5-3-71, § 5.)

Section 15-6 Liability; enforcement authority.

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 purchased, used or consumed within the corporate limits of the city, the seller shall refer the question to the city collector and treasurer, 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 such city officer. Any claim for refunds of any such tax shall be presented to the city and not to the seller.

The city collector and treasurer shall have the authority to promulgate and enforce reasonable

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rules and regulations necessary for the administration and enforcement of this chapter. (5-3-71, § 6.)

Section 15-7 Enforcement provisions; penalties.

Any amount of tax due and unpaid under this chapter shall be a debt due the city. Such debt shall be a personal obligation of the purchaser, which shall be enforceable as provided by section 8-13-15 of the Code of West Virginia, or in any other manner provided by law for compelling the payment of taxes due municipalities.

Any purchaser failing or refusing to pay the tax hereby imposed and levied and any seller or purchaser violating any of the provisions hereof or any lawful rule or regulation promulgated hereunder shall, upon conviction thereof, be fined not more than one hundred dollars. The failure or refusal to pay the tax for public utility service purchased, used or consumed during different statement periods shall constitute separate and distinct offenses. (5-3-71, § 7.)

Section 15-8 Notice to utilities.

The tax hereby imposed and levied shall not be effective until the city gives sixty days' written notice by certified mail of the effective date of this chapter to any public utility, doing business within the city, which is required to collect the tax imposed and levied hereby. (5-3-71, § 8.)

Chapter 16: SEWERS AND SEWAGE.

Sections:

16-0A	Article I. In General.
16-1	Definitions.
16-2	Connections required.
16-3	Prohibited receptacles on certain premises.
16-4	Discharge of stormwater runoff.
16-5	Prohibited discharge.
16-6	Rates--Schedule.
16-7	Same--Billings and collections.
16-8	Same--Enforcement of collection; penalties.
16-9	Same--Allocation.
16-10	Regulation by sanitary board.
16-10A	Article II. Sanitary Board.
16-11	Established; composition; qualifications, appointment and term of members; vacancies.
16-12	Eligibility of city personnel.
16-13	Officers and bylaws.
16-14	Compensation of members and allowances for expenses; bond of treasurer.
16-15	Authority as to supervision and control of sewerage system.
16-16	Statutory authority of board.
16-16A	Article III. Private Systems.
16-17	Transportation of contents of cesspool, etc.
16-18	Water closets.
16-19	Nonconforming systems.

16-20 Right of entry of mayor in enforcement of article.

For charter provisions as to authority of common council to construct sewers within or without the corporate limits, in such manner as the council may deem proper, etc.; and authority to levy special assessments for sewer construction, etc., see Char., § 28, subsec. (68). As to authority of common council to require owners of property adjoining street in which a sewer is located to connect such property to the sewer, at property owner's expense, etc., see Char., § 28, subsec. (69). As to authority of common council to regulate and require drainage of lots by means of sewers, see Char., § 28, subsec. (11). As to authority of common council to prevent injury or annoyance to the public or individuals by anything dangerous, offensive or unwholesome, see Char., § 28, subsec. (24).

For state law as to authority of city to establish and maintain a sewer system and sewage treatment and disposal system and to acquire property necessary therefor, see W. Va. Code, §§ 8-12-5, subsecs. (32), (33), 8-18-1, 16-13-1. As to authority of city to levy assessments for sewer improvements, and to regulate sewer connections, see W. Va. Code, § 8-18-1 et seq. As to municipal sewage works and sanitary districts, see W. Va. Code, § 16-13-1 et seq. As to extraterritorial jurisdiction of city for purposes of this chapter, see W. Va. Code, § 8-12-19; and see also W. Va. Code, § 8-12-5, sub-sec. (43). As to authority of city to make low cost improvements, including construction, repairing, etc., storm, sanitary and combined sewers, see W. Va. Code, § 8-17-1 et seq. As to authority of city to require certain properties to be connected to public sewer, see W. Va. Code, § 8-18-22.

As to grades and elevations generally, see §§ 1-8 to 1-12 of this Code. As to garbage, refuse and weeds generally, see ch. 9. As to obstructing, changing or diverting streams, sewers, drains, etc., see § 13-14. As to water generally, see ch. 20.

Section 16-0A Article I. In General.

Section 16-1 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Combined sewer. A sewer designated to receive both sewage and stormwater runoff.

Commercial user. 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.

Domestic user. Each family unit which uses the sewerage system of the city, which family unit may consist of one or more persons; where there is more than one family unit using water from same water meter or under the same roof, each family unit shall be considered a separate domestic user.

Garbage. Solid wastes from the preparation, cooking and dispensing of food and from the handling, storage and sale of produce.

Industrial user. A user of the city sewerage system, such as a factory or a similar organization, where more than ten persons are employed.

Occupied building. Any structure erected and intended for continuous or periodic habitation, occupancy or use by human beings or animals and from which sanitary sewage or industrial wastes is or may be discharged.

Premises accessible to the sanitary sewerage system. Any real estate which adjoins, abuts or is

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adjacent to the city sanitary sewerage system and which can be connected to such system by the construction of a lateral or private sewer of not more than one hundred feet in length.

Properly shredded garbage. The wastes from the preparation, cooking and dispensing of food which have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, where no particle is greater than half an inch in any dimension.

Public sanitary sewerage system. All separate sanitary sewers, all sewage pumping stations, all sewage treatment works and all other facilities provided and owned by the city for the collection, transportation and treatment of sanitary sewage and industrial wastes, with their appurtenances and any additions, extensions or improvements thereto which may be made by the city. Also, sewers, within or outside the city limits, which serve one or more persons and discharge into the city sanitary sewerage system, though not necessarily constructed by city funds. Such system 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.

Public user. A governmental, educational, church, charitable, benevolent, civic, service or similar unit or organization which is a user of the city sewerage system.

Sanitary sewer. A sewer which carries sewage and to which storm, surface and ground waters are not intentionally admitted.

Sanitary sewage. 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 groundwater.

Sewage. A combination of waterborne wastes from residences, business buildings, institutions and industrial establishments, with such ground, surface or stormwater as may be present.

Sewer. A pipe or conduit for carrying sewage or other waste liquids.

Storm water runoff. That portion of rainfall which reaches a drain.

Storm sewer. A sewer which is intended to carry stormwater runoff, surface water, groundwater drainage, etc., but which is not intended to carry any sanitary sewage or polluted industrial waste. (9-18-58, div. 1, § 1.)

Section 16-2 Connections required.

(a) Each person owning any premises within the city, accessible to the public sanitary sewage system, upon which a building is hereafter erected, at the time of the erection of such building and at his own expense, shall connect such building to the public sanitary sewerage system.

(b) Each person owning any occupied building within the city upon premises which hereinafter become accessible to the public sanitary sewerage system shall, at his own expense, connect such building to the public sanitary sewerage system within three months after notice to do so from the sanitary board or its authorized representative. (Code 1942, ch. 14, §§ 29, 30; 9-18-58, div. 2, §§ 2,3.)

For charter provisions as to authority of common council to require certain properties to be

connected to public sanitary sewer at property owners' expense, see Char., § 28, subsec. (69).

For state law as to authority of common council to require certain properties to be connected to public sewer, see W. Va. Code, § 8-18-22.

Section 16-3 Prohibited receptacles on certain premises.

It shall be unlawful for any person owning or occupying any occupied building within the city, on premises accessible to the public sanitary sewerage system to 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. (9-18-58, div. 2, § 4.)

Section 16-4 Discharge of stormwater runoff.

(a) The discharge of stormwater runoff into separate sanitary sewers is hereby prohibited.

(b) All persons connecting premises to the public sanitary sewerage system shall provide adequate means for excluding stormwater runoff in the event connection is made to separate sanitary sewers.

(c) Nothing in this section shall be construed to prohibit the discharge of storm water runoff into combined sewers, or to require persons directing stormwater runoff into a combined sewer which they now use for sanitation, as of the effective date of this Code, until such time as separate storm sewers are provided. (9-18-58, div. 3, §§ 1 through 4.)

Section 16-5 Prohibited discharge.

(a) The discharge of garbage into the public sanitary sewerage system is expressly prohibited unless such garbage is first properly shredded.

(b) Except as hereinafter provided, no person shall discharge any industrial waste having any of the following characteristics into the public sanitary sewerage system:

(1) 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 of the sewerage system or its operation.

(2) Wastes having a temperature in excess of one hundred sixty degrees Fahrenheit or less than thirty-two degrees Fahrenheit.

(3) Wastes having any corrosive property capable of causing damage or hazard to structures, equipment or personnel of the public sanitary sewerage system.

(4) Any noxious or malodorous gas or substance which, 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 to prevent entry into sewers for maintenance and repair.

(5) Solids, greases, lime slurry or viscous materials of such character or in such quantity that,

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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.

(6) Any toxic, radioactive isotopes, unless the person discharging such isotopes has a special permit.

(c) No provision of 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 before or after pretreatment by the producer of such industrial waste. (9-18-58, div. 4, § 2.)

Section 16-6 Rates--Schedule.

The rates and charges imposed for the use of the sewer system of the city and for the service rendered thereby shall be such rates and charges as are set and adopted by the common council pursuant to West Virginia Code section 24-2-4b and as set forth in schedules of rates on file in the office of the city clerk. (7-28-49; 10-5-53; 8-5-54; 9-18-58, div. 5, § 2; 3-17-66; 3-15-84, § 1.)

For state law as to authority and duty of common council to establish and maintain just and equitable rates or charges for use of and services rendered by municipal sewage works, etc., see W. Va. Code, § 16-13-16. As to the city itself being subject to same charges and rates as established for other customers, see W. Va. Code, § 16-13-17.

Section 16-7 Same--Billings and collections.

The sewage service charges, surcharges and fees levied by or pursuant to this chapter shall be billed by the sanitary board, or, at the discretion of the sanitary board, by its designated agent, to all persons liable therefor, pursuant to such terms, agreements, arrangements and compensation as may be determined by contract between the sanitary board and any such person liable. The collection of such service charges, surcharges and fees shall be by the sanitary board or by its designated agent. (9-18-58, div. 8.)

Section 16-8 Same--Enforcement of collection; penalties.

Each sewage service charge or surcharge levied by this chapter 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, as well as a penalty of ten percent and a reasonable attorney's fee, may be recovered by the sanitary board in a civil action in the name of the city.

In the event of failure to pay the sewer service charge or surcharge after they become 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 and 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; and such sewage 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

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not be cause for reducing or eliminating these penalties. (9-18-58, div. 6.)

For state law basis of this section, see W. Va. Code, § 16-13-16.

Section 16-9 Same--Allocation.

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 chapter, and such proceeds shall be remitted to and administered by the state sinking fund commission. These 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. (9-18-58, div. 9.)

Section 16-10 Regulation by sanitary board.

In addition to the specific authority granted by this chapter, the sanitary board shall make and enforce such other rules and regulations, subject to the approval of the common council, for the safe, economical and efficient management, control and protection of the city's public sewerage system, for the construction and use of house sewers and connections to the sewerage system, for the construction and use of all other connections thereto and for the regulation, collection, rebating and refunding of such sewage service charges as may be needful or necessary from time to time; provided, that such rules and regulations shall not become effective until they have been approved by the common council by ordinance or resolution and spread upon the records of the council as notice to the public of the provisions thereof.

It shall be unlawful for any person to 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 fined or imprisoned or both; the fine shall not be less than five dollars nor more than one hundred dollars, and the imprisonment in the city or county jail shall not exceed thirty days, and each day that any person shall continue the violation of any of the rules and regulations made and promulgated by the sanitary board shall constitute a separate offense. (9-18-58, div. 7.)

Section 16-10A Article II. Sanitary Board.

For state law relating to municipal sanitary boards, see W. Va. Code, ch. 16, art. 13, especially §§ 16-13-18 and 16-13-18a.

Section 16-11 Established; composition; qualifications, appointment and term of members; vacancies.

There is hereby created a sanitary board of the city, which shall be composed of the mayor and two persons appointed by the common council, one of whom, during any construction period, must be a registered professional engineer, and 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 not an engineer. The appointed members of the board shall serve their terms subject to the will and pleasure of the common council. The appointees shall originally be appointed for terms of two and three years respectively and, upon the expiration of each term and each succeeding term, appointment of a

successor shall be made in similar manner for a term of three years. Vacancies shall be filled for an unexpired term and such substitutions shall be made in the same manner as was the original appointment. (7-18-57, § 1.)

Section 16-12 Eligibility of city personnel.

No officer or employee of the city holding a paid or unpaid office or position shall be eligible to appointment on the sanitary board until at least one year from the expiration of the term of his public office or employment. (7-18-57, § 2.)

Section 16-13 Officers and bylaws.

The mayor shall be chairman of the sanitary board, which shall elect a vice-chairman from its members and shall designate a secretary and treasurer, though the secretary and treasurer may be one and the same person, who need not be members 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. (7-18-57, § 3.)

Section 16-14 Compensation of members and allowances for expenses; bond of treasurer.

Each member of the sanitary board shall receive such compensation for his services as the common council may, from time to time, prescribe, 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 their services as the council may, from time to time, prescribe, and the treasurer shall give bond in such amount as the council may, at any time, require.

All compensation, as well as expenses incurred by the sanitary board, its officers and employees, shall be paid solely from funds provided under the authority of chapter 16, article 13 of the Code of West Virginia. (7-18-57, § 4.)

Section 16-15 Authority as to supervision and control of sewerage system.

The construction, acquisition, improvement, equipment, custody, operation and maintenance of all works for the collection, treatment and 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 personnel, as, in the judgment of the sanitary board, may be necessary to the execution of its powers and duties, shall be under the supervision and control of the sanitary board. (7-18-57, § 5.)

Section 16-16 Statutory authority of board.

The sanitary board shall have, in addition to the powers enumerated herein, all other powers provided for such boards by chapter 16, article 13 of the Code of West Virginia. (7-18-57, § 6.)

Section 16-16A Article III. Private Systems.

For charter provisions as to authority of common council to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome, see Char., § 28, subsec. (24).

For state law as to authority of city to prevent injury or annoyance to the public or to individuals from anything dangerous, offensive or unwholesome, see W. Va. Code, § 8-12-5, sub-sec. (13). As to authority of city to provide for the elimination of hazards to the public health and safety and to abate public nuisances, see W. Va. Code, § 8-12-5, subsec. (23).

Section 16-17 Transportation of contents of cesspool, etc.

No person shall at any time remove the contents of any cesspool or privy vault through, along or over any of the streets or public or private ways of the city, except between the hours of 10:00 P .M. and 4:00 A. M., nor shall such contents be removed at any time unless the vehicle to be used for such purpose is so constructed as to be watertight and securely covered, so that the odors therefrom cannot escape. (Code 1942, ch. 17, § 11.)

Section 16-18 Water closets.

It shall be unlawful for any person within the city to construct, install, use or maintain any water closet other than what is known as a flush closet. (Code 1942, ch. 13, § 22.)

Section 16-19 Nonconforming systems.

Any privy or private sewer existing or being maintained which does not conform to the requirements of this article or for which a special permit has not been granted by the state department of health shall be and is hereby declared a nuisance, dangerous, and a menace to the public health, and the city shall have the power and the authority to abate any such nuisance in accordance with the law. (Code 1942, ch. 14, § 39.)

Section 16-20 Right of entry of mayor in enforcement of article.

It shall be the duty of the public works director to enforce the provisions of this article and, in the performance of this duty, the public works director or his duly authorized agent is hereby authorized to enter, pursuant to such restraints as are imposed by law, at any reasonable hour, any premises which he may deem it necessary to enter, in the enforcement of this article. (Code 1942, ch. 14, § 40.)

Chapter 17: SOLICITORS AND CANVASSERS.

Sections:

- 17-1 Definition.**
- 17-2 Registration.**
- 17-3 Issuance, term and display of permit.**
- 17-4 Repealed by ordinance adopted July 19, 1979.**

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17-5 Prohibited acts. **17-6 Exceptions.**

For state law as to authority of city by ordinance to provide for the adoption and enforcement of local police and similar regulations, see W. Va. Code, § 8-12-2, subsec. (a).

Section 17-1 Definition.

Solicitor. A person who goes from door to door, visiting multi-family or single-family dwellings or places of business for the following purposes:

- (a) To sell goods, wares, merchandise or services or accept subscriptions or orders therefor.
- (b) To accept or request donations for any purpose.

Section 17-2 Registration.

All persons, before entering into or upon a residential or business premises within the city for the purpose of soliciting, shall register with the city clerk and furnish the city clerk with the following information:

- (a) The name, local and permanent addresses, age, weight, height, color of hair and eyes and any other distinguishing physical characteristics of the applicant.
- (b) The nature or purpose for which solicitations will be made and the nature of the goods, wares, merchandise and services offered for sale.
- (c) The name and permanent address of the employer or organization represented.

Section 17-3 Issuance, term and display of permit.

Upon furnishing the information required under section 17-2 the applicant shall be issued a permit twenty-four hours from the date of submission of the application. A permit issued under this chapter shall be valid for one year from the date of issuance. Every solicitor shall carry his permit with him at all times while engaged in soliciting, and shall display such permit to any person who shall demand to see such permit while he is so engaged.

Section 17-5 Prohibited acts.

No person shall:

- (a) Enter into or upon a residential or business premises in the city under false pretenses, to solicit for any purpose.
- (b) Remain in or on any residential or business premises after the owner or occupant, or his agent or employee, has requested any such person to leave.

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- (c) Enter upon any residential or business premises for soliciting, when the owner or occupant, or his agent or employee, has displayed a "No Soliciting" sign on such premises.
- (d) Engage in the practice of soliciting in the city without a permit, as provided by this chapter.
- (e) Knowingly give false information or withhold correct information in obtaining a permit.

Section 17-6 Exceptions.

The provisions of this chapter, except section 17-5, shall not apply to:

- (a) Any person who visits any residence or business at the request or invitation of the owner or occupant, or his agent or employee.
- (b) Newsboys soliciting subscriptions to any newspaper for home delivery within the city.
- (c) Route deliverymen who make deliveries at least once a week to regular customers and whose solicitation is only incidental to their regular deliveries.

Chapter 18: STREETS, SIDEWALKS AND PUBLIC PLACES.

Sections:

18-0A	Article I. In General.
18-1	Seating at Mountain State Forest Festival.
18-2	Harmful or offensive matter.
18-3	Conducting trade or business.
18-4	Animals or bicycles on sidewalks.
18-5	Playing, coasting or skating on sidewalks.
18-6	Duties of owners and occupants as to sidewalks.
18-7	Obstructions.
18-8	Openings in sidewalks.
18-9	Guttering of porches and balconies.
18-10	Certain trees prohibited.
18-11	Matters incidental to street improvements--Connection standards.
18-12	Same--Notice to make connections; failure to make connections.
18-12.1	Permanent improvements requested by petition.
18-12A	Article II. Construction and Repair of Sidewalks.
18-13	Obligation of owner--Exception.
18-14	Same--Failure to comply.
18-15	Liability of adjacent property owners.
18-16	Construction standards.
18-17	Permit--Form.
18-18	Same--Required; fee.
18-19	Same--Determination of public works director.
18-20	Same--Same--Approval; certificate.
18-21	Record of permits and certificates.
18-22	Applications to have sidewalk grades and lines established.

18-22A	Article III. Excavations.
18-23	Permit required.
18-24	Excavations near streets, sidewalks and public places.
18-25	Permit--Application.
18-26	Same--Prerequisites; surety.
18-27	Companies operating under city franchise.
18-28	Manner of work; restoration of surface.
18-29	Required safeguards; footbridges.
18-30	Bridges over excavations in roadways.
18-31	Safeguards relating to sidewalk excavations.
18-32	Handling, conveyance and disposition of dirt.
18-33	State permit.

As to grades and elevations, see §§ 1-8 to 1-12 of this Code. As to city engineer generally, see § 2-24. As to board of parks and recreation commissioners, see §§ 2-37 to 2-46.1. As to the parking authority, see §§ 2-57 to 2-63. As to staking cows or other animals on streets or property of another, see § 4-10. As to exhibiting stallion, jack or bull on streets, etc., see § 4-11. As to burning paper, refuse, etc., in streets, see § 8-7. As to loitering generally, see § 13-7. As to spitting in public, see § 13-10. As to street carnivals, parades or exhibitions, see § 13-11. As to vehicles and traffic generally, see ch. 19.

Section 18-0A Article I. In General.

For charter provisions as to authority of common council to lay off, open, close, vacate and maintain public grounds, places, etc., see Char., § 28, subsec. (2). As to authority to locate, construct, repair, etc., bridges, streets, sidewalks, gutters, etc., and to keep them clean and free from obstruction, see Char., § 28, subsec. (7). As to authority to regulate the width of sidewalks and streets and abutting public grounds and grass plots, etc., see Char., § 28, subsec. (9). As to authority to grant franchises for the use of streets and public places, see Char., § 28, subsec. (57). As to authority to grant permits for the temporary use of streets and public places, see Char., § 28, subsec. (58).

For state law as to authority of city to provide for the regulation and control, acquisition, care, management and use of the city's streets, alleys, ways and property, see W. Va. Code, § 8-12-2. As to authority of city to layoff, construct, repair, etc., streets, sidewalks, gutters, etc., and to keep them free from obstructions, etc., see W. Va. Code, § 8-12-5, subsecs. (1) to (5). For state law as to low cost street and sidewalk improvements, see W. Va. Code, § 8-17-1 et seq. As to assessments by city to improve streets and sidewalks, see W. Va. Code, § 8-18-1 et seq.

Section 18-1 Seating at Mountain State Forest Festival.

(a) The placing of chairs for viewing the Mountain State Forest Festival scheduled parades shall, insofar as they are placed between the curb of any street on the parade route and the property of any person abutting the parade route, be placed only with the permission, direction and control of such abutting property owner, subject only to the provisions of this section.

(b) Chairs shall be so placed as to leave the sidewalk abutting the parade route clear and unobstructed for normal pedestrian traffic.

(c) Chairs shall not be placed in the traveled portion of any street.

(d) No person shall sell chairs or seating for any consideration for the viewing of parades without written permission of the common council. Such permission shall be for no longer than one year

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at a time. Sales of chairs and seating shall be only by religious, charitable or nonprofit organizations.

(e) By granting the right to place chairs or seating upon that portion of the public street right-of-way adjacent to any abutting owner's property, the city shall assume no liability or responsibility for injuries of parade spectators or users of the rights granted herein. (9-7-72, §§ 1 to 5.)

Section 18-2 Harmful or offensive matter.

No person, except as authorized by this Code or other ordinance, order or regulation of the mayor or common council, shall drop, place, throw or suffer to remain or cause to be dropped, placed, thrown or suffered to remain upon any street or other public place any glass, bottles, scrap-iron, nails, tacks, paper or offensive matter of any kind. (Code 1942, ch. 17, § 7.)

Section 18-3 Conducting trade or business.

(a) No person shall, without the consent of the common council, perform any work of any character pertaining to his trade or business or the trade or business of another, upon any public street, sidewalk, park or public square within the city.

(b) No person, without the consent of the common council, shall at any time sell, offer or expose for sale at public auction any goods, wares, merchandise or property of any kind upon any street; except, that this requirement shall not apply to officers of the law in making sales under the process of a court or in discharge of their official duties. (Code 1942, ch. 17, §§ 9, 13.)

For charter provisions as to authority of common council to regulate or prohibit auctioneering, and to license or prohibit the sale of goods, wares and merchandise on the streets or other public places, see Char., § 28, subsec. (16).

Section 18-4 Animals or bicycles on sidewalks.

No person shall lead, ride or drive any horse or other animal, except dogs, along or upon any of the sidewalks or footwalks.

No person shall drive, ride, roll or wheel any bicycle upon or along any sidewalk or footwalk; except, that persons may roll but not ride bicycles along the sidewalks and footwalks, if careful not to interfere with pedestrians. (Code 1942, ch. 17, § 14.)

As to operation of bicycles generally, see § 19-48 to 19-61 of this Code.

Section 18-5 Playing, coasting or skating on sidewalks.

No one shall engage in or play any game upon any sidewalk or footwalk nor coast thereon with sleds or skateboards. Nor shall anyone, without the consent of the owner or occupant of the premises adjacent thereto, skate upon any such sidewalk or footwalk. (Code 1942, ch. 17, § 15.)

Section 18-6 Duties of owners and occupants as to sidewalks.

(a) It shall be the duty of each owner or occupant of any building or lot which abuts upon any street upon which there is a brick, stone, concrete, board or other type pavement or sidewalk to keep such pavement or sidewalk clean and free from obstruction of every kind and, when necessary, such person shall remove the snow and ice therefrom at least once each day and shall sweep such pavement or sidewalk at least once each day; except, that it shall not be necessary to sweep any such pavement or sidewalk on Sunday.

(b) It shall further be the duty of each owner and occupant of any building or lot which abuts upon any street upon which there is a brick, stone, concrete, board or other pavement or sidewalk to remove the dirt, paper, sweepings and refuse of any kind therefrom, nor shall such owner or occupant sweep or place any paper, sweepings, dirt, debris or any other refuse into the city streets, but shall remove such sweepings from such pavement or sidewalk.

(c) For any violation of this section, such violator shall be fined not less than five dollars nor more than fifty dollars. (Code 1942, ch. 17, § 16; 5-18-50.)

For charter provisions as to authority of common council to provide for the removal of ice and snow from sidewalks, gutters, etc., by the owners or occupants of adjacent realty, see Char., § 28, subsec. (9).

Section 18-7 Obstructions.

(a) Enumerated. No person shall in any way obstruct any street, sidewalk, public footwalk, public park or square or any other public place. Obstructions, within the meaning of this section, shall include but not be limited to cut or fallen trees within the bounds of a public road or walkway which interfere with travel thereon; limbs of trees which have fallen or branches of trees overhanging so as to interfere with travel thereon and use thereof; landslides; carcasses of animals; lumber, wood or logs piled within the bounds of a public right-of-way, park or square; machinery, vehicles, conveyances and implements abandoned or habitually placed within the bounds of a public right-of-way, park or square; fences, buildings or other obstructions within the bounds thereof; ashes, cinders, earth, stone or other material placed thereon or in any ditch or waterway along any such public right-of-way; water diverted from its regular course so as to injure or endanger a public right-of-way; pipe lines, telegraph, telephone or other poles and wires connected therewith constructed or erected on a public right-of-way, public park or square which interfere with the use thereof; or any other thing which will prevent the easy, safe and convenient use of such public right-of-way, park or square.

(b) Prohibited; injunction. Such obstructions so placed and left within the boundaries of any such public right-of-way, park or square are hereby declared to be public nuisances and, in addition to other remedies provided by this article and other chapters of this Code, the city may apply to the circuit court of the county for an injunction to abate such nuisance.

(c) Obligation as to removal or repair.

(1) It shall be the duty of the owner or occupant of land situated along any public right-of-way or abutting any public park or square to remove all obstructions within the boundaries of such public right-of-way, park or square which have been placed thereon by himself or with his consent.

(2) It shall be the duty of all telephone, telegraph or other power or communication

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companies to remove and reset telephone, telegraph and other poles and the wires connected therewith when such poles or wires constitute obstructions to the use of a public right-of-way, park or square.

(3) It shall be the duty of all pipe line companies whose lines have been laid across or along any public right-of-way, park or square for the purpose of transporting natural gas, oil, water or other substance, to fill up all excavations made thereby so that the surface or pavement overlying such excavation is, in all respects, in as good condition as it was before the excavation was made.

(d) Removal or repair by city--Notice. If such obstructions or poles, wires or pipe lines are not removed or such poles and wires reset or such excavations are not properly filled and maintained within ten days after the service of a notice by the city upon any such owner or occupant requesting such correction to be made, the common council, by its duly designated agent, shall cause such obstructions and such poles, wires or pipe lines to be removed and reset or such repairs on the excavations to be made, as may be necessary to return such pavements or surfaces to their original condition.

(e) Same--Costs. The common council shall assess the cost of removing obstructions and removing and resetting piles and wires, or such repairs as are necessary to faulty excavations pursuant to this section, against any owner, occupant, company or corporation neglecting to perform its duty imposed by the provisions of this section. The council shall cause to be served upon such owner, occupant or company a written notice stating that, at the time and place specified therein, the council proposes to assess such cost against such owner, occupant or company neglecting to perform such duty. Such notice shall be served at least ten days prior to the time specified therein. If directed against a corporation, such notice may be served as other notices or processes are served under chapter 56 of the Code of West Virginia. At the time and place specified, the council shall hear the parties interested and shall thereupon complete the assessment, as provided by article 18 of chapter 8 of the Code of West Virginia.

(f) Penalties. If any obstruction be not removed by the person responsible therefor causing it within ten days after written notice so to do, as above provided, the person causing the obstruction shall, upon conviction of such violation of this section, be fined a sum of not more than one hundred dollars or be imprisoned for not more than ten days, or be punished by both such fine and imprisonment. Each day such noncompliance with the provisions of this section is permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. (Code 1942, ch. 17, § 12; 3-3-59; 3-19-59.)

Section 18-8 Openings in sidewalks.

No person shall, without the consent of the common council, build any cellar door, window way, coal hole or other opening of any kind into or through any sidewalk or footwalk; and where any such way, hole or opening exists in any sidewalk or footway with the consent of the council such opening shall never, under any circumstances, be left open so that pedestrians might fall therein, nor shall it at any time be opened if there is danger of pedestrians falling therein, unless someone is stationed to warn pedestrians of the danger during the time such aperture is open. (Code 1942, ch. 17, § 18.)

Section 18-9 Guttering of porches and balconies.

It shall be the duty of every person who owns property upon which there is a house or other building which has a porch or balcony which protrudes or extends over the street or sidewalk to have such porch or balcony properly spouted or equipped with gutters; and if the owner fails or refuses to properly spout such porch or balcony within ten days after being duly notified so to do, he shall be subject to such penalties as are provided by section 1-7. (Code 1942, ch. 17, § 20.)

Section 18-10 Certain trees prohibited.

(a) It shall be unlawful for any person to plant or maintain upon his property or upon any street adjoining thereto any tree commonly known as the North Carolina poplar or any other shade tree which, by its nature, will tend to plug up or damage sewers, sidewalks, streets or other property.

(b) If any such tree be planted after the effective date of this Code, it shall be the duty of the superintendent of streets to immediately cut down and destroy it, provided, that if the superintendent of streets does not have personal knowledge that such tree has been planted since that time, a notice and proceeding, shall be had before the common council; and, if it be ascertained by the council that such tree was planted since the effective date of this Code then such tree shall be declared a nuisance and the owner required to abate the nuisance. (Code 1942, ch. 17, § 21.)

For charter provisions as to authority of common council to declare as public nuisances any trees, shrubbery, etc., growing on private property within the city, the roots of which clog or choke any public sewer belonging to the city, or damage the streets or sidewalks of the city, and provide for the removal or destruction of such trees or shrubbery, see Char., § 28, subsec. (4). As to authority to regulate the planting, trimming, etc., of shade trees and ornamental shrubbery, etc., see Char., §28, subsec. (3).

For state law as to authority of common council to provide for the protection of shade and ornamental trees, whether on public or private property, and for the removal of limbs of trees when in a dangerous condition, see W. Va. Code, § 8-12-5, subsec. (29).

Section 18-11 Matters incidental to street improvements--Connection standards.

Whenever the city shall determine to permanently pave or improve any street, thirty days before the paving shall be begun, property owners having gas, water, sewer or other lines or conduits in the street where the paving is to be done shall connect or have their property connected with such lines and conduits, and where such connections have already been made, all property owners shall have examined or examine and test the connections thoroughly, and renew or repair them wherever such renewal or repair is deemed necessary by the public works director, and put them in good order and condition; and, at least two feet below the surface, all the way from the mains to the inner side of the curb line and where deemed necessary by the public works director, shall fit the pipe with the new valves, cut-offs, etc., of the weight, thickness, diameter and style prescribed by the public works director. These connections shall be of such size and according to such regulations as are prescribed by the common council or the public works director and shall extend from the respective lines to a point beyond the curb line,

One such connection shall be made in front of every lot abutting on the proposed permanent pavement or improvement and, in the business section of the city, such connections shall be spaced more closely as directed by the common council or public works director, but such connections shall be no less than twenty-five feet apart. Where a permanent improvement is to be made along the side of any corner lot, such connection shall be made as may be required by the council or public works director upon notice. Where a permanent pavement or improvement is to be made along vacant land not laid off into lots, the connections shall be made at intervals of forty feet; provided, that in such cases where the council is satisfied that there is no probability of the land being laid off into lots in the future, the connections may be more distantly spaced. (Code 1942, ch. 17, § 38.)

Section 18-12 Same--Notice to make connections; failure to make connections.

Notice to property owners to make connections with gas, water, sewer or other lines and conduits prior to the construction of permanent pavements or improvements may be made by service of notice upon the respective property owners or may be given by publication, in a newspaper published in the city, for two successive weeks, designating therein the streets along which the permanent improvements are to be made and if, after giving such notice, the property owner fails to install such connections within thirty days after notice is served or within thirty days after the first issue of notice appears in such newspaper, the city may put in the necessary connections, and the expense thereof shall be assessed against the abutting property and the owners thereof and placed in the hands of the city collector and treasurer for collection, and such expenses may be collected, with interest, as are taxes, and the costs shall be a lien upon such abutting property; provided, that the failure of the city to give notice in either form shall not release the property owners from the obligation of putting in connections prior to the construction of a permanent pavement or improvement. In no event shall any property owner be permitted to connect with or use any connections until the cost thereof has been paid to the city; but this last provision shall not release any property owner from the payment of the costs thereof even if he does not use such connection. (Code 1942, ch. 17, § 39.)

Section 18-12.1 Permanent improvements requested by petition.

(a) All permanent improvements to streets, roads or alleys requested by petition of persons owning property abutting such streets, roads or alleys shall be made in accordance with plans and specifications prepared by the city. Such plans and specifications shall provide for adequate grading and drainage, including the construction of curbs and gutters in such cases as curbs and gutters are deemed necessary to properly preserve and protect the paving or surfacing improvements so made.

(b) In the event that the petition for improvements is directed only to the paving or surfacing of the streets, roads or alleys and does not request curbs, gutters or related improvements, and the plans and specifications for the project require the construction of curbs, gutters or related improvements, then the city will so advise the petitioners. If the petitioners agree that these related improvements are necessary and are willing to pay for the same, then petitioners will submit an amended petition requesting the city to construct such curbs, gutters or related improvements as are necessary; thereafter the city will make the improvements requested by the petition or amended petition.

(c) Where the permanent improvements are made by the city in accordance with subsection (b) of this section, the city will bear the expense of resurfacing such street, road or alley in the future when such resurfacing becomes necessary.

(d) In the event that the petition for surfacing or paving improvements does not request any improvements other than the actual surfacing or paving of any street, road or alley, and in the event that is determined by the city that curbs, gutters or related improvements are necessary to preserve and protect the surfacing or paving so requested and the petitioners, being so advised, refuse to submit an amended petition as set forth in subsection (b) of this section and decline to agree to bear the expense of such improvements, then the city will proceed to make the improvements only as requested by the petition.

(e) Where improvements are made in accordance with subsection (d) of this section, the city shall not bear the expense of resurfacing or repaving the street, road or alley so improved at such time as such resurfacing or repaving might become necessary.

(f) Any of the foregoing provisions notwithstanding, the city will continue to perform

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ordinary and routine maintenance of all streets, roads and alleys within the city.

(g) This section applies only to petitions for the surfacing or paving of those streets, roads or alleys which heretofore have not been permanently improved by surfacing or paving with asphalt or concrete. (5-18-78, § 8.)

Section 18-12A Article II. Construction and Repair of Sidewalks.

For charter provisions as to authority of common council to regulate the width of sidewalks, grass plots, gutters, etc., and to order that sidewalks and gutters be paved and kept in good order and repair by the owners and occupants of adjacent realty, see Char., § 28, subsec. (9). As to authority of city to construct and maintain sidewalks and to assess owners of abutting realty therefor; manner of construction, etc., see Char., § 28, subsecs. (68), (70) through (74) and (77) through (84). As to nonliability of the city for damages for injury to persons or property caused by defects, etc., in the ground between the gutter or curb and the edge of sidewalks, unless city had notice thereof, see Char., § 28, sub-sec. (7).

For state law as to low cost street and sidewalk improvements, see W. Va. Code, § 8-17-1 et seq. As to assessments by city to improve streets and sidewalks, see W. Va. Code, § 8-18-1 et seq.

Section 18-13 Obligation of owner--Exception.

It shall be the duty of all persons owning land or lots which front upon a street which is ~~maintained and kept by the city~~ **[SUPERSEDED by Ordinance 97-03: March 20, 1997]** within the city of Elkins to put down and keep in good repair a suitable sidewalk or footwalk along the entire part of such land or lot which fronts upon any such street. When, in the opinion of the common council, it has become necessary, the property owner shall repave the sidewalk, in such a manner, of such width and of such suitable material as the council shall direct; provided, that before any permanent sidewalk or footwalk is laid, it shall be the duty of the public works director to fix the grade thereof, and such sidewalk shall be laid in conformity to such grade; and should the city, after the walk is laid, change the grade, the cost of laying a new walk to conform to such changed grade shall be paid by the city, as well as all damages the owner of the land or lot may sustain by reason of such change of grade. The public works director, after establishing of the grade of any such walk shall report to the common council at the next regular meeting or sooner, if the council shall so require, what is necessary for the protection and preservation of such walks to be laid in pursuance of this section; and the council, having made such provision for the protection and preservation of the walks as it deems necessary and proper, may thereupon direct that such walks be laid. (Code 1942, ch. 17, § 24.)

Section 18-14 Same--Failure to comply.

(a) Notice; authority of city. If at any time any sidewalk or foot-walk needs repair, or if any land or lot owner fails to build such walk or repave any walk when repaving, in the opinion of the common council, has become necessary, it shall be the duty of the mayor to cause the owner of the land or lot adjacent thereto to be notified in writing of such need of laying or repair of the walk and of the character of repaving needed to be done and, if such repairs are not made by the land or lot owner within ten days after the service of such notice or if such new walk is not laid or repaving done within thirty days after the service of such notice, the council shall then have the power and authority to repair or repave any such sidewalk or footwalk.

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(b) Alternate arrangements. The common council shall have the authority and it shall be within its sole discretion whether to repair or repave such walk by force account or by contract.

(1) Force account. If the council elects to repair or repave the walk by force account, it shall keep an accurate account of the labor and materials used in making such repairs or repavement, which statement of costs shall be filed in the office of the city clerk,

(2) Contract. If the council determines to repair or repave by contract, the council shall advertise for bids by publication in one of the newspapers of the city once a week for not more than two weeks, and all contracts let in pursuance of such advertisement shall be to the lowest responsible bidder; but nothing herein shall be construed to prevent the council rejecting any and all bids made in pursuance of such advertisement.

(c) Costs. After any sidewalk is repaired, constructed or repaved in pursuance of the power herein granted, the cost thereof shall be paid out of the city treasury in the first instance and the common council, after allowing such costs, shall lay an assessment against the lot benefited thereby, with a ten percent penalty added, and this assessment shall be placed in the hands of the city collector and treasurer, to be collected by him from such land or lot owner as city taxes are collected; and the cost of such work shall be a lien against such land or lot abutting on such walkway, taking priority over all other liens, except taxes, and shall be enforced as city taxes and assessments are enforced against real estate, or by other appropriate procedure.

(d) Fines. If the owner of any such land or lot, after having been given notice by the mayor, as herein provided, to lay, repave or repair said sidewalk shall fail to do so within the time as herein provided, the mayor may cause any such land or lot owner to be summoned before the municipal court judge to show cause why a fine should not be imposed for such failure to repair, repave or construct the sidewalk as herein provided, and for every day such land or lot owner fails to repair, repave or construct such sidewalk as herein provided, after being summoned before the municipal court judge, as aforesaid, he shall be fined not less than one dollar nor more than five dollars.

(e) Service of notices to nonresidents. If the owner of any such land or lot is not a resident of the city, the notice to him required by this regulation may be served upon him as notices are served under the laws of this state. (Code 1942, ch. 17, § 25.)

Section 18-15 Liability of adjacent property owners.

Nothing in this chapter shall be construed to relieve the adjacent property owner from liability for personal injury or property damage sustained by any person on account of any sidewalk becoming out of repair, and it shall be the duty of the property owner to keep the sidewalk adjacent to his property repaired, in good order, free and clean and, in case any damage is sustained by the city or recovered against it on account of such sidewalk not being kept repaired, in good order, free and clean, the damages, including costs and expenses, shall be recoverable by the city from the adjacent property and the owner thereof. In case any suit is brought against the city by any person on account of any sidewalk being out of repair, it shall be the duty of the mayor to notify the owner of the property adjacent to the sidewalk where the accident on which such suit is based is alleged to have occurred, and such property owner shall have the right to employ counsel and to come in and defend the suit if he so desires; provided, that the provision for the giving out of notice by the mayor is only directory, and shall not preclude the right of the city to recover as aforesaid from the property owner, although such notice is not given. (Code 1942, ch. 17, § 26.)

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Section 18-16 Construction standards.

No permanent sidewalk or footwalk shall be constructed within the city by any person unless it conforms to the specifications therefor on file in the office of the mayor of the city; provided, that under special circumstances the common council may, by an order entered of record, specify any change or variation from such specifications. All permanent sidewalks or footwalks built by the city, where the owners have failed to construct them, shall be built in accordance with those specifications; but if any variation is made in the construction of such sidewalks by the city, such variation shall not deprive the city of its right to recover the cost of the construction of the sidewalk, and such variation in the specifications shall be deemed to have been made under the authority of the common council if the sidewalks, after being so constructed, are accepted from the contractor by the council. (Code 1942, ch. 17, § 29.)

Section 18-17 Permit--Form.

Prior to the construction of any sidewalk outside the property lines of any street in the city, there shall be secured from the city clerk a sidewalk permit, made out in substantially the following form:

"ORIGINAL.

"Sidewalk Permit

"No. _____ Elkins, W. Va., _____ 19____

"PERMIT is hereby issued to _____ owner and _____ contractor, subject to the ordinances of the City of Elkins, West Va., and the approval of the public works director, to construct a concrete sidewalk _____ feet in width, and _____ feet in length, in front of Lot _____, Block _____, of _____ Sub-division, abutting and fronting on _____ Street, Avenue, in the City of Elkins, West Va.

"Sidewalk to be built to conform to the lines, grades and specifications of the City of Elkins, West Va., and subject to the inspection and approval of the public works director.

"This permit to be void upon the date of the advertisement of the lot or lots herein specified for public letting, providing the actual work of placing concrete walk shall not have been begun on that date.

" _____ City Clerk.

"Elkins, W. Va., _____ 19____

"The walk in front of Lot _____ Block _____ of _____ Subdivision, abutting and fronting on _____ Street-Avenue, in the City of Elkins, West Va. , conforms to the lines and grades given by this office and are, to the best of my information, constructed in accordance with the City specifications.

"Grade and Line given _____

"Inspected _____ Public Works Director.

"Page _____ Sidewalk Record."

(Code 1942, ch. 17, § 30.)

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Section 18-18 Same--Required; fee.

Section 18-19 Same--Determination of public works director.

Forty-eight hours previous to the construction, repair or opening of any sidewalk, a notice shall be given the public works director in order that the proper lines and grades may be established. No sidewalk shall be constructed, repaired or opened unless the lines and grades are either determined by or subjected to the inspection or supervision of the public works director, as he may direct. (Code 1942, ch. 17, § 32.)

Section 18-20 Same--Same--Approval; certificate.

Upon the completion of the construction, repair or opening of the sidewalk, such permit shall be approved by the public works director and, at the same time, a certificate shall be given, governing the amount of work done in the construction; repair or opening of such sidewalk, if desired by the property owner or the contractor.

The certificate given shall be in substantially the following form:

"Dist. No _____ Elkins, West Va., _____ 19____

"THIS IS TO CERTIFY, That the sidewalk on the _____
Street-Avenue, frontage of _____ of Lot No _____
Block No. _____ owned _____ by _____ was finished
_____ 19_____, by _____, under contract dated _____
19_____, in accordance with the specifications of the City of Elkins and under my supervision and
inspection. The walk is _____ feet in length and _____ feet in width, and contains
_____ square feet, which, at the contract price of _____ cents per square foot, amounts to \$
_____. I hereby accept the walk subject to the approval of the mayor and City Council
of the City of Elkins.

"Extra: _____

"Public Works Director.

"THIS IS TO CERTIFY, That the excavation or embankment has been measured and calculated
on the above described walk and found that there is due the contractor for excess excavation or
embankment as follows:

" _____ Cubic yards Excavation at _____ per cubic yard, \$ _____
" _____ Cubic yards Embankment at _____ per cubic yard, \$ _____
" _____ Cubic yards Rock at _____ per cubic yard, \$ _____
"Total cost of improvement, \$ _____

" _____ Public Works Director.

"Recorded in the office of the City Clerk of Elkins, West Virginia,

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in Sidewalk Record Book _____ Page _____
"(Public Works Director's Note Book _____ Page _____)"
(Code 1942, ch. 17, § 33.)

Section 18-21 Record of permits and certificates.

A record of the sidewalk permits and certificates of work done shall be kept in the office of the city clerk and in the office of the public works director, for inspection at all times. At the time of the determination of the grades and lines such determinations shall be fully described and set forth by the public works director and entered in a record kept for that purpose. (Code 1942, ch. 17, § 34.)

Section 18-22 Applications to have sidewalk grades and lines established.

Any citizen desiring that sidewalk or other grades and lines be established shall make application, in writing, to the common council, on a form to be determined by the public works director and, should the council see fit to establish the grade and lines requested, the application shall be referred to the public works director, with instructions to establish such grades and lines and to make report back to the council, in writing, on the back of the application, giving the grades and lines as established upon true meridian and elevation above sea level, as established by the United States geological survey. (Code 1942, ch. 17, § 36.)

As to grades and elevations generally, see §§ 1-8 to 1-12 of this Code.

Section 18-22A Article III. Excavations.

For state law as to authority of city to provide for the opening and excavation of streets, sidewalks and public places belonging to the city, and to regulate the conditions under which such openings may be made, see W. Va. Code, § 8-12-5, subsec. (2).

Section 18-23 Permit required.

It shall be unlawful for any person to cut into or otherwise damage or excavate any street, sidewalk or public place within the city for the purpose of connecting property with water, sewer or gas lines thereunder or for any other purpose, except pursuant to a permit as provided by this article. (Code 1942, ch. 17, § 42.)

Section 18-24 Excavations near streets, sidewalks and public places.

No person shall, without a permit so to do and except in compliance with all provisions of this article, make any excavation whatever upon or within ten feet of any street, sidewalk, footwalk, public park or square; nor shall excavation of any kind be made upon the land of another without his consent; and any person making an excavation within ten feet of any street, sidewalk or footwalk shall keep such sidewalk or footwalk so protected that persons and property cannot fall therein, except by breaking through proper and sufficient guard rails or other adequate protection. (Code 1942, ch. 17, § 8.)

Section 18-25 Permit--Application.

Any person desiring, for any purpose, to cut, open or otherwise excavate any street, sidewalk or public place, paved or unpaved, in the city shall apply to the public works director for a permit so to do. The application shall be in form as prescribed by the public works director and shall contain such pertinent information as may be required by him including but not limited to the following:

- (a) The purpose of the proposed excavation.
- (b) The site at which the work is to be done.
- (c) The date work is to begin and the expected duration of the work.
- (d) The name and address of the person for whose benefit the proposed work is to be done and who shall be responsible for all required safeguards, the diligent prosecution of the work, the restoration of the surface, the payment of all expenses incurred and the compliance with all requirements of this article.

The application shall be signed by such person responsible or by someone authorized by him or by the plumber or other contractor employed by him to do the work. (Code 1942, ch. 17, § 42.)

Section 18-26 Same--Prerequisites; surety.

(a) No excavation permit shall be granted, unless it appears, to the satisfaction of the public works director, that the excavation is necessary to the health, safety or welfare of the person upon whose behalf the excavation is to be made; and the connection of property to a water, sewer or gas main shall be deemed sufficient under this subsection.

(b) No excavation permit shall be granted until the applicant therefor or someone on his behalf has made a cash deposit or given bond to the city in such amount as may be deemed by the public works director sufficient to cover the cost of safeguards, disposal of excavated dirt, etc., and restoration of the surface of the place of excavation so as to place it in as good a condition as it was in prior to the making of the excavation. Each such bond shall be payable to the city, shall have corporate surety, shall be approved by the city attorney and shall be conditioned that the work be diligently and skillfully prosecuted, barring unforeseeable circumstances beyond control of the person doing the work, that all necessary safeguards be maintained, that all excavated materials not required for refill be disposed of as provided by this article, that the surface of the place of excavation and not less than ten feet in all directions from the outer perimeter thereof be placed in as good condition as it was in immediately prior to the commencement of the work and to the reasonable satisfaction of the public works director that all requirements of this article shall be complied with, and that any defective work which appears within five years from the date of acceptance of the restoration by the public works director shall be subject to repair by the city at the expense of the permit holder. (Code 1942, ch. 17, § 42.)

Section 18-27 Companies operating under city franchise.

Any gas, water or other company, operating under a franchise from the city and which, in the course of its business and the exercise of its franchise rights, finds it necessary to tear up the streets and

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such sidewalks, at numerous locations shall not be required in such cases to make the deposit herein required; but immediately upon the tearing up of any street or sidewalks, such company shall notify the public works director, and shall repair the surface to the satisfaction of the public works director and shall in all other respects comply with the provisions of this article; and, in the case of failure on the part of any such company to comply therewith, the public works director shall repair the site of the excavation and the company shall immediately pay the cost thereof and shall be subject to fine for failure to comply; provided, that where any location is torn up by any company and the provisions of this article are not complied with, in addition to the liability of the company itself, the individuals actually tearing up the street or sidewalk or the person failing to carry out the provisions of this article, shall, upon conviction, be punished as provided by section 1-7. (Code 1942, ch. 17, § 42.)

Section 18-28 Manner of work; restoration of surface.

Any person making an excavation shall do the work carefully and professionally and shall diligently prosecute such work to completion without undue delay. Materials used and methods employed in filling, tamping and closing excavations and in restoring the surface shall comply with all requirements of the public works director.

Section 18-29 Required safeguards; footbridges.

All excavation sites shall be provided with all necessary safety devices to protect persons and animals from falling into ditches or pits. Such devices shall include, inter alia, warning signs, lamps and barricades; and, where practicable, secure planking for pedestrians to cross upon, which shall be well lighted, the entire way, between sunset and sunrise.

Section 18-30 Bridges over excavations in roadways.

Between sunset and sunrise, upon bridges for maintaining traffic over excavations, the roadway shall be indicated by a sufficient number of lights so as to clearly identify the course of the roadway and the edges thereof; and the edges of the bridge itself shall be indicated by red lights or flares.

Section 18-31 Safeguards relating to sidewalk excavations.

All persons causing any excavations to be made for sidewalks shall have the place of excavation properly graded and protected and shall properly barricade such place for the protection of the public. Whenever necessary, they shall, at their own expense, properly erect masonry or steel construction or a retaining wall sufficient to properly support the adjoining earth. Such retaining wall shall be properly coped or provided with an iron railing to guarantee safety to the public.

Section 18-32 Handling, conveyance and disposition of dirt.

No person engaged in excavating or having charge or control of excavation or who may be engaged in or may have charge or control of conveying material from excavations shall deposit or permit to be deposited, in any manner, upon the surface of a sidewalk or any paved street or other public place, by placing, spilling, dropping or tracking from wheels of vehicles or from the feet of animals, any earth,

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clay, mud, sand, gravel or other excavated material; and all such sidewalks, streets and public places adjacent to excavations or traversed by vehicles in the process of conveying material from such excavation or in returning from the place of deposit to the place of excavation, shall be covered with planking so far as may be required to prevent any mud, earth, clay or other material from the excavation or from the place of deposit from reaching the surface of such roadway.

The excavations referred to in this section include those made on private as well as public property.

Section 18-33 State permit.

No permit shall be granted under this article to excavate within any street or right-of-way which is a part of the state highway system except upon display to the engineer of a permit so to do, issued by a competent authority of the state.

Chapter 19: VEHICLES AND TRAFFIC.

Sections:

19-0A	Article I. In General.
19-1	Vehicles on sidewalks--Generally.
19-2	Same--At gasoline service stations.
19-3	Deleted.
19-4	Vehicles to stop before crossing sidewalk or entering street.
19-5	Backing over streets, alleys and intersections.
19-6	Backing wagons or trucks into curbs; double parking.
19-7	Speed limit zones.
19-8	U-turns.
19-8A	Article II. Stopping, Standing and Parking.
19-8D	Division 1. Generally.
19-9	Condition of vehicle while parked.
19-10	Restricted areas generally.
19-11	Parking on approaches to Davis Avenue bridge.
19-12	Parking trucks and commercial vehicles in residential districts.
19-13	Prohibited uses.
19-14	Right-of-way at parking areas.
19-15	Violation of parking time limit.
19-16	Clearing of streets and parking areas.
19-17	Responsibility of registered owner.
19-18	Collisions while parking.
19-18D	Division 2. Metered Parking.
19-19	Compliance with instructions on meters.
19-20	Additional zones.
19-21	Parking spaces; positions of parked vehicles; movement of vehicles.
19-22	Position and indications of parking meters.
19-23	Operation of meters; time limits; exceptions.
19-24	Extension of parking time.
19-25	Permitting vehicle to remain parked when meter shows overtime.
19-26	Use of slugs, etc., in meters.

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19-27	Wilful damage or injury to meters; liability.
19-28	Parking of bicycles in metered spaces.
19-29	Exemptions.
19-30	Regulation of parking other than by meters.
19-31	Violations.
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19-31D	Division I. Registration and Licensing.
19-32	Definitions.
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19-34	Same--Term
19-35	Same--Effect of loss, sale or destruction of bicycles.
19-36	Inspections.
19-37	Removal of serial number or license plate.
19-38	Reserved.
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19-40	Enforcement.
19-41	Suspension of license; impoundment of bicycle.
19-42	Violations.
19-43	Secs. 19-43 to 19-47. Repealed by ordinance adopted July 19, 1979.
19-47D	Division 2. Operational Requirements.
19-48	Applicability of traffic laws.
19-49	Riding on seats; number of passengers.
19-50	Riding in public parks.
19-51	Carrying articles.
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19-53	Mechanical condition.
19-54	Speed.
19-55	Trick riding.
19-56	Clinging to vehicles.
19-57	Turns; stopping and starting.
19-58	Emerging from alleys, driveways and garages.
19-59	Fitness of operator.
19-60	Parking regulations.
19-61	Riding on roadways and bicycle paths.
19-61A	Article IV. Operation of Vehicles.
19-61D	Division 1. Generally.
19-62	Definitions.
19-62D	Division 2. Obedience to and Effect of Traffic Laws.
19-63	Applicability to vehicles upon streets and highways; exceptions.
19-64	Obedience--Required.
19-65	Same--Public officers and employees; inapplicable to persons engaged in highway surface work.
19-66	Authorized emergency vehicles.
19-67	Applicability to persons riding animals or driving animal-drawn vehicles.
19-68	No interference with rights of owners of real property.
19-68D	Division 3. Traffic, Signs, Signals, and Markings.
19-69	Obedience to traffic-control devices and instructions--Official signs to be in proper position, etc.
19-70	Same--At site of street or highway construction or maintenance.
19-71	Traffic-control signal legend.
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19-73	Flashing signals.
19-74	Display of unauthorized devices, signs, etc.; such devices, etc., declared nuisance and subject to removal.
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19-93	One-way roadways and rotary traffic islands.
19-94	Driving on roadways laned for traffic.
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19-95.1	Driving on divided highways.
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19-105	Method of giving hand-and-arm signals.
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19-106	Vehicle approaching or entering intersection.
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19-110	Operation of vehicles and streetcars on approach of authorized emergency vehicles.
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19-112	Pedestrians' right-of-way in crosswalks.
19-113	Crossing at other than crosswalks.
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19-126	Officers authorized to remove illegally stopped vehicles.
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19-145	When person arrested must be taken immediately before a justice of the peace or court.
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19-148	Form for and records of books of traffic citations.
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19-152D	Division 16. Special Stops Required.
19-153	Railroad crossings--Generally.
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19-157	Vehicles must stop at through highways; erection of signs.
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19-159D	Division 17. Accidents.
19-160	Accidents involving death or personal injuries.
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19-166	Written reports--Required.
19-167	Same--When driver unable to report.
19-168	Garages to report accidents and bullet damage.
19-169	Accident reports to be confidential.

As to the parking authority, see §§ 2-57 to 2-63 of this Code. As to riding upon fire apparatus, see § 8-20. As to recording of traffic cases, see § 11-5. As to traffic violations bureau, see § 11-5. As to trains exceeding speed limits, see § 13-13.

Section 19-0A Article I. In General.

For charter provisions as to authority of common council to regulate the use of highways and bridges and the rate of speed or travel thereon, etc., and to prevent injury to highways from overloaded or improperly loaded vehicles, see Char., § 28, subsec. (10).

For state law as to authority of common council to provide for the use of the city's streets, roads and ways, see W. Va. Code, §§ 8-12-2, 8-12-5, subsec. (4). As to authority to adopt traffic regulations not inconsistent with state law, see W. Va. Code, §§ 17C-2-7, 17C-2-8, 17C-6-3, 17C-8-5. As to motor vehicles registration, certificate of title, etc., see W. Va. Code, § 17A-1-1 et seq. As to operators' and chauffeurs' licenses, see W. Va. Code, § 17B-1-1 et seq. As to traffic regulations and laws of the road, see W. Va. Code, § 17C-1-1 et seq. As to state motor vehicle safety responsibility law, see W. Va. Code, § 17D-1-1 et seq. As to state inspection of vehicles, see W. Va. Code, § 17C-16-1 et seq.

Section 19-1 Vehicles on sidewalks--Generally.

No vehicle shall be driven on or across any sidewalk or any part of the street between the curb and the property line. In those streets where there is no regular curb, the curb shall be construed as the ditch or gutter bordering each side of the street, except at a public or permitted private driveway or entrance to private premises. (Code 1942, ch. 18, § 9.)

Section 19-2 Same--At gasoline service stations.

(a) All persons driving motor vehicles over any gasoline service station driveway across any sidewalk shall use extraordinary care and caution to prevent injury to pedestrians on the sidewalks.

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(b) It shall be unlawful for any person to drive any motor vehicle from one street to another across the sidewalks at any corner gasoline service station or garage unless entering for or leaving after the transaction of business thereat or unless the vehicle shall be stopped on such premises after entering from one street and before leaving over the sidewalk of another street. (Code 1942, ch. 17, §§ 2, 3.)

Section 19-3 Deleted.

Section 19-4 Vehicles to stop before crossing sidewalk or entering street.

Vehicles emerging from an alley, private driveway or building shall be stopped immediately before crossing the sidewalk or the sidewalk area extended across an alley and, upon entering the street or public roadway, the emerging vehicle shall yield the right-of-way to all vehicles approaching on the street or public roadway about to be entered. (Code 1942, ch. 18, § 8.)

For corresponding provisions of state law, see W. Va. Code, § 17C-12-6.

Section 19-5 Backing over streets, alleys and intersections.

No vehicle shall be backed into any street or alley intersection or over or upon a sidewalk, nor shall any vehicle be backed at any time or place upon any street or alley, unless such movement can be made in safety and without endangering other users of the street or alley. (Code 1942, ch. 18, § 7.)

Section 19-6 Backing wagons or trucks into curbs; double parking.

No wagons, drays or other vehicles shall be backed into the curb on any of the streets of the city, except for the purpose of loading or unloading and then only where the load is of such character and weight as to necessitate the loading or unloading thereof upon the vehicle placed in such position. In the event of necessity to load or unload by backing the vehicle to the curb, such vehicle shall not be permitted to stand in such position except during the actual time necessary to load or unload; and if such necessary time will exceed fifteen minutes, special permission shall be obtained from the chief of police before the vehicle is backed into such position. All such vehicles shall be moved to a position parallel with the curb as soon as is reasonably possible; and in all cases where the wagon or other vehicle is drawn by horses or tractor and is backed into the curb as herein provided, the horses or tractor shall be turned so as to face parallel with moving traffic. Wherever alleys are available, all loading and unloading must be on the alley and not by parking on or using a street for such purpose. It shall be unlawful, at all times and places, to park any truck or commercial vehicle in the manner known as "double parking." (Code 1942, ch. 18, § 27.)

Section 19-7 Speed limit zones.

Whenever official traffic-control signs are placed, erected or installed pursuant to the provisions of sections 17C-6-2, 17C-6-3, 17C-6-3a or 17C-6-5 of the Code of West Virginia, giving notice of a maximum or minimum speed limit, no driver of a vehicle shall drive in excess of such maximum speed or more slowly than such minimum speed permits.

Section 19-8 U-turns.

No vehicle shall make a U-turn at any place on any paved street in the city. (Code 1942, ch. 18, § 6.)

Section 19-8A Article II. Stopping, Standing and Parking.

Section 19-8D Division 1. Generally.

For state law as to authority of city to regulate the use of streets, crosswalks and public places belonging to city, see W. Va. Code, § 8-12-5, subsec. (4). As to authority of city to regulate the standing and parking of vehicles on streets under city's jurisdiction, see W. Va. Code, § 17C-2-8, subsec. (a) (1). For state motor vehicle law relating to stopping, standing and parking, see W. Va. Code, § 17C-13-1 et seq.

Section 19-9 Condition of vehicle while parked.

No person having control or charge of a motor vehicle shall allow such vehicle to stand unattended on any street without first effectively setting the brakes and stopping the motor of the vehicle and, when standing upon any grade, the front wheels of such vehicle shall be turned toward the curb or side of the street. (Code 1942, ch. 18, § 18.)

For corresponding provisions of state law, see W. Va. Code, § 17C-14-1.

Section 19-10 Restricted areas generally.

When signs or appropriate markings are in place giving notice that stopping, standing or parking is restricted or prohibited in a given location, no person shall stop, stand or park any vehicle except in compliance with the directions of such signs or markings.

Section 19-11 Parking on approaches to Davis Avenue bridge.

There shall be no parking at any time within fifty feet of each point of entrance upon the approaches to the Davis Avenue bridge over the Tygarts Valley River, irrespective of whether such prohibited area is marked by signs or curb or street markings. (9-20-62.)

Section 19-12 Parking trucks and commercial vehicles in residential districts.

No commercial vehicle or motor truck larger than half-ton capacity shall be parked or left standing on any street or alley located in a residential district, as designated by the Zoning Ordinance, for more than five hours at any time, except when actually engaged in loading or unloading merchandise; provided, that trucks belonging to or operated by the occupant of a business premises located in a

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residential district shall be permitted to stand in front of business premises actually occupied by him; and provided further, that any tradesman or mechanic, while actually engaged in work on premises located in a residential district, shall be permitted to have any truck owned or operated by him stand in front of such premises. (1949 Supp., ch. 18, § 41; 5-21-59.)

Section 19-13 Prohibited uses.

No person shall stand or park or permit the standing or parking of a vehicle upon any street or public place for the principal purpose of displaying it for sale; for the primary purpose of advertising; for the purpose of utilizing the street or public place for storage or warehousing; or for washing, greasing or repairing such vehicle; except, that temporary emergency repairs to permit removal of the vehicle may be made on a public street or public place. (Code 1942, ch. 18, § 14.)

Section 19-14 Right-of-way at parking areas.

All moving vehicles passing a space lawfully available for the parking of vehicles shall have the right-of-way over parked vehicles; provided, that when a vehicle is being moved into or from a parking space and is actually in motion, operators of passing vehicles shall be alert to the movement of such other vehicle and shall use reasonable diligence to prevent accidents. (Code 1942, ch. 18, § 25.)

Section 19-15 Violation of parking time limit.

Vehicles which remain standing or parked continuously upon any street for twelve hours or more shall be subject to removal by order of the mayor and stored, at owner's cost and expense and at the owner's risk, upon city premises or, at the option of the mayor, in public storage premises, if such storage is obtainable at reasonable cost. (Code 1942, ch. 18, § 19.)

Section 19-16 Clearing of streets and parking areas.

The mayor may require that parking sections on any of the streets of the city be cleared temporarily for the purpose of cleaning or for any other public purpose, and may cause notices to be given by posting, by barriers or otherwise; and any person neglecting or refusing to move his vehicle as required by such notice shall be guilty of an offense under this chapter, and such vehicle shall be subject to removal as provided by section 19-15. (Code 1942, ch. 18, § 31.)

Section 19-17 Responsibility of registered owner.

No person shall allow any vehicle registered in his name to stand or be parked in any street, alley or public place in the city in violation of any of the laws or ordinances of the city regulating the standing or parking of vehicles. (Code 1942, ch. 18, § 20.)

For state law basis of this section, see W. Va. Code, § 17C-19-2.

Section 19-18 Collisions while parking.

Care shall be taken by all persons parking vehicles to avoid injury to any other parked vehicles and, in all cases of collision or other injury with or to another vehicle, caused by the parking of any vehicle, the operator of the moving vehicle shall be, prima facie, responsible unless the vehicle which is already parked is parked in violation of the provisions of this chapter. In all cases where any vehicle shall strike another vehicle in the process of parking, irrespective of whether such striking shall be in the presence or absence of the owner of the vehicle so struck, it shall be the duty of the operator of the moving vehicle to report the fact to the police authorities or to the mayor. Any operator of such moving vehicle who drives away from the scene of such collision without reporting the collision as aforesaid shall be deemed guilty of an offense under this chapter, irrespective of whether the accident was the fault of such operator. (Code 1942, ch. 18, § 24.)

Section 19-18D Division 2. Metered Parking.

For state law as to authority of city to maintain and operate municipal parking facilities, including parking lots, curb-line parking, meters, etc., see W. Va. Code, §§ 8-16-1, 8-16-2.

Section 19-19 Compliance with instructions on meters.

At any place within the city where a parking meter is now or shall hereafter be installed and in place, pursuant to the authority of the common council, the instructions printed on the legend attached to the meter shall be complied with by each person using the parking space appurtenant to such meter. (Code 1942, ch. 19, § 1.)

Section 19-20 Additional zones.

(a) Establishment by mayor. Pursuant to resolution hereafter adopted by the common council, declaring that traffic conditions justify and required additional parking zones, the mayor is hereby authorized to establish additional parking meter zones and positions upon the streets of the city, and to cause such to be marked, designated and controlled as specified by this division for the parking of vehicles.

(b) Contracts for obtaining meters. Upon adoption by the common council of a resolution establishing additional parking meter zones, as provided by subsection (a) of this section, the mayor is directed and empowered to enter into negotiations for the making of a contract to acquire and install suitable parking meters for the purpose of carrying such resolution into effect; and when the terms, provisions and conditions of such contract shall be found by the mayor to be suitable, he shall submit the contract to the common council and the council shall have the sole right of authorizing the making of such contract; provided, that no contract shall be negotiated or entered into for the purposes aforesaid save and except upon the condition that the payment of the cost, including the cost of the installation of such parking meters, shall be derived wholly from the revenue and funds obtained from the operation of such parking meters, and no debt shall be imposed upon the city for the cost of such meters and the installation thereof. (Code 1942, ch. 19, §§ 2, 4.)

Section 19-21 Parking spaces; positions of parked vehicles; movement of vehicles.

(a) In each parking meter zone a parking space of approximately twenty feet in length shall be marked on the street or curb adjacent to the meter and parallel with the curb; except, that where angle parking is required, such parking space shall be marked on the street at an angle of forty-five degrees, and the width of such space shall be approximately ten feet.

(b) Vehicles parked parallel to the curb shall have both front and rear wheels nearest the curb placed within one foot thereof, and the front wheels of vehicles parked diagonally shall be placed in contact with the curb.

(c) Vehicles parked in parallel positions shall be so placed that the center of the forward half of the vehicle, as nearly as is practicable, shall be opposite the parking meter. Vehicles parked in diagonal positions shall be so placed that the foremost part of the vehicle shall be opposite to and fully in clearance of the meter.

(d) Parking movements shall be in the normal direction of traffic movement. (Code 1942, ch. 19, §§ 6, 8.)

Section 19-22 Position and indications of parking meters.

Parking meters shall be installed in the parking meter zones in the parking positions indicated, as closely adjacent to the curb as is practicable without exposing the meters to danger of injury by vehicles and without interfering with the free passage of vehicles or pedestrians. Each parking meter shall be so set as to show or display, by some appropriate device, that the respective allotted parking position is or is not legally in use; and each such meter shall be provided with an appropriate designation to indicate the legal parking time established by this chapter; and the operation of such meters shall indicate, by proper device and characters, the duration of legal parking in such position and the expiration of such period and the period of illegal or overtime parking. (Code 1942, ch. 19, § 7.)

Section 19-23 Operation of meters; time limits; exceptions.

(a) Duty of driver; limited exception for commercial vehicles; general exception on Sundays and holidays. It shall be unlawful and a violation of this section to park a vehicle in a parking position indicated by a meter unless a coin of the United States of the denomination indicated on the meter for the time for which parking is desired is deposited immediately in the parking meter at such position; and failure to make such deposit shall constitute a violation of this section; provided, that commercial vehicles may load or unload in such parking space as provided by subsection (c) of this section; and provided, further, that vehicles may park in such parking spaces on Sundays and other holidays as provided by subsection (e) of this section.

(b) Indication of parking time; overtime parking. Upon depositing such coin, such driver shall place the parking meter in operation in accordance with the directions contained thereon, and each parking position may be lawfully occupied by such vehicle for the parking time prescribed for such parking position. If the vehicle shall remain in such parking position beyond the permitted parking time limit, the parking meter shall, by its dial or appropriate device, indicate illegal parking and thereafter such vehicle shall be held to be parked overtime and beyond the period of legal parking time and such overtime or illegal parking shall be a violation of this section.

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(c) Loading or unloading trucks or commercial vehicles. No truck or commercial vehicle shall be parked at any time in any metered parking position, unless such parking is solely for the purpose of immediately loading or unloading such vehicle, and only for such purposes shall such a vehicle occupy a metered parking position without deposit of a five-cent coin.

(d) Time limits. Subject to the provisions for deposit of a coin, as specified by subsection (a) of this section, the permitted parking time in any metered parking position shall be limited to the period shown on the dial face of that particular meter, and such time limit shall apply between 9:00 A.M. and 6:00 P.M. on Mondays, Tuesdays, Wednesdays, Thursdays and Saturdays; and on Fridays such time limit shall apply between 9:00 A.M. and 9:00 P.M.

(e) Sundays and holidays. The time limit for parking vehicles shall not apply on Sunday or on any legal holiday which is generally observed by business places located within the parking zone areas, nor to the days devoted to any city-wide events or celebrations announced by the mayor; and during such excluded days vehicles may be parked in metered positions without the deposit of a coin in the parking meter. (Code 1942, ch. 19, §§ 9, 12, 14; 4-5-56; 4-6-61.)

Section 19-24 Extension of parking time.

It shall be unlawful and a violation of this section for any person to deposit or cause to be deposited in a parking meter a coin for the purpose of increasing or extending the parking time for any vehicle beyond the limit indicated on the parking meter at the parking position of such vehicle. (Code 1942, ch. 19, § 10.)

Section 19-25 Permitting vehicle to remain parked when meter shows overtime.

It shall be unlawful and a violation of this section for any person to permit a vehicle to remain or be placed in a metered parking position while the parking meter at such parking position displays a signal indicating that such parking position has already been occupied beyond the period of legal parking time permitted for such parking position. (Code 1942, ch. 19, § 11.)

Section 19-26 Use of slugs, etc., in meters.

It shall be unlawful and a violation of the provisions of this section to deposit or cause to be deposited in any parking meter any slug, device or any other metal article or object as a substitute for a lawful coin of the United States. Any person violating this section shall, upon conviction, be fined not more than five hundred dollars or imprisoned for not more than thirty days or shall be both so fined and imprisoned. (Code 1942, ch. 19, § 13.)

Section 19-27 Wilful damage or injury to meters; liability.

It shall be unlawful and a violation of this section for any person wilfully to deface, tamper with, damage, open or break, destroy or impair the usefulness of any parking meter installed under this division, and the unauthorized removal of any parking meter or of money therefrom shall also constitute a violation of this section. In addition, any person who shall wilfully or negligently and without authority of

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law, deface, tamper with, damage, open or break, impair the usefulness of or remove any parking meter installed under this division shall be liable to the city or to the owner of the meter for the actual damage done, for which the city shall have a right of action in its name for its own benefit or for the benefit of the owner of the meters.

Any person violating this section shall, upon conviction, be fined not more than five hundred dollars or imprisoned for not more than thirty days, or shall be both so fined and imprisoned. (Code 1942, ch. 19, § 15.)

Section 19-28 Parking of bicycles in metered spaces.

No bicycle shall be parked at any time in any metered parking position, with or without the deposit of a coin of the United States in the parking meter; and any such parking of a bicycle shall be unlawful and a violation of this section. (Code 1942, ch. 19, § 16.)

Section 19-29 Exemptions.

The provision of this division shall not apply to authorized emergency vehicles. (Code 1942, ch. 19, § 17.)

Section 19-30 Regulation of parking other than by meters.

Full power and authority is reserved to the common council to designate, from time to time, in the interest of the general public welfare, parking positions within any parking meter zone, the use of which positions may be limited or regulated otherwise than by parking meters; provided, that such parking positions be appropriately marked and designated as the common council shall require. (Code 1942, ch. 19, § 18.)

Section 19-31 Violations.

Any person violating any provision of this division for which no other penalty is provided, or aiding, abetting or assisting in any such violation shall, upon conviction, be fined a sum not less than one dollar nor more than fifty dollars for each offense; and for a second or further violation, the person convicted may also be sentenced to imprisonment for a period not to exceed thirty days. (Code 1942, ch. 19, § 19.)

Section 19-31A Article III. Bicycles.

Section 19-31D Division I. Registration and Licensing.

Section 19-32 Definitions.

For the purposes of this article, the following words and phrases shall have the meanings

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respectively ascribed to them by this section:

Bicycle. A vehicle with two tandem wheels, neither of which is less than sixteen inches in diameter, with solid or pneumatic tires, having a steering bar or wheel and a saddle seat and propelled by human power.

Dealer in bicycles. Any person engaged in the sale of bicycles at retail or wholesale.

Licenses. Any person who procures from the city a license plate for a bicycle and an accompanying registration card.

License plate. A metal plate or a tag or decalcomania issued by the city for a bicycle, and bearing the license number of such bicycle.

Operating. The use, putting into action or causing to function a bicycle by a person mounted thereon.

Rental agency. Any person engaged in the business of offering for rental and renting bicycles for hire by the public.

In addition to the above definitions, any applicable definitions of state law of this article shall be deemed to be included herein. (9-4-86.)

Section 19-33 License--Required.

(a) Application for registration and license for a bicycle shall be made by the bicycle owner in writing, in duplicate, upon forms furnished by the police department. Such application shall be signed by the owner, provided, that if the owner is a person under the age of eighteen years, such application shall be signed by the parent or legal guardian of such minor owner.

The application shall state:

(1) The full name and addresses of the owner and, if the owner is under the age of eighteen, shall state the full name and address of the parent or legal guardian of the owner.

(2) The name of the manufacturer.

(3) The serial number.

(4) Size.

(5) Number of speeds (if applicable).

(6) Model.

(7) Style (Boys or Girls).

(8) Color.

(9) Date ownership acquired.

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The application for registration and license shall be filed with the police department. At the time of presenting the application the bicycle to be registered and licensed shall be brought to the police department for inspection and examination. Upon filing such application the applicant shall pay a license fee of one dollar.

(b) A member of the police department shall examine the bicycle and, if the member finds the mechanical condition thereof such that it can be safely operated and further finds that the statements made in the application are true, the member shall mark the application "approved" and attach his signature thereto. One application form so approved shall be kept on file at the police department and the other shall be returned to the applicant and the duplicate forms so completed and approved shall constitute the registration card for each bicycle.

(c) Following registration a member of the police department shall affix a license decal upon the bicycle so registered. Such license decal shall display a license number and "CITY OF ELKINS, WVA". The license shall be entered upon the registration card. (9-4-86.)

Section 19-34 Same--Term

Each license issued pursuant to this article shall be for a period of one year, to be renewed by owner at the end of twelve-month period after issued. The person in whose name the license is issued is the owner of the licensed bicycle. (9-4-86.)

Section 19-35 Same--Effect of loss, sale or destruction of bicycles.

When any bicycle which has been registered and licensed, as herein provided, is lost, sold, destroyed or otherwise disposed of, the owner shall immediately surrender to the police department the registration card issued therefor, and in the case of sale or other transfer of ownership such registered owner shall furnish the name and address of the new owner.

Immediately upon the sale or other transfer of ownership of a registered and licensed bicycle, the new owner shall apply to the police department for a new registration and license in the name of the new owner. Upon filing such an application and the payment of a fee of one dollar, the new owner shall be issued a registration card.

The number of any license surrendered as provided herein, except where the bicycle has been sold or ownership otherwise voluntarily transferred by the owner, shall not be reissued. (9-4-86.)

Section 19-36 Inspections.

Any member of the police department is authorized to inspect any bicycle at any reasonable time, for the purpose of making a check on the license plate, license number and serial number, and for the purpose of determining the mechanical condition of the bicycle. (9-4-86.)

Section 19-37 Removal of serial number or license plate.

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It shall be unlawful for any person to wilfully or maliciously remove, destroy, mutilate or alter the serial number of any bicycle registered hereunder or to remove, destroy, mutilate or alter any decal or registration card during the time in which the decal or registration card is in force. The chief of police is hereby authorized to stamp legible numbers on the frame of a bicycle, for identification purposes, upon which no serial number can be found or upon which the serial number is illegible or insufficient for identification purposes. (9-4-86.)

Section 19-38 Reserved.

Section 19-39 Bicycle without serial number.

It shall be unlawful for any person residing in the city or any dealer in bicycles operating in the city to purchase, receive in trade or otherwise acquire any bicycle from which the serial number on the frame has been removed, destroyed, mutilated or altered, without first reporting such defect to the chief of police. (9-4-86.)

Section 19-40 Enforcement.

The chief of police shall enforce the provisions of this article. (9-4-86.)

Section 19-41 Suspension of license; impoundment of bicycle.

The chief of police may revoke or suspend for a period of thirty days any bicycle license for any violation of any provision of this article, or if any applicable provision of the statutes relating to traffic; and, in addition, the chief of police may impound the bicycle of any such violator for a period of not less than ten nor more than ninety days. (9-4-86.)

Section 19-42 Violations.

Any person violating any provision of this article shall be fined not less than one dollar nor more than one hundred dollars for each offense. (9-4-86.)

Section 19-43 Secs. 19-43 to 19-47. Repealed by ordinance adopted July 19, 1979.

Section 19-47D Division 2. Operational Requirements.

As to riding of bicycles on sidewalks, see § 18-4 of this Code. As to parking bicycles in metered parking spaces, see § 19-28.

Section 19-48 Applicability of traffic laws.

Every person riding a bicycle upon a roadway shall be granted all the rights and shall be subject

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to all the duties applicable to the driver of a vehicle by this chapter, except as to special regulations in this section and except as to those provisions of this chapter which, by their nature, can have no application. (4-7-66, § 3.)

For corresponding provisions of state law, see W. Va. Code, § 17C-11-2.

Section 19-49 Riding on seats; number of passengers.

(a) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereon.

(b) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped. (4-7-66, § 3.)

For corresponding provisions of state law, see W. Va. Code, § 17C-11-3.

Section 19-50 Riding in public parks.

Bicycles may be operated on walks in public parks, but in single file only. Under all circumstances, the rider shall yield the right-of-way to pedestrians using the walk, and due and proper care shall, at all times, be exercised by the rider for pedestrians. When approaching a pedestrian on the sidewalk, the speed of a bicycle shall be reduced to a speed which is no greater than is necessary to continue the operation of the bicycle without the rider dismounting, and shall not be increased until the pedestrian has been passed. No bicycle shall be operated upon any sidewalk in any other portion of the city. (4-7-66, § 3.)

Section 19-51 Carrying articles.

No person operating a bicycle shall carry a package, bundle or article which prevents the driver from keeping at least one hand upon the handlebars. (4-7-66, § 3.)

For corresponding provisions of state law, see W. Va. Code, § 17C-11-6.

Section 19-52 Lamps and other equipment.

(a) Every bicycle, when in use at night, shall be equipped with a lamp on the front, which shall emit a white light visible from a distance of at least five hundred feet to the front, and with a red reflector on the rear of a type approved by the state department of motor vehicles which shall be visible from fifty feet to three hundred feet to the rear when directly in front of the lawful upper beams of the headlamps on motor vehicles. A lamp emitting a red light, visible from a distance of five hundred 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 one hundred feet; except, that a bicycle shall not be equipped with nor shall any person use upon a bicycle any siren or whistle.

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(c) Every bicycle shall be equipped with a brake which will enable the operator to make the wheels skid on dry, level, clean pavement. (4-7-66, § 3.)

For corresponding provisions of state law, see W. Va. Code, § 17C-11-7.

Section 19-53 Mechanical condition.

No person shall operate a bicycle which is not in such mechanical condition that it can be safely operated. (4-7-66, § 3.)

Section 19-54 Speed.

No bicycle shall be operated, at any time, at a higher speed than is reasonable or proper, and every bicycle shall be operated with reasonable regard to the safety of the rider and of other persons and property. (4-7-66, § 3.)

Section 19-55 Trick riding.

No person shall, while operating a bicycle, indulge or engage in any kind of trick or unsafe riding. (4-7-66, § 3.)

Section 19-56 Clinging to vehicles.

No person operating a bicycle shall cling or attach himself or the bicycle to any other moving vehicle. (4-7-66, § 3.)

For corresponding provisions of state law, see W. Va. Code, § 17C-11-4.

Section 19-57 Turns; stopping and starting.

The operator of a bicycle on a roadway, when making a right turn, shall follow the right-hand edge of the roadway; the operator of a bicycle on a roadway, when making a left turn, shall approach the point of turning in the traffic lane nearest the center of the roadway. No operator of a bicycle shall start, slow down, stop or attempt to turn without first indicating such movement as provided by state law. (4-7-66, § 3.)

Section 19-58 Emerging from alleys, driveways and garages.

The operator of a bicycle emerging from an alley, driveway, garage or private sidewalk shall stop the bicycle immediately prior to driving onto or across a public sidewalk or onto or across a public sidewalk line projected across an alley, and shall exercise extreme care in making such movements. (4-7-66, § 3.)

Section 19-59 Fitness of operator.

No person shall operate a bicycle while under the influence of any intoxicating liquor or drugs, or while physically or mentally unfit to safely operate a bicycle. (4-7-66, § 3.)

Section 19-60 Parking regulations.

Bicycles, when parked in the business district, shall be parked in zones or places designated and marked for that purpose. It shall be unlawful to park any bicycle beside buildings so as to interfere with pedestrians or along roadways where they may interfere with traffic or with persons getting into or out of motor vehicles. No person other than the owner or operator shall move or in any manner interfere with any bicycle properly parked; nor shall any person interfere with or in any manner hinder any person from properly parking a bicycle; except, that members of the police and fire departments may move or, when proper, prevent the parking of a bicycle when, in the judgment of the policeman or fireman, his action is necessary to properly safeguard persons or property. (4-7-66, § 3.)

Section 19-61 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 is 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 a roadway which are 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.
(4-7-66, § 3.)

For corresponding provisions of state law, see W. Va. Code, § 17C-11-5.

Section 19-61A Article IV. Operation of Vehicles.

Section 19-61D Division 1. Generally.

Section 19-62 Definitions.

The following words and phrases when used in this article shall, for the purpose of this article, have the meanings respectively ascribed to them in this section:

Authorized emergency vehicle. Vehicles of the fire department, duly chartered rescue squad, police vehicles and such ambulances and emergency vehicles of municipal departments or public service corporations as are designated or authorized by the commissioner or the chief of police of an incorporated city, and such privately owned ambulances and emergency vehicles as are designated by the commissioner.

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Bicycle. Every device propelled by human power upon which any person may ride, having two tandem wheels either of which is more than twenty inches in diameter.

Bus. 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.

Business district. The territory contiguous to and including a highway when within any six hundred 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 three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.

Controlled-access highway. 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.

Crosswalk. That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; and any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

Driver. Every person who drives or is in actual physical control of a vehicle.

Explosives. 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.

Farm tractor. Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry.

Flammable liquid. Any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closed-cup test device.

Gross weight. The weight of a vehicle without load plus the weight of any load thereon.

Intersection.

(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 highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict; and

(b) Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every

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crossing of two roadways of such highways shall be regarded as a separate intersection.

Laned roadway. A roadway which is divided into two or more clearly marked lanes for vehicular traffic.

Metal tire. Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard nonresilient material.

Motorcycle. 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.

Motor-driven cycle. Every motorcycle, including every motor scooter, with a motor which produces not to exceed five horsepower, and every bicycle with motor attached.

Motor vehicle. 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.

Owner. 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 chapter.

Park. When prohibited, the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

Pedestrian. Any person afoot.

Pneumatic tire. Every tire in which compressed air is designed to support the load.

Pole trailer. 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.

Police officer. Every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

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.

Railroad. A carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

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Railroad sign or signal. 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.

Railroad train. A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars.

Residence district. The territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

Right-of-way. The privilege of the immediate use of the highway.

Road tractor. Every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

Roadway. That portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" as used herein shall refer to any such roadways separately but not to all such roadways collectively.

Safety zone. 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.

School bus. 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.

School grounds. 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.

Semitrailer. Every vehicle with or without motive power, other than a police 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.

Sidewalk. That portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

Solid tire. Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

Stop. When required, the complete cessation from movement.

Stop, stopping, or standing. When prohibited, 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.

Street or highway. 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.

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Through highway. Every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter.

Traffic. Pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances either singly or together while using any highway for purposes of travel.

Traffic-control devices. All signs, signals, markings and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

Traffic-control signal. Any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

Trailer. 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.

Truck. Every motor vehicle designed, used or maintained primarily for the transportation of property.

Truck tractor. Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

Vehicle. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

Section 19-62D Division 2. Obedience to and Effect of Traffic Laws.

Section 19-63 Applicability to vehicles upon streets and highways; exceptions.

The provisions of this chapter 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 sections 19-69 to 19-151 shall apply upon streets and highways.

Section 19-64 Obedience--Required.

It is unlawful and, unless otherwise declared in this article with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this article.

Section 19-65 Same--Public officers and employees; inapplicable to persons engaged in highway surface work.

(a) The provisions of this article applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, 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 chapter with reference to authorized emergency vehicles.

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

Section 19-66 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 article;
- (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 direction.

(c) The exemptions herein granted to an authorized emergency vehicle shall apply only when the driver of any said 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 17C-15-26 of the Code of West Virginia, which is visible under normal atmospheric conditions from a distance of five hundred 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.

Section 19-67 Applicability 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 article, except those provisions of this article which by their very nature can have no application.

Section 19-68 No interference with rights of owners of real property.

Nothing in this article shall be construed to prevent the 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 article, or otherwise regulating such use as may seem best to such owner.

Section 19-68D Division 3. Traffic, Signs, Signals, and Markings.

Section 19-69 Obedience to traffic-control devices and instructions--Official signs to be in proper position, etc.

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

(b) No provision of this article 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.

Section 19-70 Same--At site of street or highway construction or maintenance.

The driver of any vehicle shall obey the traffic-control instructions of persons authorized by the state road commissioner or by proper local authorities to operate traffic-control devices, act as flagmen or operate follow-vehicles at or near the site of street or highway construction or 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 article. Any person failing to comply with the requirements of this section shall be guilty of a misdemeanor.

Editor's note. --For transfer of duties of state road commissioner to department of highways, see § 17-2A-1.

Section 19-71 Traffic-control signal legend.

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 said 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 17C-12-2 of the

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Code of West Virginia, 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 shown 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 paragraphs (2) and (3) of this subsection (c).

(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 said intersection, except that local authorities in their respective jurisdictions may by ordinance prohibit any such right turn against a red or "stop" signal at any intersection within such jurisdiction, 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 said 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 said intersection, except that local authorities in their respective jurisdictions may by ordinance prohibit any such left turn against a red or "stop" signal at any intersection within such jurisdiction, 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.

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(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.

(f) The motorman of any streetcar shall obey the above signals as applicable to vehicles.

Section 19-72 Pedestrian walks and wait 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 road-way 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 crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.

Section 19-73 Flashing 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:

(1) 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.

(2) 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.

Section 19-74 Display of unauthorized devices, signs, etc.; such devices, etc., declared nuisance and subject to removal.

(a) No local authority or person shall place, maintain or display upon or in view of any 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 highway any traffic-control device bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to highway of signs giving useful directional information and of a type that cannot be mistaken for official signs.

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(b) Every such prohibited device, signal, sign or marking is hereby declared to be a public nuisance and the state road commissioner or other authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

Section 19-75 Interference with official traffic-control devices or railroad signs or signals.

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.

Section 19-75D Division 4 Serious Traffic Offenses.

Section 19-76 Driving under the influence of alcohol, controlled substances or drugs -- Penalties.

(a) Any person who:

(1) Drives a vehicle in this city while he 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,

(2) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this city; shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail or city jail for not less than one day nor more than five hundred dollars.

For corresponding provisions of state law, see W. Va. Code section 17C-5-2 (e).

(c) Any person who:

(1) Knowingly permits his vehicle to be driven in this city 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,

(2) Shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in

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the county jail or city jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

For corresponding provisions of state law, see W. Va. Code section 17C-5-2 (f).

(d) Any person who:

(1) Knowingly permits his vehicle to be driven in this city by any other person who is an habitual user of narcotic drugs or amphetamine or any derivative thereof,

(2) Shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail or city jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

For corresponding provisions of state law, see W. Va. Code section 17-5-2 (g).

(e) The fact that any person charged with a violation of subsection (a) or (b) of this section, or any person permitted to drive as described under subsection (c) or (d) of this section, 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), or (d) of this section.

For corresponding provisions of state law, see W. Va. Code section 17C-5-2 (k).

(f) For purposes of this section, the term "controlled substance" shall have the meaning ascribed to it in chapter 60-A (section 60 A-1-1 et seq.) of the Code of West Virginia. For corresponding provisions of state law, see W. Va. Code section 17C-5-2 (1).

(g) The sentences provided herein upon conviction for a violation of this section are mandatory and shall not be subject to suspension or probation.

For corresponding provisions of state law, see W. Va. Code section 17C-5-2 (m).

(h) The re-enactment of this section shall not in any way add to or subtract from the elements of the offenses set forth herein and earlier defined in the prior enactment of this section. (9-15-83.)

Section 19-77 Definition of phrase "in the city"; phrases synonymous with driving under the influence of alcohol; validation of warrants.

(a) For purposes of this city, 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.

(b) When used in this code, 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 section 19-76 of this division.

(c) From and after the effective date of this section, a warrant which charges or alleges an offense prohibited by the provisions of section 19-76 of this division, and which warrant uses any of the terms or

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phrases set forth in subsection (b) of this section shall not thereby be fatally defective if such warrant otherwise informs the person so accused of the charges against him. (3-17-83; 9-15-83.)

For corresponding provisions of state law, see W. Va. Code section 17C-5-2a.

Section 19-78 Reckless driving; penalties.

(a) Any person who drives any vehicle upon any street or highway, or upon any residential street, or in any parking area, or upon the ways of any state institution, or upon the property of the Randolph County board of education, or upon any property within the state park and public recreation system established by the director of the department of natural resources pursuant to W. Va. Code section 20-4-3, or upon any property within the city park and recreation system in wilful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(b) The provisions of subsection (a) of this section shall not apply to those areas which have been temporarily closed for racing sport events or which may be set aside by the director of the department of natural resources within the state park and recreation system for exclusive use by motorcycles or other recreational vehicles.

(c) Every person convicted of reckless driving may be punished upon a first conviction by imprisonment for a period of not less than five days nor more than ninety days, or by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by both such fine and imprisonment, and on a second or subsequent conviction may be punished by imprisonment for not less than ten days nor more than six months, or by a fine of not less than fifty dollars nor more than one thousand dollars, or by both such fine and imprisonment.

For corresponding provisions of state law, see W. Va. Code section 17C-5-3. (9-15-83.)

Section 19-78D Division 5. Speed Restrictions.

Section 19-79 Speed limitations generally.

(a) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards, then existing. 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 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 shall be lawful, but any speed in excess of the limits specified in this section or established as hereinafter authorized shall be unlawful.

(1) Fifteen miles per hour when passing a school building or school grounds abutting on a road, street or highway during school recess or while children are going to or leaving school during opening or closing hours. Such speed restriction shall 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

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the state road commissioner;

- (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 chapter.

The speed set forth in this section may be altered as authorized in sections 17C-6-2 and 17C-6-3 of the Code of West Virginia.

(c) The driver of every vehicle shall, consistent with the requirements of subsection (a), 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 in no event be lower than fifty-five miles per hour and the speed limit specified in subsection (b) hereof shall not apply.

Section 19-80 Minimum speed regulations.

(a) 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.

(b) Whenever the commissioner or local authorities within their respective jurisdiction determine on the basis of an engineering and traffic investigation that slow speeds on any part of the highway consistently impede the normal and reasonable movement of traffic, the commissioner or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law.

Section 19-81 Special speed limitations--Vehicles not designed for carrying passengers and equipped with pneumatic tires.

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

- (a) Twenty miles per hour in any business district;
- (b) Twenty-five miles per hour in any residence district;
- (c) Forty miles per hour on open country highway;
- (d) Trucks licensed at eight thousand pounds gross vehicle weight or less shall be permitted the same speed as passenger cars.

Section 19-82 Same--All other vehicles.

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

(b) No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a 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 signposted as provided in this section.

(c) The state road commission upon request from any local authority shall, or upon its own initiative may, conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this chapter, the commission shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of one hundred feet before each end of such structure.

(d) Upon the trial of any person charged with a violation of this section, proof of said determination of the maximum speed by said commission and the existence of said signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to such bridge or structure.

Section 19-83 Charging violations; rule in civil actions.

(a) In every charge of violation of any speed regulations in this article the complaint, and also the summons or notice to appear, shall specify the speed at which the defendant is alleged to have driven, also the speed applicable within the district or at the location and in the event charge shall also be made of violation of any other provision of this article, the complaint and the summons or notice to appear shall also specify such other offense alleged to have been committed.

(b) The provision of this article declaring speed limitations shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence on the part of the defendant as the proximate cause of an accident.

Section 19-84 Prima facie evidence of speed by devices employing microwaves; placing of signs relative to 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 department of public safety, by police officers of incorporated municipalities in classes one, two and three, as defined in section 8-1-3 of the Code of West Virginia, and by the sheriff and his deputies of the several counties of the state. The evidence so obtained shall be accepted as prima facie evidence of the speed of such vehicle.

In order to inform and educate the public generally that speed of motor vehicles operating within the state is being tested by radar mechanisms, the state road commission shall locate and place suitable and informative stationary and movable signs at strategic points on and along highways in each county of

the state giving notice to the public that such radar mechanisms are in use.

Section 19-85 Racing on streets and highways.

It shall be unlawful for any person to 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 state. For the purposes of this subdivision, "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.

Section 19-85D Division 6. Driving on Right Side of Roadway, Passing, Etc.

Section 19-86 Driving on 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.

Section 19-87 Passing vehicles 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.

Section 19-88 Overtaking and passing vehicle proceeding in same directions--Passing on the left generally.

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 vehicle until completely passed by the overtaking vehicle.

Section 19-89 Same--When overtaking on the right is permitted.

(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.

Section 19-90 Same--Limitations on overtaking on the left.

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 one hundred feet of any vehicle approaching from the opposite direction.

Section 19-91 Same--Further limitations on driving to left of center 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 highway where the driver's

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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 one hundred feet of or traversing any intersection or railroad grade crossing;

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

(b) The foregoing limitations shall not apply upon a one-way roadway.

Section 19-92 Same--No-passing zones.

The state road commission is hereby authorized to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person every driver of a vehicle shall obey the directions thereof.

Section 19-93 One-way roadways and rotary traffic islands.

(a) The state road commission may designate any highway or any separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof.

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

(c) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

Section 19-94 Driving on roadways laned for 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 except when overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or 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.

Section 19-95 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 highway.

(b) It shall be unlawful for the operator of any motor truck, registered for a gross weight of more than eight thousand pounds, bus, special mobile equipment or any motor vehicle drawing another vehicle operating upon any roadway outside of a business or residence district, to follow within two hundred 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.

Section 19-95.1 Driving on divided highways.

Whenever any 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.

Section 19-96 Controlled-access roadway.

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.

Section 19-96D Division 7. Turning and Starting.

Section 19-97 Required position and method of turning at intersections.

The driver of a vehicle intending to turn at an intersection shall do so as provided in this division.

Section 19-98 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.

Section 19-99 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.

Section 19-100 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.

Section 19-101 Turning on curve or crest of grade prohibited.

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 five hundred feet.

Section 19-102 Starting parked, etc., vehicle.

No person shall start a vehicle which is stopped, standing or parked unless and until such movement can be made with reasonable safety.

Section 19-103 Turning movements and required signals.

(a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in sections 19-98 to 19-100, 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 one hundred 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.

Section 19-104 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 said signals must be given by such a lamp or lamps or signal device.

Section 19-105 Method of giving 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.

Section 19-105D Division 8. Right-of-Way.

Section 19-106 Vehicle approaching or entering intersection.

- (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 highway.
- (b) When two vehicles enter an intersection from a different 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) are modified at through highways and otherwise as hereinafter stated in this article.

Section 19-107 Vehicle turning left at intersection.

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 said driver, having so yielded and having given a signal when and as required by this article, may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicles making the left turn.

Section 19-108 Vehicle entering through highway or stop intersections.

- (a) The driver of a vehicle shall stop as required by section 17C-12-5 of the Code of West

Virginia, at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection from said through highways or which are approaching so closely on said through highway as to constitute an immediate hazard, but said 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 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.

Section 19-109 Vehicle entering highway from private road or driveway.

The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right-of-way to all vehicles approaching on said highway.

Section 19-110 Operation of vehicles and streetcars on approach of authorized emergency vehicles.

(a) Upon the immediate approach of an authorized emergency vehicle equipped with at least one flashing lighted lamp of a color authorized by section 17C-15-26 of the Code of West Virginia, which is visible under normal atmospheric conditions from a distance of five hundred 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:

(1) 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.

(2) Upon the approach of an authorized emergency vehicle, as above stated, the motorman of every streetcar shall immediately stop such car clear of any intersection and keep it 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 highway.

Section 19-110D Division 9. Pedestrians' Rights and Duties.

Section 19-111 Pedestrians subject to traffic regulations; powers of local authorities.

(a) Pedestrians shall be subject to traffic-control signals at intersections as provided in section 19-71, unless required by local ordinance to comply strictly with such signals, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this article.

(b) Local authorities are hereby empowered by ordinance to require that pedestrians shall strictly comply with the directions of any official traffic-control signal and may by ordinance prohibit pedestrians

from crossing any roadway in a business district or any designated highways except in a crosswalk.

Section 19-112 Pedestrians' right-of-way in crosswalks.

(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 19-113 (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.

Section 19-113 Crossing at other than crosswalks.

(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.

Section 19-114 Drivers to exercise due care.

Notwithstanding the foregoing provisions 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.

Section 19-115 Pedestrians to use right half of crosswalks.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

Section 19-116 Pedestrians on roadways.

(a) Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(b) Where sidewalks are not provided any pedestrian walking along and upon a highway shall

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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.

Section 19-117 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 flagmen.

Section 19-117D Division 10. Operation of Bicycles and Play Vehicles.

Section 19-118 Obedience to provisions; duty of parents and guardians.

(a) It is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this division.

(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 article.

(c) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

Section 19-119 Traffic laws applicable to persons riding bicycles.

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 chapter, except as to special regulations in this article and except as to those provisions of this chapter which by their nature can have no application.

Section 19-120 Riding on bicycle seats; carrying more than one person on bicycle.

(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.

Section 19-121 Clinging to vehicles.

No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle shall attach the same

or himself to any streetcar or vehicle upon a roadway.

Section 19-122 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.

Section 19-123 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.

Section 19-124 Lamps and other equipment on bicycles.

(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 five hundred feet to the front and with a red reflector on the rear of a type approved by the department which shall be visible from all distances from fifty feet to three hundred 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 five hundred 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 one hundred 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.

Section 19-124D Division 11. Stopping, Standing and Parking.

Section 19-125 Outside of business or residence districts.

(a) Upon any 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 highway when it is practicable to stop, park or so leave such vehicle off such part of said highway, but in every event an unobstructed width of the 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 two hundred feet in each direction upon such highway.

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(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 highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

Section 19-126 Officers authorized to remove illegally stopped vehicles.

(a) Whenever any police officer finds a vehicle standing upon a highway in violation of any of the foregoing provisions of this article 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 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.

Section 19-127 Prohibited in specified 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) On a crosswalk;
- (6) Within twenty feet of a crosswalk at an intersection;
- (7) Within thirty feet upon the approach to any flashing beacon, stop sign or traffic-control signal located at the side of a roadway;
- (8) 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;
- (9) Within fifty feet of the nearest rail of a railroad crossing;
- (10) 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 said entrance (when properly signposted);
- (11) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;

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- (12) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
 - (13) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;
 - (14) At any place where official signs prohibit stopping;
 - (15) 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;
 - (16) Upon any controlled-access highway;
 - (17) At any place on any highway where the safety and convenience of the traveling public is thereby endangered.
- (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.

Section 19-128 Right and left parallel parking; angle parking; highway signs restricting parking, etc.

- (a) Except as otherwise provided in this section every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen inches of the right-hand curb.
- (b) Local authorities may by ordinance permit parking of vehicles with the left-hand wheels adjacent to and within eighteen inches of the left-hand curb of a one-way roadway.
- (c) Local authorities may by ordinance permit angle parking on any roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the state road commission has determined by resolution or order entered in its minutes that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.
- (d) The state road commission with respect to highways under its jurisdiction may place signs prohibiting or restricting the stopping, standing or parking of vehicles on any highway where in its opinion, as evidenced by resolution or order entered in its minutes, such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such signs shall be official signs and no person shall stop, stand or park any vehicle in violation of the restrictions stated on such signs.

Section 19-129 Privileges for disabled; qualification; application; violation; revocation.

- (a) A physically disabled person who displays upon a motor vehicle stopped, left standing either attended or unattended, or parked by him, or a vehicle under his direction and for his use, a distinguishing insignia provided for in this section may exercise the stopping, standing or parking privileges provided in this section. The distinguishing insignia shall be displayed on the motor vehicle in the manner prescribed by the commissioner.

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(b) A person desiring to have a distinguishing insignia issued to him under this section shall submit to the commissioner:

- (1) An application therefor on a form prescribed and furnished by the commissioner;
- (2) A certificate issued by a person licensed to practice medicine in this state stating that the applicant is physically disabled within the meaning of this section; and
- (3) A fee of one dollar.

(c) Upon receipt of the application, the physician's certificate and the registration fee if the commissioner finds that the applicant qualifies for the stopping, standing or parking privileges provided for in this section, the commissioner may issue to such applicant either, as the case may warrant:

- (1) A temporary insignia to be used by persons who are temporarily disabled, such insignia to be valid for such period of time as the aforementioned physician determines the applicant will be disabled, or
- (2) A permanent insignia to be used by persons who are certified as permanently disabled by the aforementioned physician.

(d) The two types of insignia shall be identical in size and form while being clearly distinguishable by color and lettering from each other for identification purposes. The commissioner shall adopt and promulgate rules and regulations in accordance with chapter 29A of the Code of West Virginia, as needed to administer the provisions of this section.

Free stopping, standing or parking places marked "reserved for disabled persons" shall be designated in close proximity to all state, county and municipal buildings or other public facilities. Such places shall be reserved solely for physically disabled persons during the hours that such buildings are open for business.

In this section "physically disabled person" means any person who has sustained a permanent disability rendering it difficult and burdensome for such person to walk, or any person who is similarly disabled for a temporary period of time.

(e) Any person who is not disabled permanently or temporarily and who applies for the stopping, standing or parking privileges provided for in this section, or any person who upon having been granted such privileges wrongfully uses or abuses them or any person who falsely certifies that a person is disabled permanently or temporarily in order that such person may be granted such privileges shall be guilty of a misdemeanor, and, upon conviction thereof, in addition to any other penalty he may otherwise incur or have imposed upon him by law, shall be fined not less than fifty dollars nor more than one hundred dollars, or imprisoned in the county jail not more than thirty days, or both fined and imprisoned. The commissioner shall recall and destroy any distinguishing insignia that was issued under improper circumstance.

Section 19-130 Signs on workers and church buses; when lawful for such buses to stop on highways and streets.

Any bus used primarily for the transportation of workers only and any bus operated by a church may bear upon the front and rear thereof a plainly visible sign, either painted or affixed on the body of the

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bus proper, or attached securely to the bus, containing the words, "workers' bus" or "church bus," respectively, in letters not less than eight inches in height. Any bus used primarily for the transportation of workers only and any bus operated by a church and bearing signs in that manner may lawfully stop upon the paved portion of any highway or street where there is no loading zone or pull-off adjacent to the highway or street to load or discharge persons; provided, that such bus shall be equipped with warning lamps permitted under subsection (d) of section 17C-15-19 of the Code of West Virginia and shall use such warning lamps when stopped on the highway or decreasing speed in order to stop, in order to warn the operators of other vehicles of a possible traffic hazard.

Section 19-130D Division 12. Miscellaneous Rules.

Section 19-131 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 highway.

Section 19-132 Limitations on backing.

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.

Section 19-133 Obstruction to driver' s view or driving mechanism.

(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 or streetcar shall ride in such position as to interfere with the driver' s or motorman' s view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle or streetcar.

Section 19-134 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 said motor vehicle is being operated on the streets or highways of this state; 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 department of motor vehicles.

Section 19-135 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 state.

Section 19-136 Driving on mountain highways.

The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold such motor vehicle under control and as near the right-hand edge of the highway as reasonably possible and, upon approaching any curve where the view is obstructed within a distance of two hundred feet along the highway, shall give audible warning with the horn of such motor vehicle.

Section 19-137 Coasting prohibited.

(a) The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears of such vehicle in neutral.

(b) The driver of a commercial motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged.

Section 19-138 Following fire apparatus.

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

Section 19-139 Crossing fire hose.

No streetcar or vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private driveway or streetcar track, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

Section 19-140 Putting glass, etc., on highway.

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

(b) Any person who drops, or permits to be dropped or thrown, upon any 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 highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

Section 19-141 Vehicles parked on private property.

It shall be unlawful for any driver of a vehicle to 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

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driveway or private property may move, or have moved, any vehicle stopped, parked or left standing unattended on his private road, driveway or private property as above prohibited without any liability for the cost of moving any vehicle, nor shall he 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 department of public safety of such action, and, if such vehicle is removed within a municipality, shall, in addition notify the police department of such municipality.

Section 19-141.1 Driving without inspection certificate or license.

It shall be unlawful for any owner or operator, or both owner and operator, of any vehicle required to be inspected under section 17C-16-14 (a) of the Code of West Virginia to operate, or permit to be operated, such vehicle on any street or highway without having displayed thereon a current and valid certificate of inspection and approval or fail to produce same upon demand of any police officer.

It shall be unlawful for any person, except those expressly exempted under section 17B-2-2 of the Code of West Virginia, to drive any motor vehicle upon any street or highway unless such person has a valid license as an operator or chauffeur under the provisions of chapter 17 of the Code of West Virginia. (7-19-79.)

Section 19-141D Division 13. Penalties.

Section 19-142 Violations of chapter; penalties for misdemeanor.

(a) It is a misdemeanor for any person to violate any of the provisions of this chapter.

(b) Every person convicted of a misdemeanor for a violation of any of the provisions of this article for which another penalty is not provided shall for a first conviction thereof be punished by a fine of not more than one hundred dollars or by imprisonment for not more than ten days; for a second such conviction within one year thereafter such person shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than twenty days or by both such fine and imprisonment; upon a third or subsequent conviction such person shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months or both such fine and imprisonment.

Section 19-142D Division 14. Parties, Procedure Upon Arrest and Reports in Criminal Cases.

Section 19-143 Parties to a crime.

Every person who commits, attempts to commit, conspires to commit or knowingly aids or abets in the commission of, any act declared herein to be a crime, whether individually or in connection with one or more other persons or as a principal, agent or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs

another to violate any provision of this article is likewise guilty of such offense.

Section 19-144 Offenses by persons owning or controlling vehicles.

It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

Section 19-145 When person arrested must be taken immediately before a justice of the peace or court.

Whenever any person is arrested for any violation of this article punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate within the county or before the municipal court and who has jurisdiction of such offense and is nearest or most accessible with reference to the time and place where said arrest is made, in any of the following cases:

- (a) When a person arrested demands an immediate appearance before such magistrate or court;
- (b) When the person is arrested upon a charge of driving while under the influence of intoxicating liquor or narcotic drugs;
- (c) In any other event when the person arrested refuses to give his written promise to appear in court as hereinafter provided.

Section 19-146 When person arrested to be given five days' notice to appear in court.

(a) Whenever a person is arrested for any violation of this article punishable as a misdemeanor, and such person is not immediately taken before the municipal court of the city as hereinbefore required, the arresting officer shall prepare written notice to appear in court containing the name and address of such person, the license number of his vehicle, if any, the offense charged, and the time and place when and where such person shall appear in court.

(b) The time specified in said notice to appear must be at least five days after such arrest unless the person arrested shall demand an earlier hearing.

(c) The place specified in said notice to appear must be before the municipal court of the city.

(d) The arrested person in order to secure release, as provided in this section, must accept a copy of the written notice prepared by the arresting officer. The officer shall deliver a copy of the notice to the person promising to appear.

Thereupon, said officer shall forthwith release the person arrested from custody.

Section 19-147 Procedure prescribed by article not exclusive.

The following provisions of this article shall govern all police officers in making arrests without a

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warrant for violations of this article, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade.

Section 19-148 Form for and records of books of traffic citations.

(a) Every traffic-enforcement agency in this state shall provide in appropriate form traffic citations containing notices to appear which shall be issued in books with citations, in quadruplicate and meeting the requirements of this article.

(b) The chief administrative officer of every such traffic-enforcement agency shall be responsible for the issuance of such books and shall maintain a record of every such book and each citation contained therein issued to individual members of the traffic-enforcement agency and shall require and retain a receipt for every book so issued.

Section 19-149 Disposition and records of traffic citations.

(a) Every traffic-enforcement officer upon issuing a traffic citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any city or town shall deposit the original or a copy of such traffic citation with the municipal court of the city.

(b) Upon the deposit of the original or a copy of such traffic citation with the municipal court of the city as aforesaid, said original or copy of such traffic citation may be disposed of only by trial in said court or other official action by a judge of said court, including forfeiture of the bail by the person to whom such traffic citation has been issued by the traffic-enforcement officer.

(c) It shall be unlawful and official misconduct for any traffic-enforcement officer or other officer or public employee to dispose of a traffic citation or copies thereof or of the record of the issuance of the same in a manner other than as required herein.

(d) The chief administrative officer of every traffic-enforcement agency shall require the return to him of a copy of every traffic citation issued by an officer under his supervision to an alleged violator of any traffic law or ordinance and of all copies of every traffic citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator.

(e) Such chief administrative officer shall also maintain or cause to be maintained in connection with every traffic citation issued by an officer under his supervision a record of the disposition of the charge by the court in which the original or copy of the traffic citation was deposited.

Section 19-150 Record of traffic cases

The municipal court of the city shall keep or cause to be kept a record of every traffic complaint or other legal form of traffic charge deposited with or presented to said court, and shall keep a record of every official action by said court in reference thereto, including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal and the amount of fine or forfeiture resulting from every said traffic complaint deposited with or presented to said court.

Section 19-151 Guaranteed arrest bond certificates as cash bail.

Any guaranteed arrest bond certificate of any surety company licensed to do business by the insurance commissioner, shall, when presented by the person whose signature appears thereon, be accepted in lieu of cash bail in an amount not to exceed five hundred dollars, as a bail bond, to guarantee the appearance of such person in the municipal court of the city at such time as may be required by the court when such person is arrested for violation of any motor vehicle law of the state or traffic ordinance of any municipality in the state (except for the offenses of reckless driving, driving while intoxicated or for any felony) committed prior to the date of expiration shown on such guaranteed arrest bond certificate; provided, that any such guaranteed arrest bond certificate so presented as a bail bond in any court in the state shall be subject to the same forfeiture and enforcement provisions as any other bail bond.

The term "guaranteed arrest bond certificate," as used herein, means any printed card or other certificate issued by an automobile club or association to any of its members, which said card or certificate is signed by such member and contains a printed statement that such automobile club or association and a surety company guarantee the appearance of the person whose signature appears on the card or certificate and that they will in the event of failure of said person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed five hundred dollars.

Section 19-151D Division 15. Adoption by reference of State Motor Vehicle Laws.

Section 19-152 Adoption of state law.

There is hereby adopted by reference and made a part of this Code to the same extent as if the same were copied verbatim herein all provisions of chapter 17, chapter 17A, chapter 17B, chapter 17C and chapter 17D of the West Virginia Code of 1966, as amended or as may hereafter be amended by the legislature of the state of West Virginia, to the extent that the same may be made legally applicable within the corporate limits of the city. In case of conflict between the provisions of the adopted portions of the Code of the state of West Virginia and the provisions of this chapter, the provisions of the former shall be binding and controlling and the provisions of this chapter shall be considered modified and amended to include the conflicting state Code provisions. Any violations of the Code of West Virginia provisions, which are not specifically made violations of this chapter, may be pleaded in warrants as violations of this chapter under this section. (7-19-79; 3-6-86.)

Section 19-152D Division 16. Special Stops Required.

Section 19-153 Railroad crossings--Generally.

(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

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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 one thousand five hundred feet of the 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; or

(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. (7-19-79.)

Section 19-154 Same--All vehicles must stop at certain crossings.

The common council, with the approval of the department 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. (7-19-79.)

Section 19-155 Same--Certain vehicles must stop at all crossings.

(a) The driver of any motor vehicle carrying passengers for hire, or of any school bus carrying any school child, or of any vehicle carrying explosive substances or flammable liquids 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.

(c) This section shall not apply at street railway grade crossings within a business or residence district. (7-19-79.)

Section 19-156 Same--Moving heavy equipment.

(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

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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 or 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. (7-19-79.)

Section 19-157 Vehicles must stop at through highways; erection of signs.

(a) The common council, with reference to highways under its jurisdiction, may designate through 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, 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 and every motorman of a streetcar 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 highway where the driver has a view of approaching traffic on the intersecting highway before entering the intersection except when directed to proceed by a police officer or traffic-control signal. (7-19-79.)

Section 19-158 Stopping before emerging from alley or private driveway.

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. (7-19-79.)

Section 19-159 Overtaking and passing school bus; highways with separate roadways.

(a) The driver of a vehicle on any street or highway upon meeting or overtaking from either

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direction any school bus which has stopped on the highway 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 section 17C-12-8 of the Code of West Virginia, 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 not longer actuated.

(b) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway. (7-19-79.)

Section 19-159D Division 17. Accidents.

Section 19-160 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 such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of section 19-162. Every such stop shall be made without obstructing traffic more than is necessary. (7-19-79.)

Section 19-161 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 19-162. Every such stop shall be made without obstructing traffic more than is necessary. (7-19-79.)

Section 19-162 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 name, address and the registration number of the vehicle he is driving and shall, upon request and if available, exhibit his operator's or chauffeur'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. (7-19-79.)

Section 19-163 Duty upon striking 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

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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. (7-19-79.)

Section 19-164 Duty upon striking fixtures upon 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 name and address and of the registration number of the vehicle he is driving and shall, upon request and if available, exhibit his operator's or chauffeur's license and shall make report of such accident when and as required in section 19-166. (7-19-79.)

Section 19-165 Immediate report to police department.

The driver of a vehicle involved in an accident resulting in injury to or death of any person shall immediately, by the quickest means of communication, whether oral or written, give notice of such accident to the police department if such accident occurs within the city. (7-19-79.)

Section 19-166 Written reports--Required.

(a) The driver, or the attorney or agent of such driver, of a vehicle involved in an accident occurring on the public streets and highways of the city resulting in bodily injury to or death of any person or total property damage to an apparent extent of one hundred dollars or more shall, within five days after such accident, forward to the police department a copy of the written report of such accident required by section 17C-4-7 of the Code of West Virginia to be forwarded to the department of motor vehicles.

(b) The police department may require any driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient in the opinion of such department and may require witnesses of accidents to render reports to the department.

(c) The police department shall provide a form for such accident report and every accident report required under this section shall be made on such form. (7-19-79.)

Section 19-167 Same--When driver unable to report.

(a) Whenever the driver of a vehicle is physically incapable of making an immediate report of an accident as required in section 19-165 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.

(b) Whenever the driver is physically incapable of making a written report of an accident as required in section 19-166 and such driver is not the owner of the vehicle, then the owner of the vehicle involved in such accident shall, within five days after learning of the accident, make such report not made by the driver. (7-19-79.)

Section 19-168 Garages to report accidents and 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 involved in an accident of which report must be made as provided in section 19-166, or struck by any bullet, shall report to the 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. (7-19-79.)

Section 19-169 Accident reports to be confidential.

All accident reports made by persons involved in accidents or by garages shall be without prejudice to the individual so reporting and shall be for the confidential use of the department or other state agencies having use for the records for accident prevention purposes, or for the administration of the laws of the state relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles; except, that the department may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident. No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident; except, that the department shall furnish upon demand of any person who has, or claims to have, made such a report or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the department solely to prove a compliance or a failure to comply with the requirement that such a report be made to the department. (7-19-79.)

Chapter 20: WATER.

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20-1	Furnishing water in competition with city; compliance with regulations, etc.
20-2	Water committee; composition; appointments.
20-3	Applications and permits to use water.
20-4	Prohibited uses in case of scarcity.
20-5	Use of supply; supplying others.
20-6	Drinking fountains and fixtures exposed to general use.
20-7	Use of water meters; minimum charge.
20-8	Duties of city clerk; record.
20-9	Unauthorized use of supply.
20-10	Service pipes from mains to curb.
20-11	Fixtures and service pipes from building to curb.
20-12	Damage to system; misuse of materials; trespassing.
20-13	Liability.
20-14	Noncompliance where two families are supplied from same service pipe.
20-15	Reports to water department.
20-16	Special valve where boiler is supplied from mains.
20-17	Cutting off water; notification, reimbursement procedure.
20-17A	Article II. Rates, Charges, Billings and Related Provisions.
20-18	Estimates and rates in certain cases.
20-19	Rates.

20-20 Tapping fees.

As to grades and elevations generally, see §§ 1-8 to 1-12 of this Code. As to contamination of water supply by garbage, refuse, etc., see § 9-4. As to stagnant water generally, see § 12-6. As to changing, diverting or obstructing streams, sewers, drains, etc., see § 13-14. As to contaminating watercourses, wells, drains, etc., see § 13-14. As to sewers and sewage generally, see ch. 16.

Section 20-0A Article I. In General.

For charter provisions as to authority of common council to erect, authorize and prohibit the erection of waterworks for public service and to maintain waterworks, reservoirs, etc., see Char., § 28, subsec. (56).

For state law as to authority of common council to acquire, maintain and operate a water-works system, see W. Va. Code, § 8-12-5, subsecs. (32), (33). As to municipal waterworks systems generally, see W. Va. Code, § 8-19-1 et seq., and see also, W. Va. Code, § 8-16-1 et seq. As to authority of state board of health with respect to municipal water supply systems, see W. Va. Code, § 16-1-9.

Section 20-1 Furnishing water in competition with city; compliance with regulations, etc.

It shall be unlawful for any person to furnish water in competition with the city; provided, that any person may furnish water for his own use. It shall be unlawful for any person to use water from the mains or service pipes of the city without first complying with the rules, regulations and schedules of water rates set forth in this chapter. (Code 1942, ch. 13, § 1.)

Section 20-2 Water committee; composition; appointments.

The care and maintenance of the waterworks established by the city shall be entrusted to the water committee, which shall be made up of three members of the common council, to be appointed biannually at the organizational meeting of the common council. (Code 1942, ch. 13, § 2.)

Section 20-3 Applications and permits to use water.

All applications for the introduction or supply of water to any premises, or for the extension of any pipe conveying water must be made, in writing, by the owner of the premises or his authorized agent, to the city clerk, on blanks kept for the purpose. Such application shall state fully and without reserve or concealment the use to which the water is to be applied and the place where the mains or pipes are to be tapped.

No permit to use water shall be granted except to the property owner or his agent, and he shall be responsible for compliance with the established rules and regulations governing the supply and introduction of water and the rates thereof. (Code 1942, ch. 13, § 3.)

Section 20-4 Prohibited uses in case of scarcity.

The common council shall have the right, in the case of scarcity of water, to order the discontinuance of the use of all street sprinklers, fountains and motors during the term of such scarcity,

and the committee shall be the judge of any such scarcity. (Code 1942, ch. 13, § 4.)

Section 20-5 Use of supply; supplying others.

No person supplied with water shall be permitted to use the water for any other purpose than that stated in the application or agreement; nor shall any person supply water in any way to any other person without a written permit from the water committee, nor shall they permit others to use their hose or other attachments, nor leave them exposed to use by others. (Code 1942, ch. 13, § 5.)

Section 20-6 Drinking fountains and fixtures exposed to general use.

No hydrants or other fixtures, except public drinking fountains, shall be placed within the limits of any street, unless such hydrant or other fixture is securely closed and protected against general use. No drinking fountains erected for public use shall have openings by which they can be used as a source of domestic supply. (Code 1942, ch. 13, § 7.)

Section 20-7 Use of water meters; minimum charge.

The common council reserves the right to set meters and charge meter rates, whenever there is any doubt as to the quantity of water used or wasted. Customers shall have the right, at their option, to put in meters and pay meter rates; provided, that the kind of meters shall be designated by the common council or the water committee. Whenever meters are used, they shall be placed by the city plumbers under the direction of the water committee, and the cost of the meter and the cost of placing such meter shall be paid by the city. The city officers shall have access to the meters at all reasonable times for the purpose of inspection and care.

Where meters are placed on the premises of any user of water, they shall be read quarterly, and collections made as from other users.

For any violation of this section a penalty of five dollars shall be imposed, the amount paid forfeited and the supply of water cut off until the fine is paid. (Code 1942, ch. 13, § 10.)

Section 20-8 Duties of city clerk; record.

(a) The city clerk shall keep all such records and make all such reports as may be required by the rules and regulations of the state public service commission, or which may be required by the common council, by resolution.

(b) The city clerk shall make out at the beginning of each quarter all water rents and charges and place them in the hands of the city collector and treasurer, and keep a record thereof in a well-bound book to be known and designated as the "Water Record." (Code 1942, ch. 6, § 6; ch. 13, § 12.)

Section 20-9 Unauthorized use of supply.

The introduction of service pipes for the supply of water into any premises shall be under the

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direct supervision of the water committee or its authorized agent.

Any person, not authorized by the committee, who shall be found tapping the water mains or turning on the water, shall be fined ten dollars, and the introduction of the water shall not be allowed until the fine is paid. (Code 1942, ch. 13, § 13.)

Section 20-10 Service pipes from mains to curb.

The kind, size and strength of service pipe to be used and the depth to which such pipe shall be laid to the curb shall be determined by the water committee or their authorized agents.

The city shall bear all the expense for the laying and keeping in repair of the service pipe from the water main to the curb. (Code 1942, ch. 13, § 14.)

Section 20-11 Fixtures and service pipes from building to curb.

All persons taking water must keep their service pipes and fixtures connected therewith in good repair and protected from frost at their own expense. (Code 1942, ch. 13, § 15.)

Section 20-12 Damage to system; misuse of materials; trespassing.

It shall be unlawful for any person to interfere with, molest or destroy the waterworks, reservoir, pipes, branches, fittings, faucets, fire plugs, hydrants, or any part thereof or any property or building belonging or appertaining thereto. Any person having the authority to use or open the fire plugs for any other purpose other than in case of fire shall do so under the supervision of the city plumbers or some other person authorized by law to open or use the plugs; and it shall be the duty of all officers of the council or the members thereof or their authorized agents to apprehend every offender or trespasser on the works or property and take him before the mayor, to answer for such offense. Any person using the fire plugs, hose or other such material shall pay the city collector and treasurer for the use thereof and other expenses attending such use, and shall also be liable for any damage done thereto. (Code 1942, ch. 13, § 17.)

Section 20-13 Liability.

It is expressly stipulated by the city and the consumers of water from the waterworks that no claim shall be made against the city by reason of the breaking of any pipe or cock or for any failure of the supply of water, and all contracts made shall be subject to this condition. (Code 1942, ch. 13, § 18.)

Section 20-14 Noncompliance where two families are supplied from same service pipe.

In case two or more families are supplied with water from the same service pipe, if either of the parties fails to pay the water rent when due, or fails to comply with any rule of the water committee or of the waterworks, the city shall turn off the water from such pipes until the rent is paid or the rule is strictly complied with or both. (Code 1942, ch. 13, § 19.)

Section 20-15 Reports to water department.

The water department shall inspect and make out, on or before the first meeting in July and January of each year, a complete report of all water connections, accounts and discharges and submit such report to the water committee for examination. The water committee shall correct any errors therein and pass the report to the treasurer. The report shall be presented to the common council for action and after action by the council, shall be filed with the city collector and treasurer. It shall be the duty of the city plumber to report all violations of the rules and regulations to the water committee and the committee shall see that all the aforesaid rules and regulations are enforced. (Code 1942, ch. 13, § 21.)

Section 20-16 Special valve where boiler is supplied from mains.

In all cases in which boilers are supplied directly from the water mains, a suitable valve or vacuum must be attached to prevent damage from collapsing when the water is shut off from the street mains. Check valves shall not be permitted. (Code 1942, ch. 13, § 23.)

Section 20-17 Cutting off water; notification, reimbursement procedure.

It shall be the duty of every property owner to whose property water is furnished by the city to notify the city clerk, in writing, at any time he desires water rent to cease; and no exoneration for water rent shall be made to any person until such notice in writing is received by the clerk, and in no case for less than thirty days. Upon the receipt of such notice by the city clerk, he shall immediately notify the water department, whose duty it shall be to turn off the water to such premises, and the water shall not be turned on again until notice is received from the property owner. In no case shall any person, except the city plumber or other person employed by the city for that purpose, turn such water off or on.

If the water rent covering the time when water is shut off has not been paid, the city clerk shall notify the city collector and treasurer, who shall deduct the amount of such rent from the respective rent; but if the rent has been paid, the city clerk shall draw an order reimbursing the party for the time such water is turned off, which order shall be signed as are other city orders by the mayor, if he is satisfied that it is correct.

Any person violating this section shall be fined not exceeding thirty dollars and may be imprisoned in the city jail not exceeding thirty days. (Code 1942, ch. 13, § 27.)

Section 20-17A Article II. Rates, Charges, Billings and Related Provisions.

For state law as to authority of city to lay and collect charges for services rendered by municipal waterworks to those served both within and without the city, see W. Va. Code, § 8-12-5, subsec. (32).

Section 20-18 Estimates and rates in certain cases.

Water supplied to any place for which the system of measurement is not provided by this chapter shall be estimated by the water department subject to the approval of the common council. (Code 1942, ch. 13, § 24.)

Section 20-19 Rates.

The rates charged for the use of water from the city mains shall be such as are approved by the common council and the public service commission and on file in the city clerk's office. (Code 1942, ch. 13, § 25.)

Section 20-20 Tapping fees.

Tapping fees shall be fixed by the common council and a schedule filed with the city clerk. (Code 1942, ch. 13, § 26.)

Chapter 21: ZONING.

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As to planning commission, see §§ 2-29 to 2-36 of this Code..

Section 21-0A Article I. General Provisions.

For charter provisions as to authority of common council to prohibit within the city or within one mile of its corporate limits the erection or maintenance of slaughter houses, glue factories, tanneries, etc., see Char., § 28, subsec. (28).

For state law as to urban and rural planning and zoning, see W. Va. Code, ch. 8, art. 24. As to authority of city to enact zoning ordinances, see W. Va. Code, § 8-24-39.

Section 21-1 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section, but such definitions shall not be held to modify or affect in any way the legal interpretations of such terms or words where used in other regulations:

Accessory building. A subordinate building located in and occupying not more than thirty percent of the rear yard of the main building, whose use is incidental to that of the main building, and which does not exceed fifteen feet in height above the ground level.

Alley. A public way designated as an alley in the records and on the city map of the City of Elkins on file in the office of the city clerk.

Apartment. A household unit with kitchen facilities, except portable electrical table appliances, exclusively for the use of the persons occupying such unit.

Apartment house. A building in which there are three or more apartments.

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Area. See "building area."

Block or square. See "square."

Boarding house. A dwelling other than a hotel where, for compensation, meals or lodging and meals are provided for three or more guests.

Building. A structure having a roof supported by columns or walls for the shelter, support or inclosure of persons, animals or chattels. When separated from the ground up, or from the lowest floor up, each such portion shall be deemed a separate building. The existence of communication between separate portions of a structure below the main floor shall not be construed as making such structure one building. The word "building" includes the word "structure."

Building area. The maximum horizontal projected area of a building and its accessory buildings, excluding open steps, terraces and cornices. (Front entrance porches which do not extend more than three feet beyond the front wall and are not greater than twenty square feet in area will not be construed as part of the "building area," and the depth of such porches will be excluded from the depth of the building for the purpose of computing the width of side yards.)

Building line. A line beyond which property owners and others have no legal or vested right to extend a building or any part thereof without special permission and approval of the board of zoning appeals; ordinarily a line of demarcation between public and private property when recorded in the office of the city clerk or the county clerk of Randolph County. For the purpose of zoning it is also applied to a building restriction line which is hereby prescribed as follows: In residential areas the building line shall hereafter be not less than twenty-five feet from the front property line. In commercial and industrial areas the building line shall be the same as the front property line, and in no case set back more than five feet from the front property line, except where the building is to be a residence.

Cellar. That portion of a building below the first floor joists, the floor of which is more than one half the clear ceiling height below the adjacent ground.

Community house. A group of not more than three single-family dwellings so designed as to give the appearance of a single building and erected simultaneously.

Depth of land. The main horizontal distance between the front property line and the rear lot line.

Depth of rear yard. The main horizontal distance between the rear line of the building and the center line of the alley where an alley exists, otherwise the rear lot line.

District. Sections of the city for which the regulations governing the height, the area and the use of buildings and premises are the same.

Dwelling. A house occupied by a person or family as a place of residence.

Enclosed court. An open, unoccupied space surrounded on all sides by walls or by walls and a party line.

Flat. A building in which there are two apartments.

Height of building. In the one hundred fifty-foot, one hundred thirty-foot and eighty-foot height districts, the vertical distance from the level of the curb opposite the middle of the front of the building to

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the top of any enclosure wall or to the highest point of the roof; provided, that in the eighty-foot height district, in the case of a building located on a terrace, the height above the curb level may be increased by an amount equal to the height of the terrace above the same curb level. In the forty-foot height district the vertical distance from the ground level at the middle of the front of the building to the ceiling of the top story.

Height of court. The vertical distance from the bottom of any opening in such court, necessary for light and ventilation, to the highest point of any bounding wall.

Home occupation. An occupation in connection with which there is used no sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling; in which there is kept no stock in trade or commodity sold upon the premises, no person employed other than a member of the immediate family residing on the premises, and no mechanical equipment used except such as is permissible for purely domestic or household purposes.

Hotel. Every place where lodging is provided for ten or more transient guests. This definition shall not be interpreted to include private clubs.

Length of open court. The mean horizontal distance between the open and closed ends of the court.

Lodging or rooming house. A dwelling providing lodging for three or more roomers for compensation.

Lot. The land bounded by definite lines and occupied or to be occupied by a building and its accessory buildings, and including open spaces required by these regulations. A lot may or may not be the land so recorded on the records of the city clerk, or of the clerk of the county commission of Randolph County. The word "lot" includes the words "plot" or "parcel."

Lot, alley. A lot facing or abutting an alley but at no point facing or abutting a street.

Lot, corner or triangular. A lot fronting on two or more streets at their junction, such streets forming with each other an angle of forty-five degrees or more, is a corner lot. When the angle formed by the intersecting streets is less than forty-five degrees such lot shall be known as a triangular lot.

Lot, interior. A lot other than a corner or triangular lot.

Lot lines. The lines bounding a lot as defined herein.

Lot, through. An interior lot having frontage on two streets.

Nonconforming use. The use of a building or premises classified as a use that does not conform with the regulations of the use district in which such building or premises is located.

Percentage of lot occupancy. That portion of such area of a lot as lies within lot lines and building lines as defined herein which is occupied or may be occupied, under these regulations, as a building area.

Private garage. A garage without public repair or service facilities, of not more than eight hundred square feet and housing not more than four steam or motor-driven vehicles.

Public service garage. A garage in which steam or motor driven vehicles are equipped for

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operation, repaired or kept for hire or sale, not including exhibition or show rooms for model cars.

Public storage garage. A garage, other than a private garage, in which repair facilities are incidental to its primary use for storage.

Rear yard. An open space on the same lot with a building between the rear line of the building and rear line of the lot, for the full width of the lot, and unoccupied except as herein specifically authorized.

Side yard. An open unoccupied space on the same lot between the building and the side line of the lot extending through from the front of the building to the rear yard.

Square. Land so designated as a block or square on the records of the city clerk or on maps or plots in the office of the clerk of the county commission of Randolph County, or either of them. A block or square shall consist of an area bounded by open public thoroughfares, streets or alleys, by the Tygart River, the property line of any railway company or other property line, or the city corporation line, as the case may be.

Story. That portion of a building included between the surface of any floor and the surface of the next floor above it, or if there be no floor above it, then the space between such floor and the ceiling next above it; provided, that a cellar shall not be considered a story. A mezzanine story, covering not more than one-third of the area of a building at the mezzanine level, shall not be considered a story within the meaning of these regulations.

Structural alterations. Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, except such alterations as may be required for the safety of the building. (3-5-59, § 1; 7-19-79.)

Section 21-2 Chapter subject to limitations of state zoning law.

The provisions of this chapter are subject to all limitations imposed by chapter 8, article 24 of the Code of West Virginia. (3-5-59, § 22, (2).)

Section 21-3 Zoning map.

The "Official Zoning Map , " thereon certified as such by the mayor and which is now and shall remain on file in the office of the city clerk, together with such amendments thereof and notations made thereon as of the effective date of this Code, shall continue to be the official zoning map of the city, by which title it may be cited, or it may be cited simply as the "zoning map."

Section 21-4 Streets not shown on zoning map.

When a street is shown on the highway plan or on plats on file in the office of the city clerk or the office of the clerk of the county commission of Randolph County, and is not indicated or shown on the zoning map as being in any height, area or use district, the designation of the adjoining square or parcel shall extend to the center line of such street. (3-5-59, § 22, (1).)

Section 21-5 Building permits--Required for certain purposes.

Any person who shall build or cause to be built, altered or converted any building in the city without having first obtained a city building permit so to do shall be fined not less than ten dollars nor more than one hundred dollars. (3-5-59, § 22, (5).)

Section 21-6 Same--Plats to accompany applications for permit.

All applications for building permits shall be accompanied by a plat in duplicate, drawn to scale as required on the application form, showing the actual dimensions of the recorded lot to be built upon, all buildings existing upon such lot, the size of the building to be erected and such other information as may be necessary to provide for the enforcement of these regulations. A careful record of such application and plats shall be kept in the office of the building inspector. (3-5-59, § 21, (1); 4-1-82.)

Section 21-7 Enforcement officers.

The provisions of this chapter shall be enforced by the common council and the chief of police. (3-5-59, § 22, (3).)

Section 21-8 Investigation of reports of violation; building permit denied in cases of violation.

It shall be the duty of the chief of police and building official to investigate and report any violation of these zoning regulations to the mayor and common council, and no building permit shall be granted in violation of these zoning regulations. (3-5-59, § 22, (6).)

Section 21-9 Penalties generally.

Any person violating these regulations, the penalty for the violation of which is not provided for by the provisions of this chapter or chapter 8, article 24 of the Code of West Virginia shall be subject to a fine of not less than ten dollars nor more than three hundred dollars per day for each and every day such violation is permitted to continue. (3-5-59, § 22, (4).)

Section 21-9A Article II. Use Districts.

Section 21-10 Purpose, number and designation.

In order to regulate the location of commerce, business, trades and industries, and the location of all buildings designed or occupied for specific uses, the city is hereby divided into use districts, of which there shall be four, known as:

- (a) Residential, restricted.
- (b) Residential, unrestricted.

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- (c) Commercial.
- (d) Industrial. (3-5-59, § 2, (1).)

Section 21-11 Districts are as shown on zoning map.

The use districts shall be as shown on the official zoning map in the office of the city clerk. (3-5-59, § 2, (2).)

Section 21-12 Buildings and premises to be used only for permitted purposes.

Except as hereinafter provided, no building shall be erected or converted, nor shall any building or premises be used, for any purpose other than that permitted in the use district in which such building or premises are located. (3-5-59, § 2, (3).)

Section 21-13 Limited uses for animals and poultry.

It shall be unlawful for any person to build, construct and use any new, altered, converted or remodeled building or structure on any lot, area, tract or parcel of land within the corporate limits of the city for the housing and care of any domestic animal (other than dogs and cats or household pets) or of poultry of any kind customarily housed in barns, hog pens, poultry or chicken houses, or other outhouses or sheds. (3-5-59, § 2, (4) and (5); 7-19-79.)

Section 21-14 Electric fences prohibited; staking of domestic animals prohibited.

It shall be unlawful for any person to erect, maintain or operate any electric fence for any purpose within the corporate limits of the city, or to stake any cow, bull, horse, mule, goat or other domestic animal on any lot or parcel of land within the city. (3-5-59, § 2, (6); 7-19-79.)

Section 21-15 Permitted uses--In residential districts.

In the residential districts all buildings and premises, except as otherwise provided in these regulations, shall be erected for and used exclusively as:

- (a) Dwellings.
- (b) Apartment houses, flats and tenements in the B district only.
- (c) Hotels in the B district only.

Commercial uses which distinctly pertain to or are appropriate adjuncts to hotels as follows: Restaurant dining room, drug stand, including soda fountain, perfumery shop, florist shop, barbershop, beauty parlor, pressing or tailoring establishment, cigar and newsstand, and uses similar to these enumerated in the B district when approved by the board of zoning appeals.

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(d) Lodging or boardinghouses in the B district only.

(e) Churches in the B district only.

(f) Private clubs, fraternities and lodges in the B district only, except those the chief activity of which is a service customarily carried on as a business.

(g) Repealed.

(h) Transportation rights-of-way.

(i) Farms, truck gardens, nurseries and greenhouses, in the B district only.

(j) Accessory buildings and uses of property customarily incidental to the district, when located on the same lot and not involving the conduct of a business on the premises.

The following usual accessories of a residence located on the same lot with that residence and not involving the conduct of a business shall be allowed:

(1) Repealed.

(2) A private garage located in a fireproof compartment within, adjoining or forming an addition to a building, or both; provided, that the total garage storage facilities on any one lot shall not exceed eight hundred square feet in area.

(3) A private garage located in the rear yard with a dwelling, and not less than ten feet from any point of such dwelling nor less than twenty feet from the building line of any street upon which the lot abuts; provided, that if the lot will not permit a garage to be located in conformity with this regulation, a garage may be approved by the board of zoning appeals, as provided in article VIII of this chapter; and provided further, that the total private garage storage facilities on any one lot shall not exceed eight hundred square feet in area.

(4) A public storage garage in an apartment house, where the floor area of the garage does not exceed one-fourth of the total floor area designed for use or used by the tenants; provided, that the vehicular entrances or exits are located seventy-five feet or more back of the building line of the nearest street, or are so located that dangerous traffic or otherwise objectionable conditions, as may be determined by the board of zoning appeals in article VIII of this chapter, will not be created.

(5) Open parking spaces accommodating motor-driven passenger vehicles of the persons residing in the building on the premises, provided, that no part of such parking space shall occupy any part of the side yards and courts nor more than thirty percent of the rear yard required by these regulations; and provided further, that any such parking space between the outside walls of the building and the line of any street upon which the lot abuts shall require the approval of the board of zoning appeals.

(k) A private garage which is not appurtenant to any of the above uses and housing not more than two motor-driven vehicles, nor exceeding eight hundred square feet in area, if located fifty feet or more back of the building line of the nearest street, and abutting and opening directly upon a public alley.

(l) In the B district, a public storage garage, or the temporary parking of motor vehicles on

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an alley lot, so recorded on the records of the city clerk or the county clerk, when no part of such garage or the space for such parking is located within twenty-five feet of any street building line, and when vehicular entrances and exits open directly on a public alley.

(m) In the B district temporary use of premises by fairs, circuses or carnivals, upon compliance with the applicable provisions of this Code.

(n) Public or private schools, municipal recreational uses, pumping stations and fire engine houses may be erected in any district. In the case of a fire engine house located in a residential district, a public hearing shall first be held by the mayor and common council. Police stations shall be located only in commercial and industrial districts.

Note: See article VIII of this chapter for other uses which may be approved in residential district by the board of zoning appeals. (3-5-59, § 3; 7-19-79; 7-17-80.)

Section 21-16 Same--In commercial districts.

(a) All uses authorized for the commercial districts are subject to the limitations of law and municipal regulations under the provisions of the Charter of the city.

(b) In the commercial district, all buildings and premises, except as otherwise provided in these regulations, may be used for any use permitted in the residential district or for any other use except the following:

- (1) Ammonia, bleaching powder or chlorine manufacture.
- (2) Bag cleaning establishment.
- (3) Distillation of coal, wood, bones or tar.
- (4) Distillation of turpentine or varnish.
- (5) Emery cloth manufacture.
- (6) Fertilizer manufacture.
- (7) Fireworks or explosives manufacture.
- (8) Garbage incineration other than in municipal plants or incidental to the operation of hotels, restaurants, apartment houses and dwellings.
- (9) Glue, size or gelatine manufacture.
- (10) Grinding, cooking, boiling, rendering or storing of slaughterhouse refuse, animal refuse, rancid fats or refuse of dead animals.
- (11) Pyroxyline or celluloid manufacture.
- (12) Stockyards.

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(13) Sulphuric, nitric or hydrochloric acid manufacture.

(14) Tetra-ethyl lead precipitate or liquid manufacture. (3-5-59, § 4.)

Section 21-17 Same--Industrial.

In the industrial districts all buildings and all premises may be used for any purpose whatsoever not in conflict with law or municipal regulations. No building shall be erected or altered for use and no building or premises shall be used unless the application for the permit shall first be presented to and approved by the mayor and common council and board of zoning appeals. (3-5-59, § 5.)

Section 21-17A Article III. Nonconforming Uses.

Section 21-18 When permitted.

The lawful use of a building or premises, as existing and lawful at the time of the adoption of any regulations heretofore or hereafter adopted, may be continued, although such use does not conform with the provisions of such regulation; provided, that no structural alteration or conversion, except such as may be required by law, or no extension, enlargement or change in design, is made or new building is erected. The casual, temporary or illegal use of a building or premises shall not be sufficient to establish the existence of a nonconforming use. (3-5-59, § 6, (1); 7-19-79.)

Section 21-19 Certain structural alterations in buildings require change of use.

Where structural alterations are made in a building of a nonconforming use, such use shall be changed to a use consistent with the provisions of these regulations for the district in which such building is located; provided, that structural alterations made wholly within the outside walls of nonconforming single-family dwellings, or the enclosing of side and rear porches existing on such dwellings at the time of the adoption of this regulation, shall not be prohibited. (3-5-59, § 6, (2) and (3); 7-19-79.)

Section 21-20 Effect of addition of side and rear open porches.

The addition of side and rear open porches to nonconforming single-family dwellings shall not be prohibited; provided, that the permitted percentage of lot occupancy is not exceeded thereby; and provided, further, that the widths of the side yards adjacent to such porches comply with the regulations. (3-5-59, § 6, (4); 7-19-79.)

Section 21-20.1 Change or abandonment.

A nonconforming use may be changed to a use of the same classification, provided no structural alterations are made, or may be changed to a use of a higher classification. If a nonconforming use is changed to a use of a higher classification, it shall not thereafter be changed to a use of a lower classification.

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A nonconforming use, located in a residential district, which shall remain idle, unused or vacant for a continuous period of one year, whether or not the fixtures or equipment are removed, shall be considered abandoned as a nonconforming use and thereafter such building or premises shall be used for a conforming use. (3-5-59, § 6, (1) and (3); 7-19-79.)

Section 21-20.2 Determination of existence or abandonment.

Whether a nonconforming use exists or whether a nonconforming use has been abandoned shall be a question of fact and shall be decided by the common council. (3-5-59, § 6, (4); 7-19-79.)

Section 21-20A Article IV. Height Districts.

Section 21-21 Purpose, number and designation.

In order to regulate the height of buildings, the city is hereby divided into height districts, of which there shall be four, known as:

- (a) Forty - Foot District.
- (b) Eighty - Foot District.
- (c) One hundred thirty - Foot District.
- (d) One hundred fifty - Foot District. (3-5-59, § 7, (1).)

Section 21-22 Districts are as shown on zoning map; applicability.

The height districts shall be as shown on the map designated as the official zoning map, and shall apply, respectively, to: A - restricted residential districts, B - residential unrestricted, C - commercial and D - industrial. (3-5-59, § 7, (2).)

Section 21-23 Buildings to conform to height regulations.

Except as herein specifically provided, no building shall be altered, converted, constructed or raised so as to exceed the height hereby established for the district wherein such building is located. (3-5-59, § 7, (3).)

Section 21-24 Forty-foot district.

In the district designated as the forty-foot district on the official zoning map, no building shall exceed forty feet in height. This applies to the residential, restricted district only. (3-5-59, § 8, (1).)

Section 21-25 Eighty-foot district.

In the district designated as the eighty-foot district on the official zoning map, no building shall exceed eighty feet in height. This applies to the residential, unrestricted district only. (3-5-59, § 9, (1).)

Section 21-26 One hundred thirty-foot district.

In the district designated as the one hundred thirty-foot district on the official zoning map, no building shall exceed one hundred thirty feet in height. This applies to the commercial district only. (3-5-59, § 10, (1).)

Section 21-27 One hundred fifty-foot district.

In the district designated as the one hundred fifty-foot district on the official zoning map, no building shall exceed one hundred fifty feet in height. This applies to the industrial district only. (3-5-59, § 11, (1).)

Section 21-28 Exceptions.

The foregoing requirement in the height districts shall be subject to the following exceptions and regulations:

(a) Spires, towers, domes, minarets, pinnacles, penthouses over elevator shafts, ventilation shafts, chimneys, smoke stacks and fire sprinkler tanks may be erected to a greater height than any limit prescribed in these regulations when and as they may be approved by the mayor and common council and board of zoning appeals; provided, that such structures when above such limit in height shall be fireproof, and no floor or compartment thereof shall be constructed or used for human occupancy above the top story of the building upon which such structures are placed; and provided further, that penthouses, ventilation shafts and tanks shall be set back from the exterior walls distances equal to their respective height above the adjacent roof.

(b) Public or semi-public buildings of an institutional character or monumental character may exceed the height regulations for the district in which such buildings are to be located when set back from the established building lines and all lot lines one foot for each foot of excess height.

(c) Churches may be erected to a height in excess of that authorized in the district in which located upon the approval of the mayor and common council and the board of zoning appeals.

(d) On through lots one hundred feet or less in depth, the height of buildings may be measured from the curb level of either street. On through lots more than one hundred feet deep the height regulations and basis of height measurement for the street permitting the greater height shall apply to the depth of one hundred feet only from the street.

(e) Nothing in these regulations shall prevent the erection in any height district of a building complying with the requirements of the forty-foot height district. (3-5-59, § 12.)

Section 21-28A Article V. Area Districts.

Section 21-28D Division 1. Generally.

Section 21-29 Purpose, number and designation.

In order to regulate the area of yards and courts and the percentage of the lot which may be occupied by buildings hereafter erected or enlarged, the city is hereby divided into area districts, of which there shall be four, known as A, B, C and D. (3-5-59, § 13, (1).)

Editor's note.--The ordinance provisions codified in this division were adopted March 5, 1959.

Section 21-30 Districts are as shown on zoning map.

The area districts shall be as shown upon the map designated as the official zoning map. (3-5-59, § 13, (2).)

Section 21-31 Buildings to conform to area regulations.

Except as hereinafter provided, no building shall be erected nor shall an existing building be structurally altered, enlarged or rebuilt except in conformity with these regulations. No lot area shall be so reduced or diminished in area that yards, courts and open spaces shall be smaller than prescribed by these regulations. (3-5-59, § 13, (3).)

Section 21-31D Division 2. A Area District.

Section 21-32 Minimum dimensions of yards and courts.

In the A area district the minimum dimensions of yards and courts and the maximum percentage of lot occupancy shall be the same as for a B area district; except, that hereafter no building shall be erected, and no buildings or premises altered for use or used as an apartment house, hospital, sanitarium, lodging or boarding house, public garage, flat, hotel or community house, but shall be erected or altered for use or used only as a wholly detached single-family dwelling with two side yards, church, transportation right-of-way, or school, when approved by the board of zoning appeals as provided in article VIII of this chapter. (For other uses permissible in the A area district, see section 21-15 and article VIII of this chapter.) (3-5-59, § 17.)

Section 21-32D Division 3. B Area District.

Section 21-33 Minimum dimensions of yards and courts.

In the B area district the minimum dimensions of yards and courts and the maximum percentage

of lot occupancy shall be as provided in this division.
(3-5-59, § 16, (1).)

Section 21-34 Rear yard.

There shall be a rear yard having either a depth of not less than fifteen percent of the depth of the lot, or a depth of not less than five inches for each foot of building height, whichever is greater. This yard need not exceed twenty-five feet in depth; provided, it has a depth of not less than five inches for each foot of building height. (3-5-59, § 16, (2).)

Section 21-35 Side yard.

A side yard shall not be less than two inches wide for each foot of building height. A side yard shall not be less than five feet wide and there shall be at least two side yards. (3-5-59, § 16, (3).)

Section 21-36 Open court.

An open court shall be not less than five feet wide nor less than two and one-half inches wide for each foot of height of such court. (3-5-59, § 16, (4).)

Section 21-37 Enclosed court.

An enclosed court shall not be less than six feet wide, nor less than three inches wide for each foot of height of such court, nor shall its area be less than twice the square of its required least dimension. (3-5-59, § 16, (5).)

Section 21-38 Percentage of lot occupancy.

No building, with its accessory buildings, shall occupy in excess of forty percent of an interior lot, nor in excess of fifty percent of a corner lot, nor in excess of sixty percent of a triangular lot. (3-5-59, § 16, (6).)

Section 21-38D Division 4. C and D Area Districts.

Section 21-39 Minimum dimensions of yards and courts.

For residence, in the C and D area districts, the minimum dimensions of yards and courts and the maximum percentage of lot occupancy shall be the same as for the B area district. (3-5-59, § 18, (1).)

Section 21-40 Percentage of lot occupancy.

For commercial and industrial buildings in the C and D area districts, the maximum percentage of

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lot occupancy may be one hundred percent; provided, that the Building Code and the sanitary provisions of this City Code, and the provisions of this chapter with reference to parking area, are fully complied with. (3-5-59, § 18, (2).)

Section 21-40D Division 5. Area District Exceptions.

Section 21-41 Exceptions enumerated.

The foregoing requirements in the area districts shall be subject to the following exceptions and regulations:

(a) A building upon a through lot may waive the requirements for a rear yard when complying with the percentage of lot occupancy requirements; provided, that in computing percentage of lot occupancy one of the streets upon which the lot abuts may be assumed to be an alley; and provided further, that when such a building is located between lots requiring rear yards on either or both sides, such building on a through lot shall provide a court on the side or sides on which the adjoining lots are required to provide rear yard.

(b) Every part of a required yard or court shall be open from its lowest point to the sky unobstructed, except for the ordinary projections of skylights above the bottom of such yard or court, and except for the projections of sills, bolt courses, cornices and ornamental features not to exceed four inches; provided, that open or lattice enclosed fire escapes, the ordinary projection of chimneys and flues, and portions of a building which do not extend above the level of the first floor of the main building may be permitted if so placed as not to obstruct light and ventilation.

(c) Courts or shafts for bathrooms, toilets, hallways or stairways may be of smaller dimensions than herein specified for courts; such courts or shafts, and also yards less than five feet wide, and open and enclosed courts not conforming to the requirements of these regulations, will be considered as part of the building in computing the percentage of lot occupancy.

(d) In the residential A and B area districts the percentage of lot occupancy of interior and corner lots that are heretofore occupied by dwellings may be increased ten percent to permit the erection of one story private garages only.

(e) In case of recorded private restriction lines the whole area of privately owned property will be considered in computing the area of occupancy; also, in computing the lot occupancy the area between the building line and the building restriction line, upon which the owner pays taxes shall be counted in the area of the lot.

(f) In the B district a row of connected single-family dwellings with division walls from the ground up or from the lowest floor up may be erected and deemed a single building for the purpose of these regulations; provided, the building conforms with the following requirements:

(1) All the buildings in such group shall be erected simultaneously and shall not exceed two stories in height.

(2) There shall be two side yards, each conforming with the regulations of the B district area, but each side yard shall not be less than twenty feet in width; and the rear yard shall conform with the regulations of the B area district, but shall be not less than twenty feet in depth.

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(3) The structure and its accessory buildings shall not occupy in excess of twenty-five percent of the total area.

(4) No exterior stairway, unless located within the buildings area, shall be constructed above the level of the main floor joists.

(5) A combination of single-family dwellings and apartment houses, flats or tenements in any one group is prohibited.

(6) The group shall consist of not more than twelve single-family dwellings. There shall be at least one front entrance for each four family dwellings.

(g) Churches hereafter erected, altered or enlarged in the A restricted, and B area districts shall not be subject to the maximum lot occupancy provisions applicable to such districts; provided, that yard and court provisions required for such districts are met and complied with. (3-5-59, § 19.)

Section 21-41A Article VI. Vehicle Parking.

Section 21-41D Division 1. Parking Areas.

Section 21-42 "Parking or garage space" defined.

For the purpose of this division, a "parking or garage space" shall be a level area of not less than one hundred fifty square feet, exclusive of driveways or aisles giving access thereto, accessible from streets or alleys or from private driveways or aisles leading to streets or alleys, and of such shape and condition as to be usable for the temporary parking of motor-driven vehicles. (3-5-59, § 14, (2).)

Section 21-43 Minimum parking or garage space for each building.

In all districts there shall be provided at the time of the erection of any building hereafter designated, minimum off-street parking or garage space for motor-driven vehicles in amounts not less than hereafter specified, and such area shall thereafter be maintained and not reduced below the requirements of this division. (3-5-59, § 14, (1).)

Section 21-44 Limitations on location.

No part of the open parking or garage space required which is located on the same lot with the building it is intended to serve shall be permitted within five feet of the outside walls of such building. No open parking or garage space shall be between the outside walls of a building and the line of any street upon which the lot abuts unless approved by the board of zoning appeals. (3-5-59, § 14, (3).)

Section 21-45 Limited use of parking or garage space when located on lot other than lot on which related building stands.

When the parking or garage space for vehicles in connection with any building, as required by this division, is provided on any lot other than the same lot on which the building is located, then such space shall not be used for any other purpose or included or counted as any part of a yard or court or other open space required under these regulations for or accessory to or in connection with any other building, structure or use. (3-5-59, § 14, (4).)

Section 21-46 Applicability of division to existing buildings.

Nothing contained in this division shall be construed to prohibit the establishment of any parking or garage space for existing buildings; provided, the applicable provisions of the foregoing sections of this division are met and complied with. (3-5-59, § 14, (4).)

Section 21-47 Arrangement of parking spaces within area.

For the purpose of this section "accessible" shall mean graded and unobstructed ingress and egress at all times to and from the parking area and to each parking or garage space within such area. An aisle required for accessibility between rows of two or more parking spaces or between a row of two or more parking spaces and the perimeter of the parking area shall be not less than fourteen feet in width, but in computing the width of an aisle between a row of two or more parking spaces and the perimeter of the parking area, a private right-of-way or alley abutting such perimeter, if accessible, shall be assumed to be the whole or a part of the width of such aisle, as the case may be. (3-5-59, § 14, (6).)

Section 21-48 Plat or map to accompany application for building permit.

Upon application for building permit the city clerk shall require the applicant to provide any plat, profile or topographical map necessary to determine the accessibility of the parking area. (3-5-59, § 14, (7).)

Section 21-49 Storage garages.

The provisions of this division shall also apply to public storage garages hereafter erected in residential areas as provided in subdivision (d), subsection (10) of section 21-15 and in subdivision (3) of subsection (a) of section 21-74 and to parking garages as permitted in article VIII of this chapter. (3-5-59, § 14, (8).)

Section 21-50 Table for determination of number of required spaces.

Except as otherwise provided the amount of off-street parking or garage space shall be determined in accordance with the following table:

Single family dwellings:	One parking or garage space for each dwelling unit,
Flats:	One parking or garage space for each dwelling unit.

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Lodging, rooming, boarding houses or hotels:	One parking or garage space for each four guest bedrooms.
Private clubs, fraternity houses or dormitories:	One parking or garage space for each four guest bedrooms.
Apartment or tenement houses in A district:	One parking or garage space for each dwelling unit.
Apartment or tenement houses in B district:	One parking or garage space for each dwelling unit.
Apartment or tenement houses in C district:	One parking or garage space for each dwelling unit.
Hospitals:	One parking or garage space for each four beds.
Sanitariums, convalescent homes, homes for aged:	One parking or garage space for each four beds.
Orphanages, eleemosynary institutions:	One parking or garage space for each four beds.
High schools, colleges and universities:	One parking or garage space for each twenty-five students.

(3-5-59, § 14, (9).)

Section 21-51 Lot location for off-street parking facilities.

For all buildings the off-street parking facilities required shall be located on the same lot with such building, or on a lot adjacent to such building, or on a lot separated only by an alley from the property on which the building is located, or elsewhere when permitted by the board of zoning appeals. (3-5-59, § 14, (10).)

Section 21-52 Fractional spaces.

Whenever the basis used requires a fractional parking or garage space the next higher number of parking or garage spaces shall be provided. (3-5-59, § 14, (11).)

Section 21-53 Authority of board of zoning appeals to permit waivers and modifications.

(a) The board of zoning appeals is authorized to permit a waiver or modification of the required location or conditions of off-street parking facilities required, or both, if the board finds that such action is necessary to secure an appropriate development of a specific lot which is made difficult or impracticable by reason of steep hillsides or unusual physical conditions inherent in or directly affecting the lot as follows: Topography, grades, shapes, size and dimensions of the lot.

(b) In exercising these powers the board shall find that the waiver or modification will not be inconsistent with the spirit and purpose of the regulations, with public safety, with the present character and future development of the neighborhood, and with substantial justice. (3-5-59, § 14, (12) and (13).)

Section 21-53D Division 2. Parking of Trailers; House Trailer Camps.

Section 21-54 Definitions.

For the purposes of this division, the following words and phrases shall have the meanings respectively ascribed to them by this section:

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Mobile home; house trailer. Any vehicle greater than twenty-eight feet in length or eight feet in width so designed and constructed to permit the occupancy thereof as a dwelling for one or more persons, which is both used and occupied as a dwelling, having no foundation other than wheels, jack, skirting or other temporary supports, and designed and constructed so as to be capable of being towed upon public thoroughfares by a motor truck or tractor.

Trailer park. An area of land upon which two or more house trailers or mobile homes are harbored for the purpose of human habitation, either free of charge or for revenue purposes, and shall include any building, structure, vehicle or enclosure used or intended for use as a part of the equipment and facilities of such mobile home park.

Travel trailer. Any vehicle not greater than twenty-eight feet in length or eight feet in width, so constructed as to permit its being towed upon public thoroughfares by a motor vehicle, usually an automobile, and designed for the temporary use by one or more persons as a shelter or sleeping place while traveling from place to place as distinguished from the permanent use made of mobile homes. (9-17-70, § 1.)

Section 21-55 Prohibited parking of mobile homes.

It shall be unlawful for any person, for compensation or otherwise, to use or permit the use of a lot or any portion of a lot in any zoned restricted residence area, block or square in the city for the parking and use of any occupied or unoccupied house trailer or mobile home at any time; and it shall likewise be unlawful for any person, for compensation or otherwise, to permit the occupation and use of any portion of a lot or parcel of land in any zoned unrestricted residence area or district for the parking of a house trailer or mobile home at any time unless such area be approved pursuant to the provisions of section 21-56. (3-5-59, § 15, (1); 1-8-68; 9-17-70.)

Section 21-56 How house trailer camps may be established.

House trailer camps, conforming with the "Regulations Governing the Sanitation of House Trailer Camps" as adopted by the state public health council, and other state and municipal laws and regulations, may be established in unrestricted residential (or B) districts at such locations as are approved by the planning commission after a public hearing is held in relation thereto. (3-5-59, § 15, (2).)

Section 21-57 Space and location requirements for parking of house trailers.

Each car and house trailer shall be allotted a space of not less than seven hundred square feet. The minimum dimensions shall be not less than twenty feet wide and thirty-five feet long. Each space allotment shall abut or face on a driveway or an unoccupied space of not less than twenty feet in width, which space shall have an unobstructed access to a public highway, street or alley. (3-5-59, § 15, (3).)

Section 21-58 Building permit requirements.

Any person who desires to place, locate or erect a house trailer or mobile home within the city and intends to use it as a residence for himself or others shall obtain from the city a building permit,

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which permit shall be subject to the same rules and regulations as are in effect for the obtaining of a permit to place, locate, erect or construct a conventional type residence within the limits of the city. This section shall not be construed, however, to require the owner of a travel trailer to obtain a building permit for storing or parking it unoccupied on his own premises nor shall this section require an owner allowing his property to be used for the temporary parking of a travel trailer, as above set forth, to acquire a building permit. The owner of a house trailer or mobile home shall likewise be required to obtain a building permit for any remodeling or reconstruction to a mobile home or house trailer, such permit to be acquired in the same manner as permits are acquired for the remodeling or reconstruction of a conventional type home, and the permit to be subject to the same rules and regulations. (1-8-68.)

Section 21-58A Article VII. Certificates of Occupancy.

Section 21-59 Purposes for which required; applications for and issuance of.

Hereafter, no person shall use any building, land or premises, or part thereof, for any purpose except as a single-family dwelling until the city collector and treasurer and the building inspector shall, upon written application, have issued to such person a certificate of occupancy stating that such use complies with these regulations and that the building and premises comply with the requirements of these regulations and the building or portion of the building affected complied with the requirements of these regulations and the Building Code for such use; provided, that certificates of occupancy shall not be required for separate offices in an office building if a certificate of occupancy, as herein required, is issued for the entire building. (3-5-59, § 20, (1); 4-1-82.)

Section 21-60 Posting of certificate.

Certificates issued in conformity with the provisions of this article shall, except in the case of churches, be so conspicuously posted in or upon the premises to which they apply that they may readily be seen by anyone entering the premises. (3-5-59, § 20, (2).)

Section 21-61 When certificate may be issued.

If erection or alteration of buildings is contemplated, certificates of occupancy therefor shall not be issued until such erection or alteration has been completed in accordance with the building permit issued therefor, until all nonresident contractors' fees and taxes, if any, have been paid and until such erection or alteration has been completed to the point of availability for occupancy and use. (3-5-59, § 20, (3); 4-1-82.)

Section 21-62 Prohibited occupation or use of premises prior to issuance of certificate.

Any occupation and use of a building, land or premises, without a certificate of occupancy as required by these regulations shall be unlawful, and any violation thereof shall be subject to the penalties hereinafter provided. (3-5-59, § 20, (4).)

Section 21-63 Record of certificates issued.

A record of all certificates shall be kept on file in the office of the city collector and treasurer unless they shall have first been microfilmed, in which event the original records may then be destroyed and the microphotographs shall be kept on file in lieu thereof. (3-5-59, § 20, (5); 4-1-82.)

Section 21-64A Article VIII. Board of Zoning Appeals.

For state law as to municipal boards of zoning appeals, see W. Va. Code, §§ 8-24-51 through 8-24-65.

Section 21-64D Division 1. Generally.

Section 21-65 Board continued in existence; how referred to; statutory powers and duties.

The board of zoning appeals, as constituted immediately preceding the effective date of this Code and in conformity with the provisions of section 8-24-51 et seq. of the Code of West Virginia, is hereby continued in existence and shall continue to exercise the powers and perform the duties specified for municipal boards of zoning appeals under the provisions of chapter 8, article 24 of the Code of West Virginia. (3-5-59, § 23, pt. 1, (1).)

Editor's note. --The board hereby continued in existence was initially created as the "board of adjustment," as provided in W. Va. Code, 1955, § 8-5-7. That statute was amended by Acts 1959, ch. 118, and again by Acts 1969, ch. 86, and the 1955 section 8-5-7 is now § 8-24-51.

Section 21-66 Officers.

The board shall elect a chairman, vice chairman and a secretary annually at its first meeting held in January.

The chairman shall preside at all meetings and hearings of the board. In the absence of the chairman, the acting or vice chairman shall preside. The secretary, subject to the direction of the board and its chairman, shall conduct all correspondence of the board, send out all notices required by these regulations, shall attend all meetings of the board and all hearings, shall keep all dockets and minutes of the board's proceedings, shall compile all required records, and shall maintain the necessary files and indexes. (3-5-59, § 23, pt. 5, (6).)

Section 21-67 Docket and minute book.

The secretary shall keep a docket and a minute book which shall be kept posted to date.

The secretary shall enter in the docket the number of the appeals or applications, the name of the applicant, a short description by street number or otherwise of the premises, the nature of the application and the final disposition after the case has been disposed of.

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All continuances, postponements, dates of sending notices and other steps taken and acts done shall be noted on the docket.

In the minute book shall be recorded the resolution relating to each case acted on, together with the vote of each member of the board. (3-5-59, § 23, pt. 5, (7).)

Section 21-68 Publications of notice of public hearings on appeals; adjourned meetings.

Whenever appeal is made to the board, the board shall within thirty days publish a notice of the time and place of public hearing upon such appeal, which notice shall be published at least once, not less than ten days from the date of such hearing in a daily newspaper of general circulation in the city. The board shall also give such additional notice of such hearing to interested persons and organizations as it shall deem feasible and practicable. Such public hearings may be adjourned from time to time and, if the time and place of the adjourned meeting be publicly announced when the adjournment is had, no further notice of such adjourned meeting need be published. (3-5-59, § 23, pt. 1, (2).)

Section 21-69 Duration of validity of orders and building permits relating to erection or alteration of buildings.

No order of the board permitting the erection or alteration of a building shall be valid for a period longer than six months unless, within such period, the plans therefor are filed with the city clerk for the purpose of securing a building permit. Any permit approved shall be started within six months after the date of the issuance of the permit and shall proceed to completion in accordance with its terms; provided, that if the work is not started within such period, the permit shall expire. (3-5-59, § 23, pt. 1, (3).)

Section 21-70 Duration of validity of orders permitting use of buildings or premises.

No order of the board permitting the use of a building or premises shall be valid for a period longer than six months unless such use is established within such period; provided, that where such use permitted is dependent upon the erection or alteration of a building, the provisions of section 21-69 shall apply. (3-5-59, § 23, pt. 1, (4).)

Section 21-71 Reports of board proceedings and records thereof.

The board shall cause to be made a record of all of its proceedings, which record shall set forth the full reasons for its decisions and the vote of each member participating therein. Such record, immediately following the board's final decision, shall be filed in the office of the secretary of the board and be open to public inspection. (3-5-59, § 23, pt. 1, (5).)

Section 21-72 Annual reports to planning commission, mayor and common council.

The board shall annually, on or before the 1st day of September make a report for the fiscal year preceding, or June 30, to the planning commission and to the mayor and common council, summarizing cases considered and action taken. (3-5-59, § 23, pt. 1, (6).)

Section 21-72D Division 2. Powers Relating to Exceptions and Special Questions.

Section 21-73 Powers relative to variances.

In addition to the various powers set forth above, the board shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative officer in the enforcement of this chapter, or of any ordinance adopted pursuant hereto, and to grant variances, all in accordance with chapter 8, article 24 of the Code of West Virginia. (3-5-59, § 23, pt. 3.)

Section 21-74 Granting of exceptions.

(a) Upon appeals to the board, the board is hereby empowered to grant requests for the following exceptions, when, in the judgment of the board, such exceptions shall be in harmony and not in conflict with the general purpose and intent of this chapter and the zoning map and will not tend to affect adversely the use of neighboring property in accordance with the zoning regulations and zoning map:

(1) Permit, in a residential district, a college, a university, a private school or a nonprofit institution of higher learning or culture devoted exclusively to the arts and sciences, if (a) its space and equipment may not be readily convertible to business use, (b) its operation would be impaired by location on a business street, and (c) it is not likely to become objectionable in a residential district because of noise, traffic and number of students.

(2) Permit a philanthropic or eleemosynary institution in the residential district, except in an A restricted area district.

(3) Permit in a residential district a public storage garage in an apartment house when the vehicular entrances and exits are so located that dangerous traffic or otherwise objectionable conditions will not be created; provided, that the floor area of such garage does not exceed one fourth of the total floor area designed for use by the tenants.

(4) Permit, in a residential district, except as hereinafter provided, the use of an unimproved lot for the temporary parking of motor vehicles, subject to such restrictions and safeguards as may, in the opinion of the board, be necessary to protect the residential property in the vicinity, when such use is found to be reasonably necessary or convenient to the neighborhood, and not to interfere unreasonably with most appropriate use of neighboring property under the zone plan. The use of an unimproved lot in an A restricted district for the temporary parking of motor vehicles shall not be permitted.

(5) Permit, in a residential district, a temporary building for commerce and industry which is incidental to the residential development, such permit to be issued for a period of not more than one year, but such permit may be renewed by the board from time to time for not exceeding a like period.

(6) Permit, in a residential or commercial district, the construction of private garage storage facilities in excess of eight hundred square feet accessory to a dwelling, or educational, philanthropic or eleemosynary institution, on a lot containing an area of not less than one acre; provided, the facilities do not adversely affect light and air of the dwelling or institution and of neighboring property.

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(7) Permit, in a residential or commercial district, the erection of a one-story, private garage not exceeding four hundred square feet in area accessory to a dwelling nonconforming because of lot over-occupancy; provided, that such garage does not adversely affect light and air of such dwelling and neighboring property, and that the total over occupancy of the lot does not exceed four hundred square feet.

(8) Permit the use of a building as an apartment house, flat, tenement, lodging, rooming, or boarding house, private club, fraternity, lodge or hotel where parking space is provided to the extent required by division 1 of article VI of this chapter on a lot other than the lot upon which the building is located or adjacent thereto or separated only by an alley from the property on which such building is located; provided, that the board shall find that such parking area is so located with respect to the building as to furnish reasonable and convenient parking facilities for the tenants, guests and occupants of such building; and provided, also, that the board shall approve such parking area under the provisions of subdivision (4) of this subsection.

(9) Permit in the B district the erection of antenna towers for television and frequency modulating broadcasting to any height and in conjunction therewith the erection, alteration or use of buildings for transmission equipment on the same lot or elsewhere when the board finds:

a. That the proposed location and height will not affect adversely the use of neighboring property, and radio reception, in accordance with the zoning regulations and the zoning map.

b. That any part of an antenna tower is removed from all lot lines a distance of at least one-sixth of its height or its separation from other property by an intervening street.

c. That the proposed height of the tower is reasonably necessary to render satisfactory service to all parts of the city, and Randolph and adjoining counties.

d. That any transmission equipment to be housed in a residential district is technically necessary for satisfactory and reasonable economical transmission.

(b) Before granting such appeals the board shall submit the application to the planning commission for a report in writing; provided, that antenna towers to be erected to a greater height than any limit prescribed by these regulations for buildings in the city shall require approval of the mayor and common council. (3-5-59, § 23, pt. 2.)

Section 21-75 Powers relative to nonconforming uses.

The board may grant permits with respect to nonconforming uses as follows:

(a) If no structural alterations are made, the board may permit a nonconforming use to be changed to another nonconforming use; provided, that the board finds that such proposed use will not more adversely affect the present character or future development of the neighborhood.

(b) If no structural alterations are made, the board may permit a nonconforming use of a part of a building to be extended throughout the building; provided, that the board finds that such extension will not adversely affect the present character or future development of the neighborhood in accordance with the zoning regulations. (3-5-59, § 23, pt. 4.)

Section 21-75D Division 3. Miscellaneous Provisions.

Section 21-76 Meetings; quorum.

The board shall hold at least one meeting each month. Four members shall constitute a quorum of the board, but a lesser number may meet and adjourn. (3-5-59, § 23, pt. 5, (1).)

Section 21-77 Cases before the board.

Each appeal to the board shall be made on the appropriate forms and all information called for by such form shall be furnished by the appellant or applicant. At the time of filing such appeal, any fee required by the mayor and common council shall be paid to the city collector and treasurer.

Appeals, including all applications for variances or specific exceptions, unless made on an appropriate form properly filled out with all required data attached, shall not be accepted for hearing. (3-5-59, § 23, pt. 5, (2).)

Section 21-78 The docket and calendar.

Each appeal, filed in proper form with the required date, shall be numbered serially, docketed, and shall be placed upon the calendar of the board by the secretary thereof.

Appeals shall be heard in the order in which they appear on the calendar; except, that an appeal or application may be advanced for hearing by order of the board for good cause shown.

The calendar of cases to be heard shall be posted in the office of the city clerk ten days before the meeting. Notice of the hearing of an appeal shall be given by mailing a notice ten days before such hearing to the appellant or applicant at the address stated in the appeal, and such other notice shall be given to such other interested property owners or persons as may be directed by the chairman or acting chairman of the board. (3-5-59, § 23, pt. 5, (3).)

Section 21-79 Hearings.

The applicant or appellant may appear in his own behalf or be represented by an attorney or agent at the hearing. In the absence of any personal appearance on behalf of the appellant or applicant, the board may, in its discretion, proceed to dispose of the matter on the record before it.

At the hearing the order of procedure shall be as follows:

- (a) Appellant or applicant.
- (b) Building official, mayor, member or members of the common council or other administrative officers.
- (c) Interested property owners or other interested persons.

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(d) Appellant's rebuttal. (3-5-59, § 23, pt. 5, (4).)

Section 21-80 Rehearing.

No rehearing of any decision by the board shall be had except on motion by a member of the board to reconsider, made not later than the first meeting succeeding the meeting at which the resolution was acted on and carried by not less than four affirmative votes. If a rehearing is granted, notice shall be given as in the case of an original hearing.

Any applicant whose appeal has been denied by the board may institute a new appeal not less than one year from the date upon which the board took action upon the previous appeal. (3-5-59, § 23, pt. 5, (5).)

Section 21-81 Advice.

No informal requests for advice or moot questions shall be considered by the board. (3-5-59, § 23, pt. 5, (8).)

Section 21-82 Fee for filing of an appeal.

Any person, except an association created for civic purpose and not for profit, filing an appeal to the board under the provisions of chapter 8, article 24 of the Code of West Virginia, and the regulations for the height, area and use of buildings in the city as provided in this chapter, shall pay the city collector and treasurer, with such appeal, a fee of ten dollars. If such appeal is based solely upon an alleged error in any order, requirement, decision, determination or refusal made by the building official, the mayor or the city clerk, or any other official or body, and such appeal is sustained by the board, the board shall direct the refund of the fee paid. The board shall not consider any appeal filed by any person, except an association created for civic purposes and not for profit, unless the fee required has been paid. (3-5-59, § 23, pt. 6.)