

CODIFIED ORDINANCES OF KEYSER, WEST VIRGINIA

Complete to September 1, 2019

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ROSTER OF KEYSER (2019) COUNCIL

William Zacot	Mike Ryan
Eric Murphy	Terry Liller
Jennifer Junkins	

OFFICIALS

Damon Tillman	Mayor
Amanda Brafford	City Administrator
Tom Golden	Chief of Police
Martin Townsend	Judge
Patti Davis	City Clerk
Patti Davis	Court Clerk
Bonnie Hannas	Recorder
Teddy Nestor	Water Supervisor
Richard Mayhew	Water Plant Supervisor
Mathew Lupis	Waste Water Treatment Supervisor
Jim Hannas	Street Supervisor
Monica Fortino	Utility Clerk Manager
Patti Davis	Tax Clerk
Patti Davis	Floodplain Manager
Patti Davis	Code Enforcement Manager

The publisher
expresses its appreciation
to
all City officers and employees
who gave their time and counsel
in the 2019 recodification of
the City's ordinances
KEYSER CHARTER

AN ACT to incorporate the City of Keyser in the County of Mineral, West Virginia, defining the power thereof and describing the limits of said City, and to repeal all acts and parts of acts inconsistent with the provisions of this act

EDITOR'S NOTE: Passed February 3, 1913. In effect from passage. Approved by the Governor February 20, 1913.

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**CHARTER
OF THE CITY OF
KEYSER, WEST VIRGINIA**

BE IT ENACTED BY THE LEGISLATURE OF WEST VIRGINIA:

SECTION 1. THE CITY OF KEYSER.

That the inhabitants of so much of the County of Mineral as are within the boundaries prescribed by Section Two of this Act, and their successors, shall be and remain, and they are hereby made a body politic and corporate, by the name and style of "the City of Keyser," and as such, and by that name may contract and be contracted with, sue and be sued, plead and be impleaded, answer and be answered unto, and may purchase, take, receive, hold and use goods and chattels, lands and tenants, and choses in action, or any interest, right or estate therein, either for the proper use of said City, or in trust for the benefit of any person or corporation therein; and the same may grant, sell, convey, transfer, let, lease and assign, pledge, mortgage, charge and encumber in any case, and in any manner, in which it would be lawful for a private individual so to do, subject to the limitations and provisions of the constitution of the state; and may have and use a common seal and alter and renew the same at pleasure; and generally shall have all the rights; franchises, capacities and powers appertaining to like corporations in this state, and shall have and succeed to all powers, franchises and immunities, rights and privileges which were conferred upon or belonged or appertained to the Town of Keyser by virtue of any act or acts of the legislature of this state heretofore passed; and shall have all the rights, privileges, capacities and powers provided by Chapter Forty-seven of the Code of West Virginia, as contained in the edition of the year One Thousand Nine Hundred and Six, and amendments thereto, and for which provision is not herein otherwise expressly made. All general and special laws of the State of West Virginia, governing cities, towns and villages, and now applicable and not inconsistent with the provisions of this act, shall apply to and govern the City of Keyser. All by-laws, ordinances and resolutions lawfully passed and in force in the Town of Keyser, as heretofore constituted, and not inconsistent herewith, shall remain in force until altered or repealed by the council elected under the provisions of this Act, and shall extend to and over the whole of the City of Keyser as embraced in Section Two of this Act, and all valid ordinances enacted and now in force in the Town of South Keyser, as heretofore constituted, shall remain in full force and effect therein, until the Mayor and Council shall have been elected and qualified under the first election provided by this Act, at which time all of said ordinances shall ipso facto be repealed. All rights and property heretofore vested in said Towns of Keyser and South Keyser are continued and preserved, and no right or liability, either in favor of or against either of them, existing at the time, and no suit or prosecution of any kind, shall be affected by such change, unless otherwise provided for in this Act, and the said City of Keyser shall succeed to all the rights and liabilities of the Towns of Keyser and South Keyser, and it shall be liable for all the debts and obligations of said towns in the same manner and to the same effect as if such indebtedness had been created by the said City of Keyser.

SECTION 2. CORPORATE LIMITS.

The corporate limits and boundaries of said city shall be as follows, to-wit: Beginning at a large double poplar on the north-west side

of, and at the mouth of White's run where it empties into the North branch of the Potomac River, standing North 35° 45' E. 236 feet from the north end of the Baltimore and Ohio Railroad culvert over said run, and running thence up the river with and near the state line of West Virginia and Maryland, North 12° W. 462 feet to a sugar at a bend of the river; North 46° 37' W. 600 feet to a large black oak; North 36° W. 225 feet to a large black oak, with double ash pointers; North 61° 15' W. 241.5 feet to a large maple, with sassafras and water birch pointers on the bank of the main branch of the river; South 86° 23' W. 589 feet to a double elm; thence leaving the river, South 36° 43' W. 516 feet passing main tracks of Baltimore and Ohio Railroad, at 266 feet, their inspector's house at 406 feet, the Piedmont Road at 466 feet, leaving said railroad company's lands to a stone on a hillside on the W. A. Liller lands; thence along said hillside, South 8° E. 1,186 feet to a stone in a hollow in Liller's orchard near a spring, standing South 50° 30' W. 64 feet from a pointer marked ash tree, and 140 feet from and at right angles to the southerly side of Piedmont Street; thence, parallel to said street, South 51° E. 1,355 feet to a stone standing in the line of said Liller and Randall Harrison, 140 feet southerly from said street; thence leaving Liller and crossing Harrison and F. M. Reynolds vineyard tract, South 5° 20' W. 1,060 feet to the corner of Reynolds and Hetzel's addition to Keyser, in the old T.B. Davis, or Sheetz and McCarty line; thence along it crossing White's run, and the road leading up the mountain to Elk Garden, South 31° 45' E. 1,363 feet to a stone in this line by a large post on a hill, corner of Babb, Smith and Trout heirs land; thence leaving said line and with the division line of Babb and Smith; South 36° 33' W. 1,265 feet to a large post, formerly corner of the T.B. Davis and T.R. Carskadon lands; thence along their line, now Babb and others, South 50° 42' E. 1,267 feet passing a set stone, corner of the Davis and Carskadon lands at 1,021 feet, to a stone in the westerly line of an alley at the rear of the lots fronting on Mineral Street; thence with said line of said alley, South 48° W. 1,273 feet leaving the same at 1,060 feet crossing a street and running on the Carskadon lands, to a stone on the southerly side of Carskadon run; thence down and along said run with the southerly side of Carskadon lane crossing New Creek pike at 1,152 feet, New Creek at 1,214 feet, South 48° 56' E. 2,094 feet to two chestnuts and a stone on the mountain, on the Carskadon lands; thence along the mountain leaving said lands at 1,425 feet crossing J.R. Carskadon and Taylor land, North 50° 30' E. 375 feet to two maples, a locust and stone on the Joseph Arnold land, at the northeast end of a bench of the mountain; thence along the side of the mountain passing H. Vernon's corner at 930 feet, South 69° 12' E. 1,400 feet to a set stone on a hillside with two chestnut oak pointers, south of Arza Furbee's house; thence North 77° 30' E. 857 feet crossing the Headsville road and the Town mountain and Potomac Railroad at the end of this line to a black walnut stump at the west edge of Limestone Run; thence down along the run, North 7° 55' W. 123 feet; North 8° 50' E. 277.5 feet to a point at the edge of the water; thence down and with the same passing under the county road bridge and the Baltimore and Ohio Railroad, through a culvert, North 37° 07' W. 256 feet to the mouth of said run where it empties into the North Branch of the Potomac River at the upper side of "lovers leap" at the state line of West Virginia and Maryland; thence up and with said state line, the direct lines being, South 70° 10' W. 330 feet; North 58° W. 486 feet; North 30° W. 293 feet crossing the mouth of New Creek at 148 feet; North 32° 56' W. 250 feet; North 34° 30' W. 650 feet; North 6° W. 708 feet; North 38° 17' W. 196 feet; North 60° 23' W. 169.2 feet passing the Western Maryland railroad bridge at 26 feet to the center of the south end of the Keyser and McCoolle highway bridge; North 59° 30' W. 1,188.6 feet; North 73° W. 800 feet to a three pronged willow at the edge of the water; North 68° 10' W. 686 feet to a large sycamore tree; North 63° W. 1,837 feet to a large poplar; thence North 43° 45' W. 666 feet to the beginning.

SECTION 3. ELECTION PRECINCTS.

The territory of said City shall be divided into such number of election precincts to include such territory as the council shall by ordinance adopt and fix, but for the purposes of the first primary and general election to be held under this Act the several election precincts heretofore established in the Town of Keyser and the Town of South Keyser shall constitute the election precincts for holding said first primary and election.

SECTION 4. QUALIFICATION OF VOTERS.

Every registered voter qualified by law to vote for a member of the legislature of the state, and who shall have been a resident of said City for six months preceding the day of election, and is a bona fide resident of the election precinct in which he offers to vote, shall be entitled to vote at all elections held in said City by or under the corporate authorities thereof. For the first primary and election hereunder those qualified voters resident in election precincts wherein elections were held for a member of the legislature in the year One Thousand Nine Hundred and Twelve, and at which no municipal election is held under this act, shall be regarded as residents of the municipal election precinct nearest to their actual residence.

SECTION 5. REGISTRATION OF VOTERS.

The registration of voters provided for under the general laws of the state shall be adopted in the City of Keyser, so far as applicable, and the council shall appoint registrars who shall have authority to register such persons who have moved into the municipality at least six months preceding an election and who are otherwise qualified to vote. Registration books shall be prepared under the direction of the City Clerk and furnished to the judges of the election, and all the provisions of the general law relating to the registration of voters shall apply in said City so far as applicable.

SECTION 6. MUNICIPAL AUTHORITIES - GENERAL ELECTION.

For said City, there shall be elected at the regular municipal election to be held on the Tuesday after the first Monday in June, 2011, a mayor and two-councilmen, namely, the Water Commissioner and the Commissioner of Recreation, who shall hold their office for three years and until their successors are elected and qualified. Thereafter, on the Tuesday after the first Monday in June, 2012 three councilmen, namely the Finance Commissioner, the Urban Development Commissioner, and the Commissioner of Streets, Sewer, and I& I, shall be elected, who shall hold their office for four years and until their successors are elected and qualified. Thereafter, on the Tuesday after the first Monday in June, 2014, a mayor and two councilmen, namely, the Water Commissioner and the Commissioner of Recreation, shall be elected, who shall hold their office for four years and until their successors are elected and qualified. Thereafter, on

the Tuesday after the first Monday in June, 2016, three councilmen, namely the Finance Commissioner, the Urban Development Commissioner, and the Commissioner of Streets, Sewer and I & I, shall be elected, who shall hold their office for four years and until their successors are elected and qualified. In a like manner thereafter, elections shall be held every other year, with offices being held for a term of four years.

If any vacancy occurs in any such office, the remaining members of said Council shall appoint a person to fill such vacancy during the balance of the unexpired term.

Said officers shall be nominated and elected at large, and they shall qualify and their terms of office shall be four years and until their successors are elected and qualified, and shall begin on the first day of July after the election.

Any person desiring to become a candidate for mayor or councilman shall, file with the City Administrator a statement of such candidacy, the form of which shall comply with that prescribed by the West Virginia Secretary of State's Office.

And shall at the same time file therewith the petition of at least ten qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to the qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

PETITION ACCOMPANYING CANDIDACY STATEMENT.

The undersigned, duly qualified electors of the City of Keyser, and residing at the places set opposite our respective names hereon, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for election for (name of office) at the general election to be held in such city on the _____ day of June, 20____. We further state that we know him/her to be a qualified elector of said city and a person of good moral character, and qualified in our judgment, for the duties of such office.

Names of Qualified Electors. Number. Street.

Immediately upon the expiration of the time of filing the statements and petitions for candidates, the said City Administrator shall cause to be published in the newspapers published in the City, in proper form, the names of the persons as they are to appear upon the general ballot; and shall cause copies of said list of names, as published, to be forthwith posted in at least ten conspicuous places in said City; and the said Administrator shall thereupon cause the general ballots to be printed, authenticated with a facsimile of his/her signature. Upon the said ballot the names of the candidates for mayor, arranged alphabetically, shall first be placed, with a square at the left of each name and immediately below, the words "vote for one." Following these names, likewise arranged in alphabetical order, shall appear the names of the candidates for councilmen, with a square at the left of each name, and below the names of such candidates shall appear the words "vote for two." The ballot shall be printed upon plain, substantial white paper, and shall be headed:

"Candidates for election for mayor and councilmen of the city of Keyser, at the general election," but shall have no party designation or mark whatever. The ballots shall be in substantially the following form:

(Place a cross in the square preceding the names of the parties you favor as candidates for the respective offices.)

OFFICIAL GENERAL ELECTION BALLOT.

Candidates for nomination for mayor and councilmen of the City of Keyser at the general election.

For Mayor
[] (name of candidate.)
(Vote for one.)
For Councilman
[] (Name of candidate.)
(Vote for two.)

Official ballot, attest:

Signature: _____, City Administrator.

In those years in which three councilmen are to be elected, the ballot shall be headed:

"Candidates for election for councilmen of the City of Keyser at the general election," and below the names of the candidates for councilmen shall be the direction "vote for three."

Having cause said ballot to be printed, the City Administrator shall cause to be delivered at each polling place a number of said ballots equal to twice the number of votes cast in such polling precinct at the last general municipal election for Mayor.

All elections, of whatsoever kind, held under this Act, shall be conducted, returned and the result thereof ascertained and declared in the manner prescribed by the laws of the state relating to elections in so far as they are not in conflict or inconsistent with the provisions of this Act. (Amended 6-9-10.)

SECTION 7. CONTESTED ELECTIONS.

All contested elections shall be heard and decided by the Council, and the contest shall be made and conducted in the same manner as provided for in such contests for county and district offices; and the Council shall conduct its proceedings in such cases as nearly as practicable in conformity with the proceedings of the county court in such cases.

SECTION 8. COUNCIL.

The City of Keyser shall be governed by a Council, consisting of the Mayor and five Council members chosen as provided in Section Six, as amended, of this Charter. Each of the said Council members shall have the right to vote on all questions coming before the Council, but the Mayor shall have no such right except as set forth in Section Six as amended and as set forth in this section as amended. Four members of the Council, or the Mayor and three members of the Council shall constitute a quorum, and the affirmative vote of three Council members or the affirmative vote of two Council members and the Mayor in the event of a tie when there is a vacancy, absence or abstaining vote of one of the five members of council, shall be necessary to adopt any motion, resolution or ordinance or pass any measure. Upon every vote the yeas and nays shall be called and recorded, and every resolution or ordinance shall be reduced to writing and read and identified by title before the vote is taken thereon. (Amended 12-26-07.)

SECTION 9. CITIZENS' COMMITTEE.

Whenever moneys are to be raised and procured for public improvements by the issuance and sale of bonds, or whenever application is made to the City for a public franchise, the Mayor shall, before any action is taken relating to the issuance of such bonds, or the granting or refusing of such franchise, by and with the consent and approval of the Council, appoint seven citizens of said City who shall have been actual residents therein for five years next preceding their appointment and who have been assessed with and paid taxes on at least

One Thousand Dollars worth of property therein for the year preceding their appointment, to act in conjunction with the Council, and as a part thereof, in the consideration and determination of all matters and questions pertaining to the issuance of such bonds, or the granting or refusing of such franchises. Each of said citizens shall have a vote in the Council upon all questions relating to or arising out of the matters for which they were appointed, including the awarding of contracts, expenditure of the money and auditing and approving the accounts therefor. The said citizens shall receive such compensation as the Council may prescribe, take the same oath prescribed for councilmen and shall serve until all of the work for which such money was raised and procured, is fully completed, and the accounts of expenditures thereof finally audited and approved; or until such franchise has been granted or refused.

SECTION 10. THE MAYOR.

The Mayor shall preside at all meetings of the Council; he shall have power to veto any resolution or ordinance, passed by the Council, and every resolution or ordinance so passed must be signed by him, or by the three councilmen, and be recorded before the same shall be in force. After the passage of any ordinance or resolution by the Council, the ordinance or resolution shall be presented to the Mayor for his approval or disapproval, and at the next regular meeting of the council, he shall return the same with his approval endorsed thereon, or accompanied by his veto and his reasons therefor reduced to writing and if he endorses his approval thereon, or fails to return the same as herein provided, such ordinance shall have full force and effect, but if accompanied by his veto and his reasons in writing the same shall have no force or effect but shall stand as reconsidered in the Council. The objection of the Mayor shall be entered at large upon the journal of its proceedings, and the Council shall proceed to consider the question which shall be in form: "Shall the ordinance or resolution pass, the objection of the mayor thereto notwithstanding?". The vote on the question shall be taken by yeas and nays and shall require the affirmative vote of all three members of the Council to pass such resolution or ordinance over the veto of the Mayor. Should such ordinance or resolution fail to receive the affirmative votes of all three members of the Council, when returned accompanied by the veto and objections of the Mayor thereto, it shall be null and void, but if it receives the affirmative vote of the three members of the Council, it shall thereupon become and be in full force and effect to the same extent as if it had received the approval of the Mayor.

The Mayor shall be superintendent of the department of public affairs and public safety, and he shall, at the first regular meeting of the Council, by and with the consent and approval of the Council, designate one councilman to be superintendent of the department of accounts and finance, one to be superintendent of the department of streets, alleys, parks, public improvements and public property, and one to be superintendent of the department of water works and sewers' but such designation, including that of the Mayor as superintendent of the department of public affairs and public safety, shall be changed whenever it appears to the Council that such change is necessary or advisable.

The Mayor shall at said first meeting nominate, and by and with the consent of the Council, shall appoint a city clerk, street commissioner, chief of police, city attorney, treasurer and such other officers and assistants, including regular policemen, as shall be provided for by ordinance and necessary to the proper and efficient conduct of the affairs of the City; all of said officers shall hold office during the term of the mayor by whom they are appointed and until their successors are appointed and qualified, unless sooner removed by the Council. Any officer, assistant or employee, elected, appointed or employed may be removed at any time by a vote of a majority of the members of the Council, under such regulations as the Council may prescribe. Should the Mayor fail or refuse to transmit to the Council nominations for any or all appointive offices for two successive meetings of the Council, after he shall have qualified, or for two successive meetings after the Council has refused to confirm any nomination made by him, the Council shall fill such office or offices.

The Mayor shall be the chief executive officer of the City, and he shall, except as otherwise herein provided, see that the laws and ordinances of the City are enforced; that the peace and good order of the city are preserved; he shall be president of the Council and preside at its meetings, and shall supervise all departments and report to the Council for its action all matters requiring attention in any department, and he shall perform such other duties and services as the Council may ordain, in addition to the duties prescribed in this Act, and not inconsistent, therewith. The superintendent of the department of accounts and finance shall be vice president of the Council, and in case of vacancy in the office of Mayor, or the absence or inability of the Mayor, shall perform the duties of Mayor.

SECTION 11. DEPARTMENTS OF CITY GOVERNMENT - SALARIES.

The Council shall have and possess, and the Council and its member shall exercise all executive, legislative and judicial powers conferred upon cities, towns and villages by the general law of the state and by this Act.

The executive and administrative powers, authority and duties in said City shall be distributed into and among four departments as follows:

1. Department of public affairs and public safety.
2. Department of accounts and finance.
3. Department of streets, alleys, parks, public improvements and public property.
4. Department of water works and sewers.

The council shall determine the powers and duties to be performed by, and assign them to the appropriate department; shall prescribe the powers and duties of officers and employees, may assign particular officers and employees to one or more of the departments; may require an officer or employee to perform duties in two or more departments; and may make such other rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city.

The council shall have power from time to time to create and discontinue offices and employments other than herein prescribed, according to their judgment of the needs of the city, and may, by resolution or otherwise, prescribe, limit or change the compensation of such officers or employees.

The mayor and councilmen, and every other officer or assistant, shall receive such salary or compensation as the council shall by ordinance provide, payable in equal quarterly installments. The salary or compensation of all other employees of said city shall be fixed by the council and shall be payable at such periods as the council may determine.

SECTION 12. MEETINGS OF COUNCIL.

Regular meetings of the council shall be held on the first Tuesday of July in each year, and thereafter at least twice each month. The council shall provide by ordinance for the time for holding regular meetings, and special meetings may be called from time to time by the mayor or two councilmen. All meetings of the council, whether regular or special, at which any person not a city officer is admitted, shall be open to the public.

SECTION 13. IMPROVEMENT ORDINANCES AND FRANCHISES.

Every ordinance or resolution appropriating money or ordering any street improvement or sewer, or making or authorizing the making

of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges, or public places in the city for any purpose, shall be complete in the form in which it finally passes, and remain on file with the City Clerk for public inspection at least one week before the final passage or adoption thereof. No franchise or right to occupy or use the streets, highways, bridges or public places in said city shall be granted for a period exceeding thirty years, and no amendment or addition thereto shall extend beyond the termination of the original franchise.

SECTION 14. QUALIFICATION OF MAYOR AND COUNCILMEN.

No person shall be mayor or councilmen who has not for two years next preceding his election, been a resident within the city of Keyser, and who has not been assessed with and paid taxes upon at least Five Hundred Dollars worth of real or personal property.

SECTION 15. OATH OF OFFICERS.

All officers, elective and appointive, shall make oath, before some one authorized to administer oaths, that they will support the constitution of this state, and will faithfully and impartially discharge the duties of their respective offices, to the best of their skill and judgment; that they will not administer their respective offices with the aim to benefit any political party; and, in the case of councilmen, they shall add in their oath that they will not during their term of office become pecuniarily interested, directly or indirectly, in any contract with the city, or the purchase of any supplies therefor. When the officer shall have made such oath in writing and filed the same with the City Clerk, and shall have given the bond required of and accepted from him, he shall be considered as having qualified for the office to which he was elected or appointed; provided, that if any person elected to the office of mayor or councilman shall not qualify for said office as herein prescribed within ten days after he shall have been officially declared elected thereto, said office shall ipso facto become vacant, and said vacancy shall be filled in the manner provided for in this act.

SECTION 16. GENERAL POWERS OF COUNCIL.

In addition to the powers conferred upon the council of cities, towns and villages, by the general laws of the state and amendments thereto, and those herein elsewhere enumerated, the council of said city shall have plenary power and authority therein; to locate, vacate, lay off, close, open, alter, grade, straighten widen or narrow, pave or repave, construct and keep in repair bridges, viaducts, under grade crossings, roads, streets, alleys, sidewalks, cross walks, 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 person or property caused by or from a defect or obstruction in or on the plat of ground between the gutter or curb of any street and the paved or plank sidewalk extending there along, or between any such sidewalk and the property lying next adjacent thereto, unless such municipality had actual notice of such defect or obstruction prior to the time of the injury complained of; to regulate the width of sidewalks and the streets, and the width and care of the public grounds or grass plots abutting thereon, and to order the sidewalks, footways, cross walks, 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 snow and ice therefrom, and for sprinkling the same, by the owners or occupants of the real property next adjacent thereto; and to require that all pavements shall be of uniform material, between any two cross streets; to regulate traffic on, and the use and occupancy of the streets, alleys, roads and highways of said city, and to regulate the speed of travel thereon of all vehicles, and to prohibit or regulate the use thereon of traction engines or other vehicles or loads causing injury to or unusual wear of the same, and to regulate the speed of engines or trains and street cars within the corporate limits, and to provide for the safety and convenience of the public on streets, alleys, roads, highways and railroad crossings, and to prevent the blocking of such crossings by trains; to regulate the erection, construction and location of telephone, electric light and other poles or structures, or conduits used to carry wires, and to cause the removal thereof from the surface of the streets and to require the wires to be placed under ground; 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 the drainage by the owner of such lots or other real estate by the proper drains, ditches and sewers, and to fill or cause to be filled any lot below the established elevation or grade; to lay off, open, close, vacate or maintain public grounds, parks and public places, and name and rename the same; 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; to establish, maintain and regulate free public libraries and reading rooms, and to purchase books, papers, maps and manuscripts therefor, and to 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 and managed by private corporation or association organized for that purpose; to protect divine worship in and about the premises where held; to regulate or prohibit street carnivals or streets fairs, or street parades, advertising exhibitions or other exhibitions thereon, or the exhibition of natural or artificial curiosities; to regulate or prohibit the ringing of bells, blowing of steam whistles or use of hand organs or other musical instruments of any annoying character or other music or itinerant performers in the streets, roads, parks, or public places of the municipality; to license, regulate or prohibit auctioneering; to license or prohibit the sale of goods, wares and merchandise or of live animals at auction in the streets or other public places within the municipality; to regulate, license or prohibit the sale of goods, wares, merchandise, drugs or medicine on the streets or other public places; to prevent the illegal sale of intoxicating drinks, liquors, drugs and intoxicating mixtures of all kinds; to impose a license tax on persons keeping for hire automobiles, carriages, hacks, buggies, or wagons, or for carrying for hire persons or baggage in such vehicles; to establish and regulate hack stands and stands for automobiles, coaches, cabs and omnibuses kept on the streets for hire; to regulate or prohibit runners at railroad depots and stations and other places or assemblage of people; to regulate and assess and collect a license fee for the use of the municipality on any thing or business on which a state license is required, subject to the exemptions as provided in Section Thirty-two of the Code; 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 thereat and destruction of any and all such goods and drink products as shall be found unwholesome, dangerous or offensive, and without recourse against the municipality for its cost or value; to regulate the sale of all food and drink projects, milk, fresh meats, fish and vegetables, and provide for the inspection of the same; to appoint market masters and invest them with power to make arrests for the violations of the municipal ordinances or regulations in their view, and to prevent regarding or forestalling; to regulate and provide for the weighing of hay, coal and other articles for sale in the market; to prevent injury or annoyance to the public or individual from anything dangerous, offensive or unwholesome; to regulate the keeping handling and transportation of explosives and dangerous combustibles within the municipality; to regulate or prohibit the erection or maintenance in what council deems an improper locality within the municipality any blacksmith shop, livery stable, cow house, cattle pen, poultry house, pig pen, privy, bill board, sign boards, gas or other engines or the use of walls or walks for signs, and to abate by summary proceeding whatever in the opinion of the council is a nuisance; 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, buildings or other structures without first having procured the consent of the owner or occupier thereof; 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, lamp black factory, tannery or other house, shop or factory of like kind or character; to establish, regulate and maintain public baths and bath houses, 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; 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, make regulations respecting the same, and appoint a pound master and define his duties; 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 a house of ill fame, or for knowingly permitting any house owned by him or under his control to be used or kept as an assignation house or house of ill fame, or for loafing, boarding or loitering in a house of ill fame or frequenting the same; 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 picture or make an indecent representation; to restrain and punish vagrants, mendicants, beggars, tramps, common prostitutes, and their associates and drunken or disorderly persons within the municipality, and to provide for their arrest and manner of punishment; to establish a board of health and invest it with the necessary power to attain its object; to establish quarantine, to enforce compulsory vaccination or quarantine, and to erect and maintain pest houses and places of detention, within or without said city, and to make and enforce necessary orders for controlling or preventing the spread of infectious and contagious diseases and for abating pestilences; to prohibit and punish by fine the bringing into the corporate limits by railroads or other carriers, persons who are paupers, or persons afflicted with contagious diseases, or to punish by fine, or by fine and imprisonment, any person so bringing within the corporate limits such pauper or diseased person; to provide for the poor of the municipality, and to that end the municipality may contract with the county court of Mineral County for keeping of such poor persons, or any number of them, at the county poor house at a price and on such terms as may be agreed upon between the county court and the proper municipal authorities; to authorize the taking up and to provide for the safe keeping and education, for such periods of time as may be deemed expedient, of all children who are destitute of proper parental or other care and who are growing up in mendicancy, ignorance, idleness or vice; to establish and maintain, either within or outside of its limits, a house of correction or a house of refuge and a work house, or either of them, and, in the discretion of the municipality to place the same under the management and control of such directors, superintendents and other officers as the council may, by ordinance, provide. All children under the age of sixteen years, who shall be convicted of any offense made punishable by imprisonment under any ordinances of the municipality, or who shall be liable to be committed to prison under any such ordinance may be confined in such house of refuge, and may be there kept or apprenticed out under such rules as the municipality may prescribe, until they arrive at the age of eighteen years, unless for good cause sooner discharged. Any person over the age of sixteen years convicted of the violation of any ordinance of the municipality, and liable to be punished therefor by imprisonment, may in lieu thereof be committed to the house of correction or to the work house, as may be provided by ordinance. The authorities of any house of refuge, established by such municipality, are authorized to appoint a committee of one or more of their number with power to execute and deliver on behalf of said authorities, deeds of apprenticeship for any inmate of said institution when they deem a proper person for an apprenticeship to a trade or occupation, to such person as said committee, or the authorities may approve, and said deed shall have like force and effect as other deeds of apprenticeship under the laws of this state; a copy of every such deed shall be filed and kept in said institution by the superintendent thereof, and it shall not be necessary to file the same in any other place or office. When any inmate of said institution shall have been apprenticed and prove untrustworthy and unreformed, he or she shall be recommitted to the said institution to be held in the same manner as before said apprenticeship. The county court of Mineral County shall have the power to use said house of refuge or work house for children or persons of the age hereinbefore mentioned who shall be convicted in said county, in any court thereof, of any offense not of the grade of felony under the laws of the this state; provided, said county court shall maintain its just proportion of the expense of such house of refuge or work house, to be levied for and paid out of the county treasury; to authorize the establishment and maintenance of juvenile courts, and to provide for the proper conduct of the same; to arrest, convict and punish any person for cruelly, unnecessarily or needlessly beating, torturing, mutilating, killing, or overloading or over-driving, or willfully, depriving of necessary sustenance, any horse or other domestic animal; to restrain fraudulent practices within the municipality; to arrest, convict and punish any person for gambling or keeping any gaming table, commonly called fare bank table and chips used in playing such game; crap table or chips used in 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 or like kind under any denomination, whether the game or games by 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, fare bank table or chips, roulette table, or chips, crap table or chips, keno table or devices, or keeping or maintaining any gaming 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; to restrain all felons and persons guilty of offenses against this state or the United States and deliver them over to the authority or court having jurisdiction of the offense whereof such person is accused; 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, sling shot, razor, billy, metallic or other false knuckles, or any other dangerous or deadly weapons of like kind and character as provided by Chapter Fifty-one of the acts of the legislature of One Thousand Nine Hundred and Nine, 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 police judge of the municipality or other person exercising the functions of his office, may, in his discretion, decline to inflict the punishment therein mentioned, and instead thereof may require or hold such guilty person to answer an indictment by the grand jury of Mineral County for the violation of said law; and it shall be the duty of the prosecuting attorney of such county when requested by the police judge of said municipality, to appear and prosecute such offending person before such police judge; 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 Fifty-one of the acts of the legislature of One Thousand Nine Hundred and Nine; 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; 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 occupiers thereof; to regulate the hanging of doors and the 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; to regulate, by license and otherwise, plumbers, electricians, sewer tappers and vault cleaners; to establish fire limits, and to regulate the construction of buildings and designate materials to be used in the construction of buildings within such limits; to regulate the building of fire walls, fire places, chimneys, boilers, smoke stacks and stove pipes; to take down and remove, or make safe and secure, any and all buildings hereafter erected, and 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; 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 buildings and structures and the repair or alteration thereof, and that plans and specifications thereof be submitted to the council or some person designated by it; 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 fronting on any street; to provide for the prevention and extinguishment of fires, and for this purpose to organize, equip and govern fire companies and hose companies, and to prescribe the powers and duties of such companies and department, and of the several officers therefor, and to impose on those who fail to obey any lawful command of the officer in charge of such company any penalty which the council is authorized to impose for violations 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 the fire; 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; to prescribe the powers and define the duties of the officers appointed under corporate authority, fix their terms of service and compensation, if not otherwise prescribed in this act, and to require and take from them bonds, when deemed necessary, payable to the City of Keyser, with the sureties and in such penalties as may be prescribed, conditioned for the faithful discharge of their duties; to erect, own or lease street cars and street railway plant, and to build, equip, maintain and operate street railways within the municipality and to any park, cemetery or public place belonging to the municipal corporation outside of the corporate limits, and to collect of persons riding thereon, or receiving service thereof, a reasonable fare or compensation therefor; to erect, authorize or prohibit the erection of power plants, heating plants, gas works, electric light works or waterworks in the municipality, and to erect, own or lease and maintain within or without the corporate limits of the municipality such gas works, electric light, power works, waterworks and reservoirs to supply the municipality or its inhabitants with water, light, heat or power, and to prevent injury to the same or the pollution of the water or to impair the healthfulness thereof; provided, that whenever said municipality shall operate an electric light plant, a gas plant, or other public utility, except waterworks, in or for the municipality, all the money derived from the operation of the same shall go to the credit of the fund covering the operation of such plant only, and shall not be diverted therefrom so long as there is any bonded or other debt against the same; and such fund shall be applied to the operating expenses of the plant which that fund covers, and it may be used to repair, improve, enlarge or replenish such plant, or to discharge in whole or in part any bonded or other debt against the same; to grant, by ordinance or franchise, for periods not exceeding thirty 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 not exceeding thirty 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 are hereafter prescribed; to grant by ordinance or resolution permits for the temporary 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, vehicles, animals or other property, upon such conditions as are hereinafter prescribed; to provide a revenue for the city and appropriate the same to its expense; to this act and to cause to be assessed and collected in each year an ad valorem tax, not to exceed fifty cents on one hundred dollars assessed valuation on all property in said city, subject to state and county taxes, as valued and returned for such taxation by the county assessor; to erect, buy, sell and lease all buildings necessary for the use of the city government, or any of its departments, including a town hall or play house, and to provide for, and regulate the same and establish and maintain public hospitals, and to receive donations, gifts and bequests for the same, in trust or otherwise; to compel the attendance at public meetings of the members of council, citizens' committee, or any officer or employee of said city; to prevent corrupt practices at all primary and general elections of said city and to fix the maximum sum of money that may be expended by any candidate for nomination or election; to prescribe the purposes for which the same may be used and the penalty or forfeiture to be imposed for violation, which may include the forfeiture of nomination or office; to provide for the removal and abatement of nuisances and to carry out and to enforce sanitary regulations; to regulate the sale of cocaine, morphine, opium and all poisonous drugs within said city, and to prescribe punishment, including fine and imprisonment, for the violation of any such regulation, and to provide that one or more convictions for violating the same shall operate as a revocation of the license of any druggist or pharmacist holding a license under said city; to provide penalties for the offense and violations of laws mentioned herein, but which shall not exceed the penalties provided for like offenses in Chapters One Hundred and forty-eight, One Hundred forty-nine and One Hundred Fifty-one of the Code of West Virginia; and to punish violations of all ordinances even if the offenses under and against the same shall also constitute an offense under the laws of the State of West Virginia.

SECTION 17. MUNICIPAL AUTHORITY.

To carry into effect these enumerated powers, and all other powers conferred upon said city, expressly or by implication, in this and other acts of the legislature, the municipal authorities of said city shall have power in the manner hereinafter prescribed, to adopt and enforce all needful orders, by-laws and ordinances not contrary to the laws and constitution of this state, and to prescribe, impose and enforce reasonable fines and penalties, including imprisonment, and shall have the right to use the jail of said county for any purpose necessary to the administration of its affairs. Such fines, penalties and imprisonment shall be recovered and enforced under the judgment of the police judge of the City, or the person lawfully exercising his functions.

The proceedings before the police judge, or other person exercising his functions, for enforcing regulations and penalties for violation of ordinances, shall be by warrant of arrest in the corporate name of the city, directed to the chief of police, other policemen of the City, or to any constable of Mineral County, commanding the person to whom direct in the name of the State of West Virginia, to forthwith apprehend the offender or cause him to be apprehended and brought before such police judge, or person there sitting, to answer said

charge and to be dealt with according to law.

The warrant of arrest shall be issued only on the information under oath of some reliable person. It shall describe the offense alleged to have been committed where the same is a felony, as heretofore required in such cases by laws, and where a violation of a City ordinance, it shall describe the offense in such general terms of the ordinance violated as shall inform the accused of the nature of the charge or charges, and command the officer to forthwith apprehend the accused and bring him before the police judge, or person exercising his functions, to be dealt with according to law. The officer issuing such warrant may endorse thereon, or by subpoena direct, the witnesses to be summoned, and may proceed against them for contempt if they fail or refuse to attend or to testify. All trials in the police court shall be by summary proceedings.

SECTION 18 ASSIGNMENT AND COLLECTION OF TAXES.

The levying and assessment and collection of taxes of said city, and the sale of real estate for such municipal taxes, forfeitures for non-payment and non-assessment thereof, transfer of title vested in the state, redemption of such forfeited real estate and deeds of conveyance therefor, shall, except as otherwise provided in this act, be made in the manner provided in, and subject to, the provisions of Chapters Nine of the Acts of the Legislature of Nineteen Hundred and Eight, extraordinary session, Twenty-Nine, Thirty, Thirty-One and One Hundred and Five of the Code.

SECTION 19 BONDS.

The council of the said city shall have the right to bond the said city for the purpose of paving the streets and alleys of said city and for constructing waterworks and a sewerage system for the same, and for the purpose of providing hose and other appliances for extinguishing fire, and for any and all public improvements, whenever the council thereof may deem improvements necessary, and to refund outstanding bonds at a lower rate of interest, and to issue new bonds for the purpose of increasing the length of the time on any such indebtedness, but the aggregate indebtedness of said city, for all purposes, shall not at any time exceed five per centum of the assessed valuation of the taxable property therein, based upon the valuation of the last assessment next preceding the date of incurring said indebtedness; and the said council shall by taxation, provide a fund for the payment of interest on any and all indebtedness incurred in the manner aforesaid within the period of thirty-four years; provided, that no debt shall be incurred hereunder until the question of a bond issue be submitted to a vote of the people and the issuance thereof authorized by a three-fifths votes. Such bonds shall not be sold for less than par, nor exchanged for the evidences of indebtedness of said city except dollar for dollar. The method of issuance and proceedings for conduct of election, shall, except as otherwise provided in this act, be in the manner and form provided by Chapter Forty-Seven-A of the Code.

SECTION 20 LICENSES.

Whenever anything for which a state license is required, is to be done within said city, or within two miles of the corporate limits thereof, the municipal authorities, as herein provided, may require a city license to be had for doing the same, and may, in any case require from any person licensed, a bond with sureties and in such penalty and with such conditions as it may deem proper, and the council on notice, may revoke such license at any time if the condition of the said bond be broken. And the municipal authorities may also impose a license and assess a tax thereon on all wheeled vehicles for public hire, all dogs kept within said corporate limits, all insurance, bonding, casualty and guaranty companies, all franchises heretofore granted by the Towns of Keyser and South Keyser or hereafter granted by the City, bill posting and distributing, and the making, erection and construction of signs and street advertisements, book agents, common criers, moving picture shows, drays, cabs, hacks, etc., eating houses, restaurants, and places where soft drinks are sold, express companies, hitting and striking machines, livery and feed stables, omnibuses, electric light and gas companies. The municipal authorities may prescribe, impose and enforce reasonable fines and penalties, including imprisonment, under the order of the police judge of said city, or the person lawfully exercising his functions, upon any person carrying or attempting to carry on any business for which the said license is required, without first obtaining a city license therefor, and paying the city license tax assessed thereon. All licenses provided for in this act shall be paid to the treasurer. For the purpose of enforcing the provisions of this section the City shall have police jurisdiction for two miles beyond the corporation limits thereof.

SECTION 21 FRANCHISES.

Franchises may be granted by the council, under the regulations provided in Section Nine of this act, subject to veto by the mayor, allowing to persons and corporations, for a limited time, the occupancy of portions of the streets, alleys, roads and public grounds as may be necessary for works of public utility and service, such as steam railway tracks, street railway tracks, poles and trolley wires, telegraph and telephone poles and subways, electric light and other electric poles, waterworks, wires, and subways and gas and steam pipe lines. But no such franchise shall hereafter be granted except under the following restrictions and conditions, namely:

No ordinance granting any franchise for the use of the streets, roads, alleys or public grounds of the municipality, for any of the purposes of public utility above named, or for any other purpose of like nature, except as hereinafter provided, shall be passed unless it shall have been first proposed in the council; and notice of the object, nature and extent of such franchise shall be published at least thirty days by the applicant, at his expense, in some newspaper published in said municipality, before being acting upon, and shall have received the votes of at least a majority of all of the members elected to the council and citizens appointed as provided in Section Nine, at a regular meeting or meetings, and after said publication. The votes thereon shall be taken by yeas and nays, and the same entered in the journal. Upon being passed by the council the ordinance granting said franchise shall be forthwith transmitted by the municipal clerk to the mayor for his approval or disapproval, and in case of his disapproval of same, it shall not be considered as passed unless it again receives the affirmative vote of a majority of the members elected to the council and citizens appointed as provided in Section Nine. If the franchise is amended, after having been vetoed by the mayor, it shall be subject to the veto of the mayor as in the first instance. After the ordinance granting such franchise has been passed, it shall be published in full, at the expense of the applicant, at least once within the period of ten days thereafter, in some newspaper of general circulation in the municipality and one copy of the same shall be filed with the municipal clerk, who shall preserve the same as a public record.

The council may grant a permit at any time in or upon any street, road, alley or public place; provided, that such permit may be revocable by the council at its pleasure, at any time, whether such right to revoke be expressly reserved in every such permit or not.

All franchises and privileges hereafter granted shall plainly specify on what particular streets, road, alley or other public property the same shall apply, and no franchise or privilege shall hereafter be granted by the municipality in general terms, or to apply to the municipality generally. No exclusive franchise shall ever be granted, and no franchise shall be renewed before three years prior to its expiration.

Every grant of any franchise shall be for a limited period of time. If no limit be expressly provided in the grant, the franchise shall be for one year only. In no case shall the franchise extend for a period exceeding thirty years.

No grant of any such franchise shall be made without, at the time of making it, providing that the grantee shall indemnify the municipality against all damages caused by the construction of such works. All reasonable additional provisions and conditions may be made for the protection of the public from unnecessary damages or inconveniences by reason of such works and the operation thereof.

No extension or enlargement of any franchise or grant of rights or powers previously granted to any corporation, person or association of persons, shall be made except in the manner and subject to all the conditions herein provided for the making of original grants of franchises.

Council shall, in suitable, practical terms, make it an express condition of the grant of a franchise, where it is for work that is useful chiefly to the local public, that, at the expiration of the franchise, the grantee shall, if required by the council, sell to the municipality the physical plant at what it is then worth independent of any value based upon the earning power thereof, and may also provide a means by arbitration or otherwise for determining what said value may be.

No grant of a franchise for any extension of, or addition to, any line of such work, over any street or territory in said municipality, shall be made for a period extending beyond the time limited for the expiration of the franchise of the principal work of which it is an extension, and if the franchise of the principal company or work is one which was granted before this act goes into effect, the franchise granted for the extension or addition shall nevertheless be subject to the condition hereof, including a time limit herein specified.

If a franchise secured from the municipality by an individual or by an independent or new company, and the work constructed thereunder afterwards become a part of, or to be operated as a part of, a large work of the same kind, whose franchise was previously obtained and is limited to expire earlier, such later franchise shall, by reason of such annexation, merger or single operation, expire simultaneously with such earlier franchise of the old company or work. An annual franchise tax of not less than fifty dollars shall be charged and collected on all franchises heretofore granted by the towns of Keyser and South Keyser or hereafter granted by the city.

SECTION 22. MANDAMUS.

In all cases where any individual, association of individuals or corporation has obtained or shall obtain any right, privilege or franchise to operate a street car line, lines of cars in whole or in part upon the streets, roads or alleys of the municipality, or to furnish to such municipality or the inhabitants thereof water, gas or electricity, or to construct or operate a telephone or telegraph system in any such municipality, and the terms, conditions or manner of exercising such right, privileges or franchises are embodied in the ordinance or resolution of the municipality, or are otherwise, either voluntarily or by law, imposed or assumed by said individual, association of individuals or corporation, then and in each of such cases the circuit court of Mineral county shall have power by mandamus to compel such individual, association of individuals or corporation and their assigns, to use and exercise such right, privilege or franchise in accordance with the terms and conditions and in the manner prescribed in said ordinance or resolution or otherwise lawfully so defined or assumed, and to do and perform each and every obligation and duty attached to such right, privilege or franchise, whether or not such obligation and duty be voluntarily assumed or by law attached thereto or imposed thereby.

Such mandamus may be awarded at the instance of the municipality in its corporate name, or at the instance of any taxpayer or taxpayers; and the forgoing remedy by mandamus shall not be construed to deprive such municipal corporation, or any inhabitant thereof, of any other remedy given by law to compel such individual, association of individual or corporation to comply with the terms, conditions and agreements of such right, privilege, or franchise, or of the right to recover damages for their failure so to do, or to effect, remove or lessen the liability of such individual, association of individuals or corporation, to forfeiture of such right, privilege or franchise for failure so to use and exercise such right, privilege or franchise.

SECTION 23 PAVEMENTS AND SIDEWALKS.

The council shall have the right to establish the width of any sidewalk along any street, alley or public square, or portion thereof, and any owner, of ground fronting on such street, alley or public square, shall in such manner as the council shall reasonably proscribe, pave and curb the sidewalk adjacent to such property. In case of a failure or refusal of such owner to pave or curb the same, the council may cause the same to be properly curbed and paved by the city, and levy and collect from such owner, the whole cost of such curbing and paving adjacent to such property, with a penalty of five per centum added thereto, together with six per centum interest until paid; and in like manner to require the owner of any property adjacent to any paved sidewalk heretofore or hereafter constructed, to keep the same in repair and in default of doing so, to cause the same to be repaired and to levy and collect from said owners the whole cost thereof with a penalty of five per centum added thereto together with six per centum interest per annum until paid. In all cases of such assessment, whether for the original or for the repairing of sidewalks, payment thereof, including penalties and interest, shall be made to the city clerk within thirty days after the completion of the work, who shall have power to collect the same from the owner or owners of any such property, by distress and sale in the same manner in which taxes levied for the benefit of the city are authorized to be collected; and in addition, there shall be a lien upon such real estate, which lien may be enforced by appropriate suit in any court of record of Mineral county.

SECTION 24. NUISANCES.

The council of said city is hereby authorized to decide and adjudge what constitutes a nuisance within the municipality, or within two miles thereof, when not within the limits of another municipality and may require and compel the person committing or maintaining the same, or any owner, agent, assignee, occupant or tenant, of any lot, premises, property, building or structure, upon or in which any nuisance may be, to abate and remove the same upon order from such municipal body, or from the board of health, or health officer, or other officer of the municipality acting with authority in the premises; and the council may prescribe by ordinance a penalty for the punishment of any such person who may refuse, fail or neglect to abate or remove any such nuisance within the time specified in the notice therefor.

The council may also by its own officers, appointees and employees, abate and remove nuisances, after reasonable notice to the owner, occupant, tenant, agent or assignee to abate and remove such nuisance, and collect the expense thereof, with one per centum per month interest added from the date of said notice, from said owner, occupant, tenant, agent or assignee, by distress or sale in the same manner in which taxes levied upon real estate for the benefit of the municipality are authorized to be collected under this act; and the expense shall remain a lien upon said lot or part of lot the same as taxes levied upon real estate in the municipality, which lien is in addition to the remedy specified in this section and may be enforced as provided in Section Twenty-five of this act.

In case of nonresident owners of real estate, such notice may be served upon any tenant, occupant, assignee or rental agent of said

premises, or on such nonresident owner or infant or insane owner by publication thereof for not less than two consecutive weeks in a newspaper published in the municipality. The abatement or removal of any such nuisance by the municipality, and at its expense, as herein provided, shall be prima facie proof that the said notice to the owner, occupant, tenant, agent or assignee was given as herein required.

The council may require all owners, tenants and occupants of improved property, which may be located upon or near any street, road, alley, along which may extend any sewer or system of sewerage, which the municipality may construct, own or control, to connect with such sewer or system of sewerage, all drains, cesspools, sinks, privies or water closets, upon their respective properties, or premises, so that their contents may be made to empty into such sewer or system of sewerage.

And in all cases where any tenant, occupant or agent is required to abate and remove any nuisance, under the provisions of this section, or comply with the provisions of any such ordinance as is mentioned herein, the expense thereof may be deducted out of the accruing or accrued rent of said property, or amount due said owner or agent, and such tenant, occupant or agent may recover the amount so paid from the owner, unless otherwise especially agreed upon between them.

The council may by ordinance regulate the location, construction, repair, use, emptying, and cleaning of all water closets, privies, cesspools, sinks, plumbing, drains, yards, pens, stables and other places where offensive or dangerous substances or liquids are or may accumulate and may provide suitable penalties for the violation of such regulations which may be enforced against the owner, agents, assignees, occupant or tenant of any premises or structure where such violation may occur.

The council shall have authority and jurisdiction of and over the water reservoirs, pipe lines and property adjacent, and all other property of the city located in Mineral County, whether the same be within the corporate limits of said city or not, and for the protection and preservation of the same shall have authority to pass all necessary ordinances, rules and regulations and to provide penalties for the violation thereof; and the police judge, or officer exercising his functions, shall have jurisdiction to try offenders against such ordinances, and his warrant may be directed to any police officer of the city, or to any constable or the sheriff of Mineral County, and may be served and the offender arrested anywhere in said county.

SECTION 25 LIEN FOR TAXES, ETC.

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 paving and curbing the same, and for furnishing water, electric lights or other public utilities when furnished by and said city, from the time the same are assessed or imposed, which shall have priority over all other liens except taxes or debts 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 nonpayment 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 a deed executed therefor, if not redeemed, in the same manner and with like effect, as the return of sales of real estate for state taxes is made and deed therefor executed to the purchasers.

Liens against real estate for the cost of abating or removing nuisances by the municipality, as provided in Section Twenty-four herein and the cost of constructing and repairing sidewalks, walkways and curbs by the municipality as provided in Section Twenty-three herein, may be enforced by suit in equity, before any court having jurisdiction, as other liens against real estate are enforced, and this remedy shall be in addition to the imposition of all other remedies and penalties in the premises under the provision of this act; provided, that in the case of laying or repairing sidewalks, and abating nuisances, there shall be first admitted to record in the Office of the Clerk of the County Court of Mineral County, an abstract or statement of the judgement of the council fixing the amount of the expense of laying or repairing such sidewalk or curb or abating or removing such nuisance, together with the penalty of one per centum per month on said amount from the time so fixed until paid, as provided in this act. Said abstract or statement may be certified by the City Clerk; and after the amount of the assessment and penalty is due by the terms of the ordinance or resolution laying the same, and a certificate of such levy and assessment, together with the name of the owner and occupier of said property, its location and description, has been filed in the Office of the Clerk of the County Court of Mineral County, and in satisfaction of the amount so due such municipality, and cost of the proceeding, the said real estate may be sold, and the proceeds applied to the payment of the amount so due.

Water, electric light, power and heating bills and other bills of like kind due the municipality, owning or operating such plant or plants, may be distrained for and collection enforced in the same manner in which the collection of taxes owing to the municipality may be enforced. The municipal authorities may also shut off the supply of such water, light, heat, power or other commodity from such delinquent person or company and refuse thereafter to furnish such service or commodity to said delinquent until all arrearages are paid.

SECTION 26 HEALTH-HEALTH COMMISSIONER.

The council shall have authority to ordain and enforce such regulation within said city, as shall be necessary or proper to preserve the health of the inhabitants of said city, and to secure them from disease; to require and compel the abatement and removal of all nuisances within said city, at the expense of the person or persons causing the same, or of the owner or owners of the ground whereon the same shall be; to prevent or regulate slaughter houses within said city; or the exercise of any offensive or unhealthy business, trade or employment therein; to prevent the keeping of any stale meats, fish, vegetables or other matter, or depositing the same, or dirt, rubbish, or offal, upon any lot, street, alley or square within said city, or upon the banks of any streams within the limits thereof.

The mayor, by and with the consent of the council, shall in the month of July, One Thousand Nine Hundred and Thirteen, and in said month of every second year thereafter, appoint a suitable person, who shall be practicing physician, as health commissioner, whose term of office shall be for two years, and until his successor is appointed and qualified. The members of the council, the mayor, city attorney and health commissioner shall comprise the board of health of said city. The health commissioner shall be charged with the duty of enforcing all quarantine regulations and of all regulations for keeping the streets, roads, alleys and sidewalks of the City, and all premises therein, in a sanitary condition. He shall be authorized to enter all houses, or other places, public or private, at all times, in the discharge of his duties, in improving and maintaining the sanitation of the city and the prevention and suppression of disease, and he shall have the power and be required to carry into effect all of the provisions of Section Twenty-four of this act relating to the abatement of nuisances, under such regulations as the council may by ordinance prescribe. He shall be authorized to do all acts and make all regulations that may be necessary or expedient for the promotion of health and the prevention and suppression of disease; he shall have the right to inspect all wells, cisterns and water supplies in said city and to prohibit

the use thereof if necessary in his judgment to prevent or suppress disease; he shall have the right to inspect all milk, meat, fish, oysters, vegetables and all other food stuff displayed or offered for sale in said city and to make such rules and regulations touching the preparation, display, delivery and sale thereof, as he may deem prudent, necessary and proper for cleanliness and the prevention and suppression of disease, and he shall perform such other duties as may be prescribed by the council, and shall have the exercise all of the powers and duties conferred upon the county board of health. He shall give public notice, in such manner as he may deem necessary, of any rule or regulation promulgated by him under this act, and any person, firm or corporation who shall violate the same, after proclamation thereof, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten nor more than one hundred dollars, and for a second offense may be confined in jail not more than thirty days. Every practicing physician shall forthwith report to the health commissioner every infectious or contagious disease which he is called upon to treat within said city; and if any such physician shall fail to make such report within one day after he has discovered such infectious or contagious disease, he shall be guilty of a misdemeanor and upon conviction shall be fined not less than ten nor more than one hundred dollars. The City Clerk, in his capacity of police judge, shall have jurisdiction of all offenses hereunder.

The council shall have authority to provide, under the supervision of the health commissioner, proper vaccine serum, whenever an epidemic of smallpox is threatened, and the health commissioner shall vaccinate any applicant upon the payment to him of such fee as the council shall by ordinance prescribe, and he shall thereupon issue a certificate to the patient showing his vaccination. And the council may, in like manner, in any proper case, provide antitoxin lymph or serum for immunizing against or preventing the spread of diphtheria, typhoid fever, meningitis, or other infectious or contagious disease or epidemic, and may furnish the same free to indigent persons.

SECTION 27 ORDINANCES-GENERAL PROVISIONS.

The style of the ordinances of the city shall be: "Be it ordained by the council of the City of Keyser;" but the ordinances now in force shall remain in effect until amended or repealed, except where the same are in conflict or inconsistent with this act.

SECTION 28 ORDINANCE TO BE IN WRITING AND NOT CHANGED, WHEN.

All ordinances shall be presented in writing, and no ordinance shall be so amended in its passage as to change its general purpose. No ordinance shall be considered for final passage at the meeting at which it is introduced, unless by unanimous consent entered of record. No ordinance shall contain more than one subject, which shall be clearly expressed in its title; nor shall any ordinance be passed by the council unless a majority of all the members elected to the council shall concur therein by yeas and nays when the question is put upon its passage.

SECTION 29 ORDINANCES AND VETOES SHALL BE RECORDED, ETC.

All ordinances passed by the council, and vetoes of the mayor, shall be spread at large upon the journal, and at the next regular meeting such ordinances and vetoes shall be read in open council, and the mayor shall sign said minutes, when found correct or corrected, in the presence of the council. The council shall provide a well bound book in which shall be copied all ordinances in the order in which they are passed, which ordinances so copied shall be compared with the originals by the mayor and shall be signed by him when found correct. Such book shall be indexed so as to show in brief form the substance of the ordinance. All copies thereof certified, under the hand of the City Clerk and the seal of the City, shall be received by all courts and justices in this state as evidence. But the council may adopt, by ordinance, properly designating and describing it, a code of laws and ordinances, which when adopted shall be printed in book form, or it may be adopted as a whole after it is printed, and the said code shall be and become the laws and ordinances of said City, and shall be received as such in all courts of this state, and the printed volumes published under the order of the council shall be so received as evidence of what is printed therein until errors or omissions be affirmatively shown therein.

SECTION 30 DUTIES OF THE CITY CLERK.

The City Clerk shall serve for a term of two years, unless sooner removed for cause. He shall, before entering upon the discharge of his duties as such clerk, take and subscribe to the oath of office prescribed in Section Fifteen of this act, and shall execute such bond as shall be fixed by council which bond shall be approved by council and filed with the treasurer.

In addition to all other duties prescribed in this act, the City Clerk shall keep the records of the council, and he, or his deputy, shall be present at all regular and special meetings of that body. It shall be his duty to properly record in a well bound book all the proceedings of council as well as a complete record of all ordinances, franchises, bonds, permits and resolutions adopted or passed by council, and to properly index the same, for the convenience and inspection of the council, or any city official or taxpayer.

Before any business at any regular meeting of the council is undertaken it shall be the duty of the clerk to read publicly to the council the minutes of all regular or special meeting of that body, not therefore read or approved, and upon approval of same by council, the signatures of the mayor and clerk shall forthwith be affixed. All records of council so approved and signed, or duly authenticated copy thereof, signed by the clerk and under the seal of the city, shall be admitted as evidence in any proper case in any court in this state.

The City Clerk, except as may be otherwise herein provided, shall be the custodian of the records and papers of the city and the seal of the city, which shall be kept by him at his office, and the records and papers shall be open to public inspection at all proper hours. He shall, acting under existing laws, in so far as they are not in conflict with this act, perform such duties relating to all city elections held under this act, as the clerks of the circuit or county courts perform, under state laws, in relation to the holding of general or special elections; and he shall likewise be the custodian of all registration books, ballots, tally sheets, etc., pertaining to all municipal elections.

The City Clerk shall have power within the municipality to administer oaths and take acknowledgments of deeds and other instruments required by law to be acknowledged, in the same manner and with like effect and under the same penalties as notaries public, justices of the peace and other officers of the state are authorized to administer oaths, or take acknowledgments, under state laws.

It shall be the duty of the City Clerk, who shall be the assessor, to make an assessment of the property within the city subject to taxation, substantially in the manner and form in which assessments are made by the assessor of the county, and return the same to the council on or before the first day of August in each year, and for the purpose he shall have all powers conferred by law on county assessors. He shall list the number of dogs in the city and the names of the persons owning the same, which list shall be returned to the council. In order to aid the said council in ascertaining the property and tithables subject to taxation by said city, the City Clerk (who shall act as assessor) of said city, shall have access to all books and public records of Mineral County without expenses to said city or assessor, and he shall also have the same power and be subject to the same penalties in ascertaining and assessing the property and subjects of taxation in said city as are granted and imposed upon the county assessors throughout the state by the general state law, and the council shall also have authority to prescribe by ordinance such other rules and regulations as may be necessary to enable and require

such assessor to ascertain and properly assess all property and tithables liable to be taxed by said city so that such assessment and taxation shall be uniform, and to enforce such ordinances by reasonable fines and penalties. And the said city assessor, making the valuation for assessment, shall make the same assessment for both real and personal property as the assessor of said county for the assessment year assessed by the county assessor. The City Clerk shall have an office in the city hall, council chamber or such other place as the council may designate and provide. He shall keep his office open at least three consecutive hours in the forenoon and afternoon of each day.

In addition to the duties hereinbefore set out and otherwise provided in this act, the City Clerk shall by virtue of his office be the police judge of the city, and his oath of office and the conditions of his bond shall extend to and cover his duties and obligations as police judge. The City Clerk shall, as such police judge, be ex officio a justice of the peace with authority to issue warrants or other process for all offenses within the police jurisdiction of the city, of which a justice of the peace has jurisdiction under state laws, and for all violations of any city ordinances. In order to preserve the peace and good order of the city and protect the persons property therein, riotous and disorderly persons in the city may be arrested and detained before issuing any warrant therefor. He shall hold daily sessions of his said court, Sundays excepted. He shall have and exercise all of the civil jurisdiction conferred by law upon justices of the peace, but before proceeding to act in such capacity, he shall file with the Clerk of the County Court of Mineral County, a certificate from the mayor of said city showing his appointment and qualification as City Clerk, and shall thereupon take the oath and execute the bond required to be taken and executed by justices of the peace.

The police judge may commit persons charged with felony or misdemeanor to jail or take bond for their appearance before the grand jury, but he shall receive no fees or other compensation for such services; he shall have power to issue executions for all fines, penalties and costs imposed by him, and he may require the immediate payment thereof, and in default of such payment may commit the person so in default to jail, until the fine and penalty and costs shall be paid or satisfied, and any one so committed may be required to work during imprisonment, as required by council.

If any person is sentenced to imprisonment, or any person or corporation is assessed with a fine of ten dollars or more, such person or corporation shall be allowed an appeal from said decision of the police judge to the Circuit Court of Mineral County, upon the execution of an appeal bond with surety deemed sufficient and approved by the police judge in a penalty double such fine and costs conditioned that the person or corporation proposing to appeal will perform and satisfy any judgement which may be rendered against him or it by said court on such appeal; and in no case shall a fine of less than ten dollars be given by the police judge, if the defendant, his agent or attorney request that the fine be made as much as ten dollars.

If the appeal be taken, the warrant or arrest, the transcript of the judgement, the appeal bond and other papers of the case shall be forthwith delivered by the police judge to the Clerk of the Court to which such appeal is taken, and said court shall proceed to try the case as upon indictment or presentment and render such judgement, including that of costs, as the law and evidence may demand.

The police judge shall be authorized to suspend sentence or parole any juvenile offender under the age of sixteen years, who may be brought before him for the violation of any ordinance of the city or charged with any misdemeanor under the laws of the state; he shall prescribe the conditions of such parole and enter them in his docket and may commit the offender to the care and custody of any proper person, with a view to the correction and reformation of such offender, and may take from such person such bond or security, conditioned as he shall prescribe. The chief of police, or a policeman designated by him, shall attend all sessions of the police court and perform such duties as may be required by ordinance or requested by the police judge.

The police judge shall keep in a well bound book a complete record of all cases heard and considered by him, and he shall account for and pay over the amount of all fines, as well as the fees of himself and other officers, under salary, collected by him, weekly, to the treasurer of the city, and shall make monthly reports thereof, and of all other matters pertaining to his office to the council of the city. In the absence of the police judge the mayor of the city shall sit as such police judge with the same power and authority.

The police judge, if an attorney, shall not practice in said police court as an attorney or counselor or in any case appealed or removed therefrom, but shall have the right to practice law as an attorney in other courts and cases.

In addition to the other duties to be performed by the City Clerk, he shall also be the city collector, charged with the duty of collecting all taxes, levies, assessments, water rents and all other funds due the city, except licenses; and as such collector shall have and exercise all of the rights, authority and powers conferred upon town sergeants by the general law of the state with reference to the collection of taxes and funds of cities, towns and villages, and upon sheriffs with reference to the collection of state and county taxes and funds. He shall at least once in each week, or oftener if the council so require, account for and pay over to the city treasurer all moneys received by him as such collector; he shall before entering upon the duties of his office give the bond hereinbefore required, payable to the City of Keyser in the penalty of not less than five thousand dollars, conditioned for the faithful performance of the duties of the office of City Clerk, collector and police judge and to account for and pay over, as required by law, all moneys which may come into his hands by virtue of any and all of said offices, and shall be chargeable with all of the city taxes, levies, assessments and water rents, from the time the bills therefor are required to be made up and collected, and with all moneys of the city, including fines, fees and penalties, that may come into his hands. He shall receive no fees or commissions for his services, but shall account to the city for all fees received by him, except those received by him when acting in civil suits, taking depositions or acknowledgments. He shall at the first stated meeting of the council in each month make his report to the council of all moneys and credits coming to his hands as City Clerk, police judge and collector, accompanied by a receipt or receipts from the treasurer showing that said moneys have been paid to him, and he shall publish once in every six months a detailed itemized statement of all receipts and expenses of the city for the proceeding six months.

The City Clerk may appoint such deputies and assistants, with the approval of the council, as the duties of his office render necessary. The deputies shall take the oath required of the City Clerk and shall give such bond as he may require, but such deputies or assistants shall not perform any judicial duty of the police judge.

The salary fixed for the City Clerk, which shall not be increased or diminished during his term of office, shall be deemed to include all the services of all deputies, clerks and agents employed by him, and no additional allowance shall be made for, or on account of, any such services so rendered by the City Clerk.

SECTION 31. DUTIES OF THE TREASURER.

The Treasurer shall receive and account for all moneys from all sources of municipal revenue. All license taxes and fees shall be paid him direct by the person to whom such license is issued, and no license shall be valid without the receipt of the treasurer for such tax and fees endorsed thereon. All officers and agents of the city, authorized to receive money for the city, or revenues thereof, from any source whatsoever, shall pay over to the Treasurer such moneys and revenues within one week after the receipt thereof, or sooner if required by the council.

He shall keep the funds of the city in some bank or banks within the city, which shall pay to the city two per centum or more per annum interest on such deposits, payable quarterly, based on the average daily balance on such funds in all accounts. If no bank within the city is willing at any time to receive deposits of the Treasurer, and to pay such interest thereon, the Treasurer shall report this fact to council, which shall thereupon designate a bank or banks in which he shall deposit such funds for the time being, and until some bank in the city will receive deposits at the rate of interest so fixed.

Said bank or banks shall give bond in the penalty prescribed by council, and with sureties to be approved by council, conditioned for the prompt payment, whenever lawfully required, of all public moneys, or parts thereof, which may be deposited with them.

The salary fixed for the Treasurer, which shall not be increased or diminished during his term of office, shall be deemed to include all the services of all deputies, clerks and agents employed by him, and no additional allowance shall be made for or on account of any such service so rendered by the Treasurer. He shall give bond or bonds in an amount to be fixed by council, which bond shall be approved by council, before entering upon the discharge of any of the duties of his office, and file same with the clerk. The Treasurer shall pay all warrants or other proper orders legally drawn and presented, out of any moneys at the time in the fund on which such warrant or order is drawn, but no money shall be paid by him except as the same shall have been appropriated by the council and upon an order signed by the mayor and city clerk. If no money is in the fund with which to pay such warrant or order, the Treasurer shall endorse on the back thereof the words "no funds," and affix the date of such endorsement, and shall preserve a record of such endorsement in his office. The Treasurer shall perform any other duties which council may from time to time prescribe and which are not inconsistent with the general scope of his duties.

SECTION 32. DUTIES OF CITY ATTORNEY.

The city attorney shall be the legal advisor of the city and all its officers in all matters arising and in which legal proceedings may be taken; he shall prosecute all suits, actions and proceedings instituted on behalf of said city and defend all suits and actions against said city, and, when requested in writing, shall give his written opinion to the mayor, council, or any standing committee thereof, upon such legal questions as may be referred to him affecting the city's interests; he shall perform such other duties as may be required. It shall be his duty to attend sessions of the police court, when requested by the mayor or police judge, and prosecute all trials therein and all appeals that are taken from such court; and for his services he shall receive such compensation as the council shall provide.

SECTION 33. POLICE DEPARTMENT.

The council shall by ordinance establish a police department, of which department the chief of police shall be in command. He shall be charged with the duty of preserving peace and good order in the city and of protecting the persons and property of the citizens. He shall have the right to stop, suppress or prevent any immoral, obscene or improper shows, theatrical performances or moving picture exhibitions. Policemen may be suspended, removed and discharged at any time by the mayor, upon his own motion or that of the chief of police, for good cause, in which event the mayor shall report such suspension, removal or discharge, together with the reason therefor, to the council at its next meeting. The council shall consider such suspension, removal or discharge and may make such order in reference thereto as it may deem wise. The council shall have the power to suspend, without pay, the chief of police, or any policemen against whom charges are preferred.

Whenever any notice is required to be given, or any summons, warrant or other process is required to be served or otherwise executed, under the provisions of this act, it shall be sufficient if such notice, summons, warrant, or other process be executed by an officer of the police department of said city in the same way or manner in which the laws of the state prescribe for executing summonses and subpoenas by state officers, unless otherwise provided by this act. The chief of police may also execute within this city and civil writ or process issued by the police judge, or any justice of the peace or court in Mineral County, and shall have all the powers conferred by law upon constables and sheriffs, but he shall not act in such capacity until he shall have first qualified before the County Court of Mineral County and given the bond required of constables.

SECTION 34. DUTIES OF THE STREET COMMISSIONER.

The street commissioner shall perform such duties as are now, or which may hereafter be imposed upon him by any ordinance of said city, and shall receive such compensation as may be fixed by council.

SECTION 35. POWER TO CONDEMN.

The council shall have the right to institute proceedings, in the name of the city, for the condemnation of real estate for streets, alleys, avenues, sewers, drains, market grounds, city hall, reservoirs, electric light plant, pipe liens, or for any other ground, within or without the city, necessary for public improvements and which the council is authorized to acquire or maintain under this act; such proceedings shall conform to the provision of Chapter Forty-two of the Code of West Virginia, and the costs thereof shall be borne by the city, except that in contests involving a hearing in the Circuit Court, costs shall be recovered by the prevailing party.

SECTION 36. RECALL.

The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty per centum of the entire vote for all candidates for the office of mayor cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the city clerk, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer

oaths, that the statements therein made are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be. Within ten days from the date of filing such petition, the city clerk shall examine and from the voter's register ascertain whether or not said petition is signed by the requisite number of qualified electors, and if necessary, the council shall allow him extra help for that purpose, and he shall attach to said petition his certificate showing the result of said examination. If, by the clerk's certificate, the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same, without prejudice, however, to the filing of a new petition to the same effect.

If the petition shall be deemed to be sufficient, the clerk shall submit the same to the council without delay. If the petition shall be found to be sufficient, the council shall order and fix a date for holding said election, not less than thirty days nor more than forty days from the date of the clerk's certificate to the council that a sufficient petition is filed.

The council shall make, or cause to be made, publication of notice and all arrangements for holding such election, and the same shall be conducted, returned and the result thereof declared in all respects as are other city elections. So far as applicable, except as otherwise herein provided, nominations hereunder shall be made without the intervention of a primary election by filing with the clerk at least ten (10) days prior to said special election, a statement of candidacy accompanied by a petition signed by electors entitled to vote at said special election, equal in number to at least ten per centum of the entire vote for all candidates for the office of mayor at the last preceding general municipal election, which said statement of candidacy and petition shall be substantially in the form set out in Section Six of this act, so far as the same is applicable, substituting the word "special" for the word "primary" in such statement and petition and stating therein that such person is a candidate for election instead of nomination.

The ballot for such special election shall be in substantially the following form:

OFFICIAL BALLOT.

Special election for the balance of the unexpired term of _____ as _____.

For _____.

(Vote for one only)

(Names of candidates)

[] _____

[] _____

(Name of present incumbent.)

Office ballot, attest:

(Signature) _____

City Clerk.

The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requested otherwise in writing, the clerk shall place his name on the official ballot without nomination. In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election, if some other person than the incumbent receives the highest number of votes, the incumbent shall thereupon be deemed removed from the office upon qualification of his successor. In the case the party who received the highest number of votes should fail to qualify within ten days after receiving notification of election, the office shall be deemed vacant. If the incumbent received the highest number of votes, he shall continue in office, and those electors who signed the petition demanding such special election shall, unless it be otherwise ordered by the council, pay the costs of such election, which said costs shall be a lien against the property of all of such petitioners, collectable and enforceable in like manner and to the same extent as taxes due to the city are collected. The said method of removal shall be cumulative and additional to the methods heretofore provided by law.

SECTION 37. INITIATIVE.

Any proposed ordinance may be submitted to the council by petition signed by electors of the city equal in number to the percentage hereinafter required. The signatures, verification, authentication, inspection, certification, amendment and submission of such petition shall be the same as provided for petition under Section Thirty-six hereof.

If the petition accompanying the proposed ordinance be signed by electors equal in number to twenty per centum of the votes cast for all candidates for mayor at the last preceding general election, and contains a request that the said ordinance be submitted to a vote of the people, if not passed by the council, such council shall either:

- (a) Pass such ordinance without alteration within twenty days after attachment of the clerk's certificate to the accompanying petition or,
- (b) Forthwith, after the clerk shall attach to the petition accompanying such ordinance his certificate of sufficiency, the council shall call a special election, unless the general municipal election is fixed within ninety days thereafter, and at such special or general municipal election, of one is so fixed, such ordinance shall be submitted without alteration to the vote of the electors of said city. But if the petition is signed by not less than ten per centum of the electors, as above defined, then the council shall within twenty days, pass said ordinance without change, or submit the same at the next general city election occurring not more than ninety nor less than thirty days after the clerk's certificate of sufficiency is attached to said petition.

The ballot used when voting upon said ordinance, shall contain these words: "for the ordinance," and "against the ordinance," (stating the nature of the proposed ordinance.) If a majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city; and any ordinance proposed by petition, or which shall be adopted by a vote of the people, cannot be repealed or amended except by a vote of the people. Any number of proposed ordinances may be voted upon at the same election in accordance with the provisions of this section; but there shall not be more than one special election in any period of six months for such purpose.

The council may submit a proposition for the repeal of any such ordinance or for amendments thereto, to be voted upon at any succeeding general city election; and should such proposition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall thereby be repealed or amended accordingly. Whenever any ordinance or proposition is required by this act to be submitted to the voters of the city at any election, the city clerk shall cause such ordinance or proposition to be published once in each of the newspapers published in said city; such publication to be not more than twenty nor less than five days before the submission of such

proposition or ordinance to be voted on.

SECTION 38. REFERENDUM.

No ordinance or franchise passed by the council, except when otherwise required by the general laws of the state or by the provisions of this act, except an ordinance for the immediate preservation of the public peace, health or safety, which shall contain a statement of its urgency, shall go into effect before ten days from the time of its final passage, and not then unless within two days after passage, Sundays and holidays excepted, the same shall have been published in full in some newspaper published and generally circulated in said city. And if during ten days a petition signed by electors of the city, equal in number to at least twenty per centum of the entire vote cast for all candidates for mayor at the last preceding general municipal election at which a mayor was elected, protesting against the passage of such ordinance, or franchise, be presented to the council, the said ordinance or franchise shall thereupon be suspended from going into operation, and it shall be the duty of the council to reconsider such ordinance, or franchise, and if the same is not entirely repealed, the council shall submit the ordinance, or franchise, as is provided by Sub-section (b) of Section Thirty-seven of this act, to the vote of the electors of the city, either at the general election or at a special municipal election to be called for that purpose, and such ordinance or franchise shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof. Said petition shall be in all respects in accordance with the provision of said Section Thirty-seven, except as to the percentage of signers, and be examined and certified to by the clerk in all respects as therein provided.

SECTION 39. PETITIONS.

Petitions provided for in this act shall be signed by none but legal voters of the city. Each petition shall contain, in addition to the names of the petitioners, the street and house number in which the petition resides, his age and length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city, stating that the signers thereof were, at the time of signing, legal voters of said city, and the number of signers at the time the affidavit was made.

SECTION 40. ELECTION TO ADOPT OR REJECT CHARTER.

But this act shall not be effective unless the same shall be first submitted to the voters within the territory embraced and described in Section Two hereof, at a special election called for the purpose and adopted by the majority of the votes cast at such election. Said special election shall be held on the first Tuesday in May, in the year One Thousand Nine Hundred and Thirteen, unless this act shall not have taken effect on that day, in which case such election shall be held on the first Tuesday after the day on which this act would go into effect but for this section. The council of the Towns of Keyser and South Keyser shall provide for circulation of printed copies of this act or publication thereof in such manner as said council deems best. The election shall be held in the election precincts at which the first primary and general election is to be held under this act, as provided in Section Three hereof, and the election officers shall be appointed for such special election and the result thereof ascertained, in the manner provided by Section Six of the act. The ballot shall be prepared under the direction of the council of the Town of Keyser and shall be headed: "Special election for ratification or rejection of a new charter for Keyser," and underneath said head shall be the words, in separate lines, "for new charter," and "against new charter." Any voter desiring to vote for adoption of this act shall strike out the words "against new charter," and any voter desiring to vote for rejection of this act, shall strike out the words "for new charter." And in the event that this act shall not be in effect on the second Tuesday preceding the first Tuesday after the first Monday in June, One Thousand Nine Hundred and Thirteen, the first primary election hereunder shall be held on the second Tuesday of June, and the first general election shall be held on the fourth Tuesday of June, One Thousand Nine Hundred and Thirteen.

SECTION 41. ACTS REPEALED

All acts in conflict or inconsistent with this act, are to the extent of any such conflict, hereby repealed, but this act shall not be construed to repeal, change or modify any previous acts not inconsistent with this act, or to take away any powers heretofore conferred upon the City of Keyser, or upon the mayor or council, or any other of the officers thereof, conferred by general law, except so far as the same may be inconsistent with the powers hereby conferred.

CODIFIED ORDINANCES OF KEYSER PART ONE - ADMINISTRATIVE CODE

CHAPTER ONE - General Provisions

- Art. 101. Codified Ordinances.
- Art. 105. Elections.
- Art. 107. Purchasing Procedures.

CHAPTER THREE - Legislative

- Art. 121. Council.

CHAPTER FIVE - Administrative

- Art. 131. Mayor.
- Art. 133. City Administrator
- Art. 135. City Treasurer.
- Art. 137. City Attorney.
- Art. 139. Street Commissioner.
- Art. 141. Police Department.
- Art. 143. Fire Department.
- Art. 145. Water Board.
- Art. 147. Sanitary Board.
- Art. 149. Parking Facilities Board.
- Art. 151. Employment Provisions.

CHAPTER SEVEN - Judicial

- Art. 181. Municipal Court.

CODIFIED ORDINANCES OF KEYSER PART ONE - ADMINISTRATIVE CODE

CHAPTER ONE - General Provisions

Art. 101. Codified Ordinances.

Art. 105. Elections.

Art. 107. Purchasing Procedures.

ARTICLE 101

Codified Ordinances

101.01 Designation; citation; headings.

101.02 General definitions.

101.03 Rules of construction.

101.04 Repeal of repealing act; effect of repeal.

101.05 Construction of section references.

101.06 Acts by agent or deputy.

101.07 Conflicting provisions.

101.08 Separability.

101.99 General penalty.

CROSS REFERENCES

See sectional histories for similar State law

Maximum penalty permitted - see W. Va. Code 8-11-1, 8-12-5(57)

Authority to impose penalties - see W. Va. Code 8-11-1, 8-12-2(11)

Codification of ordinances - see W. Va. Code 8-11-4(b)

101.01 DESIGNATION; CITATION; HEADINGS.

(a) All ordinances of a permanent and general nature of the Municipality as revised, recodified, rearranged, renumbered and consolidated into component codes, chapters, articles and sections shall be known and designated as the Codified Ordinances of Keyser, West Virginia, 2019, for which designation "Codified Ordinances" may be substituted. Code, chapter, article and section headings do not constitute any part of the law as contained in the Codified Ordinances.

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

101.02 GENERAL DEFINITIONS.

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

- (a) Council means the legislative authority of the Municipality.
- (b) County means County, West Virginia.
- (c) Land or lands and real estate or real property include lands, tenements and hereditaments, and all rights thereto and interests therein except chattel interests.
- (d) Laws of the State includes the Constitution of the State and the Constitution of the United States, and treaties and laws made in pursuance thereof. (WVaC 2-2-10)
- (e) Municipality or City means the City of Keyser, West Virginia.
- (f) Offense includes every act or omission for which a fine, forfeiture or punishment is imposed by law. (WVaC 2-2-10)
- (g) Owner, when applied to property, includes any part owner, joint owner or tenant in common of the whole or part of such property.
- (h) Person or whoever includes corporations, societies, associations and partnerships.
- (i) Personal estate or personal property includes goods, chattels, real and personal, money, credits, investments and the evidences thereof.
- (j) Preceding, succeeding or following used in reference to any section or sections of an article means next preceding, next succeeding or next following that in which such reference is made. (WVaC 2-2-10)
- (k) Premises, as applied to property, includes land and building.
- (l) Property or estate embraces both real and personal estate.
(WVaC 2-2-10)
- (m) Public place includes any street, sidewalk, park, cemetery, school yard, body of water or watercourse, public conveyance or any other place for the sale of merchandise, public accommodation or amusement.
- (n) Registered mail includes certified mail.
- (o) State means the State of West Virginia or any department, division, commission, board, educational or other institution of the State.
- (p) Street includes alleys, avenues, boulevards, lanes, roads, highways, viaducts and all other public thoroughfares within the Municipality.
- (q) Tenant or occupant, as applied to premises, includes any person holding a written or oral lease, or who actually occupies the whole or any part of such premises alone or with others.
- (r) Written or in writing includes any representation of words, letters or figures, whether by printing, engraving, writing or otherwise. But when the signature of any person is required, it must be in his own proper handwriting, or his mark, attested, proved or acknowledged.
(WVaC 2-2-10)

101.03 RULES OF CONSTRUCTION.

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

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

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

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

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

101.04 REPEAL OF REPEALING ACT; EFFECT OF REPEAL.

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

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

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

101.05 CONSTRUCTION OF SECTION REFERENCES.

When reference is made to any section or group of sections of the Codified Ordinances, such reference shall extend to and include any

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

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

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

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

101.06 ACTS BY AGENT OR DEPUTY.

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

(WVaC 2-2-5)

101.07 CONFLICTING PROVISIONS.

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

101.08 SEPARABILITY.

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

101.99 GENERAL PENALTY.

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

ARTICLE 105

Elections

105.01 Eligibility.

105.02 Registration.

105.03 Filing dates for candidacy.

CROSS REFERENCES

Municipal voting precincts - see W.Va. Code 3-1-6

Municipal precinct registration records - see W. Va. Code 3-1-27

Absentee voting in municipal elections - see W.Va. Code 3-3-13

Integration of municipal elections with systems of permanent registration - see W.Va. Code 8-5-13

Special elections - see W.Va. Code 8-15-15a

105.01 ELIGIBILITY.

Only persons who are bona fide residents of the City and are registered to vote as provided by law shall be entitled to vote in any municipal election, and the provisions of the "Permanent Registration Law" being Section 8-5-13 of the West Virginia Code of 1931, as last amended, so far as applicable to municipalities, is hereby adopted to govern any election in the City of Keyser, West Virginia. (Ord. 203. Passed 10-7-81.)

105.02 REGISTRATION.

The municipal registration records for the Mineral County precincts which are within the City, as they are kept and maintained by the County Commission of Mineral County, shall be the official registration of voters for any municipal election, and only those persons so registered shall be eligible to vote. (Ord. 203. Passed 10-7-81.)

105.03 FILING DATES FOR CANDIDACY.

(a) Certificates of candidacy for election to an office of the City of Keyser shall be filed with the City Administrator not earlier than the second Monday in January next preceding the primary election day, and not later than the first Saturday of February next preceding the primary election day, and must be received before 12:00 noon, Eastern Standard Time, of that day or, if mailed, shall be postmarked before that hour.

(b) The primary election for public office in the City shall be held on the second Tuesday in April of said election year.

(c) Consistent with the revisions of state law, and to the extent possible, the Charter of the City, the general election shall be held on the second Tuesday after the first Monday in June in an election year.

(d) In the event that there is no opposition for a public office, then no primary election shall be held for that office.

(e) Absentee voting by voters of the City may be conducted in person at the municipal offices of the City from the 15th day to (and including) the third day before the primary or general election. A person desiring to vote an absent voter's ballot by mail may, not earlier than the first day of January prior to the date of any primary, general, or special election in the case of any person outside the continental limits of the United States and not more than eight-four days prior to the date of any primary, general, or special election in the case of any other person, make application by mail to the City Administrator for an official absent voter's ballot or ballots to be voted

at such election, except that the City Administrator shall not honor any such application for an absent voter's ballot received by him/her after the fourth day next preceding the date of the election. In computing such fourth day, the day of conducting the election shall be excluded. Upon determination by the City Administrator that the applicant is entitled to vote an absent voter's ballot by mail, the City Administrator shall, between the forty-second and the fourth day next prior to the election in which the absent voter's ballot is to be used, mail to the applicant:

- (1) One official absent voter's ballot;
- (2) A self-addressed envelope with the designation "Absent Ballot Enclosed" on the outside; and
- (3) Instructions, as may be necessary for marking the ballot and that absent voter ballots must be received by the city administrator not later than the time of closing of the poles.

(Ord. 219A. Passed 5-13-92.)

ARTICLE 107

Purchasing Procedures

107.01 Definitions.

107.02 Competitive bids.

107.03 Solicitation for sealed bids, products of nonprofit workshops.

107.04 Purchasing in open market.

107.05 Bids to be based on specifications.

107.06 Delivery of bids; record of bids.

107.07 Awards to lowest responsible bidder preference for resident bidders.

107.08 Contracts to be signed by Mayor; approval as to form; filing.

107.09 Emergency purchase in open market.

107.01 DEFINITIONS.

For the purpose of this article:

- (a) "Administrator" means the Administrator of the City.
- (b) "Spending unit" means a department of the City for which an appropriation is requested or to which an appropriation is made by Council.
- (c) "Spending officer" means the executive head of a spending unit or a person designated by him.
- (d) "Commodities" means materials, supplies and equipment.
- (e) "Printing" means printing, binding, ruling, lithographing, engraving and other similar services.
- (f) "Expendable commodities" means those commodities which when used in the ordinary course of business shall become consumed or of no market value within the period of one year or less.
- (g) "Nonprofit workshops" means an establishment.
 - (1) Where any manufacture or handiwork is carried on, and
 - (2) Which is operated either by a public agency or by a cooperative or by a nonprofit private corporation or nonprofit association in which no part of the net earnings thereof inures, or may lawfully inure, to the benefit of any private shareholder or individual, and
 - (3) Which is operated for the primary purpose of providing remunerative employment to blind and severally disabled persons who cannot be absorbed into the competitive labor market, and
 - (4) Which shall be approved, as evidenced by a certificate of approval, by the West Virginia Board of Vocational Education, Division of Vocational Rehabilitation. (1984 Code 4-2-1.)

107.02 COMPETITIVE BIDS.

A purchase of contract for materials, supplies, equipment and printing shall be based, whenever possible, on competitive bids. (1984 Code 4-2-2.)

107.03 SOLICITATIONS FOR SEALED BIDS, PRODUCTS OF NONPROFIT WORKSHOPS.

The Clerk shall solicit sealed bids for the purchase of commodities and printing that is estimated to exceed five thousand dollars (\$5,000.00) maximum. Bids shall be obtained by public notice published as a Class I legal advertisement in compliance with West Virginia Code 59-3-1 et seq., and the area for publication shall be the City. Such notice shall be so published not less than ten days next preceding the final date of submitting bids. The notice may also be published by any other advertising medium the Clerk may deem desirable. The Clerk may also solicit sealed bids by sending requests by mail to prospective suppliers and by posting notice on a bulletin board in the Clerk's office; providing that the Clerk may, without competitive bidding, purchase commodities and printing produced and offered for sale by nonprofit workshops, as hereinbefore defined, which are located in the State; provided, however, that such commodities and printing shall be of a price and quality comparable to other commodities and printing otherwise available.

(Passed 6-22-09)

107.04 PURCHASING IN OPEN MARKET.

The Mayor may make a purchase of commodities and printing of less than five thousand dollars (\$5,000.00) in amount in open market, but such purchase shall, whenever possible, be based on at least two competitive bids.

(Passed 6-22-09.)

107.05 BIDS TO BE BASED ON SPECIFICATIONS.

Bids shall be based on standard specifications to be set forth in or referred to in the public notice soliciting sealed bids. If the specifications are not set forth in the public notice then a copy of the specifications shall be available upon request from a prospective bidder from the Clerk.

(1984 Code 4-2-5)

107.06 DELIVERY OF BIDS; RECORD OF BIDS.

(a) The failure of the prospective bidder to deliver his bid to the Clerk's Office prior to the appointed date and hour shall be grounds for rejection of the bid. Each bid, with the name of the bidder, shall be entered on a record and each record, with the successful bid indicated thereon, shall, after the award of the order or contract, be open to public inspection.

(b) The Clerk shall maintain the record of each bid for a period of five years after the date of each bid and may, after the expiration of five years destroy same.

(1984 Code 4-2-6)

107.07 AWARDS TO LOWEST RESPONSIBLE BIDDER PREFERENCE FOR RESIDENT BIDDERS.

(a) The Mayor shall, with the advice and consent of Council, award all open market orders or purchases based on advertised bid requests to the lowest responsible bidder, taking into consideration to the qualities of the articles, to be supplied, their conformity with specifications, their suitability to the requirements of the City government and the delivery terms. Any and all bids may be rejected. If all bids received on a pending contract are for the same unit price or total amount, the Mayor, with the advice and consent of Council, shall have the authority to reject all bids, and to purchase the required commodities and printing in the open market, if the price paid in the open market does not exceed the bid prices. If the market order or purchase based on advertised bid requests is awarded to a bidder, not the lowest bidder, the resolution of Council consenting to the award of the purchase shall set forth with specificity the reason for not awarding the purchase to the lowest bidder. Council shall consent to all purchases made pursuant to this article upon which field bids are required by resolution.

(b) (1) Other provisions of this article notwithstanding, in any instance that a purchase or contract is required under the provisions of this article to be made upon competitive bids, such purchase shall be made from, or contract executed with a vendor resident in the City, if such vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than five percent (5%) of the latter bid, and if such resident vendor has made written claim for such preference at the time the bid was submitted.

(2) A vendor shall be deemed to be a resident of the City if such vendor or corporation maintains its headquarters or principal place of business within the City on the date on which the bid is submitted, and is current in all financial obligations to the City and has all licenses required by the City on the date on which the bid is submitted.

(Ord. 242. Passed 5-16-96.)

107.08 CONTRACTS TO BE SIGNED BY MAYOR; APPROVAL AS TO FORM; FILING.

Contracts or purchase orders entered into by the City pursuant to this article shall be signed by the Mayor in the name of the City. They shall be approved as to form by the City Attorney. A contract that requires more than six months for its fulfillment shall be filed with the Clerk.

(1984 Code 4-2-8)

107.09 EMERGENCY PURCHASES IN OPEN MARKET.

The Mayor, with the advice and consent of Council, may purchase in the open market, without competitive bids, specific commodities for immediate delivery to meet bona fide emergencies arising from unforeseen causes, including but not limited to, delays by contractors, delays in transportation and unanticipated volume of work. A report of any such purchase together with a full account of the circumstances of the emergency shall be a part of the resolution by Council approving such emergency purchases and shall be open to public inspection.

(1984 Code 4-2-9)

CHAPTER THREE - Legislative

Art. 121. Council.

ARTICLE 121

Council

121.01 Meetings.

121.02 Quorum.

121.03 Conduct of members.

121.04 Recognition of members.

121.05 Speaking limitations.

121.06 Call to order.

121.07 Nonmembers addressing Council.

121.08 Robert's rules of order.

CROSS REFERENCES

Open government proceedings - see W.Va. Code 29B-1 et seq.

121.01 MEETINGS.

(a) Regular meetings of the Council shall be held on the second and fourth Wednesday of each and every month hereafter, except that Council shall hold a regular meeting on the first Tuesday of July in each year hereafter.

(b) Special meeting of Council may be called from time to time by the Mayor or two (2) Councilmembers. (Ord. 234. Passed 7-2-91.)

(c) Notice.

(1) No notice shall be required of the regular meetings of Council

(2) Notice of special meetings of Council shall be given by the Clerk by mailing a written notice to each member and the Mayor at least three days before the time of the meeting in the United States mail addressed to the last known address of each. Notice of such meeting shall state the day, time and place of such special meeting.

(3) Notice of special meeting of Council may be dispensed with if affirmatively to waive the giving of the written notice as above provided, which waiver shall be binding on all members, present or absent.

- (4) Council shall promulgate rules by which the time and place of all regularly scheduled meetings and the time, place and purpose of all special meetings are made available, in advance, to the public and news media, except in the event of an emergency requiring immediate official action.

(1984 Code 1-2-4.)

121.02 QUORUM.

(a) A majority of Council elected shall be necessary to constitute a quorum for the transaction of business. If at any meeting of Council there shall be less than a quorum present, any Councilman may adjourn such meeting from time to time and place to place until a quorum is present.

(1984 Code 1-2-6)

(b) After a member of Council has been recorded as present at any meeting, he shall not, without permission of the chair, absent himself from such meeting until adjournment.

(1984 Code 1-2-5.)

121.03 CONDUCT OF MEMBERS.

Every member of Council shall confine himself to the question before Council and avoid personal or indecorous language. No member shall interrupt another while speaking, except to make a point of order, the point to be briefly stated to the presiding officer. No member shall, while Council is sitting, interrupt or hinder its business by standing, moving about, talking, expressing approval or disapproval of any of the proceedings or by any conduct tending to disorder or confusion.

(1984 Code 1-2-7)

121.04 RECOGNITION OF MEMBERS.

When two members of Council request recognition at the same time, the presiding officer shall name the one to speak. In all cases, the member of Council first requesting recognition shall speak first.

(1984 Code 1-2-8)

121.05 SPEAKING LIMITATIONS.

No member of Council shall speak more than once on the same question until every member choosing to speak shall have done so, nor more than twice, nor for a longer time than fifteen minutes on any question, without permission of Council.

(1984 Code 1-2-9)

121.06 CALL TO ORDER.

If, in speaking, any member of Council transgress the rules of Council, the presiding officer shall call him to order. If there is no appeal, the decision of the chair shall be submitted to. If the decision of the chair is in favor of the member called to order, he may proceed; if otherwise, he shall not proceed, except by leave of Council.

(1984 Code 1-2-10)

121.07 NONMEMBERS ADDRESSING COUNCIL.

No person who is not a member of Council shall orally address it, until leave to do so has been applied for, through a member of Council, and granted by it, or until invited to do so by the presiding officer. The presiding officer shall request of the person desiring to speak his name, address and the subject to be discussed. (1984 Code 1-2-11)

121.08 ROBERTS' RULES OF ORDER.

Rules of procedure not covered by this article shall be in accordance with Robert's Rules of Order. (1984 Code 1-2-12)

CHAPTER FIVE - Administrative

Art. 131. Mayor.

Art. 133. City Administrator

Art. 135. City Treasurer.

Art. 137. City Attorney.

Art. 139. Street Commissioner.

Art. 141. Police Department.

Art. 143. Fire Department.

Art. 145. Water Board.

Art. 147. Sanitary Board.

Art. 149. Parking Facilities Board.

Art. 151. Employment Provisions.

ARTICLE 131

Mayor

EDITOR'S NOTE: There are no sections in Article 131. This article has been established to provide a place for cross references and future legislation.

ARTICLE 133

City Administrator

133.01 Designation.

133.02 Fees for research and reproduction of documents.

133.03 Records management and preservation.

133.01 DESIGNATION.

(a) The title of the position of "City Clerk" for the City of Keyser shall hereafter be designated as the "City Administrator".

(b) Said designation and change of nomenclature will not change the powers and authority of said position and this position will have

and possess and be consistent with the same executive, ministerial, judicial powers, authority and duties conferred upon the position of "City Clerk" as promulgated by the general laws of the State of West Virginia and Section 30 of the City Charter. (Ord. 205. Passed 5-18-83.)

133.02 FEES FOR RESEARCH AND REPRODUCTION OF DOCUMENTS.

The City hereby adopts the following fees for research and reproduction of documents in response to requests under the West Virginia Freedom of Information Act:

- (a) No fee shall be charged for the first thirty (30) minutes of research conducted by the City in response to a request. The City shall charge a fee of twenty-five dollars (\$25.00) per hour in estimated reimbursement for additional research performed in response to a request, with increments of time calculated to the tenth of an hour.
- (b) No fee shall be charged for the first five (5) pages of documents reproduced by the City in response to a request. The city shall charge a reimbursement fee of ten cents (\$0.10) per page for each additional page reproduced in response to a request.
- (c) If, upon receipt of a request, the City estimates that the total balance due under subsections (a) and (b) will exceed twenty-five dollars (\$25.00), the City shall collect fifty percent (50%) of the estimated total balance due before commencing research and reproduction. The remaining balance shall be due upon the requesting person's receipt of the documents responsive to the request.

(Ord. 283. Passed 9-14-11.)

133.03 RECORDS MANAGEMENT AND PRESERVATION.

(a) Definitions. For the purpose of this section, the following words and phrases shall have the meanings respectively ascribed to them herein, unless the text clearly indicates otherwise:

- (1) "Agency" means any department, office, commission, board or other unit, however designated, of the City.
- (2) "Local record" means a record of a county, city, town, authority or political entity whether or not organized and existing under charter of general law, unless the record is designated or treated as a State record under State law.
- (3) "Preservation duplicate" means a copy of a vital City record which is used for the purpose of preserving such City record pursuant to this article.
- (4) "Records" means any document, book, paper, photograph, sound recording, video tape, microfilm, electronic tapes or other material regardless of physical form or characteristic made or received pursuant to law or ordinance or in connection with the transaction of official business.
- (5) "Retention and disposal schedule" means that schedule listing the records of the various agencies of the City government and minimum time they must be retained to fulfill their administrative, legal or fiscal purposes.
- (6) "State record" means a record as defined in West Virginia Code 5-8-3(c).

(b) Records, Management and Preservation Advisory Committee. A Records Management and Preservation Advisory Committee is hereby established to advise the Administrator and to perform such other duties as this section requires. The Records Management and Preservation Committee shall be composed of the following members: The Mayor, Chairman of the Finance Committee, the City Attorney and the Administrator. The Mayor shall serve as Committee Chairman and the Administrator shall serve as Committee Secretary. The committee shall adopt rules for conduct of its business and shall meet whenever called by its Chairman or the Administrator.

(c) City Records Administrator. The City Administrator is hereby designated as City Records Administrator, hereinafter called the Administrator, and shall establish and administer in the government of the City, a Records Management Program, to apply efficient and economical management methods to the creation, utilization, maintenance, retention, preservation and disposal of City records and shall maintain a program for the selection and preservation of vital City records.

(d) Powers and Duties. The Administrator shall, with proper regard for the functions of the agencies affected:

- (1) Establish standards, procedures and techniques for effective management of records.
- (2) Make surveys of paperwork operations and recommend improvements in current records management practices. These surveys shall include, but are not limited to the use of space, equipment and supplies used in creating, maintaining, storing and servicing records.
- (3) Prepare, in cooperation with the agency heads, retention and disposal schedules for the retention of City records and for prompt disposal of City records having no further administrative, legal or fiscal value.
- (4) Select the City records which are vital and determine their type pursuant to this article. This selection process shall be accomplished with the agency head and periodically reviewed to provide for the preservation of the essential City records.
- (5) Obtain the approvals of retention and disposal schedules as may be appropriate from the various State agencies having auditing and supervisory responsibilities of various City government functions.

(e) Promulgation of Rules and Regulations. The Administrator, subject to the approval of Council, shall develop and publish such rules and regulations as are necessary to effectuate the purpose of the section.

(f) Preservation Duplicates.

- (1) The Administrator may make or cause to be made preservation duplicates, or may designate as preservation duplicates existing copies of vital City records. A preservation duplicate shall be durable, accurate, complete and clear, and a preservation duplicate made by means of photography, microphotography, photocopying, film or microfilm shall be made in conformity with the standards prescribed therefor by the Administrator.
- (2) A preservation duplicate made by a photographic, photostatic, microfilm, micro-card, miniature photography or other process which accurately reproduces or forms a durable medium for so reproducing the original, shall have the same force and effect for all purposes as the original record, whether the original record is in existence or not. A transcript, exemplification or certified copy of such preservation duplicate shall be deemed for all purposes to be a transcript, exemplification or certified copy of the original record.

(g) Safekeeping and Storage. The Administrator shall prescribe the place and manner of safekeeping of vital City records and with the approval of Council establish storage facilities therefor. The Administrator may provide for storage outside the City.

(h) Confidential Records. When a City record is required by ordinance to be treated in a confidential manner, the Administrator shall protect its confidential nature.

(i) Review. The Administrator shall review as required, but at least annually, the program for preservation of all City records and update the program as may be required.

(j) Annual Report. The Administrator shall make an annual report to the Mayor for transmission to Council. The report shall describe the program status and such recommendations as shall improve the management of City records.

(k) Duties of Agency Heads. The head of each agency shall:

- (1) Establish and maintain an active continuing program for the economical and efficient management of the agency.
- (2) Make and maintain records containing sufficient and necessary documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency furnishing information required to protect the legal and financial rights of the City and of persons affected by the agency's activities.
- (3) Assist the Administrator in the development of retention and disposal schedules.
- (4) Comply with rules, regulations, standards and procedures issued by the Administrator.
- (5) Obtain the Administrator's written approval before purchasing or acquiring any equipment or supplies used or to be used to store or preserve records of his agency.

(l) Types of Records to be Preserved. Local records which are within the following types are vital records which should be preserved pursuant to this section:

- (1) Type A. Records containing information necessary to the operation of government in the emergency created by a disaster.
- (2) Type B. Records not within Type A but containing information necessary to protect the rights and interests of persons; to affirm the powers and duties of government in resumption of operation after a disaster.

(m) Retention and Disposal Schedules. Retention and disposal schedules promulgated by the Administrator and approved by Council shall control the retention and disposal of City records. Amendments to this schedule shall be approved by Council in regular course of business.

(n) Disposal and Destruction of Records. No records, as defined herein, shall be destroyed by any agency of the City unless the Administrator has determined the record has no further administrative, legal, fiscal or historical value and the record has been scheduled and approved by Council.

(o) Nonrecord Materials. Materials not included in the definition of records in this article, if not otherwise prohibited by law or ordinance, may be destroyed without prior approval of the Administrator.

(1984 Code 4-1-1 to 4-1-15)

ARTICLE 135

City Treasurer

EDITOR'S NOTE: There are no sections in Article 135. This article has been established to provide a place for cross references and future legislation.

CROSS REFERENCES

Duties - see CHTR. Sec. 30

ARTICLE 137

City Attorney

EDITOR'S NOTE: There are no sections in Article 137. This article has been established to provide a place for cross references and future legislation.

CROSS REFERENCES

Duties - see CHTR. Sec. 32

Hiring special counsel - see W.Va. Code 8-10-1a

Notice of suit against municipality - see W.Va. Code 8-12-2

ARTICLE 139

Street Commissioner

EDITOR'S NOTE: There are no sections in Article 139. This article has been established to provide a place for cross references and future legislation.

CROSS REFERENCES

Duties - see CHTR. Sec. 34

ARTICLE 141

Police Department

141.01 Rules and regulations.

CROSS REFERENCES

Appointment of special police - see W.Va. Code 8-10-1

Powers and duties - see W.Va. Code 8-14-1, 8-14-3

Hours of duty; holidays - see W.Va. Code 8-14-2, 8-14-2a

School zone officers - see W.Va. Code 8-14-5

Parking lot or building officers - see W.Va. Code 8-14-5a

Civil service - see W.Va. Code 8-14-6 et seq.

Pension and relief fund - see W.Va. Code Art. 8-22

Police bonds - see W.Va. Code 61-7-5

141.01 RULES AND REGULATIONS.

Copies of the rules and regulations for the Police Department are on file with the Police Department.

ARTICLE 143

Fire Department

EDITOR'S NOTE: There are no sections in Article 143. This article has been established to provide a place for cross references and future legislation.

CROSS REFERENCES

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

ARTICLE 145

Water Board

- 145.01 Creation.**
- 145.02 Waterworks system.**
- 145.03 Ownership, management, operation and control.**
- 145.04 Composition and appointment of members.**
- 145.05 Organizational meetings, chairperson and officers.**
- 145.06 Compensation and expense of board members.**
- 145.07 Powers and duties.**
- 145.08 Budget.**
- 145.09 Director and employees.**
- 145.10 Reporting requirements.**
- 145.11 Assets and liabilities.**
- 145.12 Pension plan.**
- 145.13 Appointment.**
- 145.14 Employees job descriptions.**
- 145.15 Employment procedures.**
- 145.16 Personal matters.**
- 145.17 Supporting law.**
- 145.18 Full faith and credit.**
- 145.19 Immunity.**

CROSS REFERENCES

Sanitary Board - see ADM. Ch. 147
State provisions - see W.Va. Code 8-19-1 et seq.

145.01 CREATION.

The City does hereby create and establish a Water Board with all powers and duties as provided in and pursuant to Chapter 8, Article 19, Section 1 et seq. of the West Virginia Code. The Water Board shall, upon enactment of this article, replace and assume the responsibilities of the Utility Board over the City of Keyser waterworks system.

(Ord. 255. Passed 1-26-07.)

145.02 WATERWORKS SYSTEM.

"Waterworks system" means a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system.

(Ord. 255. Passed 1-26-07.)

145.03 OWNERSHIP, MANAGEMENT, OPERATION AND CONTROL.

The ownership, management, operation and control of the waterworks system of the City of Keyser is hereby vested in the Keyser Water Board, hereinafter referred to as the "Board" to perform such functions and duties as hereinafter provided.

(Ord. 255. Passed 1-26-07.)

145.04 COMPOSITION AND APPOINTMENT OF MEMBERS.

The Board shall consist of the Superintendent of the Department of Waterworks, as set forth in the City Charter, and two persons, whom shall be citizens and residents of the City. One of the two persons appointed to the Water Board shall, during the construction period of any waterworks facilities for which bonds have been issued for funding purposes, be a registered professional engineer. The engineer member of the Board need not be a resident of the City of Keyser. After the construction of the system has been completed, the engineer may be succeeded by an individual not a registered professional engineer. With the exception of the requirement for a registered professional engineer during those periods of construction as aforesaid, all other members of the Water Board shall be citizens

of the City. Each member shall be appointed by the Mayor with the approval of the City Council. The City Administrator of the City shall notify all appointees of the appointment. The initial terms of such Board members first appointed shall be for two and three years respectively from the 1st day of the month in which appointed. In the event of a vacancy and also within thirty days after the expiration of the term of office of any Board member, a successor shall be appointed by the Mayor with the approval of the Council. All vacancies shall be called for the unexpired term only of that respective member and all the appointments shall be for the terms of three years, to commence on the date following the scheduled expiration date of the previous term. The Board shall adopt rules of procedure for the time and place of its meetings and the conduct thereof. Any Board shall be eligible for reappointment upon the expiration of his term. Each Board member shall be subject to removal for just cause by Council by the recorded vote of a majority of said Council after a public hearing thereon. The decision of Council as to such removal shall be final and not subject to review by any Court, arbitrator or other body, and each Board member accepting such appointment shall acknowledge the finality of such decision. (Ord. 255. Passed 1-26-07.)

145.05 ORGANIZATIONAL MEETINGS, CHAIRPERSON AND OFFICERS.

The Superintendent of the Department of Waterworks of the City of Keyser shall serve as Chairperson of the Board. As soon as may be practicable following the appointment of a new member of the Water Board, of the Board shall hold an organizational meeting and choose a vice chairman from among its members, and a secretary. The City Administrator shall serve as treasurer of the Water Board. The position of secretary need not be a Board member and the City Administrator may also serve in a dual capacity as secretary/treasurer. Such officers shall hold office at the will of the Board. No bond shall be required of the Board members, but the treasurer shall give bond in the sum and penalty to be determined by the Board or such higher amount as required by applicable law, for the proper application of all money received by him as treasurer of the Board or as otherwise conditioned according to law. The cost of such bond may be payable from the revenue of the respective waterworks system and such bond to be payable to the City and conditioned as to the faithful performance of the treasurer's duties. The Chairperson shall preside at all meetings when present and shall call special meetings on his or her own motion, or when requested to do so by any two Board members. Two members of the Board present at any meeting shall constitute a quorum for purposes of conducting business. The secretary shall keep a record of the proceedings which shall be available for inspection as other municipal records. The treasurer shall disburse the funds of the Board as directed by it. In the event that any Board member shall be unable to fulfill the duties of the office for a period of six months, a majority of the remainder of the said Board members may declare the office of such Board member vacant and the Mayor, with the approval of Council of said City, shall thereupon fill such vacancy as otherwise provided for herein. (Ord. 255. Passed 1-26-07.)

145.06 COMPENSATION AND EXPENSE OF BOARD MEMBERS.

Each member of the Water Board shall receive as compensation for his or her services not less than \$150.00 per month, payable monthly, and in addition, shall be reimbursed for any and all expenses incurred for the performance of their duties under Order of the Board. Funding for compensation to members of the Water Board shall be in accordance with those provisions hereinafter stated. Council shall fix the reasonable compensation of the secretary and treasurer in its discretion. There shall be no liability upon the City for any salary or expenses so incurred. (Ord. 255. Passed 1-26-07.)

145.07 POWERS AND DUTIES.

The Board shall have the power to fix and maintain a separate budget, subject to the requirements of Section 145.08 and shall have full and complete supervision, management and control of the waterworks system, including the maintenance, operations, improvements and extension thereof. All bills for water shall be collected and accounted for by the Board in the manner and form required by law, the Public Service Commission of West Virginia and the ordinances of the City, and all disbursements and accounts of the system shall be ordered paid out only upon approval of said Board; provided however that all such supervision, management and control of the system and the collection and accounting for bills for water service shall be consistent and in accordance with any ordinances pursuant to which the City may have authorized and issued any bonds from time to time outstanding, which by their terms are payable from and secured by the revenues of the respective waterworks system. The Board shall have the power and authority to make all contracts, agreements and other matters necessary or proper for the full and complete supervision, management and control of the waterworks system and to sue and be sued. The Board is further authorized to employ engineers, architects, managers, inspectors, superintendents, collectors, attorneys and other employees to do all things necessary or incidental thereof subject to Sections 145.09 , 145.15 and 145.16 . (Ord. 255. Passed 1-26-07.)

145.08 BUDGET.

The Board shall, on or before July 1, 2000, and by March 1st of each year thereafter, submit to the Council a written itemized request for authority to expend money for the next ensuing fiscal year, which written request shall contain a statement showing estimated revenues and estimated expenditures for the next fiscal year, itemized by purposes and objects, which shall include, but shall not be limited to, a statement showing the number, classification and compensation of persons employed and the amount to be paid to such employees according to classification. The wages and salaries as approved by the Council shall not be increased during the fiscal year without written approval of the Council. The request shall also show the amount needed to retire bonds, deposits to be made and special funds, including sinking funds, capital improvement funds, and all other special purposes funds, and shall also include the amount for capital improvements, equipment, customer installations, maintenance and repair, and such other items as are necessary to show a detailed statement of the expenditures of all funds. The Council shall examine the expenditures as scheduled pursuant to this section and if it finds that they conform to the requirements of this section, are in accordance with sound physical policy, the Council shall approve the budget. The Council shall have the authority to reduce any and all items of the budget submitted, and the expenditures of money made by the Board shall be only in accordance with the budget as approved by the Council unless the budget is amended with the consent and the written approval of the Council authorizing the expenditure of a larger amount. (Ord. 255. Passed 1-26-07.)

145.09 DIRECTOR AND EMPLOYEES.

(a) The Board shall have the power to employ, fix the compensation of, and discharge a director or general manager of the waterworks system and shall direct, employ and fix the compensation of and discharge all other employees of the system and shall direct, employ and fix the compensation of and discharge all other employees of the system and other functions of the Board subject to Section

145.14 , 145.15 and 145.16 .

(b) Decisions of the Board relating to employment, discharge, discipline or compensation of employees of the Board may be modified or reversed by the Council of the City of Keyser only upon a major vote of all members of said Council. The director or general manager of the system, upon his or her appointment in taking office, shall furnish and file with the City Administrator, a bond in the sum and penalty determined by the Board, the cost of such bond to be payable to the City and conditioned as to the faithful performance of the director's duties as are fixed by the Board. Personnel policies and practices in other matters affecting employees of the Board, except pension plans, shall be determined by the Board.
(Ord. 255. Passed 1-26-07.)

145.10 REPORTING REQUIREMENTS.

The Board shall provide reports, at least semi-annual, or as otherwise required by law, to the City Administrator and Council, indicating the Boards' financial condition and the respective condition of the waterworks system. The Board shall also provide the City with yearly audited financial statements; minutes of all meetings of the Board, an annual budget, and other such information as may reasonably be requested. Any director or designee employed pursuant to Section 145.09 shall make the reports to Council at Council meetings as required by this section or as otherwise requested by Council. The City Administrator shall be the custodian of all such audits, reports and records.
(Ord. 255. Passed 1-26-07.)

145.11 ASSETS AND LIABILITIES.

All assets and liabilities of the water works system, including accounts receivable and accounts payable, and all employees thereof, shall be under the management and control of the Board.
(Ord. 255. Passed 1-26-07.)

145.12 PENSION PLAN.

All such employees shall be under the general pension plan of the City, subject to adjustments as shall be provided for by resolution of Council.
(Ord. 255. Passed 1-26-07.)

145.13 APPOINTMENT.

Upon enactment of this article by Council, the Mayor shall appoint two persons to the Board, with approval by Council, in accordance with Section 145.04 and said appointed individuals shall continue to serve their respective terms in accordance with Section 145.04 . All future appointments to the Board shall be made in accordance with Section 145.04 .
(Ord. 255. Passed 1-26-07.)

145.14 EMPLOYEES JOB DESCRIPTIONS.

The Board shall establish a job description setting forth the minimum requirements and qualifications for the position of director or general manager of the waterworks system and the duties and responsibilities that the director shall fulfill, including duties to be fulfilled by the director initially upon his or her employment and those to be fulfilled at a future date. The Board shall modify and supplement the job description from time to time as it should deem appropriate.
(Ord. 255. Passed 1-26-07.)

145.15 EMPLOYMENT PROCEDURES.

The Board shall establish a uniform procedure for soliciting and accepting applications for employment by the Board. All applications for employment received shall be submitted to Council for review and at the discretion of Council for interview by Council or its designee. The Council shall submit to the Board a list of candidates it deems qualified and acceptable and the Board shall select employees from the list of candidates approved by Council.
(Ord. 255. Passed 1-26-07.)

145.16 PERSONAL MATTERS.

In all matters relating to the hiring, firing, management and discipline of personnel, including the director, the Board shall comply with the personnel policies of the City of Keyser as amended from time to time. The Board shall provide Council with confidential copies of personnel files upon request. Council shall keep such files confidential within the limits of applicable law.
(Ord. 255. Passed 1-26-07.)

145.17 SUPPORTING LAW.

The Council of the City of Keyser enacts this article in accordance with West Virginia Code Section 8-19-1 et seq. for the assurance and protection of the citizens of the City and for the purpose of assuring the holders of bonds of the City payable from the income and revenues of the waterworks system for the efficient operation and maintenance thereof. Any issues not specifically addressed herein shall be governed by applicable State law. This ordinance shall be subject to any additional terms, conditions or requirements of bond ordinances which govern the waterworks system or hereinafter govern the waterworks system of the City. Any amendment to this article shall be adopted in accordance with the rules and regulations of the Council and State law.
(Ord. 255. Passed 1-26-07.)

145.18 FULL FAITH AND CREDIT.

The City has previously issued by and through itself and this Board, formerly known as the Utility Board, certain water revenue bonds, known as the City of Keyser Water Revenue Bonds, Series 1998A and Series 1998B, for the purposes of refunding and refinancing certain water project improvements for the City of Keyser. The City does hereby ratify, affirm and ordain all of the actions taken in regard thereto regardless of whether such were taken in the name of the City, the Keyser Utility Board or otherwise, and all such bonds shall bear the full faith and credit of the Water Board and the waterworks system of the City in accordance with those Ordinances and bonds so adopted and issued.
(Ord. 255. Passed 1-26-07.)

145.19 IMMUNITY.

No municipal official or officer or member of the Board shall in any event be personally liable upon any contract or obligation of any

kind or character executed under the authority herein contained, even if said undertaking should thereafter be held ultra vires.
(Ord. 255. Passed 1-26-07.)

ARTICLE 147

Sanitary Board

- 147.01 Creation.**
- 147.02 Composition; chairman; appointment of members.**
- 147.03 Organizational meetings; vice chairman, secretary, treasurer; official bonds.**
- 147.04 Compensation and expenses of board members.**
- 147.05 Powers, duties, funding and limitations.**
- 147.06 Restoration of property.**
- 147.07 Publication of financial statement.**
- 147.08 Disbursement of funds.**
- 147.09 Bonding.**
- 147.10 Authority.**

CROSS REFERENCES

Composition of board - see W.Va. Code 16-13-18

Publication of financial statement - see W.Va. Code 16-13-18a

Powers and duties - see W.Va. Code 16-13-3 et seq.

147.01 CREATION.

The City of Keyser does hereby create and establish a Sanitary Board, with all powers and duties as provided in and pursuant to Chapter 16, Article 13, Section 1 et seq. and Chapter 8 of the West Virginia Code. (Ord. 253. Passed 10-28-99.)

147.02 COMPOSITION; CHAIRMAN; APPOINTMENT OF MEMBERS.

The Sanitary Board shall be composed of the Mayor, who shall serve as Chairman, and two persons appointed by Council. One of the two persons appointed to the Sanitary Board shall, during the construction period of any sewage facilities be a registered professional engineer. The engineer member of the Board need not be a resident of the City of Keyser. After the construction of the system has been complete, the engineer may be succeeded by an individual not a registered professional engineer. With the exception of the requirement for a registered professional engineer during those periods of construction as aforesaid, all other members of the Sanitary Board shall be citizens of the City. Said appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each such term and each succeeding term, appointment of a successor shall be made in like manner for a term of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. No officer or employee of the City whether holding a paid or unpaid office, shall be eligible to appointment on the Sanitary Board until at least one year after the expiration of the term of his public office.

(Ord. 253. Passed 10-28-99.)

147.03 ORGANIZATIONAL MEETINGS; VICE CHAIRMAN, SECRETARY, TREASURER; OFFICIAL BONDS.

As soon as may be practicable following the appointment of a new member of the Sanitary Board, the Board shall hold an organizational meeting and choose a Vice-Chairman from among its members, and a Secretary and Treasurer. The position of Secretary and Treasurer may be held by the same person and need not be a Board member. Such officers shall hold office at the will of the Board. No bond shall be required of the Board members, but the treasurer, whether a member of the Board or not, shall give bond in the penalty of \$2,000, or such higher amount as required by applicable law, for the proper application of all money received by him as treasurer of the Board or as otherwise conditioned according to law.

(Ord. 253. Passed 10-28-99.)

147.04 COMPENSATION AND EXPENSES OF BOARD MEMBERS.

Each member of the Sanitary Board shall receive as compensation for their services not less than \$50.00 per month, payable monthly, and in addition, shall be reimbursed for any and all expenses incurred for the performance of their duties under Order of the Board. Funding for compensation to members of the Sanitary Board shall be in accordance with those provisions hereinafter stated. The City Council shall fix the reasonable compensation of the secretary and treasurer in its discretion. There shall be no liability upon the City of Keyser, for any salary or expenses so incurred.

(Ord. 253. Passed 10-28-99.)

147.05 POWERS, DUTIES, FUNDING AND LIMITATIONS.

(a) The Sanitary Board shall have the supervision and control of the construction, acquisition, improvement, equipment, custody, operation and maintenance of any such works for the collection, treatment or disposal of sewerage and the collection of revenues therefrom for the service rendered thereby, which are now owned or may hereafter be acquired by the City of Keyser.

(b) The Sanitary Board shall have the power and authority to take all steps and proceedings to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of the powers granted to the Sanitary Board by this article and under and by virtue of Article 13 of Chapter 16 of the West Virginia Code, as amended, subject to all restrictions and limitations contained therein as the same now exists or as may hereafter be amended.

(c) The Sanitary Board shall have power to establish by-laws, rules and regulations for its own government.

(d) The Sanitary Board may employ engineers, architects, inspectors, superintendents, manager, collectors, attorneys and other personnel as it in its judgement may be necessary in the execution of its powers and duties and may fix the compensation of all of whom shall do work as the Board may employ and direct.

(e) All such compensation and all expenses incurred in carrying out the provisions of this article and Article 13, of Chapter 16 of the

West Virginia Code shall be paid solely from the funds generated as revenue from the operation of the sewage system and from funding received by means of bonds, loans, grants or advances as provided under the authority given to the Board so as to bind the Board or the City beyond the extent to which money shall be or may be provided under the authority of said Article 13 of the West Virginia Code. No contract or agreement with any contractor or contractors for labor and/or material exceeding in amount the sum of \$5,000 shall be made without advertising for bids, which bids shall be publicly opened and award made to the best bidder, with power of the Board to reject any or all bids. The Sanitary Board may declare an emergency situation in the event of collector line breaks or vital treatment plant equipment failure and the Board shall be exempted from competitive bidding requirements and permitted to enter into direct purchase agreements or contracts for such expenses.

(f) After the construction, installation and completion of the sewer works, or the acquisition thereof, the Board shall operate, manage and control the same and may order and complete any extensions, betterments, and improvements of and to the works that the Board may deem expedient, if funds therefore be available or are made available as provided under Article 13 of Chapter 16 of the West Virginia Code as amended, and shall establish rules and regulations for the use and operation of the works, and of other sewers and drains connected therewith so far as they may affect the operation of such works and do all things necessary or expedient for successful operation thereof.

(Ord. 253. Passed 10-28-99.)

147.06 RESTORATION OF PROPERTY.

All public ways or public works damaged or destroyed by the Board in carrying out its authority under this article shall be restored or repaired by the Board and placed in their original condition, as nearly as practicable, if requested to do so by proper authority, out of the funds as provided herein. (Ord. 253. Passed 10-28-99.)

147.07 PUBLICATION OF FINANCIAL STATEMENT.

The Sanitary Board shall prepare a financial statement and cause it to be published as a Class I legal advertisement in compliance with the provisions of Article 3, Chapter 59 of the Code of West Virginia, as amended, and the publication area for such publication shall be the sanitary district serviced by the sewage system. Such statement shall contain an itemized account of the receipts and expenditures of the Board during the previous fiscal year, showing the source from which all money was derived, and the name of the person to whom an order was issued, together with the amount of such order and why such order was issued, arranging the same under district heads and including all money received and expended from the sale of bonds, and also a specific statement of the debts of such Board, showing the purpose for which any debt was contracted, the amount of money in all funds at the end of the preceding year, and the amount of uncollected service charges. Such statement shall be prepared and published by the Board as soon as practicable after the close of the fiscal year. The statement shall be sworn to by the Chairman, Secretary and Treasurer of the Board. (Ord. 253. Passed 10-28-99.)

147.08 DISBURSEMENT OF FUNDS.

All funds under the supervision of the Sanitary Board shall be disbursed as disbursements are required by check drawn upon the proper fund or account, and such checks shall be properly signed by the authorized officer or agent of the Board. All such disbursements shall be approved by the Board.

(Ord. 253. Passed 10-28-99.)

147.09 BONDING.

The Sanitary Board may from time to time, in its discretion, require any of its employees to furnish a good and suitable indemnity bond, with a recognized and reputable surety conditioned upon the faithful discharge of their duties as such and to deliver up and pay over all money as provided by law. The Board may require all persons who collect or otherwise handle funds of the Board to furnish a good and proper bond with a recognized and reputable corporate surety conditioned upon the faithful performance of their duties and for the proper handling and care of said funds in their hands. Such bonds shall be in amount equal to the sum of money which might at any one time be in the hands of such person or persons as may be determined by the Board.

(Ord. 253. Passed 10-28-99.)

147.10 AUTHORITY.

This article shall be governed by Chapter 16, Article 13, Section 1, et. seq. and by Chapter 20 of the West Virginia Code and any amendments thereto by act of the West Virginia State Legislature shall amend and govern this Ordinance. The powers of the Sanitary Board shall not be limited by the provisions of this Ordinance, but shall be extended all those rights, duties, privileges and powers as conferred under Chapter 16, Article 13, Section 1, et seq. of the West Virginia Code. (Ord. 253. Passed 10-28-99.)

ARTICLE 149

Parking Facilities Board

149.01 Creation.

149.02 Composition.

149.03 Officers.

149.04 By-laws, rules and regulations.

149.05 Plenary power and authority.

149.06 Condemnation.

149.07 Minutes and freedom of information.

CROSS REFERENCES

Parking generally - see TRAF. Art. 361

149.01 CREATION.

There is hereby established and created a municipal Parking Facilities Board for the City of Keyser, the same being hereinafter referred to as the "Board".

(1984 Code 11-2-1.)

149.02 COMPOSITION.

The Mayor and Council shall appoint the members of the Board. The Board shall consist of seven (7) members, of which membership all or a portion of the governing body may be members. Three (3) members shall be appointed to serve for one year, two (2) members shall be appointed to serve for two years, and two (2) members shall be appointed to serve for three years. Thereafter, upon the expiration of a term of office of any Board member, the governing body shall appoint members for terms of three years. Members shall be chosen and appointed without regard to their political affiliations, but with regard to their business or professional experience or standing as citizens in the community. Vacancies shall be filled by appointment of the governing body for the remainder of any unexpired term of any member or members vacating. Members of the Board shall serve until their successor or successors shall have been appointed and qualified.

(1984 Code 11-2-2.)

149.03 OFFICERS.

At the first meeting of the Board, and annually thereafter, the members of the Board shall organize the Board by designating one of its members to act as Chairman, another as Vice- Chairman, and another to act as Secretary. The Chairman shall preside at all meetings, except that in his absence the Vice-Chairman shall preside. The Secretary shall keep a record of the proceedings of the Board which shall be available for inspection as are other municipal records. A quorum shall consist of four (4) members. (1984 Code 11-2-3.)

149.04 BY-LAWS, RULES AND REGULATIONS.

The Board shall establish by-laws, rules and regulations for its own government, including, but not limited to, the time and place of its meetings and the conduct thereof.

(1984 Code 11-2-4.)

149.05 PLENARY POWER AND AUTHORITY.

Except as otherwise herein provided or limited, or as otherwise limited by general laws, the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipping, repairing (including replacements), custody, maintenance and operation of any and all motor vehicle parking facilities, including parking lots, buildings, ramps, curb-line parking, meters used in connection with motor vehicle parking facilities established hereunder and other facilities deemed necessary, appropriate, useful, convenient, or incidental to the regulation, control and parking of motor vehicles, and the collection of revenues from such motor vehicle parking facilities shall be under the supervision and control of the Board.

- (a) The Board shall have plenary power and authority to take all steps and proceedings, and to make and enter into all contracts or agreements necessary, appropriate, useful, convenient or incidental to the performance of its duties and the execution of its powers and authority under the article: Provided, that any contract or agreement relating to the financing, or the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase or equipment of any such works, and trust indenture with respect thereto as hereinafter provided for shall be approved by Council.
- (b) The Board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and such other employees as in its judgement may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the Board may direct. All such compensation and expenses incurred in carrying out the provisions of this ordinance, shall be paid solely from funds provided under the authority of this ordinance and the Board shall not exercise or carry out any power or authority herein given it so as to bind said Board or any municipality beyond the extent to which money shall have been or may be provided under the authority of this ordinance. No contract or agreement with any contractor or contractors for labor or materials, or both, exceeding in the sum of one thousand dollars (\$1,000.00) shall be made without advertising for bids, which bids shall be publicly opened and an award made to the lowest responsible bidder, with power and authority in the Board to reject any and all bids. After the construction, reconstruction, establishment, acquisition, renovation or equipment of any such works the Board shall maintain, operate, manage and control the same, and may order and complete any improvements, extensions, enlargements, increase or repair (including replacements) of and to the works that the Board may deem expedient, if funds therefor be available, or are made available, as provided in this ordinance, and shall establish rules and regulations for the use, maintenance and operation of the works, and do all things necessary or expedient for the successful operation thereof. All public ways or public works damaged or destroyed by the Board in carrying out its authority under this ordinance shall be restored or repaired by the Board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided under the authority of this article.
- (c) In the event of acquisition by purchase, the Board may obtain and exercise an option from the owners of said property for the purchase thereof, and may enter into a contract for the purchase thereof, and such purchase may be made upon such terms and conditions, and in such manner as the Board may deem proper: Provided, however, that the exercise of such option or the contract for such purchase, or such purchase shall in no event create any obligation of the City of Keyser, or create any obligation on the City or create any debt, liability or claim, except such as may be discharged or paid from the funds provided under the authority of Chapter 8, Article 16 of the West Virginia Code.

(1984 Code 11-2-5)

149.06 CONDEMNATION.

Pursuant to the provisions of Chapter 8, Article 16, Section 8 of the West Virginia Code, the City of Keyser shall not condemn, nor shall the Board recommend to the City the Condemnation of any existing privately owned parking facilities in operation at the time of any proposed condemnation. (1984 Code 11-2-6)

149.07 MINUTES AND FREEDOM OF INFORMATION.

Copies of the minutes of the meetings of the Board shall be forwarded to the Council of the City of Keyser within a reasonable time following each meeting, and the financial records of the Board shall be open to the inspection of the treasurer and/or recorder of the City of Keyser at all reasonable times as well as to such other persons or firms as shall be designated by the Council.

(1984 Code 11-2-7)

Employment Provisions

EDITOR'S NOTE: The City has adopted an Employee's Manual governing employment provisions. Copies are on file at City Hall.

There are no sections in Article 151. This article is established to provide a space for cross references and future legislation.

CHAPTER SEVEN - Judicial

Art. 181. Municipal Court.

ARTICLE 181

Municipal Court

- 181.01 Established.**
- 181.02 City Judge.**
- 181.03 Docket.**
- 181.04 Arrest warrants.**
- 181.05 Summonses.**
- 181.06 Subpoenas.**
- 181.07 Trial and disposition of cases.**
- 181.08 Appearance bonds.**
- 181.09 Fines and costs.**
- 181.10 Appeals.**
- 181.11 Bond.**
- 181.12 Disposition and report of fines and costs.**
- 181.13 Disturbance of proceedings.**
- 181.14 Violations.**
- 181.15 Responsibilities of City Administrator.**
- 181.16 Incarceration.**

CROSS REFERENCES

Establishment - see W.Va. Code 8-10-2

General rights of appeal - see W.Va. Code 8-34-1

Costs for crime victims reparation fund - see W.Va. Code 14-2A-4

Costs for funding law enforcement training academies - see W.Va. Code 30-29-4

Search warrant - see W.Va. Code 62-1A-1

181.01 ESTABLISHED.

There is hereby established a court which shall be called the City Court. The City Judge of the City shall preside over said court.
(1984 Code 7-1-1.)

181.02 CITY JUDGE.

Pursuant to the provisions of W.Va. Code §8-10-2 the Mayor shall appoint a qualified person to the office of the City Judge. The City Judge and City Court shall have jurisdiction, exercise the powers and perform the duties specified for Mayors, Municipal Courts and Municipal Judges respectively, in section §8-10-1 and §8-10-2 of the W.Va. Code, as amended.
(1984 Code 7-1-2)

181.03 DOCKET.

The City Judge shall keep a complete docket of all matters coming before him in his judicial capacity. The docket shall include for each defendant such information as his name, warrant and/or summons numbers, alleged offense, disposition, fines and costs imposed and whether collected, whether committed to jail, and all other information that may be relevant.
(1984 Code 7-1-3)

181.04 ARREST WARRANTS.

In addition to the City Judge, the Mayor and the City Administrator shall have the authority as herein set forth to issue warrants for all offenses committed against this code and its amendments hereinafter adopted.
(1984 Code 7-1-4)

181.05 SUMMONSES.

When a complaint of an alleged ordinance violation is made to the City Judge or such other official, the judge may in his discretion, in lieu of issuing an arrest warrant, issue a summons, ordering the alleged offender to personally appear before the City Court at a time specified therein to answer to the charges against him. The summons shall contain a brief description of the offense charged but need not be set out verbatim the provisions of the ordinance alleged to have been violated. Upon failure of any person to appear before the City Court as commanded in a summons lawfully served on him, the cause may be proceeded with ex parte, and the judgment of the court shall be valid and binding subject to the defendant's right of appeal.
(1984 Code 7-1-5)

181.06 SUBPOENAS.

The City Judge or those officials as specified above, may subpoena as witnesses all persons whose testimony he believes will be relevant and material to matters coming before his court, and it shall be unlawful for any person lawfully served with such a subpoena to fail or neglect to comply therewith. (1984 Code 7-1-6)

181.07 TRIAL AND DISPOSITION OF CASES.

Every person charged with violating a municipal ordinance shall be entitled to an immediate trial and disposition of his case, provided the City Court is in session or the City Judge is reasonable available. However, the provisions of this section shall not apply when the alleged offender, by reason of drunkenness or other incapacity, is not in a proper condition or is not able to appear before the court. (1984 Code 7-1-7)

181.08 APPEARANCE BONDS.

When the City Judge is not available or when an alleged offender requests and has reasonable grounds for a delay in the trial of his case, he may, in lieu of remaining in jail pending disposition of his case, be allowed to post an appearance bond with the City Judge or, in the absence of the judge, with the ranking police officer on duty at the time, provided such alleged offender is not drunk or otherwise in need of protective custody. (1984 Code 7-1-8)

181.09 FINES AND COSTS.

All fines and costs shall be imposed and recorded by the City Judge on the City court docket in open court. After any fine and costs have been so imposed and recorded, the City Judge shall have no power to remit or release the same or any part thereof except when necessary to correct an error. (1984 Code 7-1-9)

181.10 APPEALS.

Any defendant who is dissatisfied with any judgement of the City Court against him, within the ten (10) next after such judgment is rendered, Sundays and legal holidays excepted, appeal to the next term of the circuit court upon posting an appeal bond as set forth below. (1984 Code 7-1-10)

181.11 BOND.

An appearance bond in any case before the City Court shall be in such amount as the City Judge shall prescribe and shall be conditioned that the defendant shall appear for trial before the City Court at the stated time and place. An appeal bond in any case shall be in the sum of not less than double the amount of the fine and costs and shall be conditioned that if the circuit court shall find against the appellant the fine and all costs of the trial and appeal shall be promptly paid by the defendant and/or his sureties. An appearance or appeal bond in any case may be made in the form a cash deposit or by any corporate surety company authorized to do business in West Virginia or by two private persons who individually own real estate located within the county. No other type bond shall be acceptable. (1984 Code 7-1-11)

181.12 DISPOSITION AND REPORT OF FINES AND COSTS.

All funds coming into the hands of the City Judge in the form of fines, costs and forfeitures shall be recorded by him and paid over daily to the municipality. At the end of each month he shall submit the governing body a report accounting for the collection or non-collection of all fines and costs imposed by his court during the current month and to date for the current fiscal year. (1984 Code 7-1-12)

181.13 DISTURBANCE OF PROCEEDINGS.

No person shall create any disturbance of any trial before the City Court by making loud or unusual noises, by using indecorous, profane or blasphemous language, or by any distracting conduct whatsoever. (1984 Code 7-1-13)

181.14 VIOLATIONS.

A violation of any section of this article shall be punishable by a fine of not more than one hundred (\$100.00) dollars for each separate violation. (1984 Code 7-1-14)

181.15 RESPONSIBILITIES OF CITY ADMINISTRATOR.

(a) Pursuant to the authority set forth in Chapter 8, Article 10, Section 4 of the West Virginia Code of 1931, as amended, the City Administrator is hereby authorized and directed, in the absence of the Mayor and/or Municipal Judge to issue warrants for arrest for the violation of ordinances of the City of Keyser, West Virginia, to administer oaths and to accept and approve sureties and bonds.

(b) The authority herein provided shall be upon the appointment and confirmation by the Council of such City Administrator to utilize such authority, which authority may be hereafter removed by a majority vote of and by Council. (1984 Code 7-1-15)

181.16 INCARCERATION.

(a) Council does hereby rescind and repeal any Policies, Resolutions or Ordinances previously adopted by the City which prohibit or discourage the imposition of jail time by the Municipal Court, or which may be inconsistent with the provisions of this section.

(b) By the power and authority vested in West Virginia Code §8-11-1 et seq. the Municipal Judge of the City of Keyser shall within his or her sole discretion have the judicial authority and power to impose such period of incarceration, in addition to fines, probation etc. that in his or her opinion, shall be appropriate punishment for each defendant that appears before the Municipal Court. Such period of incarceration shall be within the jurisdictional limits of each Ordinance or Statute with respect to that particular offense, but in any event shall not exceed a term of 30 days for each offense for which an individual has been convicted.

(c) The Municipal Court shall have the authority to issue bench warrants, capias, summons, subpoenas and such other legal authority as provided under the City Charter, the City ordinances and as further prescribed by the laws of the State of West Virginia.

(d) By adoption of this section the City of Keyser does hereby recognize that it will be responsible for all expenses associated with the incarceration of any individual that may be sentenced to confinement by the Municipal Court and that any such sentence imposed shall be served by the defendant at the Potomac Highlands Regional Jail in Augusta, West Virginia. Individuals incarcerated by the Municipal Court shall be responsible for their own return transportation to the City, or their permanent place of residence if not a resident of the City, upon release from incarceration by the authorities at the Potomac Highlands Regional Jail. (Ord. 258. Passed 10-11-00.)

CHAPTER ONE - Administration

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

CHAPTER THREE - Streets and Traffic Control Devices

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

CHAPTER FIVE - Vehicular Operation

- Art. 331. Crashes.
- Art. 333. Driving Under the Influence; Reckless Driving.
- Art. 334. Open Container Law.
- Art. 335. Speed Restrictions.
- Art. 337. Driving on Right; Passing.
- Art. 339. Turning and Starting; Signals.
- Art. 341. Right of Way.
- Art. 343. Special Stops Required.
- Art. 345. Safety and Equipment.
- Art. 347. Commercial and Heavy Vehicles.
- Art. 349. Miscellaneous Rules.
- Art. 351. Licensing Generally.
- Art. 353. Commercial Drivers.
- Art. 355. All-Terrain Vehicles.

CHAPTER SEVEN - Parking

- Art. 361. Parking Generally.
- Art. 363. Parking Meters.
- Art. 365. Residential Parking District.
- Art. 369. Vehicle Immobilizer.

CHAPTER NINE - Pedestrians and Bicycles

- Art. 371. Pedestrians.
- Art. 373. Bicycles.

**CODIFIED ORDINANCES OF KEYSER
PART THREE - TRAFFIC CODE**

CHAPTER ONE - Administration

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

ARTICLE 301**Definitions**

- 301.01** Meaning of words and phrases.
- 301.02** Authorized emergency vehicle.
- 301.03** Bicycle.
- 301.04** Bus.
- 301.05** Business district.
- 301.06** Controlled-access highway.
- 301.07** Crosswalk.
- 301.08** Driver.
- 301.081** Electric personal assistive mobility device.
- 301.09** Explosives.
- 301.10** Flammable liquid.
- 301.11** Gross weight.
- 301.12** Intersection.
- 301.13** Laned roadway.
- 301.14** Moped.
- 301.15** Motorcycle.
- 301.16** Motor-driven cycle.
- 301.17** Motor vehicle.
- 301.18** Owner.
- 301.19** Park.
- 301.20** Parking area.
- 301.201** Passenger van.
- 301.21** Pedestrian.
- 301.22** Person.
- 301.23** Pole trailer.
- 301.24** Police officer.
- 301.25** Private road or driveway; private property.

- 301.26 Railroad.**
- 301.27 Railroad sign or signal.**
- 301.28 Railroad train.**
- 301.29 Residence district.**
- 301.30 Residential street.**
- 301.31 Right of way.**
- 301.32 Roadway.**
- 301.33 Safety zone.**
- 301.34 School bus.**
- 301.35 School grounds.**
- 301.36 Semitrailer.**
- 301.37 Sidewalk.**
- 301.38 Stop.**
- 301.39 Stop, stopping or standing.**
- 301.40 Street or highway; alley.**
- 301.41 Through street or through highway.**
- 301.42 Traffic.**
- 301.43 Traffic control devices.**
- 301.44 Traffic control signal.**
- 301.45 Trailer.**
- 301.46 Truck.**
- 301.47 Vehicle.**
- 301.48 Wheelchair.**

CROSS REFERENCES

See sectional histories for similar State law

Speed race defined - see TRAF. 335.04

301.01 MEANING OF WORDS AND PHRASES.

The following words and phrases when used in this Traffic Code shall, for the purpose of this Traffic Code, have the meanings respectively ascribed to them in this article.

(WVaC 17C-1-1)

301.02 AUTHORIZED EMERGENCY VEHICLE.

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

(WVaC 17C-1-6)

301.03 BICYCLE.

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

(WVaC 17C-1-8)

301.04 BUS.

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

301.05 BUSINESS DISTRICT.

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

(WVaC 17C-1-45)

301.06 CONTROLLED-ACCESS HIGHWAY.

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

(WVaC 17C-1-41)

301.07 CROSSWALK.

"Crosswalk" includes:

- (a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the street or highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; and

- (b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface. (WVaC 17C-1-43)

301.08 DRIVER.

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

301.081 ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE.

"Electric personal assistive mobility device" or "EPAMD" means a self-balancing, two nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of seven hundred fifty watts (one horse power), whose maximum speed on a paved level surface, when powered solely by such a propulsion system while ridden by an operator who weighs one hundred seventy pounds, is less than twenty miles per hour.

(WVaC 17C-1-66)

301.09 EXPLOSIVES.

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

301.10 FLAMMABLE LIQUID.

"Flammable liquid" means any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closedcup test device.

(WVaC 17C-1-25)

301.11 GROSS WEIGHT.

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

301.12 INTERSECTION.

"Intersection" includes:

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

301.13 LANED ROADWAY.

"Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

(WVaC 17C-1-39)

301.14 MOPED.

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

(WVaC 17C-1-5a)

301.15 MOTORCYCLE.

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

(WVaC 17C-1-4)

301.16 MOTOR-DRIVEN CYCLE.

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

(WVaC 17C-1-5)

301.17 MOTOR VEHICLE.

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

301.18 OWNER.

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

(WVaC 17C-1-32)

301.19 PARK.

"Park" when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

(WVaC 17C-1-54)

301.20 PARKING AREA.

"Parking area" means lots, areas or other accommodations for the parking of vehicles off the street or highway and open to public use with or without charge.

(WVaC 17C-1-60)

301.201 PASSENGER VAN.

"Passenger van" means any van or other motor vehicle owned by any agency, business or other legal entity and operated for the purpose of transportation of children under the age of eighteen years, other than a van utilized for private use, taxicab, bus or school bus. Passenger vans include, but are not limited to, vehicles used by daycare centers, after-school centers and nursery schools: provided, that the term "passenger van" does not include any van or other motor vehicle which is utilized for the specific purpose of transporting children to medical facilities for the purpose of medical or dental treatment and which loads and unloads the children on private property, making no stops for loading or unloading along public roads or highways.

(WVaC 17C-1-64)

301.21 PEDESTRIAN.

"Pedestrian" means any person afoot or any person using a wheelchair.

(WVaC 17C-1-30)

301.22 PERSON.

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

301.23 POLE TRAILER.

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

301.24 POLICE OFFICER.

"Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(WVaC 17C-1-33)

301.25 PRIVATE ROAD OR DRIVEWAY; PRIVATE PROPERTY.

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

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

301.26 RAILROAD.

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

301.27 RAILROAD SIGN OR SIGNAL.

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

301.28 RAILROAD TRAIN.

"Railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars.

(WVaC 17C-1-22)

301.29 RESIDENCE DISTRICT.

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

(WVaC 17C-1-46)

301.30 RESIDENTIAL STREET.

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

(WVaC 17C-1-62)

301.31 RIGHT OF WAY.

"Right of way" means the privilege of the immediate use of the street or highway.

(WVaC 17C-1-51)

301.32 ROADWAY.

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

(WVaC 17C-1-37)

301.33 SAFETY ZONE.

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

(WVaC 17C-1-44)

301.34 SCHOOL BUS.

"School bus" means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to

or from school, or privately owned and operated for compensation for the transportation of children to or from school.
(WVaC 17C-1-7)

301.35 SCHOOL GROUNDS.

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

301.36 SEMITRAILER.

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

301.37 SIDEWALK.

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

301.38 STOP.

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

301.39 STOP, STOPPING OR STANDING.

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

301.40 STREET OR HIGHWAY; ALLEY.

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

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

301.41 THROUGH STREET OR THROUGH HIGHWAY.

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

301.42 TRAFFIC.

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

301.43 TRAFFIC CONTROL DEVICES.

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

301.44 TRAFFIC CONTROL SIGNAL.

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

301.45 TRAILER.

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

301.46 TRUCK.

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

301.47 VEHICLE.

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

301.48 WHEELCHAIR.

"Wheelchair" means a motorized or nonmotorized wheeled device designed for, and used by, a person with disabilities that is incapable of a speed in excess of eight miles per hour.
(WVaC 17C-1-65)

ARTICLE 303

Enforcement, Impounding and Penalty

303.01 Authority of Police and Fire Department officials.

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

CROSS REFERENCES

See sectional histories for similar State law

Disposition of abandoned vehicles - see W. Va. Code 17-24-5 et seq.

Uniform application of West Virginia traffic law - see W. Va. Code 17C-2-7

Power of local authorities - see W. Va. Code 17C-2-8

303.01 AUTHORITY OF POLICE AND FIRE DEPARTMENT OFFICIALS.

(a) It shall be the duty of the officers of the Police Department to enforce all street traffic laws of this Municipality and all of the State vehicle laws applicable to street traffic in this Municipality.

(b) Officers of the Police Department are hereby authorized to direct all traffic by voice, hand or signal in conformance with traffic laws; provided that in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the Police Department may direct traffic as conditions may require notwithstanding the provisions of the traffic laws.

(c) Officers of the Fire Department, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity.

303.02 APPLICATION TO VEHICLES UPON STREETS AND HIGHWAYS; EXCEPTIONS.

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

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

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

(WVaC 17C-2-1)

303.03 OBEDIENCE TO POLICE OFFICERS; FLEEING.

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

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

(b) No person shall operate a vehicle so as to willfully elude or flee a police officer or designated special officer after receiving a visible or audible signal from such an officer to bring his vehicle to a stop.

303.04 APPLICATION TO GOVERNMENT VEHICLES; EXCEPTION.

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

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

(WVaC 17C-2-4)

303.05 AUTHORIZED EMERGENCY VEHICLES.

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

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

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

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

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

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

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

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

(WVaC 17C-2-5)

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

Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be

subject to all of the duties applicable to the driver of a vehicle by this Traffic Code, except those provisions of this Traffic Code which by their very nature can have no application.

(WVaC 17C-2-6)

303.07 IMPOUNDING OF VEHICLES; REDEMPTION.

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

- (a) When any vehicle is left unattended upon any street, bridge or causeway and is so illegally parked so as to constitute a hazard or obstruction to the normal movement of traffic, or so as to unreasonably interfere with street cleaning or snow removal operations.
- (b) When any vehicle has been abandoned or junked on private or public property as provided in West Virginia Code Article 17-24.
- (c) When any vehicle has been stolen or operated without the consent of the owner.
- (d) When any vehicle displays illegal license plates or fails to display the current lawfully required license plates.
- (e) When any vehicle has been used in or connected with the commission of a felony.
- (f) When any vehicle has been damaged or wrecked so as to be inoperable or violates equipment provisions of this Traffic Code or West Virginia Code Article 17C-15 whereby its continued operation would constitute a condition hazardous to life, limb or property.
- (g) When any vehicle is left unattended due to the removal of an ill, injured or arrested operator.
- (h) When any vehicle has been operated by any person who has failed to stop in case of a crash or collision.
- (i) When any vehicle has been operated by any person who is driving without a lawful license or while his license has been suspended or revoked.
- (j) When any vehicle is found for which two or more citation tags for violations of this Traffic Code have been issued and the owner or operator thereof has failed to respond to such citation tags as lawfully required.

Any vehicle removed under authority of subsection (b) hereof shall be disposed of as provided under West Virginia Code Article 17-24. Any other vehicle removed under authority of this section shall be ordered into storage and the Police Department shall forthwith notify the registered vehicle owner of the fact of such removal and impounding, reasons therefor and the place of storage. Any person desiring to redeem an impounded vehicle shall appear at the Police Department to furnish satisfactory evidence of identity and ownership or right to possession. Prior to issuance of a release form, the claimant, owner or operator shall either pay the amount due for any fines for violations on account of which such vehicle was impounded or, as the court may require, post a bond in an amount set by the court, to appear to answer to such violations. The pound operator shall release such vehicle upon the receipt of the release form and payment of all towage and storage charges.

303.08 RIGHTS OF OWNERS OF REAL PROPERTY.

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

(WVaC 17C-2-9)

303.99 PENALTY.

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

ARTICLE 305

Traffic Control

CROSS REFERENCES

Uniformity with State law required - see W. Va. Code 17C-2-7

Powers of Municipality - see W. Va. Code 17C-2-8

CHAPTER THREE - Streets and Traffic Control Devices

Art. 311. Street Obstructions and Special Uses.

Art. 313. Traffic Control Devices.

ARTICLE 311

Street Obstructions and Special Uses

311.01 Placing injurious material in street.

311.02 Play streets.

311.03 Toy vehicles on streets.

311.04 Parades and assemblages.

311.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law

Authority to prohibit littering in streets - see W. Va. Code 8-12-5(3)

Authority to regulate processions or assemblages - see W. Va. Code 17C-2-8(a)(3)

Dropping, leaking loads - see TRAF. 347.04

311.01 PLACING INJURIOUS MATERIAL IN STREET.

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

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

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

(WVaC 17C-14-11)

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

311.02 PLAY STREETS.

(a) No person shall use the public streets, highways, alleys, thoroughfares, roads or avenues of the Municipality for the purpose of engaging in or playing any games or athletic activities, except public ways specifically set aside for such purposes.

(b) When authorized signs are erected indicating any street or part thereof as a play street, no person shall drive a vehicle upon any such street or highway or portion thereof except drivers of vehicles having business or whose residence is within such closed area, and then any such driver shall exercise the greatest care in driving upon any such street or highway or portion thereof.

311.03 TOY VEHICLES ON STREETS.

No person on roller skates or riding in or by means of any sled, toy vehicle, skateboard or similar device shall go upon any roadway except while crossing a street on a crosswalk and except on streets set aside as play streets.

311.04 PARADES AND ASSEMBLAGES.

No person, group of persons or organization shall conduct or participate in any parade, assemblage or procession other than a funeral procession upon any street or highway, or block off any street or highway area, without first obtaining a permit from the Police Chief.

Applications for such permit shall be made on such forms as may be prescribed and shall contain such information as is reasonably necessary to a fair determination of whether a permit should be issued. Applications shall be filed not less than five days before the time intended for such parade, procession or assemblage.

The permit may be refused or canceled if:

(a) The time, place, size or conduct of the parade including the assembly areas and route of march would unreasonably interfere with the public convenience and safe use of the streets and highways.

(b) The parade would require the diversion of so great a number of police officers to properly police the line of movement, assembly area and areas contiguous thereto so as to deny normal police protection to the Municipality.

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

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

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

(f) An emergency such as a fire or storm would prevent the proper conduct of the parade.

The permit or any order accompanying it may limit or prescribe reasonable conditions, including the hours, the places of assembly and of dispersal, the route of march or travel and the streets, highways or portions thereof which may be used or occupied.

311.99 PENALTY.

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

ARTICLE 313

Traffic Control Devices

313.01 Obedience to traffic control devices.

313.02 Obedience to traffic control instructions at street construction.

313.03 Traffic control signal terms and lights.

313.04 Pedestrian control signals.

313.05 Flashing traffic signals.

313.06 Unauthorized signs and signals, hiding from view, advertising.

313.07 Alteration, injury, removal of traffic control devices.

313.08 Traffic violations in construction zones.

313.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law

Authority to place traffic control devices - see W. Va. Code 17C-2-8(a)(2), 17C-3-3

Placing traffic control devices on State highways - see W. Va. Code 17C-2-8(b), 17C-3-2

Local regulations requiring traffic control devices - see W. Va. Code 17C-2-8(c)

Traffic control devices defined - see TRAF. 301.43

Traffic control signal defined - see TRAF. 301.44

313.01 OBEDIENCE TO TRAFFIC CONTROL DEVICES.

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

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

(WVaC 17C-3-4)

313.02 OBEDIENCE TO TRAFFIC CONTROL INSTRUCTIONS AT STREET CONSTRUCTION.

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

(WVaC 17C-3-4a)

313.03 TRAFFIC CONTROL SIGNAL TERMS AND LIGHTS.

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

(a) Green alone or "go":

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

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

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

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

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

(c) Red alone or "stop":

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

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

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

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

(d) Red with green arrow:

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

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

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

(WVaC 17C-3-5)

313.04 PEDESTRIAN CONTROL SIGNALS.

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

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

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

(WVaC 17C-3-6)

313.05 FLASHING TRAFFIC SIGNALS.

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

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

Local authorities, in areas that experience low traffic times, may permit flashing signals between the hours of eleven o'clock p.m. and six o'clock a.m.

(WVaC 17C-3-7)

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

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

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

(WVaC 17C-3-8)

313.07 ALTERATION, INJURY, REMOVAL OF TRAFFIC CONTROL DEVICES.

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

(WVaC 17C-3-9)

313.08 TRAFFIC VIOLATIONS IN CONSTRUCTION ZONES.

(a) Where street or highway construction work is being conducted, signs and other traffic control devices, as adopted in West Virginia Code 17C-3-1, shall be posted giving the location of the work and notifying all motorists as to the speed limit and any other traffic restrictions.

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

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

(WVaC 17C-3-4b)

313.99 PENALTY.

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

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

(b) Construction Zones.

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

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

CHAPTER FIVE - Vehicular Operation

Art. 331. Crashes.

Art. 333. Driving Under the Influence; Reckless Driving.

Art. 334. Open Container Law.

Art. 335. Speed Restrictions.

Art. 337. Driving on Right; Passing.

Art. 339. Turning and Starting; Signals.

Art. 341. Right of Way.

Art. 343. Special Stops Required.

Art. 345. Safety and Equipment.

Art. 347. Commercial and Heavy Vehicles.

Art. 349. Miscellaneous Rules.

Art. 351. Licensing Generally.

Art. 353. Commercial Drivers.

Art. 355. All-Terrain Vehicles.

ARTICLE 331

Crashes

331.01 Crashes involving death or personal injuries.

331.02 Crashes involving damage to vehicle.

331.03 Duty to give information and render aid.

331.04 Collision with unattended vehicle.

331.05 Collision with fixtures upon a street or highway.

- 331.06 Immediate reports of crashes.**
- 331.07 When driver unable to report.**
- 331.08 Garages to report bullet damage.**
- 331.99 Penalty.**

CROSS REFERENCES

See sectional histories for similar State law

Authority to require local crash report - see W. Va. Code 17C-4-15

Impounding wrecked vehicles - see TRAF. 303.07

Removal of glass, etc. from highway - see TRAF. 311.01

331.01 CRASHES INVOLVING DEATH OR PERSONAL INJURIES.

(a) The driver of any vehicle involved in a crash resulting in the injury to or death of any person shall immediately stop the vehicle at the scene of the crash or as close to the scene as possible and return to and remain at the scene of the crash until he or she has complied with the requirements of Section 331.03 ; provided, that the driver may leave the scene of the crash as may reasonably be necessary for the purpose of rendering assistance to any person injured in the crash, as required by Section 331.03 .

(b) Any driver who is involved in a crash in which another person suffers bodily injury and who intentionally violates subsection (a) when he or she knows or has reason to believe that another person has suffered physical injury in said crash shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than thirty days, or both.

(c) Notwithstanding the provisions of subsection (b), any driver who is involved in a crash in which another person suffers serious bodily injury and who intentionally violates subsection (a) when he or she knows or has reason to believe that another person has suffered physical injury in said crash is guilty of a felony and shall be prosecuted under appropriate State law.

(d) Notwithstanding subsection (b) or (c), any driver who is involved in a crash that proximately causes the death of another person who intentionally violates subsection (a) when he or she knows or has reason to believe that another person has suffered physical injury in said crash is guilty of a felony and shall be prosecuted under appropriate State law.

(e) As used in this section:

(1) "Bodily injury" means injury that causes substantial physical pain, illness or any impairment of physical condition;

(2) "Physical injury" means bodily injury, serious bodily injury or death; and

(3) "Serious bodily injury" means bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health, prolonged loss or impairment of the function of any bodily organ, loss of pregnancy, or the morbidity or mortality occurring because of a preterm delivery.

(f) The Commissioner shall revoke the license or permit or operating privilege to drive of any resident or nonresident person convicted pursuant to the provisions of this section for a period of one year from the date of conviction or the date of release from incarceration, whichever is later.

(g) This section may be known and cited as Erin's Law.

(WVaC 17C-14-1)

331.02 CRASHES INVOLVING DAMAGE TO VEHICLE.

The driver of any vehicle involved in a crash 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 crash or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such crash until he has fulfilled the requirements of Section 331.03 . Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with such requirements under such circumstances shall be guilty of a misdemeanor.

(WVaC 17C-4-2)

331.03 DUTY TO GIVE INFORMATION AND RENDER AID.

(a) (1) The driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall, if physically able to do so, provide to the person struck or the driver or occupant of or person attending any vehicle collided with, the following:

A. His or her name, a valid telephone number where he or she may be contacted and the year, make, model and last four digits of the vehicle identification number of the vehicle he or she is driving; and

B. Proof of security and financial responsibility required by West Virginia Code 17D-2A-3 and 17D-4-2, and if provided by insurance, the information provided upon the certificate of insurance, including the name of the insured, the name and contact information of the insurer and insurance policy number.

(2) A driver may meet the requirements of this subsection by providing the information required herein to a law-enforcement officer who is investigating or providing assistance at the scene of the collision, who shall, if practical under the circumstances, provide the information to any person entitled thereto pursuant to this subsection.

(b) The driver of any vehicle involved in a crash resulting in injury to or death of any person, if physically able to do so, shall render to any person injured in such crash reasonable assistance, including the carrying, or the making arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person. (WVaC 17C-4-3)

331.04 COLLISION WITH UNATTENDED VEHICLE.

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

331.05 COLLISION WITH FIXTURES UPON A STREET OR HIGHWAY.

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

331.06 IMMEDIATE REPORTS OF CRASHES.

The driver of a vehicle involved in a crash resulting in injury to or death of any person or total property damage to an apparent extent of one thousand dollars (\$1,000) or more shall immediately by the quickest means of communication, give notice of such crash to the Police Department. (WVaC 17C-4-6)

331.07 WHEN DRIVER UNABLE TO REPORT.

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

331.08 GARAGES TO REPORT BULLET DAMAGE.

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

331.99 PENALTY.

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

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

ARTICLE 333

Driving Under the Influence; Reckless Driving

333.01 Driving under the influence.

333.011 Participation in Motor Vehicle Alcohol Test and Lock Program.

333.02 Reckless driving.

333.03 Hazardous driving.

333.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law

Authority to prohibit driving under the influence - see W. Va. Code 8-12-5(21)

Compliance with State law - see W. Va. Code 17C-5-11a

Implied consent - see W. Va. Code 17C-5A

333.01 DRIVING UNDER THE INFLUENCE.

(a) Definitions.

(1) "Impaired state" means a person:

- A. Is under the influence of alcohol;
- B. Is under the influence of any controlled substance;
- C. Is under the influence of any other drug or inhalant substance;
- D. Is under the combined influence of alcohol and any controlled substance or any other drug; or
- E. Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.

(2) "Bodily injury" means injury that causes substantial physical pain, illness or any impairment of physical condition.

- (3) "Serious bodily injury" means bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(b) Any person who drives a vehicle in this Municipality while he or she is in an impaired state and such impaired state proximately causes a bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day more than one year and shall be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000): provided, that such jail term shall include actual confinement of not less than twenty-four hours: provided, however, that a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(c) Any person who drives a vehicle in this Municipality: (1) while he or she is in an impaired state, or (2) while he or she is in an impaired state but has an alcohol concentration in his or her blood of less than fifteen hundredths of one percent by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for up to six months and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00): provided, that a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(d) Any person who drives a vehicle in this Municipality while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than six months, which jail term is to include actual confinement of not less than twenty- four hours, and

shall be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000). A person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(e) Any person who, being a habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this Municipality is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). A person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

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

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

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

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

(i) Any person who drives a vehicle in this Municipality while he or she is in an impaired state and has within the vehicle one or more other persons who are unemancipated minors who have not yet reached their sixteenth birthday is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than twelve months, and shall be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000): provided, that such jail term shall include actual confinement of not less than forty-eight hours: provided, however, that a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

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

(k) For purposes of subsection (j) of this section relating to second offenses, the following events shall be regarded as offenses under this section:

- (1) Any conviction under the provisions of subsection (b), (c), (d), (e) or (f) of this section or under a prior enactment of this section for an offense which occurred within the ten-year period immediately preceding the date of arrest in the current proceeding;
- (2) Any conviction under a municipal ordinance of this State or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (b), (c), (d), (e), (f) or (g) of this section, which offense occurred within the ten-year period immediately preceding the date of arrest in the current proceeding; and
- (3) Any period of conditional probation imposed pursuant to West Virginia Code 17C-5-2(b) for violation of subsection (c) of this section, which violation occurred within the ten-year period immediately preceding the date of arrest in the current proceeding.

(l) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time period for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, the warrant or indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final, or the person has previously had a period of conditional probation imposed pursuant to West Virginia Code 17C-5-2(b).

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

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

(o) The sentences provided in this section upon conviction for a violation of this article are mandatory and are not subject to suspension or probation: provided, that the court may apply the provisions of West Virginia Code 62-11A to a person sentenced or committed to a term of one year or less for a first offense under this section: provided however, that the court may impose a term of conditional probation pursuant to West Virginia Code 17C-5-2(b) to persons adjudicated thereunder. An order for home detention by the court pursuant to the provisions of West Virginia Code 62-11B may be used as an alternative sentence to any period of incarceration required by this section for a first or subsequent offense: provided, however, that for any period of home incarceration ordered for a person convicted of second offense under this section, electronic monitoring shall be required for no fewer than five days of the total period of home confinement ordered and the offender may not leave home for those five days notwithstanding the provisions of West

Virginia Code 62-11B-5: provided, however, that for any period of home incarceration ordered for a person convicted of a third or subsequent violation of this section, electronic monitoring shall be included for no fewer than ten days of the total period of home confinement ordered and the offender may not leave home for those ten days notwithstanding West Virginia Code 62-11B-5. (WVaC 17C-5-2)

(p) As used in subsections (c), (d), (e), (f), (g) and (h) of this section, the words "drives a vehicle in this Municipality" do not mean or include driving or operating a vehicle solely and exclusively on one's own property. (WVaC 17C-5-2)

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

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

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

333.011 PARTICIPATION IN MOTOR VEHICLE ALCOHOL TEST AND LOCK PROGRAM.

(a) Except as provided in subsection (g) hereof, whenever any person who has not previously been convicted of any offense under Section 333.01 or any statute of the United States or of any state relating to driving under the influence of alcohol, any controlled substance or any other drug:

(1) Notifies the court within thirty days of his or her arrest of his or her intention to participate in a deferral pursuant to this section; and

(2) Pleads guilty to or is found guilty of driving under the influence of alcohol under subsection (c) of Section 333.01, the court, without entering a judgment of guilt and with the consent of the accused, shall defer further proceedings and, notwithstanding any provisions of this code to the contrary, place him or her on probation, which conditions shall include, that he or she successfully completes the Motor Vehicle Alcohol Test and Lock Program as provided in West Virginia Code 17C-5A-3a. Participation therein shall be for a period of at least 165 days after he or she has served the fifteen days of license suspension imposed pursuant to West Virginia Code 17C-5A-2.

(b) A defendant's election to participate in deferral under this section shall constitute a waiver of his or her right to an administrative hearing as provided in West Virginia Code 17C-5A-2.

(c) (1) If the prosecuting attorney files a motion alleging that the defendant during the period of the Motor Vehicle Alcohol Test and Lock Program has been removed therefrom by the Division of Motor Vehicles, or has failed to successfully complete the program before making a motion for dismissal pursuant to subsection (d) hereof, the court may issue such process as is necessary to bring the defendant before the court.

(2) A motion alleging such violation filed pursuant to subsection (c)(1) hereof must be filed during the period of the Motor Vehicle Alcohol Test and Lock Program, or if filed thereafter, must be filed within a reasonable time after the alleged violation was committed.

(3) When the defendant is brought before the court, the court shall afford the defendant an opportunity to be heard. If the court finds that the defendant has been rightfully removed from the Motor Vehicle Test and Lock Program by the Division of Motor Vehicles, the court may order, when appropriate, that the deferral be terminated, and thereupon enter an adjudication of guilt and proceed as otherwise provided.

(4) Should the defendant fail to complete or be removed from the Motor Vehicle Alcohol Test and Lock Program, the defendant waives the appropriate statute of limitations and the defendant's right to a speedy trial under any applicable Federal or State constitutional provision, statutes or rules of court during the period of enrollment in the program.

(d) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol Test and Lock Program and complied with its conditions, the defendant may move the court for an order dismissing the charges. This motion shall be supported by affidavit of the defendant and by certification of the Division of Motor Vehicles that the defendant has successfully completed the Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the prosecuting attorney who shall within thirty days after service advise the judge of any objections to the motion, serving a copy of such objection on the defendant or the defendant's attorney. If there are no objections filed within the thirty day period, the court shall thereafter dismiss the charges against the defendant. If there are objections filed with regard to the dismissal of charges, the court shall proceed as set forth in subsection (c) hereof.

(e) Except as provided herein, unless a defendant adjudicated pursuant to this subsection be convicted of a subsequent violation of Section 333.01 or West Virginia Code 17C-5, discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime except for those provided in West Virginia Code 17C-5A-1, et seq. Except as provided in subsection (j), (k) and (l) of Section 333.01 regarding subsequent offenses, the effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing or otherwise giving false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose other than any inquiry made in connection with any subsequent offense as that term is defined in subsection (l) of Section 333.01.

(f) There may be only one discharge and dismissal under this section with respect to any person.

(g) No person shall be eligible for dismissal and discharge under this section:

(1) In any prosecution in which any violation of any other provision of Section 333.01 or West Virginia Code 17C-5 has been charged;

(2) If the person holds a commercial driver's license or operates commercial motor vehicle(s);

(3) The person has previously had his or her driver's license revoked under West Virginia Code 17C-5-2(a) or under any statute of the United States or of any state relating to driving under the influence of alcohol, any controlled substance or any other drug; or

- (4) If the person refused the secondary chemical test pursuant to West Virginia Code 17C-5-7.
- (h) (1) After a period of not less than one year which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this section, the person may apply to the court for an order to expunge from all official records all recordations of his or her arrest, trial and conviction, pursuant to this section except for those maintained by the Division of Motor Vehicles; provided, that any person who has previously been convicted of a felony may not make a motion for expungement pursuant to this section.
- (2) If the prosecuting attorney objects to the expungement, the objections shall be filed with the court within thirty days after service of a motion for expungement and copies of the objections shall be served on the defendant or the defendant's attorney.
- (3) If the objections are filed, the court shall hold a hearing on the objections, affording all parties an opportunity to be heard. If the court determines after a hearing that the person during the period of his or her probation and during the period of time prior to his or her application to the court under this subsection has not been guilty of any serious or repeated violation of the conditions of his or her probation, it shall order the expungement.
- (i) Notwithstanding any provision of this code to the contrary, any person prosecuted for a violation of subsection (c) of Section 333.01, whose case is disposed of pursuant to the provisions of this section shall be liable for any court cost assessable against a person convicted of subsection (i) of Section 333.01. Payment of such costs may be made a condition of probation. The costs assessed pursuant to this subsection, whether as a term of probation or not, shall be distributed as other court costs in accordance with relevant municipal ordinances and state statutes.
- (WVaC 17C-5-2b)

333.02 RECKLESS DRIVING.

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

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

333.03 HAZARDOUS DRIVING.

(a) No person shall operate a motor vehicle or motorcycle without exercising reasonable and ordinary control over such vehicle.

(b) No person shall operate a motor vehicle or motorcycle in a weaving or zigzag course unless such irregular course is necessary for safe operation or in compliance with law.

(c) No person shall operate a motor vehicle or motorcycle without giving his full time and attention to the operation of such vehicle.

333.99 PENALTY.

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

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

(b) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a violation of Section 333.02 who in doing so proximately causes another to suffer serious bodily injury shall be confined in jail not less than ten days nor more than thirty days or fined not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000) or both.

(c) For purposes of subsection (b) of this section, "serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

ARTICLE 334

Open Container Law

334.01 Definitions.

334.02 Possession of an open alcoholic beverage container in the passenger area of a motor vehicle.

334.03 Procedure on arrest.

334.99 Penalty.

CROSS REFERENCES

Intoxication or drinking in a public place - see GEN. OFF. 521.06

334.01 DEFINITIONS.

For the purposes of this article, the words or terms defined in this article have the meanings ascribed to them:

(a) "Alcoholic beverage" means:

- (1) Alcoholic liquor as defined in West Virginia Code 60-1-5; and
- (2) Nonintoxicating beer as defined in West Virginia Code 11-16-3.

(b) "Motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail or rails.

(c) "Open alcoholic beverage container" means any bottle, can or other receptacle that:

- (1) Contains any amount of alcoholic beverage; and
- (2) A. Is open or has a broken seal; or
B. Has had its contents partially removed.

(d) "Passenger area of a motor vehicle" means the area designed to seat the driver and passengers while the motor vehicle is in

operation and any area that is readily accessible to the driver or a passenger while in their seating positions. For purposes of this article, the passenger area of a motor vehicle does not include:

- (1) A. A locked glove compartment; or
B. A fixed center console or other similar fixed compartment that is locked;
 - (2) In a motor vehicle that is not equipped with a trunk;
 - A. The area behind the last upright seat; or
 - B. An area not normally occupied by the driver or a passenger; or
 - (3) In a pickup truck that has no trunk, camper top or separate enclosed area other than the cab of the truck, in the area behind the front seat of the truck in a locked case or container located so as to not be readily accessible to the driver or passengers while in their seating positions.
 - (e) "Public highway or right-of-way of a public highway" means the entire width between the immediately adjacent to the boundary lines of every way that is publicly maintained, when any part thereof is open to the use of the public for purposes of vehicular travel.
- (WVaC 17C-5D-2)

334.02 POSSESSION OF AN OPEN ALCOHOLIC BEVERAGE CONTAINER IN THE PASSENGER AREA OF A MOTOR VEHICLE.

(a) It is unlawful for the operator or a passenger of a motor vehicle to consume any alcoholic beverage in the passenger area of a motor vehicle located on a public highway or right-of-way of a public highway in this Municipality, whether the vehicle is in motion or at rest.

(b) It is unlawful for the operator or a passenger of a motor vehicle to knowingly possess any open alcoholic beverage container in the passenger area of any motor vehicle that is located on a public highway or right-of-way of a public highway in this Municipality, whether the vehicle is in motion or at rest. Possession by a person of one or more open containers in a single criminal occurrence is a single offense.

(c) The provisions of this section are not applicable to a passenger:

- (1) In the passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation including, but not limited to, a bus, taxicab or limousine; or
- (2) In the living quarters of a motorized or nonmotorized house coach, house trailer, motor home or self-contained camper.

(WVaC 17C-5D-3)

334.03 PROCEDURE ON ARREST.

If a person is arrested for an offense under the provisions of this article, unless the provisions of West Virginia Code 17C-19-3 require that the person arrested be taken immediately before a magistrate for an offense described in that section, the provisions of West Virginia Code Article 17C-19 regarding the issuance of a traffic citation containing a notice to appear applies.

(WVaC 17C-5D-4)

334.99 PENALTY.

Whoever violates any provision of this article shall be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00).

(WVaC 17C-5D-3)

ARTICLE 335

Speed Restrictions

335.01 Maximum speed limits.

335.02 Slow speed.

335.03 Special speed limitations.

335.04 Racing on streets and highways prohibited.

335.05 Prima facie evidence of speed by radar.

335.06 Special speed limitations when meeting or overtaking waste service vehicles.

335.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law

Authority to regulate speed - see W. Va. Code 17C-2-8, 17C-6-3

Minimum speed regulations - see W. Va. Code 17C-6-3(a)

Special speed limitations - see W. Va. Code 17C-6-4 et seq.

Use of radar - see W. Va. Code 17C-6-7

335.01 MAXIMUM SPEED LIMITS.

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

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

- (1) Fifteen miles per hour in a school zone during school recess or while children are going to or leaving school during opening or closing hours. A school zone is all school property including school grounds and any street or highway abutting such school grounds and extending one hundred twenty-five feet along such street or highway from the school

grounds and, in the case of school property not abutting a street or highway but accessed through a right-of-way granted for entrance to school property, a school zone established by an engineering study conducted by the Division of Highways is all school property, including school grounds and any property within the access right-of-way, and extending one hundred twenty-five feet along the street or highway from the entrance to the access right-of-way. The speed restriction does not apply to vehicles traveling on a controlled-access highway which is separated from the school or school grounds by a fence or barrier approved by the Division of Highways;

(2) Twenty-five miles per hour in any business or residence district;

(3) Fifty-five miles per hour on open country highways; except as otherwise provided by this article.

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

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

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

(WVaC 17C-6-1)

335.02 SLOW SPEED.

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

(WVaC 17C-6-3a(a))

335.03 SPECIAL SPEED LIMITATIONS.

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

(1) Twenty miles per hour in any business district;

(2) Twenty-five miles per hour in any residence district;

(3) Forty miles per hour on open country highway;

(4) Trucks licensed at 8,000 pounds gross vehicle weight or less shall be permitted the same speed as passenger cars.

(WVaC 17C-6-4)

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

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

(WVaC 17C-6-5)

335.04 RACING ON STREETS AND HIGHWAYS PROHIBITED.

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

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

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

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

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

335.05 PRIMA FACIE EVIDENCE OF SPEED BY RADAR.

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

(WVaC 17C-6-7)

335.06 SPECIAL SPEED LIMITATIONS WHEN MEETING OR OVERTAKING WASTE SERVICE VEHICLES.

(a) No person shall drive a motor vehicle and meet or overtake from either direction a stopped waste service vehicle at a speed in excess of fifteen miles per hour.

(b) For purposes of this section, "waste service vehicle" means any garbage collection vehicle, including a vehicle collecting recyclables or yard waste, which is used for curbside collection, makes frequent stops and is not fully automated.

(c) The speed limitation set forth in subsection (a) of this section applies only under the following circumstances:

(1) The waste service vehicle is identifiable as a waste service vehicle based on the vehicle configuration or markings on the vehicle;

(2) The waste service vehicle operator is giving a visual signal by means of a stationary sign to warn of the presence of workers or must use flashing lights as permitted in this code to caution other drivers; and

(3) The waste service vehicle is not located on a private driveway, controlled access highway, interstate highway, turnpike or road or highway with a center line and more than two lanes.

(WVaC 17C-6-11)

335.99 PENALTY.

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

(b) Speeding.

(1) Unless otherwise provided in this subsection (b) hereof, any person who violates the provisions of Section

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

(2) Any person who violates the provisions of Section 335.01(b)(1) shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); provided, that if such conviction is based upon a violation of the provisions of Section 335.01(b)(1) where the offender exceeded the speed limit by fifteen miles per hour or more in the presence of one or more children, then the person shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both: Provided, that if the signage required by Section 335.01(b)(1) is not present in the school zone at the time of the violation, then any person who violates said provision shall be fined not more than twenty-five dollars (\$25.00).

(WVaC 17C-6-1)

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

(WVaC 17C-6-8)

(d) Waste Service Vehicles. Any person who violates the provisions of Section 335.06 shall be fined not less than one hundred dollars (\$100.00) nor more than three hundred dollars (\$300.00). If the person convicted of violating Section 335.06 exceeded the speed limit by fifteen miles per hour or more or caused serious injury or death to a service vehicle worker, then the person shall be fined not less than three hundred dollars (\$300.00) nor more than one thousand dollars (\$1,000) or confined in jail for not more than thirty days, or both.

(WVaC 17C-6-11)

ARTICLE 337

Driving on Right; Passing

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

CROSS REFERENCES

See sectional histories for similar State law

Authority to establish one-way streets - see W. Va. Code 17C-2-8(4)

337.01 DRIVING UPON RIGHT SIDE OF ROADWAY; EXCEPTIONS.

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

- (1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
- (2) When the right half of a roadway is closed to traffic while under construction or repair;
- (3) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or
- (4) Upon a roadway designated and signposted for one-way traffic.

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

(WVaC 17C-7-1)

337.02 PASSING TO RIGHT WHEN PROCEEDING IN OPPOSITE DIRECTIONS.

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

(WVaC 17C-7-2)

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

The following rules 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 of the overtaken vehicle at a safe distance and may not again drive to the right side of the roadway until safely clear of the overtaken vehicle.
- (b) The driver of a vehicle overtaking a bicycle traveling in the same direction shall pass to the left of the bicycle at a distance of not less than three feet at a careful and reduced speed, and may not again drive to the right side of the roadway until safely clear of the overtaken bicycle.
- (c) 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 may not increase the speed of his or her vehicle until completely passed by the overtaking vehicle. (WVaC 17C-7-3)

337.04 OVERTAKING AND PASSING UPON RIGHT.

- (a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:
 - (1) When the vehicle overtaken is making or about to make a left turn;
 - (2) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction;
 - (3) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.
- (b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway. (WVaC 17C-7-4)

337.05 OVERTAKING, PASSING TO LEFT OF CENTER.

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

337.06 ADDITIONAL RESTRICTIONS ON DRIVING UPON LEFT SIDE OF ROADWAY.

- (a) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:
 - (1) When approaching the crest of a grade or upon a curve in the street or highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;
 - (2) When approaching within 100 feet of or traversing any intersection or railroad grade crossing;
 - (3) When the view is obstructed upon approaching within 100 feet of any bridge, viaduct or tunnel.
- (b) The foregoing limitations shall not apply upon a one-way roadway. (WVaC 17C-7-6)

337.07 HAZARDOUS OR NO PASSING ZONES.

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

337.08 ONE-WAY ROADWAYS AND ROTARY TRAFFIC ISLANDS.

- (a) Upon a roadway designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated.
- (b) A vehicle passing around a rotary traffic island shall be driven only to the right of such island. (WVaC 17C-7-8(b), (c))

337.09 DRIVING IN MARKED LANES OR CONTINUOUS LINES OF TRAFFIC.

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

- (a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.
- (b) Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane which is clearly marked as a left turn lane except in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation.
- (c) Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such sign. (WVaC 17C-7-9)

337.10 FOLLOWING TOO CLOSELY.

- (a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent having due regard for the speed of such vehicles and the traffic upon and the condition of the street or highway.
- (b) No operator of any motor truck, registered for a gross weight of more than 8,000 pounds, bus, special mobile equipment or any motor vehicle drawing another vehicle operating upon any roadway outside of a business or residence district, shall follow within 200 feet of another motor truck, bus, special mobile equipment or any motor vehicle drawing another vehicle; provided that this provision shall not be construed to:
 - (1) Prevent overtaking and passing;

- (2) Apply upon any lane specially designated for the use of motor trucks or combinations of vehicles, or within any section of a roadway posted or marked as a "no-passing zone";
 - (3) Apply to any convoy of vehicles of the military service of the United States or of this State; and
 - (4) Apply to funeral processions.
- (c) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to:
- (1) Funeral processions; or
 - (2) Any convoy of vehicles of the military service of the United States or of this State.
- (WVaC 17C-7-10)

337.11 DRIVING UPON DIVIDED ROADWAYS.

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

(WVaC 17C-7-11)

337.12 ENTERING AND EXITING CONTROLLED-ACCESS HIGHWAY.

No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

(WVaC 17C-7-12)

337.99 PENALTY.

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

ARTICLE 339

Turning and Starting; Signals

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

CROSS REFERENCES

See sectional histories for similar State law

Authority to regulate the turning of vehicles - see W. Va. Code 17C-2-8(a)(9)

Authority to specify different courses for turns - see W. Va. Code 17C-8-5

339.01 CONFORMITY WITH PROVISIONS REQUIRED.

The driver of a vehicle intending to turn at an intersection shall do so as provided in this article.

(WVaC 17C-8-1)

339.02 RIGHT TURNS.

Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(WVaC 17C-8-2)

339.03 LEFT TURNS ON TWO-WAY ROADWAYS.

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

(WVaC 17C-8-3)

339.04 LEFT TURNS ON OTHER THAN TWO-WAY ROADWAYS.

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

(WVaC 17C-8-4)

339.05 SPECIFIED TURNS AT INTERSECTIONS.

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

339.06 "U" TURNS RESTRICTED.

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

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

339.07 STARTING VEHICLE.

No person shall start a vehicle which is stopped, standing or parked unless and until such movement can be made with reasonable safety.

(WVaC 17C-8-7)

339.08 SIGNALS BEFORE CHANGING COURSE, TURNING OR STOPPING.

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

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

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

(WVaC 17C-8-8)

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

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

(WVaC 17C-8-9)

339.10 HAND AND ARM SIGNALS.

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

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

(WVaC 17C-8-10)

339.99 PENALTY.

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

ARTICLE 341

Right of Way

341.01 Right of way at intersections.

341.02 Right of way when turning left.

341.03 Right of way at through street or highway or stop intersections.

341.04 Driving onto roadway from private road or driveway; duty to yield.

341.05 Right of way of emergency vehicle.

341.06 Turning into private driveway, alley or building.

341.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law

Authority to designate through streets and stop inter- sections - see W. Va. Code 17C-2-8(a)(6), 17C-12-5

341.01 RIGHT OF WAY AT INTERSECTIONS.

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

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

(c) The right-of-way rules declared in subsections (a) and (b) hereof are modified at through streets or highways and otherwise as

hereinafter stated in this article.
(WVaC 17C-9-1)

341.02 RIGHT OF WAY WHEN TURNING LEFT.

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

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

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

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

(WVaC 17C-9-3)

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

The driver of a vehicle about to enter or cross a street or highway from a private road or driveway shall yield the right of way to all vehicles approaching on the street or highway.

(WVaC 17C-9-4)

341.05 RIGHT OF WAY OF EMERGENCY VEHICLE.

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

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

(WVaC 17C-9-5)

341.06 TURNING INTO PRIVATE DRIVEWAY, ALLEY OR BUILDING.

The driver of a vehicle intending to turn into a private road or driveway, alley or building from a public street or highway shall be governed by the following rules:

(a) Approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(b) Upon a roadway where traffic is proceeding in opposite directions, approach for a left turn and a left turn shall be made from that portion of the right half of the roadway nearest the center line thereof.

(c) Upon a roadway where traffic is restricted to one direction, approach for a left turn and a left turn shall be made as close as practicable to the left-hand curb or edge of the roadway.

It shall be the duty of the driver of any vehicle entering a private road or driveway, alley or building to yield the right of way to pedestrians lawfully using the sidewalk or sidewalk area extending across any alleyway, private road, driveway or building.

341.99 PENALTY.

Whoever violates any provision of this article shall be fined not more than two hundred dollars (\$200.00); upon a second conviction within one year thereafter shall be fined not more than three hundred dollars (\$300.00); and upon a third or subsequent conviction, shall be fined not more than one thousand dollars (\$1,000).

(WVaC 17C-9-6)

ARTICLE 343

Special Stops Required

343.01 Driving across grade crossing.

343.02 Stops at dangerous grade crossings.

343.03 Stopping at grade crossing.

343.04 Moving heavy equipment across grade crossings.

343.05 Through streets and stop intersections.

343.06 Driving onto roadway from place other than roadway; stopping at sidewalk.

343.07 Stopping for school bus; signs and warning lights; sale of school bus.

343.08 Stopping for passenger van; signs and warning lights.

343.09 Obstructing intersection or crosswalk.

343.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law

Authority to establish through streets and stop inter- sections - see W. Va. Code 17C-2-8(a)(6)

343.01 DRIVING ACROSS GRADE CROSSING.

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

- (1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
- (2) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;
- (3) A railroad train approaching within approximately 1,500 feet of the street or highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;
- (4) Any approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

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

(WVaC 17C-12-1)

343.02 STOPS AT DANGEROUS GRADE CROSSINGS.

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

(WVaC 17C-12-2)

343.03 STOPPING AT GRADE CROSSING.

(a) Except as provided in subsection (f) of this section, the driver of a commercial motor vehicle specified in subsection (b) of this section shall not cross a railroad track or tracks at grade unless he or she first:

- (1) Stops the commercial motor vehicle within fifty feet of, and not closer than fifteen feet to, the tracks;
- (2) Thereafter, listens and looks in each direction along the tracks for an approaching train; and
- (3) Ascertains that no train is approaching.

When it is safe to do so, the driver may drive the commercial motor vehicle across the tracks in a gear that permits the commercial motor vehicle to complete the crossing without change of gears. The driver shall not shift gears while crossing the tracks.

(b) The following commercial vehicles are required to stop at railroad tracks or tracks at grade:

- (1) Every bus transporting passengers;
- (2) Every commercial motor vehicle transporting any quantity of a United States Department of Transportation defined division 2.3 chlorine;
- (3) Every commercial motor vehicle which, in accordance with United States Department of Transportation regulations, is marked or placarded and is required to stop in accordance with 49 C.F.R. part §392.10(a)(3)(2001);
- (4) Every cargo tank motor vehicle, loaded or empty, used for the transportation of any hazardous material, as defined in Federal Department of Transportation hazardous materials rules, 49 C.F.R. parts §107 through §180 (2001);
- (5) Every cargo tank motor vehicle transporting a commodity which, at the time of loading, has a temperature above its flashpoint as determined by 49 C.F.R. §173.120 (2001); and
- (6) Every cargo tank motor vehicle, whether loaded or empty, transporting any commodity exemption in accordance with 49 C.F.R. part §107 subpart B (2001).

(c) Any vehicle owned by an employer which, in carrying on the employer's business or in carrying employees to and from work, carries more than six employees of the employer is required to stop at all railroad tracks or tracks at grade, in accordance with subsection (a) of this section.

(d) All drivers of commercial motor vehicles not required to stop at railroad tracks or tracks at grade as provided in subsection (a) of this section may not cross a railroad track or tracks at grade unless he or she first slows the commercial motor vehicle to a speed which will permit the commercial motor vehicle to be stopped before reaching the nearest rail of the railroad crossing and permit exercise of due caution to ascertain that the tracks are clear of an approaching train.

(e) All drivers of commercial motor vehicles may not proceed to cross a railroad crossing unless there is sufficient space to drive completely through the crossing without stopping and the vehicle has sufficient undercarriage clearance to drive completely through the crossing without stopping.

(f) No stop need be made at:

- (1) Any crossing where a police officer, crossing flagger or a traffic-control signal directs traffic to proceed;
- (2) A streetcar crossing, or railroad tracks used exclusively for industrial switching purposes within a business district, as defined in 49 C.F.R. §390.5 (2000);
- (3) A railroad grade crossing controlled by a functioning highway traffic signal transmitting a green indication which, under local law permits the commercial motor vehicle to proceed across the track without slowing or stopping; or
- (4) A railroad grade crossing which is marked with a sign indicating that the rail line is out of service.

(g) Any person driving a vehicle specified in this section or a vehicle that requires a commercial driver's license who fails to comply with the requirements of this section is guilty of a misdemeanor. Provided, that if the electric or mechanical signal device is malfunctioning, this subsection shall not apply.

(WVaC 17C-12-3)

343.04 MOVING HEAVY EQUIPMENT ACROSS GRADE CROSSINGS.

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

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

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

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

(WVaC 17C-12-4)

343.05 THROUGH STREETS AND STOP INTERSECTIONS.

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

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

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

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

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

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

(WVaC 17C-12-6)

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

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

(b) Where the actual identity of the operator of a motor vehicle operated in violation of subsection (a) of this section is unknown but the license plate number of the motor vehicle is known, it may be inferred that the operator was an owner or lessee of the motor vehicle for purposes of the probable cause determination. Where there is more than one registered owner or lessee, the inference created by this subsection shall apply to the first listed owner or lessee as found on the motor vehicle registration: Provided, that a person charged with a violation of subsection (a) of this section under the provisions of this subsection where the sole evidence against the owner or lessee is the presence of the vehicle at the scene at the time of the offense shall only be subject to the applicable fine set forth in Section 343.99(b).

(c) Service of process of a complaint issued pursuant to subsection (b) of this section shall be effected consistent with West Virginia Rule of Criminal Procedure 4.

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

343.08 STOPPING FOR PASSENGER VAN; SIGNS AND WARNING LIGHTS.

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

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

(WVaC 17C-12-17a)

343.09 OBSTRUCTING INTERSECTION OR CROSSWALK.

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

343.99 PENALTY.

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

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

(b) Stopping for School Bus. Any driver acting in violation of Section 343.07 (a) for a first offense, shall be fined not less than five hundred dollars (\$500.00) or more than one thousand dollars (\$1,000), or confined in jail not more than thirty days, or both fined and confined. Upon conviction of a second violation of Section 343.07 (a), the driver shall be fined not less than one thousand dollars (\$1,000) nor more than fifteen hundred dollars (\$1,500), or confined in jail not more than thirty days, or both fined and confined. Upon conviction of a third or subsequent violation of Section 343.07 (a), the driver shall be fined two thousand dollars (\$2,000) and confined not less than forty-eight hours in jail but not more than thirty days.

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

ARTICLE 345

Safety and Equipment

345.01 Driving unsafe vehicles; application; farm and road equipment exceptions.

345.02 When lighted lights required.

345.03 Measurement of distances and heights.

345.04 Headlights on motor vehicles and motorcycles.

345.05 Tail light; illumination of rear license plate.

345.06 Red light or red flag on extended loads.

345.07 Lights on parked or stopped vehicles.

345.08 Lights on slow-moving vehicles.

345.09 Spotlights and auxiliary lights.

345.10 Signal lamps and signal devices.

345.11 Cowl, fender and back-up lights; flashing hazard lights.

345.12 Multiple-beam road-lighting equipment requirements.

345.13 Use of headlight beams.

345.14 Single-beam road-lighting equipment.

345.15 Lights on motorcycles, motor-driven cycles and mopeds.

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345.26 Safety glass in motor vehicles.

345.27 Vehicles transporting explosives.

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345.31 Child passenger safety devices required; child safety seats and booster seats.

345.32 Certificate of inspection and approval.

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345.35 Operation of vehicles with safety belts.

345.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law

Obscured light on vehicles in combination - see W. Va. Code 17C-15-13

Warning devices for commercial vehicles - see W. Va. Code 17C-15-39

Bicycle equipment - see TRAF. Art. 373

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

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

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

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

345.02 WHEN LIGHTED LIGHTS REQUIRED.

Every vehicle other than a school bus, motorcycle, motor-driven cycle or moped operated upon a street or highway within this Municipality at any time from sunset to sunrise or during fog, smoke, rain or other unfavorable atmospheric conditions, or at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the street or highway at a distance of 500 feet ahead shall display lighted head lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as provided for in Section 345.07(c). Every school bus, motorcycle, motor-driven cycle and moped shall display lighted head lamps at all times when upon the street or highway. Lighted lamps and other lighting devices that consist of multiple light-emitting diodes (LEDs) or other illuminating components that function as a single lighting unit are deemed to be functional so long as at least sixty-six percent of the LEDs or other illuminating components are functional; provided, that the lighted lamps or lighting devices must still project sufficient illumination to satisfy all other requirements contained in this article. (WVaC 17C-15-2)

345.03 MEASUREMENT OF DISTANCES AND HEIGHTS.

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

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

345.04 HEADLIGHTS ON MOTOR VEHICLES AND MOTORCYCLES.

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

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

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

345.05 TAIL LIGHT; ILLUMINATION OF REAR LICENSE PLATE.

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

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

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

345.06 RED LIGHT OR RED FLAG ON EXTENDED LOADS.

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

345.07 LIGHTS ON PARKED OR STOPPED VEHICLES.

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

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

(c) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

(WVaC 17C-15-15)

345.08 LIGHTS ON SLOW-MOVING VEHICLES.

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

(WVaC 17C-15-16)

345.09 SPOTLIGHTS AND AUXILIARY LIGHTS.

For the purposes of this section, a lamp or lighting device meets the requirements specified below so long as any portion of the illuminating surface of the lamp or lighting device is within the specified range.

All lamps and lighting devices covered in this section may be installed so that the entire lamp or lighting device exceeds forty-two inches above the level surface upon which the vehicle stands so long as such lamps or lighting devices are either covered or dimmable.

- (a) Spot Lamps. Any motor vehicle except a public utility company maintenance vehicle may be equipped with not more than one spot lamp and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than 100 feet ahead of the vehicle. A public utility company maintenance vehicle may be equipped with more than one spot lamp but all lighted spot lamps shall be aimed and used in conformity to the requirements of this subsection.
- (b) Fog Lamps. Any motor vehicle may be equipped with not more than two fog lamps mounted on the front at a height not less than twelve inches nor more than thirty inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty-five feet ahead project higher than a level of four inches below the level of the center of the lamp from which it comes.
- (c) Auxiliary Passing Lamp. Any motor vehicle may be equipped with not more than two auxiliary passing lamps mounted on the front at a height not less than twenty-four inches nor more than forty-two inches above the level surface upon which the vehicle stands and every auxiliary passing lamp shall meet the requirements and limitations set forth in this article.
- (d) Auxiliary Driving Lamp. Any motor vehicle may be equipped with not more than two auxiliary driving lamps mounted on the front at a height not less than sixteen inches nor more than forty-two inches above the level surface upon which the vehicle stands and every such auxiliary driving lamp shall meet the requirements and limitations set forth in this article.
- (e) Roof-Mounted Off-Road Light Bar Lighting Device. Any motor vehicle may be equipped with a roof-mounted off-road light bar lighting device comprised of multiple lamps: provided, that whenever the vehicle is operated or driven upon any road or highway, the roof-mounted off-road light bar lighting device shall be turned off while the vehicle is being operated on any road or highway.

(WVaC 17C-15-17)

345.10 SIGNAL LAMPS AND SIGNAL DEVICES.

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

- (1) A stop lamp on the rear which shall emit a red or yellow light and which shall be actuated upon application of the service (foot) brake and which may but need not be incorporated with a tail lamp.
- (2) A lamp or lamps or mechanical signal device capable of clearly indicating any intention to turn either to the right or to the left and which shall be visible both from the front and rear.

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

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

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

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

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

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

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

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

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

345.12 MULTIPLE-BEAM ROAD-LIGHTING EQUIPMENT REQUIREMENTS.

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

- (a) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least 350 feet ahead for all conditions of loading.
- (b) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.
- (c) Every new motor vehicle, other than a motorcycle, motor-driven cycle or moped, registered in the State after January 1, 1952, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. Such indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped. (WVaC 17C-15-20)

345.13 USE OF HEADLIGHT BEAMS.

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

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

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

(WVaC 17C-15-21)

345.14 SINGLE-BEAM ROAD-LIGHTING EQUIPMENT.

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

- (a) The head lamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of twenty-five feet ahead project higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two inches above the level on which the vehicle stands at a distance of seventy-five feet ahead.
- (b) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least 200 feet. (WVaC 17C-15-22)

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

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

- (a) Every head lamp or head lamps shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than 100 feet when the motorcycle, motor-driven cycle or moped is operated at any speed less than twenty-five miles per hour and at a distance of not less than 200 feet when it is operated at a speed of twenty-five or more miles per hour.
 - (b) If the motorcycle, motor-driven cycle or moped is equipped with a multiple-beam type head lamp or head lamps the upper beam shall meet the minimum requirements set forth above and shall not exceed the limitations set forth in Section 345.12(a) and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in Section 345.12(b).
- (c) If the motorcycle, motor-driven cycle or moped is equipped with a single-beam lamp or lamps such lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five feet ahead, shall project higher than the level of the center of the lamp from which it comes.

(d) (1) Subject to subsection (d)(2) hereof, a motorcycle may be equipped with, and an operator of a motorcycle may use, the following auxiliary lighting:

- A. Amber and white illumination;
- B. Standard bulb running lights; or
- C. Light-emitting diode pods and strips.

(2) Lighting under this subsection shall be:

- A. Nonblinking;
- B. Nonflashing;
- C. Nonoscillating; and

D. Directed toward the engine and the drive train of the motorcycle to prevent interference with the driver's operation of the vehicle.

(WVaC 17C-15-23)

345.16 ALTERNATE ROAD-LIGHTING EQUIPMENT.

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

(WVaC 17C-15-24)

345.17 NUMBER OF DRIVING LIGHTS REQUIRED OR PERMITTED.

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

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

(WVaC 17C-15-25)

345.18 SPECIAL RESTRICTIONS ON LIGHTS.

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

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

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

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

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

(2) Except for standard vehicle equipment authorized by Section 345.11, red flashing warning lights are restricted to the following:

- A. Ambulances;
 - B. Fire-fighting vehicles;
 - C. Hazardous material response vehicles;
 - D. Industrial fire brigade vehicles;
 - E. Rescue squad vehicles not operating out of a fire department;
 - F. School buses;
 - G. Class A vehicles, as defined by West Virginia Code 17A-10-1 of those firefighters who are authorized by their fire chiefs to have the lights;
 - H. Class A vehicles of members of duly chartered rescue squads not operating out of a fire department;
 - I. Class A vehicles of members of ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;
 - J. Class A vehicles of out-of-state residents who are active members of West Virginia fire departments, ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;
 - K. West Virginia Department of Agriculture emergency response vehicles.
 - L. Vehicles designated by the Secretary of the Department of Military Affairs and Public Safety for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services and Division of Homeland Security and Emergency Management; and
 - M. Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the Department of Military Affairs and Public Safety and the county commission of the county of residence.
- Red flashing warning lights attached to a Class A vehicle shall be operated only when responding to or engaged in handling an emergency requiring the attention of the firefighters, members of the ambulance services or chartered rescue squads.

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

- A. Authorization for all ambulances shall be designated by the Department of Health and Human Resources and the sheriff of the county of residence.
- B. Authorization for all fire department vehicles shall be designated by the Fire Chief and the State Fire Marshal's Office.
- C. Authorization for all hazardous material response vehicles and industrial fire brigades shall be designated by the Chief of the Fire Department and the State Fire Marshal's Office.

- D. Authorization for all rescue squad vehicles not operating out of a fire department shall be designated by the squad chief, the sheriff of the county of residence and the Department of Health and Human Resources.
 - E. Authorization for school buses shall be designated as set out in West Virginia Code 17C-14-12.
 - F. Authorization for firefighters to operate Class A vehicles shall be designated by their fire chiefs and the State Fire Marshal's Office.
 - G. Authorization for members of ambulance services or any other emergency medical service personnel to operate Class A vehicles shall be designated by their chief official, the Department of Health and Human Resources and the sheriff of the county of residence.
 - H. Authorization for members of duly chartered rescue squads not operating out of a fire department to operate Class A vehicles shall be designated by their squad chiefs, the sheriff of the county of residence and the Department of Health and Human Resources.
 - I. Authorization for out-of-state residents operating Class A vehicles who are active members of a West Virginia fire department, ambulance services or duly chartered rescue squads shall be designated by their respective chiefs.
 - J. Authorization for West Virginia Department of Agriculture emergency response vehicles shall be designated by the Commissioner of the Department of Agriculture.
 - K. Authorization for vehicles for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services and Division of Homeland Security and Emergency Management shall be designated by the Secretary of the Department of Military Affairs and Public Safety.
 - L. Authorization for Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the Department of Military Affairs and Public Safety and the county commission of the county of residence.
- (4) Yellow or amber flashing warning lights are restricted to the following:
- A. All other emergency vehicles, including tow trucks and wreckers, authorized by the West Virginia Code Chapter 17C and 17C-15-27;
 - B. Postal service vehicles and rural mail carriers, as authorized in Section 345.11 ;
 - C. Rural newspaper delivery vehicles;
 - D. Flag car services;
 - E. Vehicles providing road service to disabled vehicles;
 - F. Service vehicles of a public service corporation;
 - G. Snow removal equipment;
 - H. School buses; and
 - I. Automotive fire apparatus owned by a municipality or other political subdivision, by a volunteer or part-volunteer fire company or department or by an industrial fire brigade.
- (5) The use of yellow or amber flashing warning lights shall be authorized as follows:
- A. Authorization for tow trucks, wreckers, rural newspaper delivery vehicles, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation and postal service vehicles shall be designated by the sheriff of the county of residence.
 - B. Authorization for snow removal equipment shall be designated by the Commissioner of the Division of Highways.
 - C. Authorization for school buses shall be designated as set out in West Virginia Code 17C-14-12.
 - D. Authorization for automotive fire apparatus shall be designated by the Fire Chief in conformity with the NFPA 1901 standard for automotive fire apparatus as published by the National Fire Protection Association (NFPA) on July 18, 2003, and adopted by the State Fire Commission by legislative rule (87 CSR 1, et seq.), except as follows:
 - 1. With the approval of the State Fire Marshal, used automotive fire apparatus may be conformed to the NFPA standard in effect on the date of its manufacture or conformed to a later NFPA standard, and
 - 2. Automotive fire apparatus may be equipped with blinking or flashing headlamps.
- (e) Notwithstanding the foregoing provisions of this section, any vehicle belonging to a county board of education, an organization receiving funding from the state or federal transit administration for the purpose of providing general public transportation, or hauling solid waste may be equipped with a white flashing strobotron warning light. This strobe light may be installed on the roof of a school bus, a public transportation vehicle, or a vehicle hauling solid waste not to exceed one-third the body length forward from the rear of the roof edge. The light shall have a single clear lens emitting light three hundred sixty degrees around its vertical axis and may not extend above the roof more than six and one-half inches. A manual switch and a pilot light must be included to indicate the light is in operation.
- (f) Notwithstanding the foregoing provisions of this section, any waste service vehicle as defined in West Virginia Code Chapter 17C-6-11 may be equipped with yellow or amber flashing warning lights.
- (g) No person shall install or use flashing warning lights of an unauthorized color on a vehicle other than as specified in this section, except that a police vehicle may be equipped with either or both blue or red warning lights. (WVaC 17C-15-26)

345.19 MOTOR VEHICLE OR MOTORCYCLE BRAKES.

(a) Brake Equipment Required.

- (1) Every motor vehicle, other than a motorcycle, motor-driven cycle or moped, when operated upon a street or highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.
- (2) Every motorcycle, motor-driven cycle and moped, when operated upon a street or highway, shall be equipped with at least one brake which may be operated by hand or foot.
- (3) Every trailer or semitrailer of a gross weight of 3,000 pounds or more when operated upon a street or highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle and so designed as to be

applied by the driver of the towing motor vehicle from its cab, and such brakes shall be so designed and connected that in case of an accidental breakaway of the towed vehicle the brakes shall be automatically applied.

- (4) Every new motor vehicle, trailer or semitrailer hereinafter sold in this State and operated upon the streets or highways shall be equipped with service brakes upon all wheels, with the following exceptions:
- A. Trucks and truck-tractors having three or more axles need not have brakes on the front wheels, except when such vehicles are equipped with at least two steerable axles, the wheels of one such axle need not be equipped with brakes, and
- B. Any motorcycle, motor-driven cycle or moped and any semitrailer of less than 1,500 pounds gross weight need not be equipped with brakes.
- (5) In any combination of motor-driven vehicles, means shall be provided for applying the rearmost trailer brakes, of any trailer equipped with brakes, in approximate synchronism with the brakes on the towing vehicle and developing the required braking effort on the rearmost wheels at the fastest rate; or means shall be provided for applying braking effort first on the rearmost trailer equipped with brakes; or both of the above means capable of being used alternatively may be employed.
- (6) Every such vehicle and combination of vehicles, except motorcycles, motor-driven cycles and mopeds, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading on a surface free from snow, ice or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind.
- The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that a failure of any one part shall not leave the vehicle without operative brakes.
- (7) The brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both service and hand operation.

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

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

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

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

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

345.21 HORN, SIREN AND THEFT ALARM SIGNAL.

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

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

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

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

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

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

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

(WVaC 17C-15-34)

345.23 REAR-VIEW MIRROR.

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

345.24 WINDSHIELD TO BE UNOBSTRUCTED; WINDSHIELD WIPER.

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

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

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

345.25 TIRE EQUIPMENT RESTRICTIONS.

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

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

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

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

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

(3) It shall be permissible to use studded tires during the period from November 1, of each year until April 15 of the following year.

Provided that in the interest of highway maintenance, no vehicle moved on a street or highway, other than school buses, shall be equipped with studded tires which are operational with a recommended air pressure greater than forty pounds per square inch.

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

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

345.26 SAFETY GLASS IN MOTOR VEHICLES.

(EDITOR'S NOTE: Former West Virginia Code 17C-15-38 from which Section 345.26 was derived was repealed by Senate Bill 444, effective May 31, 2018.)

345.27 VEHICLES TRANSPORTING EXPLOSIVES.

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

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

(b) Every such vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use and placed at a convenient point on the vehicle so used. (WVaC 17C-15-41)

345.28 VIDEO SCREENS AND MONITORS, TELEVISION RECEIVERS IN VIEW OF DRIVER PROHIBITED.

(a) No motor vehicle may be operated on a street or highway when equipped with a television receiver, video monitor, television or video screen unless the receiver, screen or monitor is configured so that the moving images are not in view of the operator while the vehicle is in motion, or if falls within one or more of the categories set forth in subsection (b) or (c) of this section.

(b) This prohibition does not apply to the following equipment installed in a vehicle:

(1) A visual display if it does not show video or television broadcast images in view of the operator while the motor vehicle is in motion;

(2) A global positioning device;

(3) A mapping display;

(4) A visual display used to enhance or supplement the driver's view forward, behind or to the sides of a motor vehicle for the purpose of maneuvering the vehicle;

(5) A visual display used to enhance or supplement a driver's view of vehicle occupants; or

(6) Television-type receiving equipment used exclusively for safety or traffic engineering information.

(c) A television receiver, video monitor, television or video screen or other similar means of visually displaying a television broadcast or video signal is not prohibited if the equipment has an interlock device that, when the motor vehicle is driven, disables the equipment for all uses except as a visual display described in subsection (b)(1) to (6) of this section.

(WVaC 17-C-15-42)

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

(a) No person shall operate or be a passenger on any motorcycle or motor-driven cycle unless he is wearing securely fastened on his

head by either a neck or chin strap a protective helmet designed to deflect blows, resist penetration and spread impact forces. Any helmet worn by an operator or passenger shall meet the current performance specifications established by the American National Standards Institute Standard, Z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard No. 218 or Snell Safety Standards for Protective Headgear for Vehicle Users.

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

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

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

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

(f) (1) "Autocycle" means a fully or partially enclosed motorcycle that is equipped with safety belts, rollover protection, a rearview mirror, automotive seating, a steering wheel and equipment otherwise required on a motorcycle and which has no more than three wheels in contact with the roadway at any one time. (WVaC 17C-1-69)

(2) Notwithstanding any provision of this code to the contrary, a person with a valid driver's license who is operating a fully enclosed autocycle, as defined in subsection (f)(1) hereof, is exempt from the provisions of this section. (WVaC 17-C-15-44)

345.30 CERTIFICATION LABELS ON MOPEDS.

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

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

345.31 CHILD PASSENGER SAFETY DEVICES REQUIRED; CHILD SAFETY SEATS AND BOOSTER SEATS.

Every driver who transports a child under the age of eight years in a passenger automobile, van or pickup truck other than one operated for hire shall, while the motor vehicle is in motion and operated on a street or highway, provide for the protection of the child by properly placing, maintaining and securing the child in a child passenger safety device system meeting applicable federal motor vehicle safety standards; provided, that if a child is under the age of eight years and at least four feet nine inches tall, a safety belt shall be sufficient to meet the requirements of this section.

Any person who violates any provision of this section shall be fined not less than ten dollars (\$10.00) nor more than twenty dollars (\$20.00).

A violation of this section does not by virtue of the violation constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity may not affect other provisions or applications of this section and to this end the subsections of this section are declared to be severable.

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

345.32 CERTIFICATE OF INSPECTION AND APPROVAL.

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

345.33 ALTERATION OF MOTOR VEHICLES; BUMPER HEIGHT LIMITS.

(a) No person shall operate upon a public street or highway any motor vehicle registered or required to be registered in this State if it has been modified by alteration of its height from the ground to the extent that its bumpers, measured to any point on the lower edge of the main horizontal bumper bar, exclusive of any bumper guards, do not fall within the limits specified herein for its gross vehicle weight rating category. The front and rear bumper height of motor vehicles whose gross vehicle weight rating is 10,000 pounds or less shall be no less than six inches and no more than thirty-one inches. In the absence of bumpers, and in cases where bumper heights have been altered or modified, height measurements shall be made to the bottom of the frame rail. If a motor vehicle has a bumper, the bumper

must be at least three inches in vertical width, centered on the center line of the motor vehicle and not less than the width of the wheel track distance. The provisions of this subsection do not apply to motor vehicles with a gross vehicle weight rating in excess of 10,000 pounds. For the purpose of this subsection, the term "gross vehicle weight ratings" means the manufacturer's gross vehicle weight ratings established for that vehicle.

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

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

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

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

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

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

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

(WVaC 17C-15-48)

345.34 SUN SCREENING DEVICES.

(a) No person may operate a motor vehicle that is registered or required to be registered in the State on any public highway, road or street that has a sun screening device on the windshield, the front side wings and side windows adjacent to the right and left of the driver and windows adjacent to the rear of the driver that do not meet the requirements of this section. Provided, that law-enforcement K-9 and other emergency vehicles that are designed to haul animals are exempt from this requirement.

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

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

(d) Each manufacturer shall:

- (1) Certify to the State Police and Division of Motor Vehicles that a sun screening device used by it is in compliance with the reflectivity and transmittance requirements of this section;
- (2) Provide a label not to exceed one and one-half square inches in size, with a means for the permanent and legible installations between the sun screening material and each glazing surface to which it is applied that contains the manufacturer's name and its percentage of light transmission; and
- (3) Include instructions with the product or material for proper installation, including the affixing of the label specified in this section. The labeling or marking must be placed in the left lower corner of each glazing surface when facing the vehicle from the outside.

(e) No person shall:

- (1) Offer for sale or for use any sun screening product or material for motor vehicle use not in compliance with this section; or
- (2) Install any sun screening product or material on vehicles intended for use on public roads without permanently affixing the label specified in this section.

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

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

(h) As used in this section:

- (1) "Bus" means a motor vehicle with motive power, except a trailer, designed for carrying more than ten persons.
- (2) "Light transmission" means the ratio of the amount of total light to pass through a product or material to the amount of the total light falling on the product or material.

- (3) "Luminous reflectants" means the ratio of the amount of total light that is reflected outward by the product or material to the amount of the total light falling on the product or materials.
 - (4) "Manufacturer" means any person engaged in the manufacturing or assembling of sun screening products or materials designed to be used in conjunction with vehicle glazing materials for the purpose of reducing the effects of the sun.
 - (5) "Motor homes" means vehicular units designed to provide temporary living quarters built into and an integral part of or permanently attached to a self-propelled motor vehicle chassis.
 - (6) "Multipurpose passenger vehicle" means a motor vehicle with motive power, except a trailer, designed to carry ten persons or less which is constructed either on a truck chassis or with special features for occasional offroad operation.
 - (7) "Nonreflective" means a product or material designed to absorb light rather than to reflect it.
 - (8) "Passenger car" means a motor vehicle with motive power, except a multipurpose passenger vehicle, motorcycle or trailer, designed for carrying ten persons or less.
 - (9) "Sun screening device" means film material or device that is designed to be used in conjunction with motor vehicle safety glazing materials for reducing the effects of the sun.
 - (10) "Truck" means a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment.
- (WVaC 17C-15-36a)

345.35 OPERATION OF VEHICLES WITH SAFETY BELTS.

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

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

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

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

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

(WVaC 17C-15-49)

345.99 PENALTY.

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

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

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

(d) Safety Belts. Any person who violates the provisions of Section 345.35 shall be fined not more than twenty-five dollars (\$25.00). No court costs or other fees shall be assessed for a violation of this section.

(WVaC 17C-15-49)

ARTICLE 347

Commercial and Heavy Vehicles

347.01 Oversize or overweight vehicles.

347.02 Projecting loads on passenger vehicles.

347.03 Maximum width, height and length.

347.04 Loads dropping or leaking.

347.05 Towing requirements.

347.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law

Authority to designate weight limits on local streets - see W. Va. Code 17C-2-8(a)(7)

Authority to permit oversized buses - see W. Va. Code 17C-17-2(b)

Red light or flag on extended load - see TRAF. 345.07

Transporting explosives - see TRAF. 345.27

347.01 OVERSIZE OR OVERWEIGHT VEHICLES.

(a) Use of State Route. No person shall operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in West Virginia Code Article 17C-17 upon any State route within the Municipality, except pursuant to special written permit issued by the Commissioner of Highways, or upon any local truck route. Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer.

No holder of a permit issued by the Commissioner of Highways shall be required to obtain any local permit or license or pay any local fee or charge for movement on any State route within the Municipality; however, it shall be unlawful to operate any such vehicle or combination of vehicles upon any roadway within the Municipality which is not a State route, except as provided in subsection (c) hereof.

(b) Use of Local Streets. No person shall operate a vehicle exceeding a size as specified in Section 347.03 or exceeding a gross weight of five tons, upon any street in the Municipality other than a State route, except those local streets designated as a truck route and marked as such by appropriate traffic signs, and except when such operation is necessary to load or unload property, to go to or from the usual place of storage of such vehicle or to perform any other legitimate business or act other than passage through the Municipality. Operators of vehicles so deviating from either a State route or a designated truck route within the Municipality shall confine such deviation to that required in order to accomplish the purpose of the departure.

(c) Local Permit and Conditions. Upon application and for good cause, the Police Chief may issue a local permit authorizing an applicant to move an oversize or overweight vehicle or combination of vehicles upon local streets.

No permittee shall be required to obtain a special permit from the Commissioner of Highways for the movement of the vehicle or combination of vehicles on streets or highways under local jurisdiction; however, the approval of the Commissioner of Highways shall be required for movement upon State routes as provided in subsection (a) hereof.

The Police Chief may grant a permit for a single or round trip, or for such period of time, not to exceed one year, as the Police Chief in his discretion deems advisable, or for the duration of any construction project. The Police Chief may limit or prescribe terms or conditions of operation for such vehicle or combination of vehicles by designating the route, hours, speed or such other restrictions as may be necessary for the preservation of the public peace, property, health and safety. The Police Chief may require the posting of bond or other security necessary to compensate for any damage to a roadway or road structure.

For each such permit, the Police Chief shall charge five dollars (\$5.00), and for each hour of time or any part thereof spent by each police officer in supervising the movement of such vehicle, the applicant shall pay the sum of ten dollars (\$10.00).

Signs shall be posted indicating "no thru trucks - gross weight 5 tons" or words of similar import to apprise drivers of the limitations imposed by this section. No driver shall disobey the instructions indicated on any such sign.

Violation of any of the limitations, terms or conditions of the permit granted by the Police Chief shall be cause for immediate revocation or suspension of such permit, and denial of request for any future permit. Such violation shall also subject the violator to the penalty prescribed by Section 303.99.

347.02 PROJECTING LOADS ON PASSENGER VEHICLES.

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

(b) A motor home, travel trailer or truck camper may exceed the maximum width prescribed in Section 347.03, if the excess width is attributable to an appurtenance that does not exceed more than six inches beyond the body of the vehicle.

(WVaC 17C-17-3)

347.03 MAXIMUM WIDTH, HEIGHT AND LENGTH.

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

(b) A motor vehicle, including any load thereon, may not exceed a length of forty feet extreme overall dimension, inclusive of front and rear bumpers, except that a motor home and school bus may not exceed a length of forty-five feet, exclusive of front and rear bumpers.

(c) Except as hereinafter provided in this subsection or in subsection (d) of this section, a combination of vehicles coupled together may not consist of more than two units and no combination of vehicles including any load thereon shall have an overall length, inclusive of front and rear bumpers, in excess of fifty-five feet except as provided in West Virginia Code 17C-17- 11b, and except as otherwise provided in respect to the use of a pole trailer as authorized in West Virginia Code 17C-17-5. The limitation that a combination of vehicles coupled together may not consist of more than two units may not apply to:

(1) A combination of vehicles coupled together by a saddle-mount device used to transport motor vehicles in a drive-away service when no more than three saddle mounts are used, if equipment used in the combination meets the requirements of the safety regulations of the United States Department of Transportation and may not exceed an overall length of more than seventy- five feet; or

(2) A combination of vehicles coupled together, one of which is a travel trailer or folding camping trailer having an overall length, exclusive of front and rear bumpers, not exceeding sixty-five feet.

(d) A combination of two vehicles coupled together, one of which is a motor home, or a combination of vehicles coupled together, one of which is a travel trailer or folding camping trailer, may not exceed an overall length, exclusive of front and rear bumpers of sixty-five feet.

(e) Notwithstanding the provisions of subsections (a), (b), (c) and (d) of this section, the Commissioner of Highways may designate, upon his or her own motion or upon the petition of an interested party, a combination vehicle length not to exceed seventy feet.

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

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

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

347.04 LOADS DROPPING OR LEAKING.

(a) No vehicle or combination of vehicles shall be operated on any street or highway unless such vehicle or combination of vehicles is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

(b) No person shall operate on any street or highway any vehicle or combination of vehicles with any load unless such load and any covering thereon is securely fastened so as to prevent such covering or load from becoming loose, detached or in any manner a hazard to other users of the street or highway.
(WVaC 17C-17-6)

347.05 TOWING REQUIREMENTS.

(a) When one vehicle is towing another the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and such drawbar or other connection shall not exceed fifteen feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered.

(b) When one vehicle is towing another and the connection consists of a chain, rope or cable, there shall be displayed upon such connection a white flag or cloth not less than twelve inches square.
(WVaC 17C-17-7)

347.99 PENALTY.

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

ARTICLE 349

Miscellaneous Rules

- 349.01 Unattended motor vehicle.**
- 349.02 Backing a vehicle.**
- 349.03 Drivers' view and control to be unobstructed by load or persons.**
- 349.04 Passengers in seat with operator.**
- 349.05 Passengers on running board.**
- 349.06 Following authorized emergency vehicles.**
- 349.061 Approaching authorized emergency vehicles.**
- 349.07 Driving over fire hose.**
- 349.08 Funeral processions.**
- 349.09 Opening door of vehicle on traffic side.**
- 349.10 Boarding or alighting from vehicle.**
- 349.11 Unlawful riding.**
- 349.12 Squealing tires, cracking exhaust noises.**
- 349.13 Taking, injuring or tampering with vehicle.**
- 349.14 Driving upon sidewalk, street lawn or curb.**
- 349.15 Shortcutting; avoiding traffic control devices.**
- 349.16 Coasting prohibited.**
- 349.17 Driving through safety zone.**
- 349.18 Driving upon street posted as closed for repair.**
- 349.19 Obstruction of traffic.**
- 349.20 Vehicle security.**
- 349.21 Littering from a motor vehicle.**
- 349.22 Prohibited use of an electronic communication device.**
- 349.99 Penalty.**

CROSS REFERENCES

See sectional histories for similar State law

349.01 UNATTENDED MOTOR VEHICLE.

(EDITOR'S NOTE: Former West Virginia Code 17C-14-1 from which Section 349.01 was derived was repealed by House Bill 2612, effective May 14, 2018.)

349.02 BACKING A VEHICLE.

The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.

(WVaC 17C-14-2)

349.03 DRIVERS' VIEW AND CONTROL TO BE UNOBSTRUCTED BY LOAD OR PERSONS.

(a) No person shall drive a vehicle when it is so loaded as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his or her control over the driving mechanism of the vehicle. (WVaC 17C-14-4)

349.04 PASSENGERS IN SEAT WITH OPERATOR.

No more than three persons including the operator shall ride or be permitted by such operator to ride in the seat with the operator of any motor vehicle while such motor vehicle is being operated on the streets or highways of this Municipality: provided, however, that the limitation of this section shall not apply to a truck cab or truck crew compartment properly designed for the occupancy of four persons including the operator, and so designated on the registration card by the Division of Motor Vehicles.

(WVaC 17C-14-5)

349.05 PASSENGERS ON RUNNING BOARD.

No passenger shall ride nor shall the operator permit any passenger to ride on the running boards of any motor vehicle while such vehicle is being operated on the streets or highways of this Municipality. (WVaC 17C-14-6)

349.06 FOLLOWING AUTHORIZED EMERGENCY VEHICLES.

The driver of any vehicle other than one on official business may not follow any authorized emergency vehicle traveling in response to a fire alarm or other emergency closer than 500 feet or drive into or park such vehicle within the block where such authorized emergency vehicle has stopped in answer to a fire alarm or other emergency.

(WVaC 17C-14-9)

349.061 APPROACHING AUTHORIZED EMERGENCY VEHICLES.

The driver of any vehicle approaching a stationary authorized emergency vehicle, when the authorized emergency vehicle is giving a signal by displaying alternately flashing red, red and white, blue, or red and blue lights or amber or yellow warning lights, shall:

- (a) Proceed with due caution, yield the right-of-way by making a lane change not adjacent to that of the authorized emergency vehicle, if possible with regard to safety and traffic conditions, if on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the approaching vehicle and reduce speed to a safe level for road conditions; or
- (b) Proceed with due caution, reduce the speed of the vehicle, maintaining a safe speed not to exceed fifteen miles per hour on any nondivided highway or street and twenty-five miles per hour on any divided highway depending on road conditions, if changing lanes would be impossible or unsafe.

(WVaC 17C-14-9a)

349.07 DRIVING OVER FIRE HOSE.

No vehicle shall be driven over any unprotected hose of the Fire Department when laid down on any street or private driveway to be used at any fire or alarm of fire, without the consent of the Fire Department official in command. (WVaC 17C-14-10)

349.08 FUNERAL PROCESSIONS.

(a) Definitions.

(1) "Funeral director" and "funeral establishment" have the same meaning as set forth in West Virginia Code 30-6-4.

(2) "Funeral procession" means two or more vehicles accompanying the body of a deceased person, or traveling to the church, chapel, cemetery, or other location at which the funeral service or final disposition is to be held, including a funeral lead vehicle or a funeral escort vehicle.

(3) "Funeral lead vehicle" means any authorized law enforcement or nonlaw-enforcement motor vehicle or a funeral escort vehicle being used to lead and facilitate the movement of a funeral procession. A funeral hearse may serve as a funeral lead vehicle.

(4) "Funeral escort" means a person or entity that provides escort services for funeral processions, including law-enforcement personnel and agencies.

(5) "Funeral escort vehicle" means any motor vehicle that escorts a funeral procession.

(b) Funeral Procession Right-Of-Way.

(1) Regardless of any traffic control device or right-of-way provisions prescribed by state or local ordinance, pedestrians and operators of all vehicles, except as stated in subsection (b)(3) of this section, shall yield the right-of-way to any vehicle which is part of a funeral procession being led by a funeral escort vehicle or a funeral lead vehicle.

(2) When the funeral lead vehicle lawfully enters an intersection, either by reason of a traffic control device or at the direction of law-enforcement personnel, the remaining vehicles in the funeral procession may follow through the intersection regardless of any traffic control devices or right-of-way provisions prescribed by state or local law.

(3) Funeral processions have the right-of-way at intersections regardless of traffic control devices subject to the following conditions and exceptions:

A. Operators of vehicles in a funeral procession shall yield the right-of-way to an approaching emergency vehicle giving an

audible or visible signal;

B. Operators of vehicles in a funeral procession shall yield the right-of-way when directed to do so by a police officer; and

C. Operators of vehicles in a funeral procession must exercise due care when participating in a funeral procession.

(c) Driving in Procession.

(1) All vehicles comprising a funeral procession shall follow the preceding vehicle in the funeral procession as closely as is practical and safe.

(2) Any ordinance, law or rule stating that motor vehicles shall be operated to allow sufficient space enabling any other vehicle to enter and occupy such space without danger is not applicable to vehicles in a funeral procession.

(d) Liability. Liability for any death, personal injury or property damage suffered on or after the first day of July, one thousand nine hundred ninety-nine, by any person in a funeral procession may not be imposed upon a funeral director or funeral establishment or their employees or agents unless the death, personal injury or property damage is proximately caused by the negligent or intentional act of a funeral director or funeral establishment or their employees or agents.

(e) Equipment. All nonlaw-enforcement funeral escort vehicles and funeral lead vehicles may be equipped with at least one lighted circulation flashing lamp exhibiting an amber or purple light or lens. Flashing amber or purple lights may be used when such vehicles are used in a funeral procession. (WVaC Art. 17C-23)

349.09 OPENING DOOR OF VEHICLE ON TRAFFIC SIDE.

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open on the side of a motor vehicle available to moving traffic for a period of time longer than is necessary to load or unload passengers.

349.10 BOARDING OR ALIGHTING FROM VEHICLE.

No person shall board or alight from any vehicle while such vehicle is in motion.

349.11 UNLAWFUL RIDING.

No person shall ride on any vehicle upon any portion thereof not designated or intended for the use of passengers when the vehicle is in motion. This provision shall not apply to an employee engaged in the necessary discharge of a duty or to persons riding within truck bodies in space intended for merchandise.

349.12 SQUEALING TIRES, CRACKING EXHAUST NOISES.

No person shall unnecessarily race the motor of any vehicle and no person shall operate any motor vehicle, except in an emergency, in such a manner that the vehicle is so rapidly accelerated or started from a stopped position that the exhaust system emits a loud, cracking or chattering noise unusual to its normal operation, or whereby the tires of such vehicle squeal or leave tire marks on the roadway, commonly called "peeling".

349.13 TAKING, INJURING OR TAMPERING WITH VEHICLE.

(a) No person shall drive a vehicle, not his or her own, without consent of the owner thereof, and with intent temporarily to deprive such owner of his or her possession of such vehicle, but without intent to steal the vehicle. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same or a different person. Any person who assists in, or is a party or accessory to or an accomplice in any such unauthorized taking or driving, shall also be guilty of a violation of this section.

(WVaC 17A-8-4)

(b) No person either individually or in association with one or more persons shall willfully injure or tamper with any vehicle or break or remove any part or parts of or from a vehicle without the consent of the owner.

No person with intent to commit any malicious mischief, injury or other crime shall climb into or upon a vehicle whether it is in motion or at rest or with like intent attempt to manipulate any of the levers, starting mechanism, brakes or other mechanism or device of a vehicle while the same is at rest and unattended or with like intent set in motion any vehicle while the same is at rest and unattended.

(WVaC 17A-8-6)

349.14 DRIVING UPON SIDEWALK, STREET LAWN OR CURB.

(a) No person shall drive any vehicle, other than a bicycle, upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway.

(b) No person shall drive a vehicle on a street lawn area or the curb of a street, except upon a permanent or duly authorized temporary driveway or when otherwise lawfully authorized.

349.15 SHORTCUTTING; AVOIDING TRAFFIC CONTROL DEVICES.

(a) No person shall operate a motor vehicle across public or private property marked with signs "No Through Traffic" or words of similar import for the purpose of passing from one roadway to another.

(b) No person shall operate a motor vehicle across public or private property for the purpose of avoiding compliance with a traffic control device.

(c) It shall be prima-facie evidence of a violation of this section for the operator of a motor vehicle to cross public or private property as provided herein without using the service of such property, stopping the engine or both.

349.16 COASTING PROHIBITED.

The operator of any motor vehicle when traveling on a down grade on any street, alley or highway shall not coast with the gears of such vehicle in neutral.

349.17 DRIVING THROUGH SAFETY ZONE.

No operator of a vehicle shall drive the same over or through a safety zone.

349.18 DRIVING UPON STREET POSTED AS CLOSED FOR REPAIR.

No person shall drive upon, along or across a street or highway, or any part thereof, which has been closed in the process of its construction, reconstruction or repair, and posted with appropriate signs by the authority having jurisdiction to close such street or highway.

349.19 OBSTRUCTION OF TRAFFIC.

No person shall operate, stop, stand or park any motor vehicle on any street or alley within the Municipality so as to obstruct or hinder the free flow of motor vehicle traffic except in compliance with a lawful order of a police officer or in compliance with a traffic control sign, signal or marking.

349.20 VEHICLE SECURITY.

Every owner or registrant of a motor vehicle shall maintain security upon such vehicle as required by West Virginia Code Article 17D-2A, and no person shall knowingly drive or operate on any street within the Municipality any motor vehicle upon which security is required by such Article unless the security is provided, and violation of any of the provisions of West Virginia Code Article 17D-2A including failure to have a certificate of insurance, if required, shall constitute a violation under this section.

349.21 LITTERING FROM A MOTOR VEHICLE.

(a) It is unlawful for any driver or passenger of a motor vehicle or other conveyance to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown, any litter from a motor vehicle or other conveyance in or upon any public or private highway, road, street or alley; any private property; any public property; or the waters of the State or within one hundred feet of the waters of this State, except in a proper litter or other solid waste receptacle.

(b) For purposes of this section, "litter" means all waste material including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof, or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.

(c) When there is more than one occupant in a motor vehicle or other conveyance and it can not be determined which occupant is responsible for violating this section, the driver shall be presumed to be responsible for the violation.

(WVaC 17C-14-14)

349.22 PROHIBITED USE OF AN ELECTRONIC COMMUNICATIONS DEVICE.

(a) Except as provided in subsection (c) of this section, a person may not drive or operate a motor vehicle on a public street or highway while:

- (1) Texting; or
- (2) Using a cell phone or other electronic communications device, unless the use is accomplished by hands-free equipment.

(b) For purposes of this section, the following terms shall mean:

- (1) "Cell phone" means a cellular, analog, wireless or digital telephone.
- (2) "Driving" or "operating a motor vehicle" means operating a motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays, but does not include operating a motor vehicle after the driver has moved the vehicle to the side of, or off, a highway and halted in a location where the vehicle can safely remain stationary.
- (3) "Electronic communication device" means a cell telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, 2-way messaging device, electronic game, or portable computing device. For the purposes of this section, an "electronic communication device" does not include:
 - A. Voice radios, mobile radios, land mobile radios, commercial mobile radios or two way radios with the capability to transmit and receive voice transmissions utilizing a push-to-talk or press-to-transmit function; or
 - B. Other voice radios used by a law enforcement officer, an emergency services provider, an employee or agent of public safety organizations, first responders, Amateur Radio Operators (HAM) licensed by the Federal Communications Commission and school bus operators.
- (4) "Engaging in a call" means when a person talks into or listens on an electronic communication device, but shall not include when a person dials or enters a phone number on a pushpad or screen to initiate the call.
- (5) "Hands-free electronic communication device" means an electronic communication device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such electronic communication device, by which a user engages in a call without the use of either hand or both hands.
- (6) "Hands-free equipment" means the internal feature or function of a hands-free electronic communication device or the attachment or addition to a hands-free electronic communication device by which a user may engage in a call or text without the use of either hand or both hands.
- (7) "Texting" means manually entering alphanumeric text into, or reading text from, an electronic communication device, and includes, but is not limited to, short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page or engaging in any other form of electronic text retrieval or entry, for present or future communication. For purposes of this section, "texting" does not include the following actions:
 - A. Reading, selecting or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device by pressing the device in order to initiate or receive a phone call or using voice commands to initiate or receive a telephone call;
 - B. Inputting, selecting or reading information on a global positioning system or navigation system; or
 - C. Using a device capable of performing multiple functions, including fleet management systems, dispatching devices, smart phones, citizens band radios or music players, for a purpose that is not otherwise prohibited in this section.
- (8) "Using a cell phone or other electronic communication device" means holding in a person's hand or hands an electronic communication device while:
 - A. Viewing or transmitting images or data;
 - B. Playing games;
 - C. Composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving e-mail, text messages or other electronic data; or
 - D. Engaging in a call.

(c) Subsection (a) of this section shall not apply to:

- (1) A law enforcement officer, a firefighter, an emergency medical technician, a paramedic or the operator of an authorized emergency vehicle in the performance of their official duties;
- (2) A person using an electronic communication device to report to appropriate authorities a fire, a traffic accident, a serious road hazard, or a medical or hazardous materials emergencies.
- (3) The activation or deactivation of hands-free equipment or a function of hands-free equipment.

(d) This section does not supersede the provisions of West Virginia Code 17B-2-3a, or any more restrictive provisions for drivers of commercial motor vehicles prescribed by the provisions of West Virginia Code 17E-1-1 et seq. or federal law or rule.

(e) No policy providing liability coverage for personal lines insurance shall contain a provision which may be used to deny coverage or exclude payment of any legal damages recoverable by law for injuries proximately caused by a violation of this section, as long as such amounts are within the coverage limits of the insured.

(WVaC 17C-14-15)

349.99 PENALTY.

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

(b) (1) Any person who violates Section 349.061 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both fined and imprisoned.

(2) If violation of Section 349.061 results in property damage in addition to any other penalty imposed, driving privileges of the persons causing the property damage shall be suspended for ninety days.

(3) If violation of Section 349.061 results in injury to another person in addition to any other penalty imposed, the driving privileges of the person causing the injury shall be suspended for six months.

(4) If violation of Section 349.061 results in the death of another person in addition to any other penalty imposed, the driving privileges of the person causing the death shall be suspended for two years.

(5) Any person who violates Section 349.061 and while doing so also violates Section 333.01 shall be prosecuted under appropriate State law.

(WVaC 17C-14-9a)

(c) Taking, Injuring or Tampering With Vehicle. Whoever violates Section 349.13 shall, for a first offense, be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both. (WVaC 17A-11-1)

(d) Vehicle Security. Whoever violates Section 349.20 shall be fined not less than two hundred dollars (\$200.00) or more than five thousand dollars (\$5,000) or imprisoned not more than thirty days, or both. (WVaC 17D-2A-9)

(e) Electronic Communication Devices.

(1) Any person who violates the provisions of Section 349.22 is guilty of a traffic offense and, shall for a first offense be fined one hundred dollars (\$100.00); for a second offense be fined two hundred dollars (\$200.00); and for a third or subsequent offense be fined three hundred dollars (\$300.00). No court costs or other fees shall be assessed for a violation of Section 349.22.

(2) Notwithstanding any other provision of this code to the contrary, points may not be entered on any driver's record maintained by the Division of Motor Vehicles as a result of a violation of Section 349.22, except for the third and subsequent convictions of the offense, for which three points shall be entered on any driver's record maintained by the Division of Motor Vehicles.

(3) Driving or operating a motor vehicle on a public street or highway while texting shall be enforced as a primary offense. Driving or operating a motor vehicle on a public street or highway while using a cell phone or other electronic communication device without hands-free equipment shall be enforced as a secondary offense until July 1, 2013 when it shall be enforced as a primary offense for purposes of citation.

(4) Nothing contained in this section shall be construed to authorize seizure of a cell phone or electronic device by any law enforcement agency.

(WVaC 17C-14-15)

ARTICLE 351

Licensing Generally

351.01 Registration, certificate of title required.

351.02 Registration card.

351.03 Display of registration plates.

351.04 Operation of vehicle without evidence of registration; use of temporary facsimile.

351.05 Improper use of registration card, plate or permit.

351.06 Driver or motorcycle license required.

351.07 Persons exempt from license.

351.08 Display of license.

351.09 Certain acts prohibited.

351.10 Driving under suspension or revocation.

351.11 Owner or operator allowing another to drive.

351.99 Penalty.

CROSS REFERENCES

Impounding unlicensed vehicle - see TRAF. 303.07

Illumination of license plate - see TRAF. 345.05(c)

351.01 REGISTRATION, CERTIFICATE OF TITLE REQUIRED.

No person shall drive or move and no owner shall knowingly permit to be driven or moved upon any street or highway any vehicle of a type required to be registered under West Virginia Code Chapter 17-A which is not registered or for which a certificate of title has not been issued or applied for or for which the appropriate fee has not been paid when and as required, except as otherwise permitted by the provisions therein: provided, that in the event of the sale of a vehicle by a person other than a registered dealer, the person purchasing the same may, for a period of not more than ten days, operate such vehicle under the registration of its previous owner and display the registration thereof: provided further that he shall have and display on the demand of any proper officer the consent in writing of such previous owner so to use such registration.

(WVaC 17A-3-1)

351.02 REGISTRATION CARD.

Every owner upon receipt of a registration card shall write his signature thereon with pen and ink in the space provided. Every such registration card shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle who shall display the same upon demand of a police officer or any officer or employee of the Department of Motor Vehicles.

(WVaC 17A-3-13)

351.03 DISPLAY OF REGISTRATION PLATES.

(a) Registration plates issued for vehicles required to be registered shall be attached to the rear thereof except that on truck tractors and road tractors designed and constructed to pull trailers or semi-trailers, the registration plate shall be mounted to the front.

(b) Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than twelve inches from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible.

(c) Notwithstanding the provisions of subsection (b) of this section, an owner of a motor vehicle with a Class G registration as defined in West Virginia Code 17A-10-1 may choose to:

- (1) Display a standard, Class G registration plate in a horizontal position; or
- (2) Display a specially designed Class G registration plate in a vertical position.

(WVaC 17A-3-15)

351.04 OPERATION OF VEHICLE WITHOUT EVIDENCE OF REGISTRATION; USE OF TEMPORARY FACSIMILE.

No person shall operate or park, nor shall an owner knowingly permit to be operated or parked upon any street or highway any vehicle required to be registered unless there is attached thereto and displayed thereon or is in the possession of the operator when and as required by this Traffic Code, a valid registration card and registration plate or plates issued therefor by the Department of Motor Vehicles for the current registration year except as otherwise expressly permitted in West Virginia Code Chapter 17-A.

In the event that the registration plate or plates originally issued are lost, destroyed or stolen, a temporary facsimile of the plate or plates, showing the number of the same, may be attached to the vehicle by the owner for a period of not more than fifteen days, or until a new plate or plates are issued by the Department whichever is earlier: provided, that no such facsimile shall be used and no such vehicle shall be driven upon the streets or highways of this Municipality until the owner has notified in writing the State Police of the loss of such registration plate or plates.

(WVaC 17A-9-2)

351.05 IMPROPER USE OF REGISTRATION CARD, PLATE OR PERMIT.

No person shall lend to another any certificate of title, registration card, registration plate, special plate or permit issued to him if the person desiring to borrow the same would not be entitled to the use thereof, nor shall any person knowingly permit the use of any of the same by one not entitled thereto, nor shall any person display upon a vehicle any registration card, registration plates or permit not issued for such vehicle or not otherwise lawfully used thereon under this Traffic Code. (WVaC 17A-9-3)

351.06 DRIVER OR MOTORCYCLE LICENSE REQUIRED.

(a) No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a street or highway in this Municipality or upon any subdivision street, used by the public generally unless the person has a valid driver's license issued under the provisions of the West Virginia Code for the type or class of vehicle being driven.

Any person licensed to operate a motor vehicle as provided in the West Virginia Code may exercise the privilege thereby granted as provided in the West Virginia Code and, except as otherwise provided by law, shall not be required to obtain any other license to exercise such privilege by any county, municipality or local board or body having authority to adopt local police regulations.

(b) No person, except those hereinafter expressly exempted, shall drive any motorcycle upon a street or highway in this Municipality or upon any subdivision street, used by the public generally unless the person has a valid motorcycle license, a valid license which has been endorsed under West Virginia Code 17B-2-7b for motorcycle operation or has a valid motorcycle instruction permit. (WVaC 17B-2-1)

351.07 PERSONS EXEMPT FROM LICENSE.

The following persons are exempt from the license required under Section 351.06:

- (a) Any person while operating a motor vehicle in the armed services of the United States while in the performance of his official duties;
- (b) A nonresident who is at least sixteen years of age and who has in his or her immediate possession a valid driver's license issued to the person in the person's home state or country unless the Commissioner determines the person's home state or country does not extend the same privileges to a resident of this State, may operate a motor vehicle in this State only as a noncommercial driver for a period not to exceed ninety days in any one calendar year;
- (c) A nonresident who is at least sixteen years of age, who has in the person's immediate possession a valid driver's license issued to the person in the person's home state or country and who is employed in this State, or owns, maintains or operates a place or places of business in this State, or engages in any trade, profession or occupation in this State, in addition to the driving

privileges extended under subsection (b) hereof, unless the Commissioner determines the person's home state or country does not extend the same privileges to a resident of this State, may operate a motor vehicle in this State only as a noncommercial driver in traveling to and from the person's place or places of employment, place or places of business or place or places at which the person engages in the trade, profession or occupation and in the discharge of the duties of the person's employment, business, trade, profession or occupation if the duties are such that, if performed by a resident of the State of West Virginia over the age of eighteen years of age, the resident would not be required under the provisions of West Virginia Code Chapter 17 to obtain a Class A, B, C or D driver's license. However, this subsection shall not exempt any person who is required to obtain a West Virginia driver's license in accordance with the provisions of West Virginia Code 17B-2-1a;

- (d) A nonresident who is at least eighteen years of age and who has in his or her immediate possession a valid commercial driver's license issued to the person in his or her home state or country and which meets the requirements of the federal commercial motor vehicle act of 1986, Title XI of public law 99-570 and unless the Commissioner determines the person's home state or country does not extend the same privilege to a resident of this State may operate a motor vehicle in this State either as a commercial driver subject to the age limits applicable to commercial driver in this State, or as a noncommercial driver subject to the limitations imposed on nonresident drivers in subsections (b) and (c) hereof;
- (e) Any person who is a student, properly enrolled and registered in an accredited school, college or university in this State, who is at least sixteen years of age and who has in his or her immediate possession a valid driver's license issued to the person in the person's home state, notwithstanding the limitations of subsections (b) and (c) hereof may operate motor vehicle in this State only as noncommercial driver: provided, that the state of which the person is a resident shall extend the same privileges to residents of this State. This exemption shall be canceled immediately when the student is graduated from school, college or university or is expelled or ceases to be a student. (WVaC 17B-2-2)

351.08 DISPLAY OF LICENSE.

Every licensee shall have his or her driver's license in such person's immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of a magistrate, municipal judge, circuit court judge, peace officer or an employee of the Division of Motor Vehicles. However, no person charged with violating this section shall be convicted if such person produces in court or the office of the arresting officer a driver's license theretofore issued to such person and valid at the time of such person's arrest. (WVaC 17B-2-9)

351.09 CERTAIN ACTS PROHIBITED.

No person shall commit any one of the following acts:

- (a) Display or cause or permit to be displayed or have in his possession any fictitious or fraudulently altered driver's or commercial driver's license or nonoperator's identification;
- (b) Lend his driver's or commercial driver's license or nonoperator's identification to any other person or knowingly permit the use thereof by another;
- (c) Display or represent as one's own any driver's or commercial driver's license or nonoperator's identification not issued to him;
- (d) Use a false or fictitious name in any application for a driver's or commercial driver's license or nonoperator's identification or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application;
- (e) Permit any unlawful use of a driver's or commercial driver's license or nonoperator's identification issued to him; or
- (f) Do any act forbidden or fail to perform any act required by this Traffic Code or West Virginia Code Chapter 17.

(WVaC 17B-4-1)

351.10 DRIVING UNDER SUSPENSION OR REVOCATION.

No person shall drive a motor vehicle on any public street or highway of this Municipality at a time when his privilege so to do has been lawfully suspended or revoked.

(WVaC 17B-4-3)

351.11 OWNER OR OPERATOR ALLOWING ANOTHER TO DRIVE.

No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any street or highway by any person who is not authorized hereunder or in violation of any of the provisions of this Traffic Code.

(WVaC 17B-4-4)

351.99 PENALTY.

(a) General Article Penalty. Whoever violates any provision of this article for which no other penalty is provided shall be fined not more than five hundred dollars (\$500.00); for a second or subsequent violation of the same provision such person shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.

(b) Driving Under Suspension or Revocation.

- (1) Except as otherwise provided in West Virginia Code 17B-4-3(b) or (d), or subsection (b)(2) or (3) hereof, whoever drives a motor vehicle on any street or highway of this Municipality at a time when his or her privilege so to do has been lawfully suspended or revoked shall, for the first offense, be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); for the second offense, such person, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); for the third or any subsequent offense, such person shall be imprisoned for a period of thirty days and, in addition to such mandatory jail sentence, shall be fined not less than one hundred fifty dollars (\$150.00) nor more than five hundred dollars (\$500.00).

A record of the conviction of any person under this section upon a charge of driving a vehicle while the license of such person was suspended lawfully shall be sent to the State Department of Motor Vehicles.

- (2) Any person who drives a motor vehicle on any public highway at a time when his or her privilege to do so has been lawfully revoked for driving under the influence of alcohol, controlled substances or other drugs, or any combination thereof, or for driving while having an alcoholic concentration in his or her blood of eight hundredths of one percent or more, by weight, or for refusing to take a secondary chemical test of blood alcohol content, for the first

offense shall be imprisoned thirty days and in addition to the mandatory jail sentence, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); for the second offense, shall be imprisoned thirty days and in addition to the mandatory jail sentence, shall be fined not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000); for the third or any subsequent offense, the person is guilty of a felony and shall be prosecuted under appropriate State law.

- (3) Any person who drives a motor vehicle on any public highway at a time when his or her privilege to do so has been lawfully suspended for driving while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, shall be imprisoned for twenty-four hours or shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or both; for the second offense, the person shall be confined in jail for a period of thirty days, and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); for the third or any subsequent offense, the person is guilty of a felony and shall be prosecuted under appropriate State law.
- (4) An order for home detention by the court pursuant to the provisions of West Virginia Code Article 62-11B may be used as an alternative sentence to any period of incarceration required by this section.
- (c) Additional Penalties. Whoever violates Sections 351.02, 351.03, 351.05, 351.09 or 351.11 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.

ARTICLE 353

Commercial Drivers

353.01 Definitions.

353.02 Limitation on number of driver's licenses.

353.03 Employer responsibilities.

353.04 Commercial driver's license required.

353.05 Exemptions.

353.06 Drivers prohibited from operating with any alcohol in system.

353.07 Commercial drivers prohibited from texting.

353.99 Penalty.

CROSS REFERENCES

Uniform Commercial Driver's License Act - see W.Va. Code Art. 17E-1

Commercial vehicles - see TRAF. Art. 347

Driver's licensing - see TRAF. Art. 351

353.01 DEFINITIONS.

Notwithstanding any other provision of this Traffic Code, the following definitions apply to this article:

(a) "Alcohol" means:

- (1) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propanol and isopropanol;
- (2) Beer, ale, port or stout and other similar fermented beverages (including sake or similar products) of any name or description containing one half of one percent (0.5%) or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt;
- (3) Distilled spirits or that substance known as ethyl alcohol, ethanol or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced); or
- (4) Wine of not less than one half of one percent (0.5%) of alcohol by volume.

(b) "Alcohol concentration" means:

- (1) The number of grams of alcohol per 100 milliliters of blood; or
- (2) The number of grams of alcohol per 210 liters of breath; or
- (3) The number of grams of alcohol per sixty-seven milliliters of urine; or
- (4) The number of grams of alcohol per eighty-six milliliters of serum.

(c) "Commercial driver license" means a license issued in accordance with the requirements of West Virginia Code Article 17E-1 to an individual which authorizes the individual to drive a class of commercial motor vehicle.

(d) "Commercial driver instruction permit" means a permit issued pursuant to West Virginia Code 17E-1-9(d).

(e) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:

- (1) If the vehicle has a gross combination vehicle weight rating of 26,001 pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating of more than 10,000 pounds;
- (2) If the vehicle has a gross vehicle weight rating of more than 26,001 pounds or more;
- (3) If the vehicle is designed to transport sixteen or more passengers, including the driver; or
- (4) If the vehicle is of any size transporting hazardous materials as defined in this section.

(f) "Conviction" means an unvacated adjudication of guilt; a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal or proceeding; an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court; a plea of guilty or nolo contendere accepted by the court or the payment of a fine or court cost, or violation of a condition of release without bail regardless of whether or not the penalty is rebated, suspended, or probated.

(g) "Disqualification" means any of the following three actions:

- (1) The suspension, revocation or cancellation of a driver's license by the state or jurisdiction of issuance.
- (2) Any withdrawal of a person's privilege to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control other than parking or vehicle weight except

as to violations committed by a special permittee on the coal resource transportation system or vehicle defect violations.

- (3) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. Part §391 (2004).
- (h) "Drive" means to drive, operate or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of Section 353.06 "drive" includes operation or physical control of a motor vehicle anywhere in this Municipality.
- (i) "Driver" means any person who drives, operates or is in physical control of a commercial motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a commercial driver license.
- (j) "Driver license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle of a specific class.
- (k) "Employee" means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors (while in the course of operating a commercial motor vehicle) who are either directly employed by or under lease to drive a commercial motor vehicle for an employer.
- (l) "Employer" means any person, including the United States, a state or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.
- (m) "Farm vehicle" includes a motor vehicle or combination vehicle registered to the farm owner or entity operating the farm and used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants and in the transportation of agricultural or horticultural supplies and machinery to such farms or orchards to be used thereon.
- (n) "Farmer" includes owner, tenant, lessee, occupant or person in control of the premises used substantially for agricultural or horticultural pursuits, who is at least eighteen years of age with two years licensed driving experience.
- (o) "Farmer vehicle driver" means the person employed and designated by the farmer to drive a farm vehicle as long as driving is not his sole or principal function on the farm, who is at least eighteen years of age with two years licensed driving experience.
- (p) "Motor vehicle" means every vehicle which is self-propelled, and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.
- (q) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle as a result of a determination by a law-enforcement officer, an authorized enforcement officer of a federal, state, Canadian, Mexican, county or local jurisdiction including any special agent of the Federal Motor Carrier Safety Administration pursuant to 49 C.F.R. §§386.72, 392.5, 395.13, 396.9 or compatible laws or the North American uniform out-of-service criteria that an imminent hazard exists.
- (r) "Violation of an out-of-service order" means:
- (1) The operation of a commercial motor vehicle during the period the driver was placed out of service; or
 - (2) The operation of a commercial motor vehicle by a driver after the vehicle was placed out of service and before the required repairs are made.
 - (3) The operation of any commercial vehicle by a motor carrier operation after the carrier has been placed out of service.
- (s) "Texting" means manually entering alphanumeric text into or reading text from an electronic device.
- (1) This action includes, but is not limited to, short messaging service, e- mailing, instant messaging and a command or request to access a World Wide Web page or engaging in any other form of electronic text retrieval or entry for present or future communication.
 - (2) Texting does not include:
 - A. Reading, selecting or entering a telephone number, an extension number or voicemail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a phone call or using voice commands to initiate or receive a telephone call;
 - B. Inputting, selecting or reading information on a global positioning system or navigation system; or
 - C. Using a device capable of performing multiple functions including, but not limited to, fleet management systems, dispatching devices, smart phones, citizen band radios or music players for a purpose that is not otherwise prohibited by this section.
- (WVaC 17E-1-4)

353.02 LIMITATION ON NUMBER OF DRIVER'S LICENSES.

No person who drives a commercial motor vehicle shall have more than one driver license at one time. (WVaC 17E-1-4)

353.03 EMPLOYER RESPONSIBILITIES.

- (a) Each employer shall require the applicant to provide the information specified in West Virginia Code 17E-1-5.
- (b) No employer may knowingly allow, permit, require or authorize a driver to drive a commercial motor vehicle during any period in which the driver:
- (1) Has a driver's license suspended, revoked or canceled by a state; has lost the privilege to drive a commercial motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle;
 - (2) Has more than one driver's license at one time.
 - (3) Or the commercial motor vehicle he or she is driving or the motor carrier operation, is subject to an out-of-service order;
 - (4) Is in violation of federal, state or local law or regulation pertaining to railroad highway grade crossings; or
 - (5) Is in violation of any provision of 49 C.F.R., Part §382 related to controlled substances and alcohol use and testing.
- (c) No employer may require or allow a driver to operate a commercial motor vehicle while texting. (WVaC 17E-1-6)

353.04 COMMERCIAL DRIVER'S LICENSE REQUIRED.

- (a) Except when driving under a commercial driver's instruction permit accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person shall drive a commercial motor vehicle unless the person holds a commercial driver's

license and applicable endorsements valid for the vehicle they are driving.

(b) No person shall drive a commercial motor vehicle while their driving privilege is suspended, revoked, canceled, expired, subject to a disqualification, or in violation of an out-of-service order.

(c) Drivers of a commercial motor vehicle shall have a commercial driver's license in their possession at all times while driving. (WVaC 17E-1-7)

353.05 EXEMPTIONS.

(a) Farmers. Bona fide farmers or farm vehicle drivers, as defined, operating a vehicle otherwise covered by the commercial driver's license requirements may be exempted from the provisions of this article only if the vehicle used is:

- (1) Driven by a farmer or farm vehicle driver;
- (2) Used only to transport either agricultural products, farm machinery, farm supplies, to or from a farm;
- (3) Not used in the operation of a common or contract motor carrier; and
- (4) Used within 150 miles of the qualifying farm. Farmers who wish to be exempted from the commercial driver's license requirements must apply to the Division of Motor Vehicles for a certificate of exemption.

(b) Military Personnel. Active duty military personnel operating vehicles being used for military purposes are exempted from the provisions of this article in accordance with the provisions of 49 CFR § 383.3 (c)(2006).

(c) Fire Fighting and Rescue Equipment. Operators of vehicles authorized to hold an authorized emergency vehicle permit for use of red signal lights only are exempt from the provisions of this article while the authorized emergency vehicle permit is in force. Vehicles in this class include, but are not limited to, fire fighters and rescue equipment:

- (1) Owned and operated by state, county and municipal fire departments.
- (2) Owned and operated by state, county and municipal civil defense organizations.
- (3) Owned and operated by a manufacturer engaged in a type of business that requires fire fighter equipment to protect the safety of their plants and its employees.
- (4) Owned and operated by volunteer fire departments.

(d) Operators of Off-Road Construction and Mining Equipment. Operators of equipment which, by its design, appearance and function, is not intended for use on a public road, including, without limitation, motorscrapers, backhoes, motorgraders, compactors, excavators, tractors, trenches and bulldozers, are exempt from the provisions of this article: Provided, that the exemption recognized by this subsection shall not be construed to permit the operation of such equipment on any public road except such operation as may be required for a crossing of such road: Provided, however, that no such equipment may be operated on a public road for a distance exceeding five hundred feet from the place where such equipment entered upon the public road.

(e) Exempt Vehicles. The Federal Motor Carrier Safety Improvement Act of 1999 exempts vehicles used exclusively for personal use such as recreation vehicles and rental trucks used only to transport the driver's personal or household property. (WVaC 17E-1-8)

353.06 DRIVERS PROHIBITED FROM OPERATING WITH ANY ALCOHOL IN SYSTEM.

(a) In addition to any other penalties provided by the West Virginia Code or these Codified Ordinances, any person who drives, operates or is in physical control of a commercial motor vehicle while having an alcohol concentration in his or her blood, breath or urine of four hundredths of one percent or more, by weight, shall be imprisoned for not less than twenty-four hours nor more than thirty days, and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). A person convicted of a second or any subsequent offense under the provisions of this subsection shall be imprisoned for a period of thirty days, and the court may, in its discretion, impose a fine of not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000).

(b) A person who violates the provisions of subsection (a) of this section shall be treated in the same manner set forth in West Virginia Code 17C-19-3, as if he or she had been arrested for driving under the influence of alcohol or of any controlled substance.

(c) In addition to any other penalties provided by the West Virginia Code or these Codified Ordinances, a person who drives, operates or is in physical control of a commercial motor vehicle having any measurable alcohol in such person's system or who refuses to take a preliminary breath test to determine such person's blood alcohol content as provided by West Virginia Code 17E-1-15 shall be placed out of service for twenty-four hours by the arresting law-enforcement officer. (WVaC 17E-1-14)

353.07 COMMERCIAL DRIVERS PROHIBITED FROM TEXTING.

(a) No commercial driver may engage in texting while driving a commercial motor vehicle.

(b) No motor carrier may allow or require its drivers to engage in texting while driving a commercial motor vehicle.

(c) For the purposes of this section only, and unless a more restrictive prohibition is prescribed in the West Virginia Code, driving means operating a commercial motor vehicle with the motor running, including while temporarily stationed because of traffic, a traffic control device or other momentary delays. Driving does not include operating a commercial motor vehicle with or without the motor running when the driver moved the vehicle to the side of or off a highway, as defined in 49 CFR 390.5, and halted in a location where the vehicle can safely remain stationary. (WVaC 17E-1-14(a))

353.99 PENALTY.

Unless another penalty is provided in this article, whoever violates any provision of this article shall be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000), or imprisoned for not more than thirty days, or both except that for the second violation of Section 353.04, the offender shall be fined not less than five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000) or imprisoned not more than thirty days, or both. For the third or any subsequent conviction for violation of Section 353.04, the offender shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500), or imprisoned for not more than thirty days, or both. (WVaC 17E-1-25)

ARTICLE 355

All-Terrain Vehicles

355.01 Definition of all-terrain and utility terrain vehicle.

355.02 Acts prohibited by operator.

355.03 Safety awareness courses.

- 355.04 Rental dealers required to provide safety equipment.**
- 355.05 Private property exemption.**
- 355.06 Exemption for farm, commercial use; current regulations.**
- 355.07 Applicability of rules of operation.**
- 355.99 Penalty.**

CROSS REFERENCES

State law provisions - see W. Va. Code Art. 17F-1

355.01 DEFINITION OF ALL-TERRAIN AND UTILITY TERRAIN VEHICLE.

- (a) As used in this article:
- (1) "All-terrain vehicle" or "ATV" means any motor vehicle, designed for off-highway use and designed to travel on not less than three low-pressure tires, having a seat or saddle designed to be straddled by the operator and handlebars for steering control and intended by the manufacturer to be used by a single operator or by an operator and no more than one passenger.
 - (2) "Utility terrain vehicle" means any motor vehicle with four or more low-pressure tires designed for off-highway use having bench or bucket seating for each occupant and a steering wheel for control.
 - (3) "Motorcycle" means any motor vehicle manufactured with no more than two wheels and having a seat or a saddle for the use of the operator.
 - (4) "Off-highway vehicle" means a vehicle intended for off-highway use and includes all-terrain vehicles, utility-terrain vehicles, motorcycles and off-road vehicles;
 - (5) "Off-road vehicle" means a vehicle that is suitable for off-road use. It includes a four-wheel drive vehicle such as a Jeep, pickup or sport utility vehicle. It also includes a specially designed, modified or customized off-road vehicle that is of a similar size to a vehicle manufactured for highway use.
- (b) As used in this article, "all-terrain vehicles" and "vehicle", or the plural, mean all-terrain vehicles, utility-terrain vehicles, motorcycles and off-highway vehicles. (WVaC 17F-1-9)

355.02 ACTS PROHIBITED BY OPERATOR.

- (a) No all-terrain vehicle may be operated in this Municipality:
- (1) On any interstate highway except by public safety personnel responding to emergencies;
 - (2) On any road or highway with a center line or more than two lanes except for the purpose of crossing the road, street or highway, if:
 - A. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
 - B. The vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway;
 - C. The operator yields his or her right-of-way to all oncoming traffic that constitutes an immediate potential hazard; and
 - D. Both the headlight and taillight are illuminated when the crossing is made if the vehicle is so equipped;
 - (3) With more than one passenger unless more passengers are allowed under manufacturers' recommendations;
 - (4) With a passenger under the age of eighteen, unless the operator has at a minimum a level of two intermediate driver's license or its equivalent or is eighteen years of age or older;
 - (5) Unless riders under the age of eighteen are wearing size appropriate protective helmets that meet the current performance specifications established by the American National Standards Institute Standard z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard No. 218 or Snell safety standards for protective headgear for vehicle users;
 - (6) Anytime from sunset to sunrise without an illuminated headlight or lights and taillights;
 - (7) Without a manufacturer-installed or equivalent spark arrester and a manufacturer-installed or equivalent muffler in proper working order and properly connected to the vehicle's exhaust system; or
 - (8) Unless operating in compliance with the provisions of Section 355.03.
- (b) An all-terrain vehicle may be operated upon the shoulder, or as far to the right on the pavement as possible when there is not enough shoulder to safely operate, on any road, street or highway referred to in subsection (a)(2) of this section other than an interstate highway for a distance not to exceed ten miles to travel between a residence or lodging and off-road trails, fields and areas of operation, including stops for food, fuel, supplies and restrooms, if:
- (1) The vehicle is operated at speeds of twenty-five miles per hour or less; and
 - (2) The vehicle is operated at any time from sunset to sunrise the all-terrain vehicle must be equipped with headlights and taillights which must be illuminated.
- (c) Operation of an all-terrain vehicle in accordance with subsection (b) shall not constitute operation of a motor vehicle on a road or highway of this Municipality as contemplated by the provisions of Section 355.07.
- (d) Notwithstanding any provision of this article to the contrary, the Municipality may authorize the operation of all-terrain vehicles on certain specified roads, streets or highways which are marked with centerline pavement markings, other than interstate highways, to allow participation in parades, exhibitions and other special events, in emergencies or for specified purposes. (WVaC 17F-1-1)

355.03 SAFETY AWARENESS COURSES.

- (a) On and after January 1, 2005, no person under the age of eighteen may operate an all-terrain vehicle without a certificate of completion of a vehicle rider awareness course as offered or approved by the Commissioner of Motor Vehicles.
- (b) The provisions of subsection (a) of this section do not apply to the operation of an all-terrain vehicle on any private or public recreational trail or area or affiliated trail or area operated by any person or entity which has in place a safety program.
- (WVaC 17F-1-2)

355.04 RENTAL DEALERS REQUIRED TO PROVIDE SAFETY EQUIPMENT.

Any person or entity renting or leasing all-terrain vehicles for recreational purposes must provide protective helmets as defined by the provisions of Section 355.02(a)(5), to all persons using such vehicles who are under the age of eighteen and offer protective helmets to all persons eighteen and older using the rented or leased vehicles: Provided, that for the provisions of this section to be applicable, the age and identity of the users of the all-terrain vehicle must be disclosed to the person or entity providing the rented or leased vehicle. (WVaC 17F-1-4)

355.05 PRIVATE PROPERTY EXEMPTION.

Except as provided by the provisions of Section 355.02(a)(3) to (5), and except as provided by the provisions of Section 355.03, the provisions of this article do not apply if the all-terrain vehicle is operated exclusively on lands owned or leased by the vehicle owner or on private lands of others with the owner's permission. (WVaC 17F-1-5)

355.06 EXEMPTION FOR FARM, COMMERCIAL USE; CURRENT REGULATIONS.

(a) Except as provided by the provisions of Section 355.02(a)(4) and (5), nothing in this article may be construed to preclude or limit the use or operation of all-terrain vehicles for lawful nonrecreational commercial purposes, including, but not limited to, farm use, oil and gas operations, timbering, surveying and public utilities access.

(b) Nothing in this article may be construed to supersede or contravene the provisions of any agreement between the State of West Virginia and any private or governmental entity entered into prior to the effective date of this article, or any lawfully promulgated legislative rule, including any emergency legislative rule, regulating the operation of all-terrain vehicles. (WVaC 17F-1-6)

355.07 APPLICABILITY OF RULES OF OPERATION.

(a) Every person operating an all-terrain vehicle upon a public road or highway of this Municipality shall be subject to all of the duties applicable to the driver of a vehicle by the provisions of West Virginia Code Chapter 17C and this Traffic Code except where inconsistent with the provisions of this article and except as to those provisions of West Virginia Code Chapter 17C and this Traffic Code which by their nature can have no application.

(b) Notwithstanding the provisions of subsection (a) of this section, a motor vehicle operator's license is not required of an operator of an all-terrain vehicle when he or she is operating said vehicle in conformity with the provisions of Section 355.02(a)(2) or (b) except when the operator is under the age of eighteen and is transporting a passenger under the age of eighteen. (WVaC 17F-1-7)

355.99 PENALTY.

(a) Except as provided in the provisions of subsection (b) of this section and in addition to any other legal remedy for violation of civil or criminal provisions of this Code, any person who violates the provisions of this article or who owns or has control over an all-terrain vehicle and knowingly permits it to be used in violation of the provisions of this article shall be fined not more than one hundred dollars (\$100.00).

(b) Any parent, legal guardian or person who has actual responsibility for a child under eighteen years of age who knows or should have known the child is operating or is a passenger on an all-terrain vehicle without a helmet as required by the provisions of Section 355.02 shall be subject to the following penalties:

- (1) For a first offense, a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) or not more than ten hours of community service, or both;
- (2) For a second offense, a fine of not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00) or not more than twenty hours of community service, or both;
- (3) For a third or subsequent offense, a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) or not more than one hundred hours of community service, or both.

(WVaC 17F-1-8)

CHAPTER SEVEN - Parking

Art. 361. Parking Generally.

Art. 363. Parking Meters.

Art. 365. Residential Parking District.

Art. 369. Vehicle Immobilizer.

ARTICLE 361

Parking Generally

361.01 Prohibition against parking on streets or highways.

361.02 Police may remove illegally stopped vehicles.

361.03 Prohibited stopping, standing or parking places.

361.04 Vehicles parked on private property.

361.05 Manner of angle and parallel parking.

361.06 Accessible parking.

361.07 Abandoned motor vehicles.

361.08 Parking for certain purposes prohibited.

361.09 Truck loading zones.

361.10 Bus stops and taxicab stands.

361.11 Parking in alleys and narrow streets; exceptions.

361.12 Registered owner prima-facie liable for unlawful parking.

361.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law

Authority to regulate the standing or parking of vehicles - see W. Va. Code 17C-2-8(a)(1)

Authority to regulate parallel and angle parking - see W. Va. Code 17C-13-4
Impounding of abandoned vehicles - see TRAF. 303.07
Duty to stop engine, set brake on grade and remove key - see TRAF. 349.01

361.01 PROHIBITION AGAINST PARKING ON STREETS OR HIGHWAYS.

(a) Upon any street or highway outside of a business or residence district no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the street or highway when it is practicable to stop, park or so leave such vehicle off such part of the street or highway, but in every event an unobstructed width of the street or highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of 200 feet in each direction upon such highway or street.

(b) This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a street or highway in such a manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

(WVaC 17C-13-1)

361.02 POLICE MAY REMOVE ILLEGALLY STOPPED VEHICLES.

(a) Whenever any police officer finds a vehicle standing upon a street or highway in violation of Section 361.01, such officer is hereby authorized to move such vehicle or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or main-traveled part of such street or highway.

(b) Whenever any police officer finds a vehicle unattended upon any bridge or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety.

(WVaC 17C-13-2)

361.03 PROHIBITED STOPPING, STANDING OR PARKING PLACES.

(a) No person shall stop, stand or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device, in any of the following places:

- (1) On a sidewalk;
- (2) In front of a public or private driveway;
- (3) Within an intersection;
- (4) Within fifteen feet of a fire hydrant;
- (5) In a properly designated fire lane;
- (6) On a crosswalk;
- (7) Within twenty feet of a crosswalk at an intersection;
- (8) Within thirty feet upon the approach to any flashing beacon, stop sign or traffic control signal located at the side of a roadway;
- (9) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;
- (10) Within fifty feet of the nearest rail of a railroad crossing;
- (11) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of such entrance (when properly signposted);
- (12) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;
- (13) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
- (14) Upon any bridge or other elevated structure upon a street or highway or within a street or highway tunnel;
- (15) At any place where signs prohibit stopping, standing or parking, or where the curbing or street is painted yellow or red, or at any place in excess of the maximum time limited by signs;
- (16) Within twenty feet of any mail receptacle served regularly by a carrier using a motor vehicle for daily deliveries, if such parking interferes with or causes delay in the carrier's schedule;
- (17) Upon any controlled-access highway;
- (18) At any place on any street or highway where the safety and convenience of the traveling public is thereby endangered;
- (19) Over or across any lines or marks established by the Municipality to indicate parking spaces.
- (20) In front of a wheelchair accessible ramp or curb cut which is part of a sidewalk designed for use by the general public when the ramp or curb cut is properly marked with blue paint.

(b) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.

(WVaC 17C-13-3)

361.04 VEHICLES PARKED ON PRIVATE PROPERTY.

No driver of a vehicle shall stop, park or leave standing unattended any vehicle on a private road or driveway or on private property without having express or implied permission from the owner, tenant or lessee of such land. The owner, tenant or lessee of such private road or driveway or private property may move, or have moved, any vehicle stopped, parked or left standing unattended on his or her private road, driveway or private property as above prohibited without any liability for the cost of moving any vehicle, nor shall he or she be liable to the owner of the vehicle for any damage done to such vehicle in moving it, unless the owner, tenant or lessee of such private road or driveway or private property was negligent in removing or authorizing the removal of the vehicle. The owner of such vehicle shall be responsible to the persons removing such vehicle for paying all removal costs. Any person who removes any vehicle under the provisions of this section shall notify the State Police of such action, and, in addition notify the Police Department. (WVaC 17C-14-13)

361.05 MANNER OF ANGLE AND PARALLEL PARKING.

(a) Every vehicle stopped or parked upon a roadway where there is an adjacent curb shall be stopped or parked with the curb-side wheels of such vehicle parallel with and not more than eighteen inches from the curb, unless it is impossible to approach so close to the

curb; in such case the stop shall be as close to the curb as possible and only for the time necessary to discharge and receive passengers or to load or unload merchandise.

(b) This subsection does not apply to streets or parts thereof where angle parking is lawfully permitted. However, no angle parking shall be permitted on a State or Federal-aid route unless approved by the State Commissioner of Highways.

(c) Upon streets where angle parking is permitted, no person shall stop, stand or park a vehicle other than at the angle to the curb or edge of the roadway as is indicated by appropriate signs or marks.

(d) No vehicle shall be stopped or parked on a road or street with the vehicle facing in a direction other than the direction of travel on that side of the road or street.

361.06 ACCESSIBLE PARKING.

(a) As used in this section, the following terms have the meanings ascribed to them in this subsection:

- (1) A person or applicant with a "mobility impairment" means a person who is a citizen of West Virginia and as determined by a physician, allopath or osteopath chiropractor, advanced nurse practitioner or physician's assistant licensed to practice in West Virginia:
 - A. Cannot walk two hundred feet without stopping to rest;
 - B. Cannot walk without the use of or assistance from a brace, cane, crutch, prosthetic device, wheelchair, other assistive device or another person;
 - C. Is restricted by lung disease to such an extent that the person's force (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than sixty mm/hg on room air at rest;
 - D. Uses portable oxygen;
 - E. Has a cardiac condition to such an extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards established by the American heart association; or
 - F. Is severely limited in his or her ability to walk because of an arthritic, neurological, or other orthopedic physical condition.
- (2) "Special registration plate" means a registration plate that displays the international symbol of access, as adopted by the Rehabilitation International Organization in nineteen hundred sixty-nine at its Eleventh World Congress on Rehabilitation of the Disabled, in a color that contrasts with the background, in letters and numbers the same size as those on the plate, and which may be used in lieu of a regular registration plate;
- (3) "Removable windshield placard" (permanent or temporary) means a two-sided, hanger style placard measuring three inches by nine and one half inches, with all of the following on each side:
 - A. The international symbol of access, measuring at least three inches in height, centered on the placard, in white on a blue background for permanent designations and in white on a red background for temporary designations;
 - B. An identification number measuring one inch in height;
 - C. An expiration date in numbers measuring one inch in height; and
 - D. The seal or other identifying symbol of the issuing authority.
- (4) "Public entity" means state or local government or any department, agency, special purpose district or other instrumentality of a state or local government.
- (5) "Public facility" means all or any part of any buildings, structures, sites, complexes, roads, parking lots or other real or personal property, including the site where the facility is located.
- (6) "Place(s) of public accommodation" means a facility or facilities operated by a private entity whose operations affect commerce and fall within at least one of the following categories:
 - A. Inns, hotels, motels and other places of lodging;
 - B. Restaurants, bars or other establishments serving food or drink;
 - C. Motion picture houses, theaters, concert halls, stadiums or other places of exhibition or entertainment;
 - D. Auditoriums, convention centers, lecture halls or other places of public gatherings;
 - E. Bakeries, grocery stores, clothing stores, hardware stores, shopping centers or other sales or rental establishments;
 - F. Laundromats, dry cleaners, banks, barber and beauty shops, travel agencies, shoe repair shops, funeral parlors, gas or service stations, offices of accountants and attorneys, pharmacies, insurance offices, offices of professional health care providers, hospitals or other service establishments;
 - G. Terminals, depots or other stations used for public transportation;
 - H. Museums, libraries, galleries or other places of public display or collection;
 - I. Parks, zoos, amusement parks or other places of recreation;
 - J. Public or private nursery, elementary, secondary, undergraduate or post-graduate schools or other places of learning and day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies or other social service establishments; and
 - K. Gymnasiums, health spas, bowling alleys, golf courses or other places of exercise or recreation.
- (7) "Commercial facility" means a facility whose operations affect commerce and which are intended for nonresidential use by a private entity.
- (8) "Accessible parking" formerly known as "handicapped parking" is the present phrase consistent with language within the American with Disabilities Act (ADA).
- (9) "Parking enforcement personnel" includes any law enforcement officer as defined by West Virginia Code 30-29-1, and private security guards, parking personnel and other personnel authorized by a city, county or the state to issue parking citations.

(b) An accessible parking space should comply with the provisions of the Americans with Disabilities Act accessibility guidelines, contained in 28 C.F.R. 36, Appendix A, Section 4.6. In particular, the parking space should be a minimum of eight feet wide with an adjacent eight-foot access aisle for vans having side mounted hydraulic lifts or ramps or a five-foot access aisle for standard vehicles. Access aisles should be marked using diagonal two- to four-inch-wide stripes spaced every twelve or twenty-four inches apart along with the words "no parking" in painted letters which are at least twelve inches in height. All accessible parking spaces should have a signpost in front or adjacent to the accessible parking space displaying the international symbol of access sign mounted at a minimum of

eight feet above the pavement or sidewalk and the top of the sign. Lines or markings on the pavement or curbs for parking spaces and access aisles may be in any color, although blue is the generally accepted color for accessible parking.

(c) A vehicle displaying a disabled veterans special registration plate issued pursuant to West Virginia Code 17A-3-14(c)(6) shall be recognized and accepted as meeting the requirements of this section.

(d) A vehicle from any other state, United States territory or foreign country displaying an officially issued special registration plate, placard or decal bearing the international symbol of access shall be recognized and accepted as meeting the requirements of this section, regardless of where the plate, placard or decal is mounted or displayed on the vehicle.

(e) Stopping, standing or parking places marked with the international symbol of access shall be designated in close proximity to all public entities including state, county and municipal buildings and facilities, places of public accommodation and commercial facilities. These parking places shall be reserved solely for persons with a mobility impairment and disabled veterans at all times.

(f) Any person whose vehicle properly displays a valid, unexpired special registration plate or removable windshield placard may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted: Provided, that this privilege does not mean that the vehicle may park in any zone where stopping, standing or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard. To the extent any provision of any ordinance of any political subdivision of this State is contrary to the provisions of this section, the provisions of this section take precedence and apply.

The parking privileges provided for in this subsection apply only during those times when the vehicle is being used for the loading or unloading of a person with a mobility impairment. Any person who knowingly exercises, or attempts to exercise these privileges at a time when the vehicle is not being used for the loading or unloading of a person with a mobility impairment, upon first conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined two hundred dollars (\$200.00); upon second conviction thereof, in addition to any other penalty, he or she may otherwise incur, shall be fined three hundred dollars (\$300.00); and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars (\$500.00).

(g) Any person whose vehicle does not display a valid, special registration plate or removable windshield placard may not stop, stand or park a motor vehicle in an area designated, zoned or marked for accessible parking with signs or instructions displaying the international symbol of access, either by itself or with explanatory text. The signs may be mounted on a post or a wall in front of the accessible parking space and instructions may appear on the ground or pavement, but use of both methods is preferred. Accessible parking spaces for vans having an eight-foot adjacent access aisle should be designated as "van accessible" but may be used by any vehicle displaying a valid special registration plate or removable windshield placard.

Any person who violates the provisions of this subsection shall be fined two hundred dollars (\$200.00); upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined three hundred dollars (\$300.00); and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars (\$500.00).

(h) All signs that designate areas as "accessible parking" or that display the international symbol of access shall also include the words "Up to \$500 fine".

(i) No person may stop, stand or park a motor vehicle in an area designated or marked off as an accessible aisle to a van-accessible parking space or regular accessible parking space. Any person, including a driver of a vehicle displaying a valid removable windshield placard or special registration plate, who violates the provisions of this subsection shall be fined two hundred dollars (\$200.00); upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined three hundred dollars (\$300.00); and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars (\$500.00).

(j) Parking enforcement personnel who otherwise enforce parking violations may issue citations for violations of this section and shall reference the number on the vehicle's license plate, since the driver normally will not be present.

(k) Law-enforcement agencies may establish a program to use trained volunteers to collect information necessary to issue citations to persons who illegally park in designated accessible parking spaces. Any law-enforcement agency choosing to establish a program shall provide for workers' compensation and liability coverage. The volunteers shall photograph the illegally parked vehicle and complete a form, to be developed by supervising law-enforcement agencies, that includes the vehicle's license plate number, date, time and location of the illegally parked vehicle. The photographs must show the vehicle in the accessible space and a readable view of the license plate. Within the discretion of the supervising law-enforcement agency, the volunteers may issue citations or the volunteers may submit the photographs of the illegally parked vehicle and the form to the supervising law-enforcement agency, who may issue a citation, which includes the photographs and the form, to the owner of the illegally parked vehicle. Volunteers shall be trained on the requirements for citations for vehicles parked in marked, zoned or designated accessible parking areas by the supervising law-enforcement agency.

(l) The Municipality in enforcing this section shall retain all fines and associated late fees. These revenues shall be used first to fund the provisions of subsection (k) of this section, if adopted by the Municipality or otherwise shall go into the Municipality's General Revenue Fund. (WVaC 17C-13-6)

361.07 ABANDONED MOTOR VEHICLES.

(a) Definitions.

(1) "Abandoned motor vehicle" means any motor vehicle, or major part thereof, which is inoperative and which has been abandoned on public property for any period of time over five days, other than in an enclosed building or in a licensed salvage yard or at the business establishment of a demolisher; or any motor vehicle, or major part thereof, which has remained on private property without consent of the owner or person in control of the property for any period of time over five days; or any motor vehicle, or major part thereof, which is unattended, discarded, deserted and unlicensed and is not in an enclosed building, a licensed salvage yard or the actual possession of a demolisher: Provided, that a motor vehicle, or major part thereof, shall not be considered an abandoned motor vehicle if:

- A. The owner of the motor vehicle is storing the motor vehicle on the owner's property;
- B. The motor vehicle is being stored for the purpose of using its parts on other motor vehicles owned by the owner;
- C. The owner owns other motor vehicles similar to the motor vehicle being stored; and
- D. The owner is a business licensed to do business in the State of West Virginia and not in the primary business of offering motor

vehicles or parts thereof for sale.

(2) "Enclosed building" means a structure surrounded by walls or one continuous wall and having a roof enclosing the entire structure and includes a permanent appendage thereto.

(3) "Motor vehicle" means a vehicle which is or was self-propelled, including, but not limited to, automobiles, trucks, buses and motorcycles.

(4) "Person" means a natural person, corporation, firm, partnership, association or society and the plural as well as the singular.

(WVaC 17-24A-1)

(b) Abandonment of Motor Vehicle Prohibited. No person shall, within this Municipality, abandon a motor vehicle or major part thereof upon the right-of-way of any public highway, upon any other public property or upon any private property without the consent of the owner or person in control of the property, or upon property owned or controlled by that person, unless it be at a licensed salvage yard or at the business establishment of a demolisher, or a business licensed to do business in the State of West Virginia and not in the primary business of offering motor vehicles or parts thereof for sale.

(WVaC 17-24A-2)

361.08 PARKING FOR CERTAIN PURPOSES PROHIBITED.

No person shall park any vehicle upon any street within the Municipality for the principal purpose of:

(a) Displaying such vehicle for sale.

(b) Displaying advertising.

(c) Washing, greasing or repairing such vehicle, except repairs made necessary by an emergency.

(d) Relieving the crowded condition of any parking lot, used car lot, automobile sales lot, repair garage, automobile sales agency or used car sales agency.

361.09 TRUCK LOADING ZONES.

No person shall stop, stand or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivering or pickup and loading of materials in any place marked as a truck loading zone during hours when the provisions applicable to such zones are in effect. In no case shall the stop for loading and unloading of materials exceed thirty minutes.

361.10 BUS STOPS AND TAXICAB STANDS.

(a) No person shall stop, stand or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand when any such stop or stand has been officially designated and appropriately posted, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while actually engaged in loading or unloading passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone, and then only for a period not to exceed three minutes, if such stopping is not prohibited therein by posted signs.

(b) The operator of a bus shall not stop, stand or park such vehicle upon any street at any place for the purpose of loading or unloading passengers or their baggage other than at a bus stop so designated and posted as such, except in case of an emergency.

(c) The operator of a bus shall enter a bus stop on a public street in such a manner that the bus when stopped to load or unload passengers or baggage shall be in a position with the right front wheel of such vehicle not further than eighteen inches from the curb and the bus approximately parallel to the curb so as not to unduly impede the movement of other vehicular traffic.

(d) The operator of a taxicab shall not stand or park such vehicle upon any street at any place other than in a taxicab stand so designated and posted as such. This provision shall not prevent the operator of a taxicab from temporarily stopping in accordance with other stopping or parking provisions at any place for the purpose of and while actually engaged in the expeditious loading or unloading of passengers.

361.11 PARKING IN ALLEYS AND NARROW STREETS; EXCEPTIONS.

No person shall stop, stand or park any vehicle upon a street, other than an alley, in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for free movement of vehicular traffic, except that a driver may stop temporarily during the actual loading or unloading of passengers or when directed to by a police officer or traffic control signal.

Except as otherwise provided by law, no person shall stop, stand or park a vehicle within an alley except while actually loading and unloading, and then only for a period not to exceed thirty minutes.

361.12 REGISTERED OWNER PRIMA-FACIE LIABLE FOR UNLAWFUL PARKING.

In any hearing on a charge of illegally parking a motor vehicle, testimony that a vehicle bearing a certain license plate was found unlawfully parked as prohibited by the provisions of this Traffic Code, and further testimony that the records of the Department of Motor Vehicles shows that the license plate was issued to the defendant, shall be prima-facie evidence that the vehicle which was unlawfully parked was so parked by the defendant. A certified copy of registration from the Department of Motor Vehicles shall be proof of such ownership.

361.99 PENALTY.

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

(b) Abandoned and Junk Vehicles. Whoever violates Section 361.07 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.

ARTICLE 363

Parking Meters

363.01 Definitions.

363.02 Parking meter zone.

363.03 Designation of parking spaces.

363.04 Installation of parking meters.

363.05 Operation of parking meters.

363.06 Parking time limits.

363.07 Violations.
363.99 Penalty.

CROSS REFERENCES

Residential Parking District - see TRAF. Art. 365

363.01 DEFINITIONS.

For the purpose of this article:

- (a) The word “vehicle” shall mean any device in, upon or by which any person or property is or may be transported upon a highway, except a device which is operated upon rails or tracks.
- (b) The word “street” shall mean any public street, avenue, road, alley, highway, lane, path, or other public place located in the City of Keyser and established for the use of vehicles.
- (c) The word “person” shall mean and include any individual, firm, copartnership, association or corporation.
- (d) The word “operator” shall mean and include every individual who shall operate a vehicle as the owner thereof, or as the agent, employee or permittee of the owner, or is in actual physical control of a vehicle.
- (e) The word “park” or “parking” shall mean the standing of a vehicle, whether occupied or not, upon a street otherwise than temporarily for the purpose of, and while actually engaged in receiving or discharging passengers or loading or unloading merchandise or in obedience to traffic regulations, signs, or signals or an involuntary stopping of the vehicle by reason of causes beyond the control of the operator of the vehicle.
- (f) The words “Parking Meter” shall mean and include any mechanical device or meter not inconsistent with this ordinance placed or erected for the regulation of parking by authority installed shall indicate by proper legend the legal parking time established by the City and when operated shall at all time indicate the balance of legal parking time, and at the expiration of such period shall indicate illegal or overtime parking.
- (g) The words “Parking Meter Zone” shall mean and include any restricted street upon which parking meters are installed and in operation.
- (h) The words “Parking Meter Space” shall mean any space within a parking meter zone, adjacent to a parking meter and which is duly designated for the parking of a single vehicle by lines painted or otherwise durably marked on the curb or on the surface of the street adjacent to or adjoining the parking meters.

(Ord. 221. Passed 6-4-86.)

363.02 PARKING METER ZONE.

(a) The following named and described areas, streets, or portions of streets and such other areas, streets, or portions of streets as may hereafter be included in this section by amendment hereto, lying within the corporation limits of the City of Keyser, West Virginia, shall constitute a Parking Meter Zone, namely:

Armstrong Street:

Mineral Street to Davis Street - North and South sides
Davis Street to Main Street - North and South sides
Main Street to West Street - North and South sides

Davis Street:

Armstrong Street to Baltimore and Ohio Railroad road bed - East side
Armstrong Street to Center Street - East and West sides
Center Street to E. Piedmont Street - East and West sides

Main Street:

Overton Place to E. Piedmont Street - East side
E. Piedmont Street to Center Street - East and West sides
Center Street to Armstrong Street - East and West sides

Center Street:

Mineral Street to Davis Street - North and South sides
Church Street to Sharpless Street - South side
Sharpless Street to Water Street - South side

Mineral Street:

E. Piedmont Street to Davis Street - East side
Fort Avenue to State Street - West side

E. Piedmont Street:

Mineral Street to Davis Street - South side
Davis Street to Main Street - South side

East Street:

Court Street to Armstrong Street - East side

West Street:

Court Street to Armstrong Street - West side
Armstrong Street to Baltimore and Ohio Railroad road bed - East and West sides

Patrick Street:

West Street to East Street - South side
East Street to Water Street - South side

Water Street:

Patrick Street to Armstrong Street - West side
Armstrong Street to Center Street - West side

South Street:

Center Street to Court Street - East and West sides

(b) All frontages in said square, streets, or avenues defining said zones to be included therein.
(Ord. 221. Passed 6-4-86.)

363.03 DESIGNATION OF PARKING SPACES.

The Chief of Police is hereby directed and authorized to mark off individual parking spaces in the parking zones designated and described in Section 363.02 and in such other zones as may hereafter be established, said parking spaces to be designated by lines painted or durably marked on the curbing or surface of the street. At each space so marked off it shall be unlawful to park any vehicle in such a way that said vehicle shall not be entirely within the limits of the space so designated. (Ord. 221. Passed 6-4-86.)

363.04 INSTALLATION OF PARKING METERS.

In said parking meter zones the Chief of Police shall cause parking meters to be installed upon the curb or sidewalk immediately adjacent to the parking space provided in Section 363.03, and the Chief of Police shall be responsible for the regulation, control, operation, maintenance, and use of such parking meters. Each device shall be so set as to display a signal showing legal parking upon the deposit of the appropriate coin or coins, lawful money of the United States of America, for the period of time prescribed by this article. Each device shall be so arranged that upon the expiration of the lawful time limit it will indicate by a proper visible signal that the lawful parking period has expired and in such cases the right to such vehicle to occupy such space shall cease and the operator, owner, possessor or manager thereof shall be subject to the penalties hereinafter provided. (Ord. 221. Passed 6-4-86.)

363.05 OPERATION OF PARKING METERS.

Except in a period of emergency determined by an officer of the Fire or Police Department, or in compliance with the directions of a police officer or traffic control sign or signal, when any vehicle shall be parked in any parking space alongside or next to which a parking meter is located, the operator of such vehicle shall, upon entering the said parking meter space, immediately deposit or cause to be deposited in said meter such proper coin of the United States as is required for such parking meter and as is designated by proper directions on the meter, and when required by the directions on the meter, the operator of such vehicle, after the deposit of the proper coin or coins, shall also set in operation the timing mechanism on such meter in accordance with directions properly appearing thereon, and failure to deposit such proper coin, and to set the timing mechanism in operation when so required, shall constitute a violation of this article. Upon the deposit of such coin (and the setting of the timing mechanism in operation when so required) the parking space may be lawfully occupied by such vehicle during the period of time which has been prescribed for the part of the street in which said parking space is located, provided that any person placing a vehicle in a parking meter space adjacent to a meter which indicates that unused time has been left in the meter by the previous occupant of the space shall not be required to deposit a coin so long as his occupancy of said space does not exceed the indicated unused parking time. If said vehicle shall remain parked in any such parking space beyond the parking time limit set for such parking space, and if the meter shall indicate such illegal parking, then, and in that event, such vehicle shall be considered as parking overtime and beyond the period of legal parking time, and such parking shall be deemed a violation of this article.

(Ord. 221. Passed 6-4-86.)

363.06 PARKING TIME LIMITS.

(a) Parking or standing a vehicle in a designated space in a parking meter zone shall be lawful for the time limit and upon making the required coin deposit prescribed upon the meters in such zones, which times and required coin deposits shall be clearly marked and noted thereon or within said meters by practical and legible means. Said time limits and coin deposit requirements may be changed from time to time as circumstances regarding the regulation of traffic may require, but the same shall be changed only by way of minute order of Council of the City of Keyser, adopted and entered of record at a regular meeting of said Council.

(b) Said parking meters shall be operated in said parking meter zones on Monday, Tuesday, Wednesday, Thursday, and Saturday of each week between the hours of 9:00 a.m. to 9:00 p.m., except in the parking meter zone designated as "Mineral Street: Fort Avenue to State Street - West side", under Section 363.02 hereof, said parking meters shall be operated on Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday of each week between the hours of 9:00 a.m. to 8:00 p.m.

(c) Parking meters shall not be operated on Sunday of each week or on holidays; provided, however, that within the meaning of this article the term "holiday" shall include the following days only: The first day of January, commonly called "New Year's Day"; the twelfth day of February, commonly called "Lincoln's Birthday"; the third Monday of February, commonly called "Washington's Birthday"; the last Monday of May, commonly called "Memorial Day"; the twentieth day of June, commonly called "West Virginia Day"; the fourth day of July, commonly called "Independence Day"; the first Monday of September, commonly called "Labor Day"; the second Monday of October, commonly called "Columbus Day"; the eleventh day of November, hereinafter referred to as "Veterans Day"; the fourth Thursday of November, commonly called "Thanksgiving Day"; the twenty-fifth day of December, commonly called "Christmas Day"; any national, state or other election day throughout the district or municipality wherein held; and all days that may be appointed or recommended by the governor of this State, or the president of the United States, as day of thanksgiving, or for the general cessation of business; and when any of said days or dates falls on Sunday, then it shall be lawful to observe the succeeding Monday as such holiday, all of which articles so set forth are in accord with Chapter 2, Article 2, Section 1, of the Code of the State of West Virginia as amended.

(Ord. 221. Passed 6-4-86.)

363.07 VIOLATIONS.

It shall be unlawful and a violation of the provisions of this article for any person:

- (a) To cause, allow, permit or suffer any vehicle registered in the name of, or operated by such person to be parked overtime, or beyond the period of legal parking time established for any parking meter zone as herein described, or to deposit in any parking meter any coin for the purpose of parking beyond the maximum legal parking time for the particular parking meter zone.
- (b) To permit any vehicle to remain or be placed in any parking space adjacent to any parking meter while said meter is displaying a signal indicating that the vehicle occupying such parking space has already been parked beyond the period prescribed for such parking space.
- (c) To park any vehicle across any line or marking of a parking meter space or in such position that the vehicle shall not be entirely

within the area designated by such lines or markings.

- (d) To deface, injure, tamper with, open or willfully break, destroy, or impair the usefulness of any parking meter installed under the provisions of this article.
- (e) To deposit or cause to be deposited in any parking meter any slugs, device or metal substance, or other substitute for lawful coins.
- (f) Enforcement. It shall be the duty of the Police Department to enforce the provisions of this article.
- (g) Collection. It shall be the duty of the Chief of Police to designate some member of the Police Department to make regular collections of the money deposited in said meters and it shall be the duty of such persons so designated to remove from the parking meters the containers therein containing the coins so deposited in said meters and to deliver such containers, to the City Clerk of the City of Keyser, who shall deposit such funds with the City Treasurer.
- (h) Use of Funds. The coins deposited in parking meters are required and shall be used to defray the expense of proper regulation of traffic upon the public streets of the City of Keyser; to provide for the cost of supervision, regulation and control of the parking of vehicles in parking meter zones, and to cover the cost of purchase, supervision, protection, inspection, installation, operation, maintenance, control and use of parking meters. (Ord. 221. Passed 6-4-86.)

363.99 PENALTY.

(a) Any person who shall fail to make the coin deposit or deposits of said coins in operation of the meter timing mechanism as required under Section 363.05, may lawfully be ticketed by any member of the Police Department of the City of Keyser, or other person lawfully authorized by the Chief of Police and the Council of the City of Keyser to so act, which tickets shall be so marked as to indicate a "Failing to Pay Meter" charge and shall be placed upon the vehicle parking overtime, under the windshield or some other conspicuous place thereof, and such ticket shall also have noted thereon the date and time of said violation and the license number of such vehicle, and be signed by the policeman or other authorized officer making said charge. If within one (1) hour after the charge of said violation, the person so charged, or someone in his behalf, shall pay the said parking meter violation, the fine shall be fifty (\$0.50) cents; within twenty-four (24) hours one dollar (\$1.00); within forty-eight (48) hours, ten dollars (\$10.00). Notwithstanding the fines herein set forth above, should any vehicle be left standing or parked within a parking meter zone for a period of twelve (12) hours from the time such vehicle is ticketed, the Chief of Police of the City of Keyser, or any other officer acting under the authority or direction of the Chief of Police, may have such vehicle removed from the parking meter zone wherein it is parked or standing by way of towing, or other practical means, to a garage or car lot or other place deemed by said Chief of Police or such officer to be reasonable and convenient, and the reasonable and necessary costs of such removal and storage shall be paid by the owner of the vehicle so removed and stored, or by some person on his behalf before the same may be removed from the place of storage and again operated upon the streets and highways of the City of Keyser.

(b) In addition to the above fines and penalties set forth under subsection (a) hereof, any person who shall violate or fail to comply with any of the provisions of this ordinance, or who shall counsel the same, aid or abet any such violation or failure to comply, shall be deemed guilty of a misdemeanor and upon conviction therefor, shall be punished by a fine not to exceed twenty-five dollars (\$25.00) and costs, or by imprisonment in the jail used and employed by the City of Keyser, for a period not to exceed ten (10) days, or by either or both said fines and imprisonment at the discretion of the Chief of Police or Judge of the City of Keyser.
(Ord. 221. Passed 6-4-86.)

ARTICLE 365

Residential Parking Districts

- 365.01 Residents defined.**
- 365.02 Consideration of residential parking districts.**
- 365.03 Designation and establishment of residential parking districts.**
- 365.04 Permits.**
- 365.05 Yearly fee.**
- 365.06 Duration of parking permits.**
- 365.07 Visitor permits.**
- 365.08 Special permits.**
- 365.09 Display of parking permits.**
- 365.10 Signage and demarcation.**
- 365.11 Time period.**
- 365.12 Towing.**
- 365.99 Penalty.**

CROSS REFERENCES

Parking generally - see Art. 361

365.01 RESIDENTS DEFINED.

For purposes of this article, the terms hereafter set forth shall have the following meanings:

Resident shall include all persons physically and permanently residing within the municipal boundaries of the City of Keyser and for purposes of this article, those persons permanently residing within the respective residential parking districts as hereinafter designated. Residents shall also include occupants of a commercial housing complex or apartment unit, pursuant to a written rental or lease agreement, located within the designated parking districts.

(Ord. 262. Passed 9-10-03.)

365.02 CONSIDERATION OF RESIDENTIAL PARKING DISTRICTS.

City Council shall, from time to time as it deems necessary, identify and designate specific areas within the municipal boundaries of the City of Keyser to be designated as residential parking districts based upon public necessity and interest. During its consideration of designated parking districts, the City Council shall consider, but not be limited to the following criteria:

- (a) The degree to which traffic congestion and demand for on street parking is generated by drivers of vehicles who do not reside within the proposed districts.
 - (b) The comments, suggestions and requests of the residents on specific streets and/or within the proposed private parking districts.
 - (c) The existence of structures or facilities in the immediate vicinity of the proposed designated parking districts, the use of which generates significant increased traffic congestion and demand for on street parking spaces within the proposed districts.
 - (d) The logistics of enforcing residential parking in the proposed residential parking district by the City of Keyser, the Keyser City Police Department, Street Department and any duly appointed representative or designee of the City of Keyser.
- (Ord. 262. Passed 9-10-03.)

365.03 DESIGNATION AND ESTABLISHMENT OF RESIDENTIAL PARKING DISTRICTS.

(a) Within the municipal boundaries of the City of Keyser, there are hereby established the following residential private parking districts as designated with defined boundaries thereof. For purposes of this article, the following streets or portions thereof as particularly designated shall be and are hereafter considered private residential parking districts within the City of Keyser:

- (1) Upper James Street from house number 126 south on the east and west sides encompassing all of that portion of upper James Street to its intersection with Fort Avenue.

(b) Each of the aforementioned residential parking districts as described shall remain subject to all currently existing or hereafter designated no parking zones within the designated area.

(Ord. 262. Passed 9-10-03.)

365.04 PERMITS.

Parking permits shall be required for any vehicle parked on the designated portions of any street as described in Section 365.03 . Parking permits shall only be available to residents of the respective areas as designed in Section 365.03 and shall be available only through application with City Hall. Each resident may only purchase as many permits as the number of motor vehicles which that respective resident has legally registered in his or her name.

(Ord. 262. Passed 9-10-03.)

365.05 YEARLY FEE.

The City Administrator shall be responsible for issuing residential parking permits to each resident of the respective designated parking districts as designated in Section 365.03 upon fulfillment of an application to be completed and filed with City Hall on a yearly basis. The yearly fee for each respective residential parking sticker shall be \$10.00 for the first vehicle per year and \$5.00 for each additional eligible vehicle. For residential parking permits purchased after August 1st of each fiscal year as set forth in Section 365.06 , costs for such permits shall be prorated on a quarterly basis. The City Administrator shall have the authority to require presentation of proof of residency from any individual who applies for a residential parking permit.

(Ord. 262. Passed 9-10-03.)

365.06 DURATION OF PARKING PERMITS.

Private parking permits for those individuals who qualify under the provisions of this article shall be valid for a fiscal year period commencing August 1, 2003 through July 31, 2004, and each fiscal year thereafter.

(Ord. 262. Passed 9-10-03.)

365.07 VISITOR PERMITS.

Each resident within the defined boundaries of each residential parking district as defined under Section 365.03 , who purchases a residential parking permit, shall be eligible for two temporary visitor, guest or business vehicle permits at an additional charge of \$1.00 each. Temporary visitor parking permit shall be numbered and assigned accordingly to each respective residential household upon completion of a separate application form to be filed with City Hall. Residents located within the defined boundaries of each residential parking district as defined under Section 365.03 , who do not purchase a residential parking permit, shall be eligible for two temporary visitor, guest or business vehicle permits in the amount of \$1.00 each. Temporary visitor permits shall be issued on a fiscal year basis as noted under Section 365.06 .

(Ord. 262. Passed 9-10-03.)

365.08 SPECIAL PERMITS.

Special permits may be issued by the City Administrator on a limited basis for a fixed period of time, not to exceed 72 hours, in the event of a death in the family or other similar emergency circumstances. There shall be no fee for issuance of special permits.

(Ord. 262. Passed 9-10-03.)

365.09 DISPLAY OF PARKING PERMITS.

(a) Each vehicle parked in the designated portions of those respective streets as designated under Section 365.03 shall be required to display a parking permit either in the form a residential parking permit, temporary visitor permit or special permit.

(b) Residential parking permits, visitor permits or special permits shall be required to be hung from the rear view mirror or placed on the dashboard of the respective vehicle so that the same is clearly visible from the front.

(Ord. 262. Passed 9-10-03.)

365.10 SIGNAGE AND DEMARCATION.

(a) Each respective street designated as a residential parking district under Section 365.03 shall be clearly and plainly identified by signage displaying the following language "Residential Parking District" with additional information as necessary to advise the public in general that the same is subject to restricted residential parking and the hours of the restricted provisions.

(b) All portions of the designated residential parking districts as designated in Section 365.03 shall likewise be further identified by having the curb of the respective portion of the private parking area painted blue. (Ord. 262. Passed 9-10-03.)

365.11 TIME PERIOD.

The provisions of this article shall be applicable to all of the residential parking districts as designated under Section 365.03 on a weekly basis 24 hours per day from 6:00 a.m. Monday through Friday at 7:00 p.m. Saturdays, Sundays and Holidays shall not be subject to the restrictions provided herein.

(Ord. 262. Passed 9-10-03.)

365.12 TOWING.

All vehicles located within the residential parking districts as designated under Section 365.03 which do not apply a valid parking permit as required by Section 365.09 shall be subject to towing. Any such decision to tow a vehicle from a designated private parking district shall be made by a representative of the Keyser City Police Department. The Keyser City Police Department shall keep and maintain a separate record of each vehicle, identification, make model, V.I.N. number and license number which was towed, the date the same was towed and the name of the individual, if applicable, who reported the respective vehicle in violation of this article. All expenses, fees, liens, damages incurred with the towing of any vehicle in violation of the provisions of this article shall be the responsibility of the owner of the vehicle. The City of Keyser shall not be liable or responsible for any fees, expenses, liens or damages incurred with respect to the enforcement of the provisions of this article.

(Ord. 262. Passed 9-10-03.)

365.99 PENALTY.

Any person violating the provisions of this article shall be guilty of a misdemeanor and shall be subject to being charged by citation, be fined in an amount not to exceed \$25.00 for any first offense and in an amount not to exceed \$50.00 for any subsequent offense.

(Ord. 262. Passed 9-10-03.)

ARTICLE 369

Vehicle Immobilizer

369.01 Applicability.

369.02 Notice.

369.03 Public nuisance.

369.04 Immobilization of vehicles constituting public nuisances.

369.05 Procedure for immobilization of vehicles.

369.06 Immobilization fee.

369.07 Release from immobilization and bond.

369.08 Petition for relief from immobilization or impoundment.

369.09 Cash bond forfeiture.

369.10 Disposition of impounded vehicles.

369.11 Hearing.

369.12 Proceeds from sale.

369.01 APPLICABILITY.

(a) The provisions of this article shall be applicable to any vehicle and owner of any vehicle located within the municipal limits of the City of Keyser for which there are three or more outstanding unpaid, delinquent or unanswered parking tickets which have not been paid or answered within the requisite time periods for such violations in accordance with the City of Keyser Uniform Citation Guidelines and of which said violations are due and payable before the Keyser City Police Department or the Administrator's Office of the City of Keyser.

(b) The provisions of this article shall be equally applicable to any single vehicle or owner of any vehicle which is in violation of the provisions of this act. Specifically, an individual who has incurred three or more unpaid or unanswered parking violations for any one or more vehicles registered in his or her name, shall be subject to having said vehicles immobilized in accordance with the provisions of this article until all outstanding fines, fees and costs are paid on all of said vehicles registered to that owner or the individual has posted bond as set forth herein.

(Ord. 273. Passed 10-27-08.)

369.02 NOTICE.

Any individual to whom a parking ticket and/or motor vehicle violation has been issued shall fail to answer said violation within ten (10) days after the issuance thereof, or shall fail to make payment on said violation within the requisite time periods for such violations in accordance with the City of Keyser Uniform Citation Guidelines and if there are three or more parking violations to which there have been no response or for which the fines and costs have not been paid, the City of Keyser shall mail a notice to the registered owner of the vehicle to which the notice of parking violation was affixed. Such notice shall be mailed to the address of the registered owner as shown by the records of the Department of Motor Vehicles of the state in which such vehicle is licensed and shall contain the following information:

- (a) The license number of the vehicle;
- (b) The name of the registered owner of the vehicle as shown by the records of the Department of Motor Vehicles or other appropriate agency of the State in which such vehicle is licensed;
- (c) The date and nature of all notices of parking violations and/or motor vehicle violations applicable to such vehicle to which no response has been made and for which the penalties have not been paid;
- (d) A statement of the amount of all unpaid penalties imposed by reason of such notices of parking violations and/or motor vehicle violations together with any increases in such penalties as may be applicable by the Codified Ordinances of the City of Keyser and/or the laws of the State of West Virginia;
- (e) A statement that the vehicle will be considered to be a public nuisance unless all outstanding or unpaid penalties and increases thereof, incurred by the issuance of the notices of parking violation and/or motor vehicle violations are not paid within 10 (ten) days of such notice;
- (f) A statement that the vehicle is a public nuisance and will be subject to immobilization and subsequent impoundment pursuant to this article, unless such payment is made within the applicable time frame.

(Ord. 273. Passed 10-27-08.)

369.03 PUBLIC NUISANCE.

Any vehicle for which three or more parking violations have been issued and for which there has been no response in payment of the penalties shall be considered a public nuisance 10 (ten) days after the date of the notice provided in accordance with the foregoing section. In the event the individual shall fail to make payment as directed in said notice, said vehicle shall be considered a public nuisance and that said vehicle has inhibited the orderly movement of vehicles on the streets and/or and to the public parking facilities of the City, created an obstruction to traffic, restricted public access to the limited parking spaces and created a disincentive to others to obey the parking regulations of the City of Keyser.
(Ord. 273. Passed 10-27-08.)

369.04 IMMOBILIZATION OF VEHICLES CONSTITUTING PUBLIC NUISANCES.

Any vehicle constituting a public nuisance under the provisions of this act that is found parked on the streets of the City of Keyser or in any public parking facilities located within the City may be immobilized by an officer of the Keyser City Police Department pursuant to the use of a device commonly known as a vehicle immobilizer or "boot".
(Ord. 273. Passed 10-27-08.)

369.05 PROCEDURE FOR IMMOBILIZATION OF VEHICLES.

(a) Any law enforcement officer or parking control officer of the City of Keyser may immobilize any vehicle constituting a public nuisance pursuant to the provisions of this article by installing on or attaching to such vehicle a device designated to restrict the normal movement of said vehicle.

(b) At the time that such device is installed or attached, there shall be affixed to said vehicle a notice of immobilization containing the following information:

- (1) The date and time that the notice of immobilization was affixed;
- (2) The name of the officer or parking control officer who installed or attached said device;
- (3) A statement that the vehicle constitutes a public nuisance under the provisions of this article and has been immobilized by the City of Keyser;
- (4) A statement that the vehicle may be released from such immobilization upon payment in full of all unpaid parking violations, penalties, fees, increases resulting from the issuance of notices of parking infractions for which response has not been made or for which payment has not been made, plus the additional sum of a \$50.00 immobilization fee;
- (5) A statement that if the registered owner of the vehicle desires to contest the immobilization the registered owner may file a petition for relief from the failure to respond to any notices of parking infraction within 10 days of the date of immobilization and may obtain a release of the immobilized vehicle by posting a cash bond in an amount that is equal to all outstanding penalties, fines, cost and immobilization fees;
- (6) A statement advising that in the event the individual fails to take action and make payment in accordance with the provisions set forth in subsection (b)(4) and (5) hereof are not performed within 72 hours of the date and time of such notice, the vehicle will be placed in the custody of a registered tow truck operator and impounded until payment is made, including the cost of towing and impounding;
- (7) A warning that removing or attempting to remove the immobilization device before release is obtained is unlawful and may damage the vehicle;
- (8) The address and telephone number and office hours where additional information can be obtained, where payment shall be made, and where arrangements can be made for the release of the immobilization device;
- (9) In the event a cash bond is posted with the Office of the City Administrator in accordance with subsection (b)(5) hereof and the individual shall fail to make a written request for a hearing for relief within 10 days then such cash bond shall be forfeited.

(c) Parking restrictions otherwise provided under the codified ordinances of the City of Keyser and the laws of the State of West Virginia shall not apply to any vehicle during the time of immobilization. (Ord. 273. Passed 10-27-08.)

369.06 IMMOBILIZATION FEE.

The registered owner of any vehicle immobilized pursuant to this article shall be assessed a \$50.00 fee to cover the costs of immobilization and said fee shall be in addition to any other penalties under this article. (Ord. 273. Passed 10-27-08.)

369.07 RELEASE FROM IMMOBILIZATION AND BOND.

Except for the purposes of impoundment as provided in this article, no vehicle immobilized pursuant to this article shall be released from the device until payment of the total amount of all unpaid parking violation penalties, fees, increases and the additional \$50.00 immobilization fee, or the posting of a cash bond in an amount that is equal to the sum of said penalties and fees.
(Ord. 237. Passed 10-27-08.)

369.08 PETITION FOR RELIEF FROM IMMOBILIZATION OR IMPOUNDMENT.

Any person desiring to contest an immobilization or impoundment of a vehicle under this article may serve upon the City and file with the Office of the City Administrator, a written request of petition for relief within 10 days of the date of the notice of impoundment attached to the vehicle pursuant to the provisions set forth in Section 369.05. The City of Keyser shall schedule the individual for a hearing on the next available hearing date before the municipal judge and the costs of filing and serving any petitions or notices under this section shall be paid by the party seeking relief just as in any other civil proceedings.
(Ord. 273. Passed 10-27-08.)

369.09 CASH BOND FORFEITURE.

Any person posting a cash bond pursuant to Section 369.05 shall be deemed to have forfeited the cash bond to the City of Keyser if no petition for relief is filed with the Office of the City Administrator within 10 days following the date of the notice of immobilization as set forth in Article Five. Notice of the right of the City to forfeit the cash bond shall either be given in person to the party posting the bond or mailed to their last known address.
(Ord. 273. Passed 10-27-08.)

369.10 DISPOSITION OF IMPOUNDED VEHICLES.

(a) After a period of 30 days following the posting of notice of immobilization pursuant to Article Five or after a period of 30 days from the date of a final hearing and decision of the municipal court of the City of Keyser pursuant to Article Eight, and said individual has failed to redeem the vehicle from impoundment pursuant to payment of all applicable penalties, fees and costs in accordance with this chapter, said vehicle shall be disposed of pursuant to the provisions of West Virginia Code Section 17-24A-1 et seq.

(b) Any vehicle which remains impounded for a period of more than 30 days shall be subject to sale either at public auction or to a licensed salvage yard or demolisher. The purchaser of such motor vehicle shall take title to such vehicle free and clear of all liens and claims of ownership and shall receive a sales receipt from the Keyser City Police Department evidencing sale and transfer of said motor vehicle. The sales receipt at said public auction shall be sufficient title for purposes of transferring such motor vehicle to an individual or licensed salvage yard through the Department of Motor Vehicles. (Ord. 273. Passed 10-27-08.)

369.11 HEARING.

Upon hearing before the municipal court of the City of Keyser, if the municipal judge finds that the immobilization was invalid or unjustified, the municipal judge shall Order the vehicle to be immediately released and the owner or any other persons who have an interest in the vehicle shall not be held liable for the immobilization fee. In the alternative, if the municipal judge determines that the immobilization was valid and justified the municipal judge shall Order that the immobilization device remain on the vehicle or the vehicle remain impounded until all outstanding fines, penalties, costs and immobilization fees are paid in full. Any individual aggrieved by the decision of the municipal court of the City of Keyser shall be entitled to seek an appeal of said decision before the Circuit Court of Mineral County, West Virginia within 30 days of the date of the final hearing and by filing a written petition for appeal before the Circuit Court of Mineral County. (Ord. 273. Passed 10-27-08.)

369.12 PROCEEDS FROM SALE.

The proceeds from any sale pursuant to the provisions of this article shall be distributed in the following order:

- (a) Reimbursement to the City of Keyser and the Keyser City Police Department for any and all outstanding fines, penalties, costs, immobilization fees, costs of conducting the auction, costs of towing, preserving and storing the vehicle which resulted from placing the immobilized vehicle in custody and all notice and publication costs incurred pursuant to the sale of said vehicle and the provisions of this article. The \$50.00 immobilization fee shall be credited to the City police budget and the remaining amount shall be deposited in general revenue account for the City of Keyser.
- (b) Payment to any lien holder on said vehicle for any outstanding amount owed on the applicable lien of said vehicle.
- (c) Any remainder of the proceeds from said sale shall be paid to the last registered owner of the vehicle.
- (d) In the event the owner and/or lien holder cannot be located or in the event the owner and/or lien holder fails to claim any remaining proceeds from said sale, said proceeds shall be deposited in the state road fund in accordance with the provisions of West Virginia Code Section 17-24A-6. (Ord. 273. Passed 10-27-08.)

CHAPTER NINE - Pedestrians and Bicycles

Art. 371. Pedestrians.

Art. 373. Bicycles.

ARTICLE 371

Pedestrians

- 371.01 Compliance with traffic regulations.**
- 371.02 Right of way in crosswalk.**
- 371.03 Crossing roadway outside crosswalk.**
- 371.04 Drivers to exercise due care.**
- 371.05 Moving upon right half of crosswalk.**
- 371.06 Walking along streets and highways; soliciting rides.**
- 371.07 Persons working on streets and highways.**
- 371.08 Protection of blind pedestrians.**
- 371.09 Electric personal assistive mobility device.**
- 371.99 Penalty.**

CROSS REFERENCES

See sectional histories for similar State law

Pedestrian defined - see TRAF. 301.21

Pedestrians at traffic signal - see TRAF. 313.03

Pedestrian control signal - see TRAF. 313.04

371.01 COMPLIANCE WITH TRAFFIC REGULATIONS.

Pedestrians shall be subject to traffic control signals at intersections as provided in Section 313.03, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this article.

(WVaC 17C-10-1(a))

371.02 RIGHT OF WAY IN CROSSWALK.

(a) When traffic control signals are not in place or not in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. This provision shall not apply under the conditions stated in Section 371.03(b).

(b) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(WVaC 17C-10-2)

371.03 CROSSING ROADWAY OUTSIDE CROSSWALK.

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

(WVaC 17C-10-3)

371.04 DRIVERS TO EXERCISE DUE CARE.

Notwithstanding any other provision of this article every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

(WVaC 17C-10-4)

371.05 MOVING UPON RIGHT HALF OF CROSSWALK.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

(WVaC 17C-10-5)

371.06 WALKING ALONG STREETS AND HIGHWAYS; SOLICITING RIDES.

(a) Where sidewalks are provided, no pedestrian shall walk along and upon an adjacent roadway.

(b) Where sidewalks are not provided any pedestrian walking along and upon a street or highway shall when practicable walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

(c) No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any vehicle.

(WVaC 17C-10-6)

371.07 PERSONS WORKING ON STREETS AND HIGHWAYS.

The driver of a vehicle shall yield the right of way to persons engaged in maintenance or construction work on a street or highway whenever he is notified of their presence by an official traffic control device or flagman.

(WVaC 17C-10-8)

371.08 PROTECTION OF BLIND PEDESTRIANS.

The driver of a vehicle approaching a blind pedestrian who knows, or in the exercise of reasonable care should know, that such pedestrian is blind because such pedestrian is carrying a cane predominantly white or metallic in color with or without a red tip, or is using a guide dog or otherwise, shall exercise care commensurate with the situation to avoid injuring such pedestrian.

(WVaC 5-15-5)

371.09 ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE.

(a) For purposes of this section, the definition of an "electric personal assistive mobility device" is the same definition as previously set forth in Section 301.081 and "operator" shall refer to the operator of an electric personal assistive mobility device.

(WVaC 17C-10A-1)

(b) An electric personal assistive mobility device shall be equipped with:

(1) Front, rear and side reflectors;

(2) A braking system that enables the operator to bring the device to a controlled stop; and

(3) If operated at any time from one-half hour after sunset to one-half hour before sunrise, a lamp that emits a white light that sufficiently illuminates the area in front of the device.

(c) An operator of an electric personal assistive mobility device traveling on a sidewalk, roadway or bicycle path shall have the rights and duties of a pedestrian and shall exercise due care to avoid colliding with pedestrians. An operator shall yield the right of way to pedestrians.

(d) Except as provided in this section, no other provisions of the motor vehicle code shall apply to electric personal assistive mobility devices.

(WVaC 17C-10A-2)

371.99 PENALTY.

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

(WVaC 17C-10-7)

(b) An operator who violates a provision of Section 371.09 shall receive a warning for the first offense. For a second or subsequent offense, the operator shall be punished by a fine of not less than ten dollars (\$10.00) and not greater than one hundred dollars (\$100.00).

(WVaC 17C-10A-2)

ARTICLE 373

Bicycles

373.01 Compliance; code application to bicycles.

373.02 Obedience to traffic rules; exceptions.

373.03 Riding upon seats; number of persons.

373.04 Attaching bicycle or sled to vehicle.

373.05 Riding on roadways and bicycle paths.

373.06 Carrying articles.

373.07 Lights and reflector on bicycle; brakes.

- 373.08 Reckless operation; control, course and speed.**
- 373.09 Bicycle helmets for children.**
- 373.10 Riding on sidewalks.**
- 373.11 Parent's or guardian's responsibilities.**
- 373.99 Penalty.**

CROSS REFERENCES

See sectional histories for similar State law

Authority to regulate bicycle operation - see W. Va. Code 17C-2-8(a)(8)

Bicycle defined - see TRAF. 301.03

Moped equipment and operation - see TRAF. 345.29

373.01 COMPLIANCE; CODE APPLICATION TO BICYCLES.

- (a) No person shall do any act forbidden or fail to perform any act required in this article.
 - (b) The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this Traffic Code.
 - (c) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any street or highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.
- (WVaC 17C-11-1)

373.02 OBEDIENCE TO TRAFFIC RULES; EXCEPTIONS.

Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Traffic Code, except as to special regulations in this article and except as to those provisions of this Traffic Code which by their nature can have no application.

(WVaC 17C-11-2)

373.03 RIDING UPON SEATS; NUMBER OF PERSONS.

- (a) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.
- (b) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped. (WVaC 17C-11-3)

373.04 ATTACHING BICYCLE OR SLED TO VEHICLE.

No person riding upon any bicycle, coaster, skateboard, roller skates, sled or toy vehicle shall attach the same or himself to any vehicle upon a roadway.

(WVaC 17C-11-4)

373.05 RIDING ON ROADWAYS AND BICYCLE PATHS.

- (a) Any person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride in the lane marked for bicycle use or, if no lane is marked for bicycle use, as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:
 - (1) When overtaking and passing another bicycle or vehicle proceeding in the same direction;
 - (2) When preparing for a left turn at an intersection or into a private road or driveway; or
 - (3) When reasonably necessary to avoid any condition or potential conflict including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane. For the purposes of this subsection, a "substandard-width lane" is a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.
 - (b) Any person operating a bicycle upon a one-way roadway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.
 - (c) Persons riding bicycles upon a roadway may not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.
- (WVaC 17C-11-5)

373.06 CARRYING ARTICLES.

No person operating a bicycle shall carry any package, bundle or article which prevents the driver from keeping at least one hand upon the handlebars.

(WVaC 17C-11-6)

373.07 LIGHTS AND REFLECTOR ON BICYCLE; BRAKES.

- (a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least 500 feet to the front and with a red reflector on the rear of a type approved by the Department of Motor Vehicles which shall be visible from all distances from fifty feet to 300 feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to the red reflector.
 - (b) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.
- (WVaC 17C-11-7)

373.08 RECKLESS OPERATION; CONTROL, COURSE AND SPEED.

No person shall operate a bicycle:

- (a) Without due regard for the safety and rights of pedestrians and drivers and occupants of all other vehicles, and so as to endanger the life, limb or property of any person while in the lawful use of the streets or sidewalks or any other public or private

- property;
- (b) Without exercising reasonable and ordinary control over such bicycle;
- (c) In a weaving or zigzag course unless such irregular course is necessary for safe operation in compliance with law;
- (d) Without both hands upon the handle grips except when necessary to give the required hand and arm signals, or as provided in Section 373.06 ;
- (e) At a speed greater than is reasonable and prudent under the conditions then existing.

373.09 BICYCLE HELMETS FOR CHILDREN.

(a) Definitions. As used in this section:

- (1) "Bicycle" means a human-powered vehicle with wheels designed to transport, by the action of pedaling, one or more persons seated on one or more saddle seats on its frame. Such term also includes a human-powered vehicle, and any attachment to such vehicle designed to transport by pedaling when the vehicle is used on a public roadway, public bicycle path or other public right-of-way, but does not include a tricycle.
- (2) "Tricycle" means a three-wheeled human-powered vehicle designed for use as a toy by a single child under the age of six years, the seat of which is no more than two feet from ground level.
- (3) "Public roadway" means a right of way under the jurisdiction and control of this State or the Municipality for use primarily by motor vehicles.
- (4) "Public bicycle path" means a right of way under the jurisdiction and control of this State or the Municipality for use primarily by bicycles and pedestrians.
- (5) "Other public right-of-way" means any right of way other than a public roadway or public bicycle path that is under the jurisdiction and control of this State or the Municipality and is designed for use and used by vehicular or pedestrian traffic.
- (6) "Protective bicycle helmet" means a piece of headgear which meets or exceeds the impact standards for protective bicycle helmets set by the American National Standards Institute (ANSI) or the Snell Memorial Foundation's standards for protective headgear or American Society for Testing and Materials (ASTM) for use in bicycling.
- (7) "Passenger" means any person who travels on a bicycle in any manner except as an operator.
- (8) "Operator" means a person who travels on a bicycle seated on a saddle seat from which that person is intended to and can pedal the bicycle.

(WVaC 17-11A-3)

(b) Requirements for Helmet Use.

- (1) It is unlawful for any person under fifteen years of age to operate or be a passenger on a bicycle or any attachment to a bicycle used on a public roadway, public bicycle path or other public right of way unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet.
- (2) It is unlawful for any parent or legal guardian of a person under fifteen years of age to knowingly permit such person to operate or be a passenger on a bicycle or on any attachment to a bicycle used on a public roadway, public bicycle path or other public right of way unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet.

(WVaC 17C-11A-4)

(c) Sale of Bicycle Helmets. Any helmet sold or offered for sale for use by operators and passengers of bicycles shall be conspicuously labeled in accordance with the standard described in subsection (a)(6) hereof, which shall constitute the manufacturer's certification that the helmet conforms to the applicable safety standards. (WVaC 17C-11A-5)

(d) Civil Actions. A violation of subsection (b) hereof is not admissible as evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages, and shall not be admissible in mitigation of damages. (WVaC 17C-11A-6)

373.10 RIDING ON SIDEWALKS.

Except as to such persons who have been issued special written permits by the Police Chief or Police Judge for the use of bicycles upon sidewalks for the delivery of papers within certain hours, no person shall ride a bicycle upon the sidewalks of any of the streets located within the central business district of the City. (Ord. 217. Passed 10-16-85.)

373.11 PARENT'S OR GUARDIAN'S RESPONSIBILITIES.

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. (Ord. 217. Passed 10-16-85.)

373.99 PENALTY.

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

(a) Notwithstanding the provisions of Section 303.99, any parent or legal guardian violating any requirement set forth in Section 373.09(b) shall be fined ten dollars (\$10.00) or be required to perform two hours in community service related to a child injury prevention program which includes injury prevention education or both fined and required to perform such community service. Notwithstanding the provisions of West Virginia Code 8-11-1, no court costs may be assessed to any person violating the requirements of Section 373.09(b).

(b) In the case of a first violation of Section 373.09(b), the court may waive the fine upon receipt of satisfactory proof that the person has a helmet or within a reasonable time from the date of the violation, purchased or otherwise obtained, a protective bicycle helmet.

(c) It is an absolute defense to a charge for a violation of Section 373.09 that a parent or legal guardian is unable to pay for the protective bicycle helmet. Inability to pay may be demonstrated by the filing of a financial affidavit in accordance with the provisions of West Virginia Code 59-2-1(c). Any person who demonstrates inability to pay shall be referred to the Governor's highway safety program for assistance in obtaining the appropriate helmet or helmets. (WVaC 17C-11A-7)

**CODIFIED ORDINANCES OF KEYSER
PART FIVE - GENERAL OFFENSES CODE**

Art. 501. Administration and Law Enforcement.
Art. 505. Animals and Fowl.
Art. 509. Disorderly Conduct and Peace Disturbance.
Art. 513. Gambling.
Art. 517. Indecency and Obscenity.
Art. 521. Liquor Control.
Art. 525. Minors.
Art. 529. Offenses Relating to Persons.
Art. 533. Offenses Relating to Property.
Art. 541. Railroads.
Art. 545. Weapons and Explosives.

**CODIFIED ORDINANCES OF KEYSER
PART FIVE - GENERAL OFFENSES CODE**

ARTICLE 501

Administration and Law Enforcement

501.01 Refusal to aid officer.
501.02 Obstructing or giving false information to an officer; fleeing.
501.03 False fire alarm.
501.04 False reports concerning bombs or other explosive devices.
501.05 Impersonating an official or law enforcement officer.
501.06 Attempts.
501.07 Citation in lieu of arrest; failure to appear.
501.08 Falsely reporting an emergency incident.
501.09 False report.
501.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law
Specific types of bribery - see W. Va. Code 3-1-1 et seq., 15-2-17 et seq., 18-2A-9,
61-10-15 and 61-10-22
Penalty not to exceed that provided in W. Va. Code Ch. 61 - see W. Va. Code 8-12-
5(57)
Crimes against public justice - see W. Va. Code Art. 61-5
Bribery and corrupt practices generally - see W. Va. Code Art. 61-5A
Failure to comply with lawful order of police officer - see TRAF. 303.02

501.01 REFUSAL TO AID OFFICER.

No person shall, when required by the Police Chief or any other officer, refuse or neglect to assist him in the execution of his office in a criminal case, in the preservation of the peace or in the apprehension or securing of any person for a breach of the peace or in any case of escape or rescue.
(WVaC 61-5-14)

501.02 OBSTRUCTING OR GIVING FALSE INFORMATION TO AN OFFICER; FLEEING.

(a) No person shall by threats, menaces, acts or otherwise, forcibly or illegally hinder or obstruct, or attempt to hinder or obstruct, any law-enforcement officer, probation officer, parole officer, court security officer, the State Fire Marshal, or a full-time Deputy or Assistant Fire Marshal acting in his or her official capacity.

(b) No person shall, with intent to impede or obstruct a law enforcement officer, the State Fire Marshal or a full-time Deputy or Assistant Fire Marshal in the conduct of an investigation of a misdemeanor or felony offense, knowingly and willfully make a materially false statement. Provided, that the provisions of this subsection (b) shall not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half-sibling, child, stepchild or grandchild, whether related by blood or marriage, of the person under investigation. Statements made by the person under investigation may not be used as the basis for prosecution under this subsection. For the purposes of this subsection, "law enforcement officer" shall not include a watchman, state police or college security personnel who is not a certified law-enforcement officer.

(c) No person shall intentionally flee or attempt to flee by any means other than the use of a vehicle from any law-enforcement officer, probation officer, parole officer, court security officer, the State Fire Marshal, or a full-time Deputy or Assistant Fire Marshal acting in his or her official capacity who is attempting to make a lawful arrest of the person, and who knows or reasonably believes that the officer is attempting to arrest the person.

(d) No person shall intentionally flee or attempt to flee in a vehicle from any law-enforcement officer, probation officer, or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop.

(e) No person shall intentionally flee or attempt to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and cause damage to the real or personal property of any person during or resulting from his or her flight.

(f) For purposes of this section, "vehicle" includes any motor vehicle, motorcycle, motorboat, all-terrain vehicle or snowmobile, as

those terms are defined in West Virginia Code 17A-1-1 whether or not it is being operated on a public highway at the time and whether or not it is licensed by the State.

(g) For purposes of this section, "flee", "fleeing" and "flight" do not include any person's reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer, probation officer, or parole officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction to stop.

(h) (1) No person, with the intent to purposefully deprive another person of emergency services, shall interfere with or prevent another person from making an emergency communication, which a reasonable person would consider necessary under the circumstances, to law-enforcement, fire or emergency medical service personnel.

(2) For the purpose of this subsection, "interfere with or prevent" includes, but is not limited to, seizing, concealing, obstructing access to or disabling or disconnecting a telephone, telephone line, or equipment or other communication device.

(3) For the purpose of this subsection, "emergency communication" means communication to transmit warnings or other information pertaining to a crime, fire, accident, power outage, disaster or risk of injury or damage to a person or property. (WVaC 61-5-17)

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

501.03 FALSE FIRE ALARM.

No person shall make, turn in or telephone, or by use of any means or method of communication aid or abet in the making or turning in of any alarm of fire which he knows to be false at the time of making such alarm. (WVaC 29-3-21)

501.04 FALSE REPORTS CONCERNING BOMBS OR OTHER EXPLOSIVE DEVICES.

(a) No person shall impart or convey or cause to be imparted or conveyed any false information, knowing or having reasonable cause to believe such information to be false, concerning the presence of any bomb or other explosive device in, at, on, near, under or against any dwelling house, structure, improvement, building, bridge, motor vehicle, vessel, boat, railroad car, airplane or other place, or concerning an attempt or alleged attempt being made or to be made to so place or explode any such bomb or other explosive device.

(b) Notwithstanding any provision of this section to the contrary, any person violating the provisions of subsection (a) of this section for a second offense or whose violation of the subsection results in another suffering serious bodily injury shall be guilty of a felony and prosecuted under appropriate State law. (WVaC 61-6-17)

501.05 IMPERSONATING AN OFFICIAL OR LAW ENFORCEMENT OFFICER.

(a) No person shall falsely represent himself or herself to be a law-enforcement officer or law-enforcement official or be under the order or direction of any such person. No person not a law-enforcement officer or law-enforcement official shall wear the uniform prescribed for such persons, or the badge or other insignia adopted for use by such persons with the intent to deceive another person.

For purposes of this section, "law-enforcement officer" and "law-enforcement official" shall have the meanings set forth in West Virginia Code 30-29-1 except that such terms shall not include members of the State Division of Public Safety and shall not include individuals hired by non-public entities for the provision of security services. (WVaC 61-1-9)

(b) No person shall falsely represent himself to be an officer or employee of the Municipality, or exercise or attempt to exercise any of the duties, functions or powers of a Municipal officer. No person not a member of the Fire Department, for the purpose of such false representation, shall wear a uniform or part thereof similar to the uniform worn by a member of the Fire Department.

501.06 ATTEMPTS.

Every person who attempts to commit an offense, but fails to commit or is prevented from committing it, shall be subject to the penalty provided in Section 501.99 if the offense is punishable by confinement in jail. (WVaC 61-11-8)

501.07 CITATION IN LIEU OF ARREST; FAILURE TO APPEAR.

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

(a) Any misdemeanor, not involving injury to the person, committed in a police officer's presence: provided, that the officer may arrest the person if he has reasonable grounds to believe that the person is likely to cause serious harm to himself or others; and

(b) When any person is being detained for the purpose of investigating whether such person has committed or attempted to commit shoplifting, pursuant to Section 533.01 of this Code.

The citation shall provide that the defendant shall appear within a designated time.

If the defendant fails to appear in response to the citation or if there are reasonable grounds to believe that he will not appear, a complaint may be made and a warrant shall issue. When a physical arrest is made and a citation is issued in relation to the same offense, the officer shall mark on the citation, in the place specified for court appearance date, the word "arrested" in lieu of the date of court appearance. (WVaC 62-1-5(a))

501.08 FALSELY REPORTING AN EMERGENCY INCIDENT.

A person is guilty of reporting a false emergency incident when knowing the information reported, conveyed or circulated is false or baseless, he:

(a) Initiates or circulates a false report or warning of or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness or other emergency under circumstances in which it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned; or

(b) Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness or other emergency in which it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned, which did not occur, does not in fact exist; or

(c) Reports to a law enforcement officer or agency the alleged occurrence of any offense or incident which did not in fact occur or an allegedly impending occurrence of an offense or incident which is not in fact about to occur or false information relating to an actual offense or incident or to the alleged implication of some person therein; or

- (d) Without just cause, calls or summons by telephone, fire alarm system or otherwise, any firefighting apparatus, ambulance apparatus, rescue vehicles or other emergency vehicles. (WVaC 61-6-20)

501.09 FALSE REPORT.

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

501.99 PENALTY.

(a) Whoever violates any provision of this Part Five - General Offenses Code for which no other penalty is provided shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both. Each day such violation continues shall constitute a separate offense.

(b) Whoever violates Section 501.01 shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both. (WVaC 61-5-14)

(c) Whoever violates Section 501.02(b) shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than five days, or both.

(d) Whoever violates Section 501.02(d) shall be fined not more than one thousand dollars (\$1,000) and shall be imprisoned not more than thirty days.

(e) Whoever violates Section 501.02(e) shall be fined not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000) and shall be imprisoned for not more than thirty days.

(f) Whoever violates Section 501.02(h) shall be fined not less than two hundred fifty dollars (\$250.00) nor more than two thousand dollars (\$2,000) or imprisoned not less than one day nor more than thirty days, or both fined and imprisoned.
(WVaC 61-5-17)

(g) (1) Except as provided by the provisions of subsection (g)(2) of this section, any person who violates the provisions of Section 501.03 shall be fined for a first offense not more than one hundred dollars (\$100.00) or imprisoned for not more than thirty days, or both; and for a second and each subsequent offense fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or imprisoned for not more than thirty days, or both.

(2) Any person who violates the provisions of Section 501.03 with the intent to cause injury to the person of another, to cause destruction of the property of another or to divert the attention of law enforcement or fire personnel to help effectuate the commission of another crime shall be guilty of a felony and shall be prosecuted under appropriate state law.

(h) Whoever violates Section 501.04 shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than thirty days, or both.
(WVaC 61-6-17)

(i) Whoever violates Section 501.05(a) shall be fined not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000).
(WVaC 61-1-9)

ARTICLE 505

Animals and Fowl

505.01 Cruelty to animals.

505.02 Cruelty to dogs and cats.

505.03 Nuisance conditions prohibited.

505.04 Barking or howling dogs.

505.05 Hunting prohibited.

505.06 Dogs.

505.07 Dangerous, vicious or deadly animal.

505.08 Livestock.

505.09 Noisy cats.

505.99 Penalty.

CROSS REFERENCES

Authority to regulate the keeping of animals - see W. Va. Code 8-12-5(26)

Authority to prevent ill-treatment of animals - see W. Va. Code 8-12-5(27)

Domestic animal tax - see W. Va. Code 8-13-10

Disposing of dead animals - see W. Va. Code 16-9-3

Diseases among domestic animals - see W. Va. Code Art. 19-9

Dogs generally - see W. Va. Code Art. 19-20

Vaccination of dogs - see W. Va. Code Art. 19-20A

Hunting - see W. Va. Code Art. 20-2

505.01 CRUELTY TO ANIMALS.

(a) No person shall intentionally, knowingly or recklessly:

- (1) Mistreat an animal in a cruel manner;
- (2) Abandon an animal;

- (3) Withhold,
 - A. Proper sustenance, including food or water;
 - B. Shelter that protects from the elements of weather; or
 - C. Medical treatment, necessary to sustain normal health and fitness or to end the suffering of any animal;
- (4) Abandon an animal to die;
- (5) Leave an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result;
- (6) Ride an animal when it is physically unfit;
- (7) Bait or harass an animal for the purpose of making it perform for a person's amusement;
- (8) Cruelly chain or tether an animal; or
- (9) Use, train or possess a domesticated animal for the purpose of seizing, detaining or mistreating any other domesticated animal.

(b) No person, other than a licensed veterinarian or a person acting under the direction or with the approval of a licensed veterinarian, shall knowingly and willfully administer or cause to be administered to any animal participating in any contest any controlled substance or any other drug for the purpose of altering or otherwise affecting such animal's performance.

(c) Any person convicted of a violation of this section shall forfeit his or her interest in any such animal and all interest in such animal shall vest in the humane society or county pound of the county in which the conviction was rendered, and such person shall, in addition to any fine imposed, be liable for any costs incurred or to be incurred by the humane society or county pound as a result.

(d) For the purpose of this section, "controlled substance" has the same meaning ascribed to it by West Virginia Code 60A-1-101(d).

(e) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management, nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. Section 2131 et seq. and the regulations promulgated thereunder, as both such statutes and regulations are in effect on the effective date of this section.

(WVaC 61-8-19)

505.02 CRUELTY TO DOGS AND CATS.

No person shall cruelly, or needlessly beat, torture, torment, mutilate, kill or willfully deprive necessary sustenance, to any dog or cat, irrespective of whether any such dog or cat is his or her own or that of another person. No person shall impound or confine any dog or cat in any place unprotected from the elements or fail to supply the same with a sufficient quantity of food and water, or abandon to die any maimed, sick or diseased dog or cat or be engaged in or employed at dogfighting, or pitting one dog or cat to fight against another dog or cat or any similar cruelty to any dog or cat, or receive money for the admission of any person, or use, train or possess a dog or cat for the purpose of seizing, detaining or mistreating any other dog or cat.

505.03 NUISANCE CONDITIONS PROHIBITED.

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

505.04 BARKING OR HOWLING DOGS.

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

505.05 HUNTING PROHIBITED.

No person shall hunt, kill or attempt to kill any animal or fowl by the use of firearms, bow and arrow, air rifle or any other means within the corporate limits of the Municipality.

505.06 DOGS.

(a) Definitions. The term "dog" means all members of the canine family, of either sex and at least six months of age, unless otherwise specified in this section.

(b) License Required. Every person owning, maintaining or harboring a dog in the City shall obtain a license for such dog in accordance with the provisions of this section.

(c) Application; issuance; tag; certificate.

(1) Every person owning, maintaining or harboring a dog in the City shall apply to the Assessor of Mineral County for a license for each dog so owned, maintained or harbored and such applications shall show whether such dog is male or female.

(2) The official tag so issued by the Assessor shall be fastened to the collar to the dog so licensed; in addition thereto said dog shall have first obtained a certificate or tag from a registered profession veterinarian to the effect that the dog for which a license is applied has been duly and properly inoculated for rabies.

Section 13-1-14 is hereby revoked and repelled.

Section 13-1-7 is hereby revoked and repelled.

Section 13-1-8 is hereby revoked and repelled.

Section 13-1-13 is hereby amended to read as follows:

(d) Unlawful Attaching or Removal of License Tag. No person shall attach a license tag to any dog to which it was not issued, or remove a license tag from the collar of any dog without the consent of its owner.

(e) License Exemptions. All seeing eye dogs are exempted from the licensing provisions of this section.

(f) Equipment. The City Clerk, subject to the approval of Council, shall acquire such equipment as may be necessary to enforce the provisions of this section.

(g) Interfering with Humane Officer. No person shall hinder, molest or interfere with the Humane Officer or any other person authorized or empowered to perform any duty under this article.

(h) Enticing; Seizing or Molesting; Impounding or Killing. Except for persons duly authorized by this article, no person shall entice any properly licensed dog into any enclosure for the purpose of taking off his collar or tag, or, for such purpose, decoy or entice any dog out of the enclosure or house of its owner or possessor, or seize or molest any dog which is held or led by any person, or bring any dog

into the City for the purpose of impounding and killing the same.

(i) Inducing to Fight; Frightening Persons. No person shall entice, induce, urge or cause any dog to engage in or prolong a fight in the City, and no person shall induce or cause any dog to run after, bark at, frighten or bite any person or animal lawfully passing along or standing in or on any street or highway in the City.

(j) Vicious dogs. No person shall own, keep or harbor any dog, known by him to be vicious, dangerous or in the habit of biting or attacking persons, whether or not such dogs wear a tag or muzzle and, upon satisfactory proof that such dog is vicious, dangerous or in the habit of biting or attacking persons the Chief of Police or any other police officer, or the County Humane Officers may cause such dog to be impounded and disposed of.

(k) Noise Dogs. No person shall own or keep within the City any dog which shall, by barking, howling, squalling, crying or in any other manner, disturb and the comfort or quiet of any neighborhood.

(l) Muzzling Dogs. Whenever it appears to the Mayor or Municipal Court Judge that there is good reasons for believing that any dog within the City is rabid, it may issue a proclamation requiring that all dogs shall, for a period to be defined in the proclamation, wear good, substantial muzzles, securely put on, so as to prevent them from biting or snapping, and any dog at large during the period defined by the Mayor or Municipal Court Judge without such muzzle, shall be taken by the Humane Officer and impounded.

(m) Bites; Impounding. Any dog, whether licensed or not, that has bitten any person shall be seized by the Humane Officer or any police officer and impounded for a period of ten days for observation to determine whether such dog has rabies. The Humane Officer is authorized to secure the services of any registered professional veterinarian, doctor or qualified laboratory to determine whether or not such dog has rabies. In the event it should be ascertained that the dog has rabies, then the Humane Officer is authorized to cause such dog to be disposed of. The owner of such dog shall be required to pay the expense of maintaining such dog for such period of time at the rate of \$5.00 per day and, in addition thereto, such reasonable fee or charges as may be made to ascertain whether or not the dog had rabies. In the event the impounded dog is found to be free of rabies, such dog shall be returned to the owner upon the payment of the fees herein provided.

(n) Cooperation with Other Governmental Bodies. In carrying out the intent and provisions of this article, the City is expressly authorized to enter into agreements with Municipalities and the County Commission for the purchase of necessary equipment and supplies, employment of necessary personnel, operation and maintenance of a dog pound, and all other matters relating to the provisions of this article and to share the cost thereof with other municipalities and the County Commission on a joint and mutual basis.

(o) Running at Large; Confinement; on Leash; Impounding; Defecation.

(1) No dog, whether wearing a license tag or not, shall be permitted to run at large within the City at any time except on the property owned or occupied by the owner of the dog. Any dog found running at large in violation of this section shall be seized by the Humane Officer and forthwith impounded.

(2) The owner of a dog or person harboring or keeping a dog shall not allow such dog to roam at large in the City whether a license tag or not. The owner of a dog or the person harboring or keeping a dog shall confine such dog at the owner's premises or at the premises of such person harboring or keeping the dog. No person shall take any dog onto the streets or sidewalks of the City unless the dog shall be on a leash, or under effective control.

(3) No person taking a dog upon the streets and sidewalks of the City or other public place shall allow the dog to defecate upon the streets or sidewalks of the City, or other public property located in the City or private property other than that of the owner or owners, and to allow a dog to so defecate shall be a violation of this section and punishable as hereinafter described in this section.

(p) Penalty.

(1) Whoever violates subsections (g), (i), (k) or (o) shall be fined as follows:

A. For the first offense	\$25.00
B. For the second offense within a period of one year	40.00
C. For the third offense within a period of one year	100.00
D. For the fourth offense within a period of one year	300.00

(2) The Humane Officer, any member of the City Police Department or an aggrieved individual, may cause a warrant to be issued from the Police Court to the dog owner or to the person harboring or keeping the dog for appearance before the Police Court.

(Ord. 216. Passed 10-16-85.)

505.07 DANGEROUS, VICIOUS OR DEADLY ANIMALS.

(a) Prohibition Against Dangerous, Vicious or Deadly Animals. No person shall keep any dangerous, vicious or deadly animal(s) within the City unless he or she has first obtained a license and provided for insurance or bonding as otherwise set forth in this section.

(b) Licensing Fee. Any person desiring to keep any dangerous, vicious or deadly animal within the City shall first apply for a license which application shall be made to the City Administrator of the City of Keyser. Said application shall include a complete and accurate description of the animal or animals, and shall be accompanied by an application fee in the amount of \$5.00 per animal. The application shall be in a form provided by the City.

(c) Prerequisite to Obtaining License for Dangerous Vicious or Deadly Animal. There shall accompany the above referred to application and licensing fee proof that there is in existence and in effect during the license year which shall begin July 1st and end of June 30 of the following year, an insurance policy or policies, either by way of a special insurance policy or in the form of an endorsement or rider to a homeowners or renters policy which contains a provision which covers for the liability which may result from any harm done to any third person or property by virtue of the dangerous, vicious or deadly animal for which a license is sought. The insurance shall be in an amount no less than \$20,000.00 per person, \$40,000.00 per occurrence and \$20,000.00 property damage. No license shall be issued absent proof of the issuance of such policy. In the event such policy is terminated prior to the license period then, and in that event, the animal shall be immediately removed from the City of Keyser prior to the expiration of the effectiveness of the

cancellation of such policy. Satisfactory proof shall consist of a binder or endorsement executed by duly authorized agent of a properly licensed insurance company in the State of West Virginia which names the City of Keyser as an additional insured and which contains a notice of termination requirement to the City in the event said policy is terminated.

(d) Certificate of License. Upon the issuance of a license after appropriate application, filing fee and insurance certification, the City Administrator shall issue a certificate specifying the animal or animals so licensed within the City of Keyser and the location at which such animal or animals are to be kept. Said license shall expire on June 30, next following the issuance of such license. Said license must be renewed annually thereafter so long as said animal(s) are maintained within the City.

(e) Liability of Owner. The owner (of any animal so licensed which does harm or damage to any person or property within the City of Keyser) shall be prima facie presumed to be responsible for such damage or injury.

(f) Penalty.

(1) Whoever violates the provisions of this section shall be guilty of a misdemeanor and shall be fined as follows:

A. For the first offense	\$25.00
B. For the second offense within a period of one year	40.00
C. For the third offense within a period of one year	100.00
D. For the fourth offense within a period of one year	300.00

(2) Each day upon which a person violates the provisions of this Article shall be deemed a separate offense.

(3) The Humane Officer of the County or City, any member of the City Police Department, or any aggrieved individual may cause a warrant to be issued by the Municipal Court of the City of Keyser to the owner of such dangerous, vicious, or deadly animal or to the person harboring or keeping such dangerous, vicious or deadly animal for appearance before the Municipal Court.

(g) Definitions. When used in this Chapter the following terms shall have the following meanings:

(1) "Dangerous, vicious or deadly" shall mean one which either creates or instills fear of battery (an assault) causes or, if left unattended or uncontained, is likely to cause damage or injury to another animal or person or which could cause death or serious injury by virtue of its bite or venom;

(2) "Animal" shall mean any living organism except a plant;

(3) "Owner" shall mean any person or entity who houses, feeds, or controls an animal or who has legal title thereto;

(4) "Application" shall mean the form as prescribed from time to time by the City Administrator of the City of Keyser.

(5) "Police Court" shall mean the Municipal Court of the City of Keyser.

(Ord. 216. Passed 10-16-85.)

505.08 LIVESTOCK.

No person shall keep any cattle, swine or fowl within the City.

505.09 NOISY CATS.

No person shall own or keep within the City any cat which shall, by squalling, crying or in any other manner disturb the comfort or quiet of any neighborhood.

505.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) (1) Whoever violates Section 505.01(a) shall be fined not less than three hundred dollars (\$300.00) nor more than two thousand dollars (\$2,000) or imprisoned not more than thirty days, or both, for a first offense. Any person convicted of a second or subsequent violation of Section 505.01(a) shall be imprisoned for not more than thirty days or fined not less than five hundred dollars (\$500.00) nor more than three thousand dollars (\$3,000), or both. The incarceration set forth in this subsection shall be mandatory unless the provisions of subsection (a)(2) are complied with.

(2) A. Notwithstanding any provision of this Code to the contrary, no person who has been convicted of a violation of the provisions of Section 505.01(a) may be granted probation until the defendant has undergone a complete psychiatric or psychological evaluation and the court has reviewed such evaluation. Unless the defendant is determined by the court to be indigent, he or she shall be responsible for the cost of said evaluation.

B. For any person convicted of a violation of subsection (a) of this section, the court may, in addition to the penalties provided in this section, impose a requirement that he or she complete a program of anger management intervention for perpetrators of animal cruelty. Unless the defendant is determined by the court to be indigent, he or she shall be responsible for the cost of the program.

(3) In addition to any other penalty which can be imposed for a violation of Section 505.01, a court shall prohibit any person so convicted from possessing, owning or residing with any animal or type of animal for a period of five years following entry of a conviction. A violation under this subsection is punishable by a fine not exceeding two thousand dollars (\$2,000) and forfeiture of the animal.

(b) Whoever violates Section 505.01(b) shall be fined not less than five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000).

(WVaC 61-8-19)

(c) Whoever violates Section 505.02 shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than thirty days, or both. In addition the Humane Officer may remove the dog or cat involved and place it in the pound and such dog or cat shall not be returned to the owner or perpetrator of the act of cruelty, but shall be put up for adoption to a desirable home or given into the care of

a humane society or upon the recommendation of a licensed veterinarian shall be humanely destroyed.

ARTICLE 509

Disorderly Conduct and Peace Disturbance

509.01 Disorderly conduct.

509.02 Loitering on school property.

509.03 Wearing masks, hoods or face coverings.

509.04 Disorderly conduct and peace disturbance.

509.05 Criminal loitering by persons on supervised release.

509.06 Curfew.

509.99 Penalty.

CROSS REFERENCES

Authority to maintain order - see W. Va. Code 8-12-5

(19), (44)

Crimes against the peace - see W. Va. Code Art. 61-6

Intoxication or drinking in public places - see GEN. OFF. 521.06

Breach of peace with weapon - see GEN. OFF. 545.02

509.01 DISORDERLY CONDUCT.

(a) No person shall, in a public place, any State or Municipal office or office building or any other property owned, leased, occupied or controlled by the State or Municipality, a mobile home park, a public parking area, a common area of an apartment building or dormitory, or a common area of a privately owned commercial shopping center, mall or other group of commercial retail establishments, disturb the peace of others by violent, profane, indecent or boisterous conduct or language or by the making of unreasonably loud noise that is intended to cause annoyance or alarm to another person, and who persists in such conduct after being requested to desist by a law-enforcement officer acting in his or her lawful capacity: provided, that nothing in this subsection should be construed as a deterrence to the lawful and orderly public right to demonstrate in support or protest of public policy issues.

(b) For purposes of this section:

- (1) "Mobile home park" means a privately-owned residential housing area or subdivision wherein the dwelling units are comprised mainly of mobile homes and wherein the occupants of such dwelling units share common elements for purposes of ingress and egress, parking, recreation and other like residential purposes.
- (2) "Mobile home" means a moveable or portable unit, designed and constructed to be towed on its own chassis (comprised of frame and wheels), and designed to be connected to utilities for year-round occupancy. The term includes:
 - A. Units containing parts that may be folded, collapsed or telescoped when being towed and that may be expanded to provide additional cubic capacity, and
 - B. Units composed of two or more separately towable components designed to be joined into one integral unit capable of being separated again into the components for repeated towing.
- (3) "Public parking area" means an area, whether publicly or privately owned or maintained, open to the use of the public for parking motor vehicles.

(WVaC 61-6-1b)

509.02 LOITERING ON SCHOOL PROPERTY.

No person, not a student in regular attendance, shall loiter in or about any school, school building or school grounds in violation of any posted rules or regulations governing the use of any such school without written permission from the principal. (WVaC 61-6-14a)

509.03 WEARING MASKS, HOODS OR FACE COVERINGS.

(a) Except as otherwise provided in this section, no person, whether in a motor vehicle or otherwise, while wearing any mask, hood or device whereby any portion of the face is so covered as to conceal the identity of the wearer, shall:

- (1) Come into or appear upon any walk, alley, street, road, highway or other thoroughfare dedicated to public use;
- (2) Come into or appear in any trading area, concourse, waiting room, lobby or foyer open to, used by or frequented by the general public;
- (3) Come into or appear upon or within any of the grounds or buildings owned, leased, maintained or operated by the State or Municipality;
- (4) Ask, request, or demand entrance or admission to the premises, enclosure, dwelling or place of business of any other person within this Municipality; or
- (5) Attend or participate in any meeting upon private property of another unless written permission for such meeting has first been obtained from the owner or occupant thereof.

(b) The provisions of this section do not apply to any person:

- (1) Under sixteen years of age;
- (2) Wearing a traditional holiday costume;
- (3) Engaged in a trade or employment where a mask, hood or device is worn for the purpose of ensuring the physical safety of the wearer;
- (4) Using a mask, hood or device in theatrical productions, including use in mardi gras celebrations or similar masquerade balls;
- (5) Wearing a mask, hood or device prescribed for civil defense drills, exercises or emergencies; or
- (6) Wearing a mask, hood or device for the sole purpose of protection from the elements or while participating in a winter sport.

(WVaC 61-6-22)

509.04 DISORDERLY CONDUCT AND PEACE DISTURBANCE.

(a) Noise Producing Devices. No person shall use any sound, musical, loudspeaking or other loud noise producing devices or

apparatus on or in front of any building, public or private, within the City, without first obtaining special permission of Council, or use or operate any other loud noise producing devices or apparatus upon the streets or highways within the City, except after first having obtained permission from the Chief of Police, and the Mayor, and under such restrictions as they may impose.

(b) Penalty. Whoever violates the above for a first offense shall be fined not more than one hundred dollars (\$100.00). For a second or subsequent offense such person shall be fined not more than five hundred dollars (\$500.00). (Ord. 227. Passed 10-7-87.)

509.05 CRIMINAL LOITERING BY PERSONS ON SUPERVISED RELEASE.

(a) No person serving a period of supervised release of ten years or more pursuant to the provisions of West Virginia Code 62-12-26, shall loiter within one thousand feet of the property line of the residence or workplace of a victim of a sexually violent offense for which the person was convicted.

(b) No person serving a period of supervised release of ten years or more pursuant to the provisions of West Virginia Code 62-12-26 for an offense where the victim was a minor shall loiter within one thousand feet of the property line of a facility or business the principal purpose of which is the education, entertainment or care of minor children, playground, athletic facility or school bus stop.

(c) A person does not violate the provisions of subsection (a) or (b) of this section unless he or she has previously been asked to leave the proscribed location by an authorized person and thereafter refuses to leave or leaves and thereafter returns to the proscribed location.

(d) As used in this section:

(1) "Authorized person" means:

- A. A law-enforcement officer acting in his or her official capacity;
- B. A security officer employed by a business or facility to protect persons or property acting in his or her employment capacity;
- C. An owner, manager or employee of a facility or business having a principal purpose the caring for, education or entertainment of minors;
- D. A victim or parent, guardian or lawful temporary or permanent custodian thereof;
- E. An employee of a county board of education acting in his or her employment capacity.

(2) "Facility or business, the principal purpose of which is the education, entertainment or care of minor children" means:

- A. A pre-school, primary, intermediate, middle or high school, either public or private;
- B. A childcare facility;
- C. A park;
- D. An athletic facility used by minors;
- E. A school bus stop.

(3) "Loitering" means to enter or remain on property while having no legitimate purpose or, if a legitimate purpose exists, remaining on that property beyond the time necessary to fulfill that purpose.

(e) Nothing in this section shall be construed to prohibit or limit a person's presence within one thousand feet of a location or facility referenced in this section if the person is there present for the purposes of supervision, counseling or other activity in which the person is directed to participate as a condition of supervision or where the person has the express permission of his supervising officer to be present. (WVaC 61-8-29)

509.06 CURFEW.

(a) Definitions.

- (1) A "minor" is defined as any person who has not yet attained their 18th birthday.
- (2) An "adult" is defined as any person who has attained their 18th birthday.
- (3) "With their parents permission" is defined as the prior express permission by the parent or legal guardian of a minor to be under the direct supervision and control of some adult other than their parent or legal guardian.
- (4) An "emergency situation" is defined as a sudden or unforeseen situation which creates an eminent danger requiring immediate action to prevent harm or injury to any person, property or the public at large and without such remedial action said harm or injuries would or could be enhanced.

(b) Provisions. No minor shall loiter, idle, wander, stroll or play in or upon the streets, parks, playgrounds, public places, public buildings, places of amusement or entertainment, vacant lots or unsupervised areas between the hours of 11:00 p.m. (2300 hrs) and 6:00 a.m. (0600 hrs) the following morning. Between the aforementioned hours, no minor shall ride about the City on bicycles, motorcycles, any play vehicles or in vehicles without a set destination.

No minor shall refuse to give their proper name and address to any police officer when requested. No parent, legal guardian or adult over the age of 18 years, having care and custody of said minor, shall permit any of the above activities.

(c) Exceptions.

- (1) These provisions shall not apply to any minor accompanied by a parent or legal guardian, or any adult over the age of 18 years having care and custody of said minor with their parent's or legal guardian's permission.
- (2) These provisions shall not apply to a minor involved in an emergency situation.
- (3) These provisions shall not apply to any minor directly involved in employment that requires the minor's presence after 11 o'clock PM (2300 hours) for the minor's employment or his or her direct travel from and to his or her place of employment.
- (4) These provisions shall not apply to any organized activity sponsored by any school, church or recognized organization. Minors shall have 30 minutes prior to or after the termination of said activity to arrive at the activity or return to his or residence.

(d) Penalties.

- (1) Any person convicted of violating this provision may be subject to a fine of up to \$100.00 for first and second offenses.
- (2) Any person convicted of violating this provision for a third or subsequent offense may be subject to a fine of up to \$500.00.
- (3) Community service may be imposed on both the parent, legal guardian, and juvenile in lieu of, or in addition to any monetary fines.

(Ord. 240. Passed 10-4-95.)

509.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) Whoever violates Section 509.01 shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than twenty-four hours.

(WVaC 61-6-1b)

(b) Whoever violates Section 509.02 shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both, for a first offense. For a second or subsequent offense such person shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.

(WVaC 61-6-14a)

(c) Whoever violates Section 509.05 shall be imprisoned for not more than thirty days.

(WVaC 61-8-29)

ARTICLE 513

Gambling

513.01 Keeping or exhibiting gambling apparatus.

513.02 Permitting gambling apparatus on premises.

513.03 Acting as lookout or guard for keeper of gambling apparatus.

513.04 Playing on gambling apparatus; hotels, public places.

513.05 Making wager for value or furnishing money to another for wager.

513.06 Permitting gambling at public places.

513.07 Cheating or fraudulent actions while gambling or making a wager.

513.08 Poolrooms and pool tickets.

513.09 Lotteries and raffles.

513.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law

Gambling at fairs prohibited - see W. Va. Code 19-7-8

Pari-mutuel system of wagering at race track permitted - see W. Va. Code 19-23-9

Gaming contracts - see W. Va. Code Art. 55-9

Crimes against public policy - see W. Va. Code Art. 61-10

513.01 KEEPING OR EXHIBITING GAMBLING APPARATUS.

No person shall keep or exhibit a gaming table, commonly called an A.B.C. or E.O. table, faro bank, keno table, or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine, or any other gaming table or device of like kind, under any denomination or which has no name, whether the game, table, bank, machine or device is played with cards, dice or otherwise, or be a partner, or concerned in interest, in keeping or exhibiting such table, bank, machine or gaming device of any character. Any such table, faro bank, machine or gaming device, and all money staked or exhibited to allure persons to bet at such table or upon such gaming device, may be seized by order of the Police Court and the money so seized shall be forfeited to the Municipality and paid into the Municipal Treasury and the table, faro bank, machine or gaming device shall be completely destroyed. However, the provisions of this section shall not extend to coin-operated nonpayout machines with free play features or to automatic weighing, measuring, musical and vending machines which are so constructed as to give a certain uniform and fair return in value or services for each coin deposited therein and in which there is no element of chance.

(WVaC 61-10-1)

513.02 PERMITTING GAMBLING APPARATUS ON PREMISES.

No person shall knowingly permit a gaming table, bank or device, as mentioned in Section 513.01, to be kept or exhibited on any premises in his occupation.

(WVaC 61-10-2)

513.03 ACTING AS LOOKOUT OR GUARD FOR KEEPER OF GAMBLING APPARATUS.

No person shall act as doorkeeper, guard or watch, or employ another person to act as such, for a keeper or exhibitor of any gaming table, bank or device as mentioned in Section 513.01, nor resist, nor by any means or device, prevent, hinder or delay the lawful arrest of such keeper or exhibitor, or the seizure of the table, bank or device, or money exhibited or staked thereat, nor unlawfully take the same from the person seizing it.

(WVaC 61-10-3)

513.04 PLAYING ON GAMBLING APPARATUS; HOTELS, PUBLIC PLACES.

No person shall bet or play at any gaming table, bank or device as mentioned in Section 513.01, or, at any hotel or tavern, other public place or place of public resort, play at any game except bowling, chess or backgammon, draughts or a licensed game, or bet on the side of those who play at any game, whether or not the game is permitted or licensed.

(WVaC 61-10-4)

513.05 MAKING WAGER FOR VALUE OR FURNISHING MONEY TO ANOTHER FOR WAGER.

No person shall, at any place, public or private, bet or wage money or other thing of value on any game of chance, or knowingly furnish any money or other thing of value to any other person to bet or wage on any such game.

(WVaC 61-10-5)

513.06 PERMITTING GAMBLING AT PUBLIC PLACES.

No keeper of a hotel, tavern or other public place shall permit unlawful gaming at his house, or at any outhouse, booth, arbor or other place appurtenant thereto.

(WVaC 61-10-6)

513.07 CHEATING OR FRAUDULENT ACTIONS WHILE GAMBLING OR MAKING A WAGER.

No person playing at any game or making a wager, or having a share in any stake or wager, or betting on the hands or sides of others playing at any game or making a wager, shall cheat, or by fraudulent means win or acquire for himself, or another, money or any other valuable thing.

(WVaC 61-10-9)

513.08 POOLROOMS AND POOL TICKETS.

"Poolroom", wherever used in this section, means any room where any pool ticket, chance voucher or certificate is sold entitling or purporting to entitle the holder or promisee thereof, or any other person, to money or other thing of value, contingent upon the result of any horse race, prizefight, game of chance, game of skill or science or other sport or contest. No person shall set up or promote, or be connected with or interested in the management or operation of any poolroom. The buying, selling or transferring of tickets or chances in any lottery is hereby prohibited.

(WVaC 61-10-10)

513.09 LOTTERIES AND RAFFLES.

Except as otherwise provided by law, no person shall set up, promote or be concerned in managing or drawing a lottery or raffle for money or other thing of value; knowingly permit such lottery in any house under his control; knowingly permit money or other property to be raffled for in such house or to be won therein by throwing or using dice or by any other game of chance; knowingly permit the sale in such house of any chance or ticket, or share of a ticket in a lottery, or any writing, certificate, bill, token or other device purporting or intended to guarantee or assure to any person or to entitle him to a prize, or a share of or interest in a prize to be drawn in a lottery. No person shall for himself or any other person, buy, sell, transfer or have in his possession for the purpose of sale or with intent to exchange, negotiate or transfer, or aid in selling, exchanging, negotiating or transferring a chance or ticket, or a share of a ticket, in a lottery or any such writing, certificate, bill, token or device. However, this section shall not be deemed to apply to that certain type or form of lottery or raffle designated and familiarly known as "policy" or "numbers".

(WVaC 61-10-11)

513.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) Whoever violates Section 513.04 or 513.06 shall be fined not more than one hundred dollars (\$100.00).

(b) Whoever violates Section 513.05 shall be fined not more than three hundred dollars (\$300.00).

ARTICLE 517

Indecency and Obscenity

517.01 Operating a place for or permitting or engaging in prostitution, lewdness or assignation.

517.02 Detention of person in place of prostitution.

517.03 Pandering.

517.04 Pimping.

517.05 Profane swearing and drunkenness.

517.06 Obscene or harassing telephone calls.

517.07 Indecent exposure.

517.08 Invasion of privacy by looking.

517.09 Preparation, distribution or exhibition of obscene matter to minors. (Repealed)

517.10 Sale or display of obscene matter.

517.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law

Authority to prohibit distribution of obscene literature - see W. Va. Code 8-12-5(17)

Authority to suppress houses of ill fame - see W. Va. Code 8-12-5(18)

Authority to prevent indecent practices - see W. Va. Code 8-12-5(19)

Equitable remedies - see W. Va. Code Art. 61-9

517.01 OPERATING A PLACE FOR OR PERMITTING OR ENGAGING IN PROSTITUTION, LEWDNESS OR ASSIGNATION.

(a) No person shall keep, set up, maintain or operate any house, place, building, hotel, tourist camp, other structure or part thereof, or vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation; or own any place, house, hotel, tourist camp, other structure or part thereof, or trailer or other conveyance knowing the same to be used for the purpose of prostitution, lewdness or assignation, or let, sublet or rent any such place, premises or conveyance to another with knowledge or good reason to know of the intention of the lessee or rentee to use such place, premises or conveyance for prostitution, lewdness or assignation; or offer, or offer to secure another for the purpose of prostitution or for any other lewd or indecent act; or receive or offer or agree to receive any person into any house, place, building, hotel, tourist camp or other structure, or vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation, or permit any person to remain there for such purpose; or for another or others, direct, take or transport, or offer or agree to take or transport, or aid or assist in transporting any person to any house, place, building, hotel, tourist camp, other structure, vehicle, trailer or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation; or aid, abet or participate in the doing of any acts herein prohibited. Whoever violates this subsection (a) shall, for a first offense, be guilty of a misdemeanor.

(b) No person shall engage in prostitution, lewdness or assignation, or solicit, induce, entice or procure another to commit an act of prostitution, lewdness or assignation; or reside in, enter or remain in any house, place, building, hotel, tourist camp or other structure, or enter or remain in any vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation; or aid, abet or

participate in the doing of any of the acts herein prohibited.

Whoever violates this subsection (b) shall, for a first or second offense, be guilty of a misdemeanor.

The subsequent offense provision shall apply only to the pimp, panderer, solicitor, operator or any person benefiting financially or otherwise from the earnings of a prostitute.

(c) All leases and agreements, oral or written, for letting, subletting or renting any house, place, building, hotel, tourist camp or other structure which is used for the purpose of prostitution, lewdness or assignation, shall be void from and after the date any person who is a party to such an agreement shall be convicted of an offense hereunder. "Tourist camp" includes any temporary or permanent buildings, tents, cabins or structures, or trailers or other vehicles which are maintained, offered or used for dwelling or sleeping quarters for pay.

(d) In the trial of any person charged with a violation of any of the provisions of this section, testimony concerning the reputation or character of any house, place, building, hotel, tourist camp or other structure, and of the person or persons who reside in or frequent them, and of the defendant or defendants, shall be admissible in evidence in support of the charge.

(WVaC 61-8-5)

517.02 DETENTION OF PERSON IN PLACE OF PROSTITUTION.

(a) No person shall by any means keep, hold, detain or restrain any person in a house of prostitution or other place where prostitution is practiced or allowed; shall, directly or indirectly, keep, hold, detain or restrain or attempt to keep, hold, detain or restrain, in any house of prostitution or other place where prostitution is practiced or allowed, any person by any means, for the purpose of compelling such person, directly or indirectly, to pay, liquidate or cancel any debt, dues or obligations incurred or said to have been incurred by such person.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor if the person so kept, held, detained or restrained under this section is not a minor.

(WVaC 61-8-6)

517.03 PANDERING.

(a) No person shall procure an inmate for a house of prostitution, or by promises, threats, violence or by any device or scheme, cause, induce, persuade or encourage a person to become an inmate of a house of prostitution, or shall procure a place as inmate in a house of prostitution for a person. No person shall, by promises, threats, violence or any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or shall, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procure any person to become an inmate of a house of ill fame, to enter any place in which prostitution is encouraged or allowed within this Municipality, or to come into or leave this Municipality for the purpose of prostitution, or shall procure any person to become an inmate of a house of ill fame within this Municipality or to come into or leave this Municipality for the purpose of prostitution; or shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any person to become an inmate of a house of ill fame within this Municipality, or to come into or leave this Municipality for the purpose of prostitution.

It shall not be a defense to prosecution for any of the acts prohibited in this section that any part of such act or acts shall have been committed outside of this Municipality, and the offense shall in such case be deemed and alleged to have been committed and the offender tried and punished in the municipality or county in which the prostitution was intended to be practiced, or in which the offense was consummated, or any overt act in furtherance of the offense was committed.

Any such person shall be a competent witness in any prosecution under this section to testify for or against the accused as to any transaction, or as to conversation with the accused, or by the accused with another person or persons in his or her presence, notwithstanding his or her having married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution. The act or state of marriage shall not be a defense to any violation of this section.

(b) Whoever violates this section is guilty of a misdemeanor for the first offense unless the inmate referred to in this section is a minor.

(WVaC 61-8-7)

517.04 PIMPING.

(a) No person knowing another person to be a prostitute, shall live or derive support or maintenance, in whole or in part, from the earnings or proceeds of the prostitution of such prostitute, or from money loaned or advanced to or charged against such prostitution by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or shall tout or receive compensation for touting for such prostitution. A prostitute shall be a competent witness in any prosecution hereunder to testify for or against the accused as to any transaction or conversation with the accused, or by the accused with another person or persons in the presence of the prostitute, even if the prostitute may have married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor unless the prostitute referred to in this section is a minor.

(WVaC 61-8-8)

517.05 PROFANE SWEARING AND DRUNKENNESS.

(EDITOR'S NOTE: Former West Virginia Code 61-8-15 upon which Section 517.05 was based was repealed by Senate Bill 457, passed March 13, 2010.)

517.06 OBSCENE OR HARASSING TELEPHONE CALLS.

(a) No person with intent to harass or abuse another by means of telephone shall:

- (1) Make any comment, request, suggestion or proposal which is obscene; or
- (2) Make a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to harass any person at the called number; or
- (3) Make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or
- (4) Make repeated telephone calls, during which conversation ensues, with intent to harass any person at the called number; or

- (5) Threaten to commit a crime against any person or property.
- (b) No person shall knowingly permit any telephone under his or her control to be used for any purpose prohibited by this section.
- (c) Any offense committed under this section may be deemed to have occurred at the place at which the telephone call was made, or the place at which the telephone call was received.
- (WVaC 61-8-16)

517.07 INDECENT EXPOSURE.

No person shall intentionally expose his or her sex organs or anus or the sex organs or anus of another person, or intentionally cause such exposure by another or engage in any overt act of sexual gratification, under circumstances in which the person knows that the conduct is likely to cause affront or alarm; provided, that it is not considered indecent exposure for a mother to breast feed a child in any location, public or private.

(WVaC 61-8-9)

517.08 INVASION OF PRIVACY BY LOOKING.

No person shall unlawfully enter upon the property of another or secretly or furtively peep through or attempt to peep into, through, or spy through a window, door or other aperture of any building, structure or other enclosure of any nature occupied by or intended for occupancy as a dwelling or dormitory, whether or not such building, structure or enclosure be permanently situated or transportable and whether or not such occupancy be permanent or temporary.

517.09 PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE MATTER TO MINORS.

(EDITOR'S NOTE: Former Section 517.09 has been deleted from the Codified Ordinances since all violations of West Virginia Code 61-8A from which Section 517.09 was derived are now felonies and should be prosecuted under appropriate State law.)

517.10 SALE OR DISPLAY OF OBSCENE MATTER.

(a) Definitions. For the purposes of this section:

- (1) "Knowingly" means to have knowledge of or to be aware of the content or character of obscene matter.
- (2) "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.
- (3) "Individual" means any human being regardless of age.
- (4) "Obscene" means matter which the average individual applying contemporary community standards would find
 - A. Taken as a whole, appeals to the prurient interest;
 - B. Depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated; and
 - C. The matter, taken as a whole, lacks serious literary, artistic, political or scientific value, and which either:
 1. Depicts or describes patently offensive representation of masturbation, excretory functions, lewd exhibition of the genitals, sodomy, fellatio, cunnilingus, bestiality, sadism, masochism; or
 2. Depicts or describes nudity or sexual acts of persons, male or female, below the age of eighteen years.
- (5) "Person" means any individual, partnership, firm, association, corporation or other legal entity.
- (6) "Prepare" means to produce, publish or print.
- (7) "Public display" means the placing of material on or in a billboard, viewing screen, theater, marquee, newsstand, display sack, window, showcase, display case or similar public places so that material can be purchased or viewed by individuals.

(b) Individual Relief. The circuit court shall have jurisdiction to issue an injunction to enforce the purposes of this section upon petition by the attorney for the Municipality or a representative thereof or any citizen of the Municipality who can show a good faith and valid reason for making such application. No bond shall be required unless for good cause shown.

(c) Activities Prohibited. No person shall knowingly send or cause to be sent or cause to be brought into the Municipality for sale or public display, or prepare, sell or make a public display, or in the Municipality offer to prepare, sell or make a public display, or have in his possession with the intent to sell or make a public display of any obscene matter to any individual.

(d) Employees Not Prosecuted. No employee shall be guilty of a violation of this section when such employee is a projectionist, ticket taker, usher, or when such employee prepares, sells or makes a public display of obscene matter while acting within the scope of his regular employment, unless such employee has a proprietary interest in such obscene matter or is a shareholder or officer of a corporation which has a proprietary interest in such obscene matter.

(e) Exceptions. Nothing in this section shall be construed so as to apply to any person exercising a right secured by the Constitution or laws of this State or of these United States. (WVaC 8-12-5(b))

517.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

- (a) Whoever violates Section 517.01(a) shall be fined not more than two hundred fifty dollars (\$250.00) or imprisoned not more than thirty days, or both.
- (b) Whoever violates Section 517.01(b) shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both, and for a second offense shall be fined not more than two hundred fifty dollars (\$250.00) or imprisoned not more than thirty days, or both.
- (c)
 - (1) Except as provided in subsection (c)(2), any person who violates the provisions of Section 517.07 shall be confined in jail not more than thirty days, or fined not more than two hundred fifty dollars (\$250.00) or both.
 - (2) Any person who violates the provisions of Section 517.07 by intentionally exposing himself or herself to another person and the exposure was done for the purpose of sexual gratification, shall be fined not more than five hundred dollars (\$500.00), or confined in jail not more than thirty days, or both. For a second offense, the person shall be fined not more than one thousand dollars (\$1,000) and confined in jail for thirty days. For a third or subsequent offense, the person is guilty of a felony and shall be prosecuted under appropriate State law.
- (d) Whoever violates Section 517.10 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both, for a first offense. For a second or subsequent offense such person shall be fined not more

than one thousand dollars (\$1,000) or imprisoned not more than six months, or both.

ARTICLE 521

Liquor Control

521.01 Definitions.

521.02 Article not applicable to certain uses by physicians, druggists and others.

521.03 Prohibited acts generally.

521.04 Unlawful sale or possession by alcoholic liquor licensee.

521.05 Unlawful purchase of alcoholic liquors from State agency.

521.06 Intoxication or drinking in public places; illegal possession.

521.07 Acts prohibited by non-intoxicating beer licensee.

521.08 Unlawful purchase of non-intoxicating beer.

521.09 Acts prohibited by private club licensee.

521.10 Unlawful purchase from private club.

521.11 Acts prohibited by wine dealers.

521.12 Unlawful purchase of wine.

521.13 Unlawful purchase from retail liquor licensee.

521.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law

Authority to regulate liquor sales - see W. Va. Code 8-12-5(20)

Nonintoxicating beer - see W. Va. Code Art. 11-16

Local option - see W. Va. Code Art. 60-5

Search warrants - see W. Va. Code 60-6-18

Public drunkenness - see GEN. OFF. 517.05

521.01 DEFINITIONS.

For the purposes of this article, unless the context clearly indicates otherwise, the following definitions shall apply:

- (a) (1) "Alcohol" means ethyl alcohol whatever its origin and includes synthetic ethyl alcohol but not denatured alcohol.
- (2) "Alcoholic liquor" includes alcohol, beer, wine and spirits, and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer.
- (b) "Beer" means any beverage obtained by the fermentation of barley, malt, hops or any other similar product or substitute, and containing more alcohol than that of nonintoxicating beer.
- (c) "Intoxicated" means having one's faculties impaired by alcohol or other drugs to the point where physical or mental control or both are markedly diminished.
- (d) "Manufacturer" means any person engaged in the manufacture of any alcoholic liquor, including, among others, a distiller, rectifier, wine maker and brewer.
- (e) "Powdered alcohol" means an alcohol manufactured in a powder or crystal-line form for either direct or use reconstitution as an alcoholic liquor or food. For purposes of this article, powdered alcohol excludes any material intended for industrial purposes. (WVaC 60-1-5)
- (f) (1) "Nonintoxicating beer" means all natural cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers with no caffeine infusion or any additives masking or altering the alcohol effect containing at least one half of one percent alcohol by volume, but not more than 11.9 percent of alcohol by weight, or 15 percent alcohol by volume, whichever is greater. "Liquor" as used in this article does not include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.
- (2) "Nonintoxicating craft beer" means any beverage obtained by the natural fermentation of barley, malt, hops or any other similar product or substitute and containing not less than one-half of one percent by volume and not more than 15 percent alcohol by volume or 11.9 percent alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect. (WVaC 11-16-3)
- (g) "Person" means an individual, firm, partnership, limited partnership, corporation or voluntary association.
- (h) "Public place" means any place, building or conveyance to which the public has or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies and corridors of hotels, and any highway, street, lane, park or place of public resort or amusement. "Public place" does not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of West Virginia Code Chapter 60 to sell alcoholic liquors for consumption on the premises; provided, however, "public place" does not mean or include any legally demarcated area designated solely for the consumption of beverages and freshly prepared food that directly connects and adjoins any portion or portions of a premises that qualifies and is licensed under the provisions of West Virginia Code Chapter 60 to sell alcoholic liquors for consumption thereupon.
- (i) "Sale" means any transfer, exchange or barter in any manner or by any means, for a consideration, and includes all sales made by any principal, proprietor, agent or employee.
- (j) "Selling" includes the solicitation or receipt of orders, possession for sale, and possession with intent to sell.
- (k) "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of fruits or other agricultural products, containing sugar. (WVaC 60-1-5)

521.02 ARTICLE NOT APPLICABLE TO CERTAIN USES BY PHYSICIANS, DRUGGISTS AND

OTHERS.

The provisions of this article shall not prevent:

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

521.03 PROHIBITED ACTS GENERALLY.

No person shall:

- (a) Manufacture or sell in this City, without a license, any alcoholic liquor except as permitted by West Virginia Code Chapter 60;
- (b) Aid or abet in the manufacture or sale of alcoholic liquor without a license, except as permitted by West Virginia Code Chapter 60;
- (c) Sell or tender without a license any alcoholic liquor other than provided by West Virginia Code Article 60-6;
- (d) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude, unrectified or impure form of ethyl alcohol, or any other foreign or deleterious substance or liquid;
- (e) Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has been sold at retail in this State;
- (f) Advertise any alcoholic liquor in this City except in accordance with the rules and regulations of the West Virginia Alcohol Beverage Control Commissioner;
- (g) Distribute, deal in, process or use crowns, stamps or seals required under the authority of West Virginia Code Chapter 60, except in accordance with the rules and regulations prescribed by the West Virginia Alcohol Beverage Control Commissioner.
- (h) Manufacture or sell, aid or abet in the manufacture or sale, possess, transport or ship, use or in any other manner provide or furnish powdered alcohol.
(WVaC 60-6-7)
- (i) Manufacture, sell, give or offer to make a sale or gift of, transport or otherwise possess any alcoholic liquor or nonintoxicating beer except as permitted by West Virginia Code Chapters 11 and 60.
- (j) Whoever violates subsection (a) to (h) hereof is guilty of a misdemeanor for a first offense.

521.04 UNLAWFUL SALE OR POSSESSION BY ALCOHOLIC LIQUOR LICENSEE.

No person licensed under West Virginia Code Chapter 60 shall:

- (a) Sell, furnish, tender or serve alcoholic liquors of a kind other than that which is permissible under West Virginia Code Chapter 60;
- (b) Sell, furnish, tender or serve beer to which wine, spirits or alcohol has been added;
- (c) Sell, furnish, tender or serve wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture thereof under regulations of the Commission; (WVaC 60-6-8)
- (d) (1) Sell, furnish, tender or serve alcoholic liquors or nonintoxicating beer to a person who is:
 - A. Less than twenty-one years of age;
 - B. An habitual drunkard;
 - C. Intoxicated;
 - D. Addicted to the use of any controlled substance as defined by West Virginia Code Chapter 60A;
 - E. Mentally incompetent.
- (2) It shall be a defense to a violation of subsection (d)(1)A. hereof if the seller shows that the purchaser:
 - A. Produced written evidence which showed his or her age to be at least the required age for purchase and which bore a physical description of the person named on the writing which reasonably described the purchaser; or
 - B. Produced evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.
(WVaC 60-3-22; 60-6-8)
- (e) Sell, furnish, tender or serve alcoholic liquors except as authorized by his or her license;
- (f) Sell, furnish, tender or serve alcoholic liquors other than by the drink, poured from the alcoholic liquors' original container: provided, that under certain requirements exceptions to liquor by the drink are as follows:
 - (1) A private club licensed under West Virginia Code 60-7-1 et seq., that is in good standing with the Commissioner and has paid a \$1000 on-premises only bottle service fee to the Commissioner, may sell or serve liquor by the bottle to two or more persons for consumption on the licensed premises only, and any liquor bottle sold by such a private club shall be sold at retail for personal use, and not for resale, to a person for not less than 300 percent of the private club's cost, and no such liquor bottle shall be removed from the licensed premises by any person or the licensee; and
 - (2) A Class A licensee licensed under West Virginia Code 60-8-1 et seq., may sell or serve wine by the bottle to two or more persons for consumption on the licensed premises only, unless such licensee has obtained a license or privilege authorizing other activity;
- (g) Sell, furnish, tender, or serve pre-mixed alcoholic liquor that is not in the original container: provided, that a licensee may sell, furnish, tender, and serve pre-mixed beverages consisting of alcoholic liquors, nonalcoholic mixer, and ice if:
 - (1) The frozen drink mixing machine is emptied and sanitized daily; and
 - (2) That a written record reflecting the cleaning and sanitizing of the frozen drink machine is maintained for inspection by the Commissioner and health inspectors;
- (h) Sell, furnish, tender or serve any alcoholic liquor when forbidden by the provisions of this article;
- (i) Sell, possess, possess for sale, tender, serve, furnish or provide any powdered alcohol;
- (j) Keep on the premises covered by his or her license alcoholic liquor other than that which he or she is authorized to sell, furnish, tender, or serve by such license or by this article.

Whoever violates this section is guilty of a misdemeanor for the first offense.

(WVaC 60-6-8)

521.05 UNLAWFUL PURCHASE OF ALCOHOLIC LIQUORS FROM STATE AGENCY.

No person shall:

- (a) Being under the age of twenty-one years, for the purpose of purchasing alcoholic liquors from a State liquor store or an agency, misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or illegally attempt to purchase alcoholic liquors from a State liquor store or an agency.
 - (b) Knowingly buy for, give to or furnish to anyone under the age of twenty-one years to whom they are not related by blood or marriage, any alcoholic liquors from whatever source.
- (WVaC 60-3-22a)

521.06 INTOXICATION OR DRINKING IN PUBLIC PLACES; ILLEGAL POSSESSION.

- (a) A person shall not:
 - (1) Appear in a public place in an intoxicated condition;
 - (2) Drink alcoholic liquor or nonintoxicating beer in a public place;
 - (3) Tender a drink of alcoholic liquor or nonintoxicating beer to another person in a public place;
 - (4) Operate a business without a license issued under West Virginia Code 60-1-1 et seq., which knowingly facilitates the consumption of alcoholic liquors in a public place by providing for on-site items such as cups, glasses, ice and nonalcoholic beverages used to mix with alcoholic liquors, refrigeration, or on-site storage of alcoholic liquors in a lounge area or space for persons to gather, perhaps offering musical entertainment, exotic dancing, or other such nude entertainment, or other similar activity or entertainment. Such business may be commonly known as a “bring your own bottle”, “bring your own booze” or “BYOB” establishments;
 - (5) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing stamps or seals of the West Virginia Alcohol Beverage Control Commissioner, without having first obtained written authority from the Commissioner therefor; or
 - (6) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of West Virginia Code Chapter 60.
- (b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his or her presence, violates subdivision (1) of subsection (a) of this section:
 - (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying the date for appearance before a judicial officer and release him or her to the custody of the individual accepting responsibility: provided, that the issuance of a citation shall be used whenever feasible;
 - (2) If it does not impose an undue burden on the officer, he or she may, after issuance of the citation, transport the individual to the individual’s present residence or arrange for the transportation;
 - (3) If the individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not possible, the officer shall transport or arrange for transportation to the appropriate judicial officer as defined by West Virginia Code 27-11-17; or
 - (4) If the individual is incapacitated and, in the law-enforcement officer’s judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room. The officer shall accompany the individual until he or she is discharged from the emergency room or admitted to the hospital. If the individual is released from the emergency room, the officer may proceed as described in subdivisions (1), (2) and (3) of this subsection. If the individual is admitted to the hospital, the officer shall issue a citation to the individual specifying a date for appearance before a judicial officer.
- (c) Upon presentment before the proper judicial officer, the law-enforcement officer serves as the chief complaining witness. The judicial officer shall determine if there is probative evidence that the individual may be guilty of the charge of public intoxication. If such evidence is not presented, the charge shall be dismissed and the individual released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once a warrant or summons has been issued, the following actions may be taken:
 - (1) If the individual is no longer incapacitated, he or she may be released;
 - (2) If the individual is still incapacitated but a nonintoxicated person is available to accept responsibility for him or her, he or she may be released to the responsible person; or
 - (3) If the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under the provisions of West Virginia Code Article 27-5 or 6A.
- (d) Any law-enforcement officer may arrest and hold in custody, without a warrant, until complaint may be made before a judicial officer and a warrant or summons issued, any person who in the presence of the law-enforcement officer violates any one or more of subdivisions (1) through (5), subsection (a) of this section: provided, that the law-enforcement officer may use reasonable force to prevent harm to himself or herself, the individual arrested or others in carrying out the provisions of this section. (WVaC 60-6-9)

521.07 ACTS PROHIBITED BY NONINTOXICATING BEER LICENSEE.

- (a) (1) No licensee, his, her, its or their servants, agents, or employees shall sell, give or dispense , and no individual shall drink or consume, in or on any licensed premises or in any rooms directly connected, nonintoxicating beer or cooler on weekdays between the hours of 2:00 a.m. and 7:00 a.m., or between the hours of 2:00 a.m. and 1:00 p.m., and no Class A retail dealer who sells nonintoxicating beer for on premises consumption only between the hours of 2:00 a.m. and 10:00 a.m. in any county upon approval as provided for in the West Virginia Code, on any Sunday, except in private clubs licensed under the provisions of the West Virginia Code, where the hours shall conform with the hours of sale of alcoholic liquors;
- (2) No licensee, his, her, its or their servants, agents or employees shall sell, furnish or give any nonintoxicating beer as defined in this article to any person visibly or noticeably intoxicated, or to any person known to be insane or known to be a habitual drunkard;
- (3) No licensee, his, her, its or their servants, agents or employees, shall sell, furnish or give any nonintoxicating beer as defined in

this article to any person who is less than twenty-one years of age;

- (4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained in this section prohibits a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for the containers when title is retained by the vendor: provided, that a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor shall initiate the transfer no later than noon of one business day after the delivery;
 - (5) No brewer or distributor or brewpub or his, her, its or their agents, shall transport or deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;
 - (6) No brewer or distributor shall give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail, or offer any prize, premium, gift or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: provided that a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained shall prohibit a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any such events: provided however that no such event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the nonintoxicating Beer Commissioner.
 - (7) No licensee shall permit in his premises any lewd, immoral or improper entertainment, conduct or practice;
 - (8) No licensee except the holder of a license to operate a private club issued under the provisions of West Virginia Code Article 60-7, or a holder of a license for a private wine restaurant issued under the provisions of West Virginia Code Article 60-8, shall possess a Federal license, tax receipt or other permit entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;
 - (9) No licensee shall obstruct the view of the interior of his premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying such premises. The interior of all licensed premises shall be adequately lighted at all times: provided, that provisions of this subsection shall not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of West Virginia Code Article 60-7, or the premises of a private wine restaurant licensed under the provisions of West Virginia Code Article 60-8;
 - (10) No licensee shall manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith: provided, that the prohibition contained in this subsection with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a license to operate a private club issued under the provisions of West Virginia Code Article 60-7, nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of West Virginia Code Article 60-8, insofar as such private wine restaurant is authorized to serve wine;
 - (11) No retail licensee shall sell or dispense nonintoxicating beer as defined in this article, purchased or acquired from any source other than a distributor, brewer or manufacturer licensed under the laws of this State;
 - (12) No licensee shall permit loud, boisterous or disorderly conduct of any kind upon his or her premises or permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community wherein such business is located: provided, that a licensee may have speaker systems for outside broadcasting so long as the noise levels do not create a public nuisance or violate local noise ordinances;
 - (13) No person whose license has been revoked, shall obtain employment with any retailer within the period of one year from the date of such revocation, and no retailer shall knowingly employ any such person within such time;
 - (14) No distributor shall sell, possess for sale, transport or distribute nonintoxicating beer except in the original container;
 - (15) No licensee shall knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this State or Municipality;
 - (16) No Class B retailer shall permit the consumption of nonintoxicating beer upon his licensed premises;
 - (17) No Class A licensee, his, her, its or their servants, agents or employees, or any licensee by or through such servants, agents or employees, shall allow or permit any person less than eighteen years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subsection shall not apply where such person under the age of eighteen years is in or upon such premises in the immediate company of his or her parent or parents, or where and while such person under the age of eighteen years is in or upon such premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on such premises;
 - (18) No distributor shall sell, offer for sale, distribute or deliver any nonintoxicating beer outside the territory assigned to such distributor by the brewer or manufacturer of such nonintoxicating beer or sell, offer for sale, distribute or deliver any such nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such nonintoxicating beer: provided, that nothing herein shall be deemed to prohibit sales of convenience between distributors licensed in this State wherein one such distributor sells, transfers or delivers to another such distributor a particular brand or brands for sale at wholesale; and
 - (19) No licensee or any agent, servant or employee of any such licensee shall knowingly violate any rule or regulation lawfully promulgated by the Commissioner.
- (b) Any person who violates any provision of this section, or any rule, regulation or order lawfully promulgated by the Commissioner, or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful, shall be punished as provided

in Section 521.99.

(c) (1) A Class B licensee that:

- A. Has installed a transaction scan device on its licensed premises; and
- B. Can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold, furnished or given away by the use of the transaction device may not be subject to:

- 1. Any criminal penalties whatsoever;
- 2. Any administrative penalties from the Commissioner; or
- 3. Any civil liability whatsoever for the improper sale, furnishing or giving away of nonintoxicating beer to an individual who is less than twenty-one years of age by one of his or her employees, servants or agents. Any agent, servant or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one years of age is subject to the criminal penalties of Section 521.99. Any agent, servant or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than twenty-one years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.

(2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence:

- A. That it has developed a written policy which requires each employee, servant or agent to verify the age of each individual to whom nonintoxicating beer will be sold, furnished or given away;
- B. That it has communicated this policy to each employee, servant or agent; and
- C. That it monitors the actions of its employees, servants or agents regarding the sale, furnishing or giving away of nonintoxicating beer and that it has taken corrective action for any discovered noncompliance with this policy.

(3) "Transaction scan" means the process by which a person checks, by means of a transaction scan device, the age and identity of the cardholder, and "transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver's license or other governmental identity card.

(d) Nothing in this section nor any rule or regulation of the Commissioner shall prevent or be deemed to prohibit any licensee from employing any person who is at least eighteen years of age to serve in such licensee's lawful employ, including the sale or delivery of nonintoxicating beer as defined in this article. With the prior approval of the Commissioner, a licensee whose principal business is the sale of food or consumer goods or the providing of recreation activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: provided, that such person's duties shall not include the sale or delivery of nonintoxicating beer or alcoholic liquors: provided, however, that the authorization to employ such persons under the age of eighteen years shall be clearly indicated on the licensee's license.

(WVaC 11-16-18)

521.08 UNLAWFUL PURCHASE OF NONINTOXICATING BEER.

(a) No person under the age of twenty-one years shall purchase, consume, sell, possess or serve nonintoxicating beer.

Nothing in this section, nor any rule or regulation of the Alcohol Beverage Control Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of nonintoxicating beer. Further, nothing in this section, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores: provided, that such person shall not sell or deliver nonintoxicating beer.

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

(b) No person under the age of twenty-one years for the purpose of purchasing nonintoxicating beer, shall misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or shall illegally attempt to purchase nonintoxicating beer.

(c) No person shall knowingly buy for, give to or furnish nonintoxicating beer to anyone under the age of twenty-one years to whom they are not related by blood or marriage.

(WVaC 11-16-19)

521.09 ACTS PROHIBITED BY PRIVATE CLUB LICENSEE.

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

- (1) Sell, offer for sale, tender, or serve any alcoholic liquors other than by the drink poured from the original package or container, except as authorized in Section 521.04 ;
- (2) Authorize or permit any disturbance of the peace, obscene, lewd, immoral or improper entertainment, conduct or practice, gambling or any slot machine, multiple coin console machine, multiple coin console slot machine, or device in the nature of a slot machine; however, various games, gaming and wagering conducted by duly licensed persons of the West Virginia State Lottery Commission, charitable bingo games conducted by duly licensed charitable or public service organization (or its auxiliaries), pursuant to West Virginia Code 47-20-1 et seq., and charitable raffle games conducted by a duly licensed charitable or public service organization (or its auxiliaries), pursuant to West Virginia Code 47-21-1 et seq., all of which are permissible on a licensee's licensed premises when operated in accordance with this code, rules and regulations: provided, that a private resort hotel holding a license issued pursuant to West Virginia Code 60-7-1 et seq., may sell, tender or dispense nonintoxicating beer, wine, or

alcoholic liquors in or on the premises licensed under West Virginia Code 29-22A-1 et seq., and 29-22C-1 et seq., or West Virginia Code 29-25-1 et seq., during hours of operation authorized by West Virginia Code 29-22A-1 et seq., and 29-22C-1 et seq., or 29-25-1 et seq.;

- (3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine or alcoholic liquors on the licensee's premises, by any person less than twenty-one years of age;
 - (4) Sell, give away, or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;
 - (5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any licensed premises, or in any rooms directly connected therewith between the hours of 3:00 a.m. and 7:00 a.m. on weekdays or Saturdays, between the hours of 3:00 a.m. and 10:00 a.m. on any Sunday or, between the hours of 3:00 a.m. and 1:00 p.m. in any county upon approval as provided for in West Virginia Code 7-1-3ss, on any Sunday; and
 - (6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine or alcoholic liquors, covered by this article, to any person who is less than twenty-one years of age;
 - (7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;
 - (8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues paying member in good standing of the private club or a guest of such member;
 - (9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium or nitrous oxide for purposes of human consumption except as authorized by the Commissioner;
 - (10) A. Employ any person who is less than eighteen years of age in a position where the primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating beer, wine or alcoholic liquors to any person;
B. Employ any person who is between the ages of eighteen and twenty-one who is not directly supervised by a person aged twenty-one or over in a position where the primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating beer, wine or alcoholic liquors to any person; or
 - (11) Violate any reasonable rule or regulation of the Alcohol Beverage Control Commissioner.
- (b) No licensee shall advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased thereat.
(WVaC 60-7-12)

521.10 UNLAWFUL PURCHASE FROM PRIVATE CLUB.

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

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

(c) No person shall knowingly buy for, give to or furnish to anyone under the age of twenty-one years any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee.
(WVaC 60-7-12a)

521.11 ACTS PROHIBITED BY WINE DEALERS.

It shall be unlawful:

- (a) For a supplier or distributor to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of West Virginia Code 60-8-6, or for a retailer to sell or deliver wine purchased or acquired from any source other than a licensed distributor or a farm winery as defined in West Virginia Code 60-1-5a;
- (b) Unless otherwise specifically provided for by the provisions of West Virginia Code Article 60-8, for a licensee under West Virginia Code Article 60-8 to acquire, transport, possess for sale, or sell wine other than in the original package;
- (c) For a licensee, his or her servants, agents or employees to sell, furnish or give wine to any person less than twenty-one years of age or to a mental incompetent or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs: provided that the provisions of West Virginia Code 60-3A-25a shall apply to sales of wine;
- (d) For a licensee to permit a person who is less than eighteen years of age to sell, furnish or give wine to any person;
- (e) For a supplier or distributor to sell or deliver any brand of wine purchased or acquired from any source other than the primary source of supply of the wine which granted the distributor the right to sell such brand at wholesale. For the purposes of this article, "primary source of supply" means the vintner of the wine, the importer of a foreign wine who imports the wine into the United States, the owner of a wine at the time it becomes a marketable product, the bottler of a wine, or an agent specifically authorized by any of the above enumerated persons to make a sale of the wine to a West Virginia distributor: provided, that no retailer shall sell or deliver wine purchased or acquired from any source other than a distributor or farm winery licensed as such in this State: provided, however, that nothing herein is considered to prohibit sales of convenience between distributors licensed in this State wherein one such distributor sells, transfers or delivers to another such distributor a particular brand or brands for sale at wholesale of which brand or brands such other distributor has been authorized by a licensed supplier to distribute. The Alcohol Beverage Commissioner shall promulgate rules necessary to carry out the provision of this subsection;
- (f) For a person to violate any reasonable rule promulgated by the Alcohol Beverage Control Commissioner under West Virginia Code Article 60-8.

(g) Nothing in this article, nor any rule or regulation of the Commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least eighteen years of age to serve in any licensee's lawful employment, including the sale or delivery of wine under the provisions of this article. With the prior approval of the Commissioner a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: provided, that such person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: provided, however, that the authorization to employ such persons, under the age of eighteen years shall be clearly indicated on the licensee's license.

(WVaC 60-8-20)

521.12 UNLAWFUL PURCHASE OF WINE.

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

Nothing in this section, nor any rule or regulation of the Alcohol Beverage Control Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of wine. Further, nothing in this section, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores: provided, that such person shall not sell or deliver wine or alcoholic liquor.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing wine or alcoholic liquor when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.

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

(c) No person shall knowingly buy for, give to or furnish wine or other alcoholic liquors from any source to anyone under the age of twenty-one years to whom they are not related by blood or marriage. (WVaC 60-8-20a)

521.13 UNLAWFUL PURCHASE FROM RETAIL LIQUOR LICENSEE.

(a) (1) No person who is eighteen or over but under the age of twenty-one years shall purchase, consume, sell, serve or possess alcoholic liquor. Any person who is under eighteen years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a status offense, as that term is defined in West Virginia Code 49-1-4, and, upon adjudication therefor, shall be referred to the Department of Health and Human Resources for services, as provided in West Virginia Code 49-5-11.

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

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

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

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

(d) No person while on the premises of a retail outlet shall consume liquor or break the seal on any package or bottle of liquor. (WVaC 60-3A-24)

521.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) Whoever violates Section 521.05(a), 521.12(b) or 521.13(b) shall be fined not more than fifty dollars (\$50.00), or imprisoned for not more than seventy-two hours, or both, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for not more than one year.

(b) Whoever violates Section 521.05(b), 521.12(c) or 521.13(d) shall be fined not more than one hundred dollars (\$100.00), or imprisoned for not more than ten days, or both.

(WVaC 11-16-19, 60-3-22a, 60-8-20a, 60-3A-24)

(c) Whoever violates subdivision (1), subsection (a) of Section 521.06 shall be sentenced by a judicial officer in accordance with the following options:

(1) Upon first offense, a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00). If the individual, prior to conviction, agrees to voluntarily attend an alcohol education program of not more than six hours duration at the nearest community mental health - mental retardation center, the judicial officer may delay sentencing until the program is completed and upon completion may dismiss the charges;

(2) Upon conviction for a second offense, a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00) and not more than sixty days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health - mental retardation center;

(3) Upon third and subsequent convictions, a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00)

and not less than five nor more than thirty days in jail or a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00) and completion of not less than five hours of alcoholism counseling at the nearest community

mental health - mental retardation center: provided, that three convictions for public intoxication within the preceding six months is considered evidence of alcoholism. For the educational counseling programs described in this subsection the community mental health - mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual.

(4) A person charged with a violation of subdivision (1), subsection (a) of Section 521.06 who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to West Virginia Code Articles 27-5 and 6A.

(d) Whoever violates subdivision (2), subsection (a) of Section 521.06 shall be fined not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00); and upon a second or subsequent conviction thereof, shall be fined not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both.

(e) Whoever violates subdivision (3), subsection (a) of Section 521.06 shall be fined not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both.

(f) Whoever violates subdivision (4) or (5), subsection (a) of Section 521.06 shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). Upon conviction of a second or subsequent offense, he or she is guilty of a felony and, shall be prosecuted under appropriate State law.

(WVaC 60-6-9)

(g) (1) Whoever violates Section 521.08(a) shall be fined an amount not to exceed five hundred dollars (\$500.00) or shall be confined in jail, or, in the case of a juvenile, a detention facility, for a period not to exceed seventy-two hours, or both fined and confined or, in lieu of such fine and confinement, may, for the first offense, be placed on probation for a period not to exceed one year.

(2) Whoever violates Section 521.08(b) shall be fined an amount not to exceed one hundred dollars (\$100.00) or shall be confined in jail, or in the case of a juvenile, a juvenile detention facility, for a period not to exceed seventy- two hours, or both such fine and confinement or, in lieu of such fine and confinement, may, for the first offense, be placed on probation for a period not exceeding one year.

(3) Whoever violates Section 521.08(c) shall be fined an amount not to exceed one hundred dollars (\$100.00) or shall be confined in jail for a period not to exceed ten days, or both such fine and confinement.

(h) Whoever violates Section 521.09 shall be fined not less than five hundred dollars (\$500.00) or more than one thousand dollars (\$1,000), or imprisoned not more than thirty days, or both.

(WVaC 60-7-12)

(i) Whoever violates Section 521.10(a) or (b) shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both, and in addition may, for the first offense be placed on probation for a period not to exceed one year.

(j) Whoever violates Section 521.10(c) shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than ten days, or both.

(WVaC 60-7-12a)

(k) Whoever violates 521.12(a) or 521.13(a) shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than seventy-two hours, or both, or in lieu thereof, may, for the first offense, be placed on probation for a period not to exceed one year.

(WVaC 11-16-19, 60-8-20a, 60-3A-24)

(l) Whoever violates Section 521.13(c) shall be fined not more than two hundred fifty dollars (\$250.00) or imprisoned not more than ten days, or both.

(WVaC 60-3A-24)

ARTICLE 525

Minors

525.01 Contributing to delinquency of a child.

525.02 Cruelty to children.

525.03 Parental liability for acts of children.

525.04 Abandoned airtight containers.

525.05 Tobacco usage restrictions.

525.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law

Delinquent child defined - see W. Va. Code 49-1-4

Jurisdiction of municipal court - see W. Va. Code 49-5-1(b)

Contributing to delinquency of minor - see W. Va. Code 49-7-7 et seq.

525.01 CONTRIBUTING TO DELINQUENCY OF A CHILD.

(a) No person eighteen years of age or older shall knowingly contribute to or encourage the delinquency of a child.

(b) As used in this section, "delinquency" means the violation or attempted violation of any federal or state statute, county or municipal ordinance, or a court order, or the habitual or continual refusal to comply, without just cause, with the lawful supervision or direction of a parent, guardian or custodian.

(c) In addition to any penalty provided under Section 501.99 and any restitution which may be ordered by the court pursuant to West

Virginia Code 61-11A-5, the court may order any person convicted of a violation of subsection (a) of this section to pay all or any portion of the cost of medical, psychological or psychiatric treatment provided the child resulting from the acts for which the person is convicted.

(d) This section does not apply to any parent, guardian or custodian who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody or control of the parent, guardian or custodian with necessary medical care, when medical care conflicts with the tenets and practices of a recognized religious denomination or order of which parent, guardian or custodian is an adherent or member.

(e) It is not an essential element of the offense created by this section that the minor actually be delinquent.

(f) Upon conviction, the court may suspend the sentence of a person found guilty under this section. A suspended sentence may be subjected to the following terms and conditions:

- (1) That offender pay for any and all treatment, support, and maintenance while the child is in the custody of the state or person that the court determines reasonable and necessary for the welfare of the child;
- (2) That the offender post a sufficient bond to secure the payment for all sums ordered to be paid under this section, as long as the bond does not exceed five thousand dollars (\$5,000); and
- (3) That the offender participate in any program or training that will assist the child in correcting the delinquent behavior or, in the case of neglect, that will assist the offender in correcting his or her behavior that led to violation of this section.

(g) (1) The penalty of a bond given upon suspension of a sentence which becomes forfeited is recoverable without a separate suit. The court may cause a citation or a summons to issue to the principal and surety, requiring that they appear at a time named by the court, not less than ten days, from the issuance of the summons, and show cause why a judgment should not be entered for the penalty of the bond and execution issued against the property of the principal and the surety.

- (2) Any money collected or paid upon an execution, or upon the bond, shall be deposited with the clerk of the court in which the bond was given. The money shall be applied first to the payment of all court costs and then to the treatment, care or maintenance of the child who was at issue when the offender was convicted of this section.

(h) If the guilty person had custody of the child prior to conviction, the court or judge may, on suspending sentence, permit the child to remain in the custody of the person, and make it a condition of suspending sentence that the person provides whatever treatment and care may be required for the welfare of the child, and shall do whatever may be calculated to secure obedience to the law or to remove the cause of the delinquency.

(WVaC 61-8D-10)

525.02 CRUELTY TO CHILDREN.

No person shall cruelly ill treat, abuse or inflict unnecessary cruel punishment upon, any infant or minor child, and no person, having the care, custody or control of any minor child, shall willfully abandon or neglect the minor child.

In addition to any penalty provided under this section and any restitution which may be ordered by the court, the court may order any person convicted under the provisions of this section to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the victim, the need for which results from the act or acts for which the person is convicted, whether or not the victim is considered to have sustained bodily injury.

(WVaC 61-8-24)

525.03 PARENTAL LIABILITY FOR ACTS OF CHILDREN.

The custodial parent or parents of any minor child shall be personally liable in an amount not to exceed that specified in West Virginia Code 55-7A-2 for damages which are the proximate result of any one or a combination of the following acts of the minor child:

- (a) The malicious and willful injury to the person of another; or
- (b) The malicious and willful injury or damage to the property of another, whether the property be real, personal, or mixed; or
- (c) The malicious and willful setting fire to a forest or wooded area belonging to another; or
- (d) The willful taking, stealing and carrying away of the property of another, with the intent to permanently deprive the owner of possession.

For purposes of this section, "custodial parent or parents" means the parent or parents with whom the minor child is living, or a divorced or separated parent who does not have legal custody but who is exercising supervisory control over the minor child at the time of the minor child's act.

Persons entitled to recover damages under this section shall include, but are not limited to, the State, any municipal corporation, county commission and board of education, or other political subdivision of this State or any person or organization of any kind or character. The action may be brought in magistrate or another court of competent jurisdiction. Recovery hereunder shall be limited to the actual damages, based upon direct out-of-pocket loss, taxable court costs, and interest from date of judgment. The right of action and remedy granted herein shall be in addition to and not exclusive of any rights of action and remedies therefor against a parent or parents for the tortious acts of his or their children heretofore existing under the provisions of any law, statutory or otherwise, or now so existing independently of the provisions of this section.

(WVaC 55-7A-2)

525.04 ABANDONED AIRTIGHT CONTAINERS.

No person shall abandon any refrigerator or food freezer appliance or other airtight appliance having a height or length of greater than two feet without first removing all entry doors therefrom. (WVaC 61-2-26)

525.05 TOBACCO USAGE RESTRICTIONS.

(a) Sale or Gift of Tobacco to Persons Under Eighteen. No person, firm, corporation or business entity may sell, give or furnish, or cause to be sold, given or furnished, to any person under the age of eighteen years:

- (1) Any pipe, cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco or tobacco product;
 - (2) Any cigar, cigarette, snuff, chewing tobacco or tobacco product, in any form; or
 - (3) Any tobacco-derived product, alternative nicotine product or vapor product.
- (b) Any firm or corporation that violates any provision of subsection (a) hereof and any individual who violates any provision of

subsection (a) hereof shall be fined fifty dollars (\$50.00) for the first offense. Upon any subsequent violation at the same location or operating unit, the firm, corporation or individual shall be fined as follows: at least two hundred fifty dollars (\$250.00) but not more than five hundred dollars (\$500.00) for the second offense, if it occurs within two years of the first conviction; at least five hundred dollars (\$500.00) but not more than seven hundred fifty dollars (\$750.00) for the third offense, if it occurs within two years of the first conviction; and at least one thousand dollars (\$1,000) but not more than five thousand dollars (\$5,000) for any subsequent offense, if the subsequent offense occurs within five years of the first conviction.

(c) Any individual who knowingly and intentionally sells, gives or furnishes or causes to be sold, given or furnished to any person under the age of eighteen years any cigar, cigarette, snuff, chewing tobacco, tobacco product or tobacco-derived product, in any form, for the first offense shall be fined not more than one hundred dollars (\$100.00); upon conviction thereof for a second or subsequent offense shall be fined not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00).

(d) Any employer who discovers that his or her employee has sold or furnished tobacco products or tobacco-derived products to minors may dismiss such employee for cause. Any such discharge shall be considered as "gross misconduct" for the purposes of determining the discharged employee's eligibility for unemployment benefits in accordance with the provisions of West Virginia Code 21a-6-3 if the employer has provided the employee with prior written notice in the workplace that such act or acts may result in their termination from employment.

(WVaC 16-9A-2)

(e) Use or Possession of Tobacco or Tobacco-Derived Products by Persons Under the Age of Eighteen Years. No person under the age of eighteen years shall have on or about his or her person or premises or use any cigarette, or cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; or, any pipe, snuff, chewing tobacco, tobacco product or tobacco-derived product; provided, that minors participating in the inspection of locations where tobacco products or tobacco-derived products are sold or distributed pursuant to West Virginia Code 16-9A-7 shall not be deemed to violate the provisions of this subsection (e). Any person violating the provisions of this subsection (e) shall for the first violation be fined fifty dollars (\$50.00) and be required to serve eight hours of community service; for a second violation, the person shall be fined one hundred dollars (\$100.00) and be required to serve sixteen hours of community service; and for a third and each subsequent violation, the person shall be fined two hundred dollars (\$200.00) and be required to serve twenty- four hours of community service. Notwithstanding the provisions of West Virginia Code 49-4- 701, the Magistrate Court has concurrent jurisdiction.

(WVaC 16-9A-3)

525.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

Whoever violates Section 525.04 shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than thirty days, or both.

ARTICLE 529

Offenses Relating to Persons

529.01 Assault and battery.

529.02 Assault and battery on school employees.

529.021 Assault and battery on governmental representatives, health care providers, utility workers, law enforcement officers and emergency medical service personnel.

529.03 Controlled substances.

529.04 Breathing, inhaling or drinking certain intoxicating compounds.

529.99 Penalty.

CROSS REFERENCES

Uniform Controlled Substances Act - see W. Va. Code Ch. 60A

State law provisions - see W. Va. Code Art. 61-2

Harassing telephone calls - see GEN. OFF. 517.06

Intoxication or drinking in public places - see GEN. OFF. 521.06

529.01 ASSAULT AND BATTERY.

(a) Assault. No person shall unlawfully attempt to commit a violent injury to the person of another or unlawfully commit an act that places another in reasonable apprehension of immediately receiving a violent injury.

(b) Battery. No person shall unlawfully and intentionally make physical contact of an insulting or provoking nature to the person of another or unlawfully and intentionally cause physical harm to another person. (WVaC 61-2-9)

529.02 ASSAULT AND BATTERY ON SCHOOL EMPLOYEES.

(a) No person shall commit an assault:

(1) By unlawfully attempting to commit a violent injury to the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a; or

(2) By unlawfully committing an act which places a school employee in reasonable apprehension of immediately receiving a violent injury while the employee is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a.

(b) No person shall commit a battery:

(1) By unlawfully and intentionally making physical contact of an insulting or provoking nature with the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her

place of employment or if the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a; or

- (2) By unlawfully and intentionally causing physical harm to a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a.

(c) For the purposes of this section, "school employee" means a person employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. For the purposes of this section, a "school employee" includes a student teacher.

(WVaC 61-2-15)

529.021 ASSAULT AND BATTERY ON GOVERNMENTAL REPRESENTATIVES, HEALTH CARE PROVIDERS, UTILITY WORKERS, LAW ENFORCEMENT OFFICERS AND EMERGENCY MEDICAL SERVICE PERSONNEL.

(a) Definitions. For purposes of this section:

- (1) "Government representative" means any officer or employee of the state or a political subdivision thereof, or a person under contract with a state agency or political subdivision thereof.
- (2) "Health care worker" means any nurse, nurse practitioner, physician, physician assistant or technician practicing at, and all persons employed by or under contract to a hospital, county or district health department, long- term care facility, physician's office, clinic or outpatient treatment facility.
- (3) "Emergency service personnel" means any paid or volunteer firefighter, emergency medical technician, paramedic, or other emergency services personnel employed by or under contract with an emergency medical service provider or a state agency or political subdivision thereof.
- (4) "Utility worker" means any individual employed by a public utility or electric cooperative or under contract to a public utility, electric cooperative or interstate pipeline.
- (5) "Law-enforcement officer" has the same definition as this term is defined in West Virginia Code 30-29-1, except for purposes of this section, "law- enforcement officer" shall additionally include those individuals defined as "chief executive" in West Virginia Code 30-29-1.
- (6) "Correctional employee" means any individual employed by the West Virginia Division of Corrections or the West Virginia Regional Jail Authority.

(b) Battery. No person shall unlawfully, knowingly and intentionally make physical contact of an insulting or provoking nature with a government representative, health care worker, utility worker, emergency service personnel, correctional employee or law-enforcement officer acting in his or her official capacity and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity, or unlawfully and intentionally causes physical harm to that person acting in such capacity and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity. Whoever violates this subsection (b) is guilty of a misdemeanor for a first offense.

(c) Assault. No person shall unlawfully attempt to commit a violent injury to the person of a government representative, health care worker, utility worker, emergency service personnel, correctional employee or law-enforcement officer, acting in his or her official capacity and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity, or unlawfully commits an act which places that person acting in his or her official capacity in reasonable apprehension of immediately receiving a violent injury and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity.

(d) Any person convicted of any crime set forth in this section who is incarcerated in a facility operated by the West Virginia Division of Corrections or the West Virginia Regional Jail Authority, at the time of committing the offense and whose victim is a correctional employee, may not be sentenced in a manner by which the sentence would run concurrent with any other sentence being served at the time of sentencing, but shall run consecutively to the current sentence. (WVAC 61-2-10(b))

529.03 CONTROLLED SUBSTANCES.

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

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

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

(WVaC 60A-4-401)

(d) No person shall knowingly or intentionally:

- (1) Create, distribute or deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or
- (2) Create, possess or sell or otherwise transfer any equipment with the intent that such equipment shall be used to apply a trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance or the container or label of a counterfeit substance or an imitation controlled substance.

The provisions of subsection (d)(1) hereof shall not apply to a practitioner who administers or dispenses a placebo.

(WVaC 60A-4-401)

529.04 BREATHING, INHALING, OR DRINKING CERTAIN INTOXICATING COMPOUNDS.

(a) No person shall intentionally breathe, inhale, or drink any compound, liquid, or chemical containing acetone, amylacetate, benzol or benzene, butyl acetate, butyl alcohol, carbon tetrachloride, chloroform, cyclohexanone, ethanol or ethyl alcohol, ethyl acetate, hexane, isopropanol or isopropyl alcohol, isopropyl acetate, methyl "cellosolve" acetate, methyl ethyl ketone, methyl isobutyl ketone, toluol or

toluene, trichloroethylene, tricresyl phosphate, xylol or xylene, or any other solvent, material substance, chemical, or combination thereof, having the property or releasing toxic vapors for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis, or irrational behavior or in any manner changing, distorting, or disturbing the auditory, visual or mental processes. For the purposes of this section, any condition so induced shall be deemed to be an intoxicated condition.

(b) This section does not apply to:

- (1) Any person who commits any act described herein pursuant to the direction or prescription of a licensed physician or dentist authorized to so direct or prescribe, including the inhalation of anesthesia for medical or dental purposes; or
- (2) To any alcoholic liquor or nonintoxicating beer as defined in West Virginia Code 60-1-5.
(WVaC 61-8-11)

529.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

Whoever violates Section 529.01(a), 529.02(a) or 529.04 shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both.

ARTICLE 533

Offenses Relating to Property

- 533.01 Shoplifting.**
- 533.02 Trespass.**
- 533.03 Petit larceny.**
- 533.04 Dealing with stolen goods.**
- 533.05 Injury or destruction of property or monuments.**
- 533.06 Tampering with and theft of utilities; CATV.**
- 533.07 Littering and deposit of garbage, rubbish, junk, etc.**
- 533.08 Barricades and warning lights; abandoned excavations.**
- 533.09 Unauthorized use of dumpsters.**
- 533.10 Fraudulently obtaining food or lodging.**
- 533.99 Penalty.**

CROSS REFERENCES

See sectional histories for similar State law

Authority to regulate advertising - see W. Va. Code 8-12-5(31)

State law provisions - see W. Va. Code Art. 61-3

533.01 SHOPLIFTING.

(a) General Definitions.

- (1) "Card-not-present credit or debit transaction" means a credit or debit sale of merchandise by telephone, mail order, internet or other means that does not require the cardholder's signature or physical presentation of the credit or debit card to the merchant.
- (2) "Conceal" means to hide, hold or carry merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation.
- (3) "Merchant" means an owner or operator of any mercantile establishment, and includes the merchant's employees, servants, security agents or other agents.
- (4) "Mercantile establishment" means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale. "Mercantile establishment" does not include adjoining parking lots or adjoining areas of common use with other establishments.
- (5) "Merchandise" means any goods, foodstuffs, wares or personal property or any part or portion thereof of any type or description displayed, held or offered for sale, or a shopping cart.
- (6) "Value of the merchandise" means the merchant's stated price of the merchandise, or in the event of altering, transferring or removing a price marking or causing a cash register or other sales device to reflect less than the retail value of the merchandise, as defined in subsection (b) hereof, the difference between the merchant's stated price of the merchandise and the altered price.

(WVaC 61-3A-6)

(b) Shoplifting Defined.

- (1) A person commits the offense of shoplifting if, with intent to appropriate merchandise without paying the merchant's stated price for the merchandise, such person, alone or in concert with another person, knowingly:
 - A. Conceals the merchandise upon his or her person or in another manner; or
 - B. Removes or causes the removal of merchandise from the mercantile establishment or beyond the last station for payment; or
 - C. Alters, transfers or removes any price marking affixed to the merchandise; or
 - D. Transfers the merchandise from one container to another; or
 - E. Causes cash register or other sales recording device to reflect less than the merchant's stated price for the merchandise; or
 - F. Removes a shopping cart from the premises of the mercantile establishment.
 - G. Repudiates a card-not-present credit or debit transaction after having taken delivery of merchandise ordered from the merchant and does not return the merchandise or attempt to make other arrangements with the vendor.
- (2) A person also commits the offense of shoplifting if such person, alone or in concert with another person, knowingly and with intent obtains an exchange or refund or attempts to obtain an exchange or refund for merchandise which has not been purchased from the mercantile establishment.

(WVaC 61-3A-1)

(c) Breach of Peace; Detention. An act of shoplifting as defined herein, is hereby declared to constitute a breach of peace and any owner of merchandise, his agent or employee, or any law enforcement officer who has reasonable ground to believe that a person has committed shoplifting, may detain such person in a reasonable manner and for a reasonable length of time not to exceed thirty minutes, for the purpose of investigating whether or not such person has committed or attempted to commit shoplifting. Such reasonable detention shall not constitute an arrest nor shall it render the owner of merchandise, his agent or employee, liable to the person detained.

(WVaC 61-3A-4)

(d) Evidence.

- (1) Evidence of stated price or ownership of merchandise may include, but is not limited to:
 - A. The actual merchandise alleged to have been shoplifted; or
 - B. The unaltered content of the price tag or marking from such merchandise; or
 - C. Properly identified photographs of such merchandise.
- (2) Any merchant may testify at a trial as to the stated price or ownership of merchandise, as well as to other matters pertaining to the case.

(WVaC 61-3A-2)

(e) Civil Liability.

- (1) General rule. Any person who commits any of the acts described in this section shall be civilly liable:
 - A. To restore the merchandise to the mercantile establishment; and
 - B. If such merchandise is not recoverable or is damaged, for actual damages, including the value of the merchandise involved in the shoplifting; and
 - C. For other actual damages arising from the incident, not including the loss of time or loss of wages incurred by the mercantile establishment or any merchant in connection with the apprehension and processing of the suspect; and
 - D. In all cases, for a penalty to be paid to the mercantile establishment in the amount of fifty dollars (\$50.00) or double the value of the merchandise whichever is higher.
- (2) Costs and attorneys' fees. A merchant who is a prevailing party under this section is entitled to costs.
- (3) Effect of conviction. A conviction for the offense of theft by shoplifting is not a prerequisite to the maintenance of a civil action authorized by this section. However, a merchant who has recovered the penalty prescribed by subsection (f) hereof is not entitled to recover the penalty imposed by this section.
- (4) Right to demand payment. The fact that a mercantile establishment may bring an action against an individual as provided in this section does not limit the right of such establishment to demand, orally or in writing, that a person who is liable for damages or a penalty under this section remit such damages or penalty prior to the commencement of any legal action.

(WVaC 61-3A-5)

(f) Penalty. A person convicted of shoplifting shall be punished as follows:

- (1) First offense conviction. Upon a first shoplifting conviction:
 - A. When the value of the merchandise is less than or equal to five hundred dollars (\$500.00) the defendant shall be fined not more than two hundred fifty dollars (\$250.00).
 - B. When the value of the merchandise exceeds five hundred dollars (\$500.00), the defendant shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) and such fine shall not be suspended; or the defendant shall be confined in jail not more than thirty days, or both.
- (2) Second offense conviction. Upon a second shoplifting conviction:
 - A. When the value of the merchandise is less than or equal to five hundred dollars (\$500.00) the defendant shall be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00) and such fine shall not be suspended; or the defendant shall be confined in jail not more than thirty days, or both.
 - B. When the value of the merchandise exceeds five hundred dollars (\$500.00), the defendant shall be fined not less than five hundred dollars (\$500.00) and shall be confined in jail not more than thirty days.
- (3) Mandatory penalty. In addition to the fines and imprisonment imposed by this section, in all cases of conviction for the offense of shoplifting, the court shall order the defendant to pay a penalty to the mercantile establishment involved in the amount of fifty dollars (\$50.00), or double the value of the merchandise involved, whichever is higher. The mercantile establishment shall be entitled to collect such mandatory penalty as in the case of a civil judgment. This penalty shall be in addition to the mercantile establishment's rights to recover the stolen merchandise.
- (4) Prior convictions. In determining the number of prior shoplifting convictions for purposes of imposing punishment under this section, the court shall disregard all such convictions occurring more than seven years prior to the shoplifting offense in question.

(WVaC 61-3A-3)

533.02 TRESPASS.

(a) Definitions. As used in this section:

- (1) "Structure" means any building of any kind either temporary or permanent, which has a roof over it, together with the curtilage thereof.
- (2) "Conveyance" means any motor vehicle, vessel, railroad car, railroad engine, trailer, aircraft or sleeping car, and "to enter a conveyance" includes taking apart any portion of the conveyance.
- (3) An act is committed "in the course of committing" if it occurs in an attempt to commit the offense or in flight after the attempt or commission.
- (4) "Posted land" is land that has:
 - A. Signs placed not more than five hundred feet apart, along and at each corner of the boundaries of the land. The signs shall be reasonably maintained, with letters of not less than two inches in height, and the words "no trespassing". The signs shall be placed along the boundary line and at all roads, driveways and gates of entry onto the posted land so as to be clearly noticeable from outside of the boundary line; or
 - B. Boundaries marked with a clearly visible purple painted marking, consisting of one vertical line no less than eight inches in

length and two inches in width, and the bottom of the mark not less than three nor more than six feet from the ground or normal water surface. Such marks shall be affixed to immovable, permanent objects that are no more than one hundred feet apart and readily visible to any person approaching the property. Signs shall also be posted at all roads, driveways or gates of entry onto the posted land so as to be clearly noticeable from outside the boundary line.

C. It is not necessary to give notice by posting on any enclosed land or place not exceeding five acres in area on which there is a dwelling house or property that by its nature and use is obviously private in order to obtain the benefits of this article pertaining to trespass on enclosed lands.

- (5) "Cultivated land" means that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture or trees or is fallow land as part of a crop rotation.
- (6) "Fenced land" means that land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire or other material, which stands at least three feet in height. For the purpose of this section it shall not be necessary to fence any boundary or part of a boundary of any land which is formed by water and is posted with signs pursuant to the provisions of this section.
- (7) Where lands are posted, cultivated or fenced as described herein, then such lands, for the purpose of this section, shall be considered as enclosed and posted.
- (8) "Trespass" means the willful unauthorized entry upon, in or under the property of another, but shall not include the following:
 - A. Entry by the State, its political subdivisions or by the officers, agencies or instrumentalities thereof as authorized and provided by law.
 - B. The exercise of rights in, under or upon property by virtue of rights of way or easements by a public utility or other person owning such right of way or easement whether by written or prescriptive right.
 - C. Permissive entry, whether written or oral, and entry from a public road by the established private ways to reach a residence for the purpose of seeking permission shall not be trespass unless signs are posted prohibiting such entry.
 - D. Entry performed in the exercise of a property right under ownership of an interest in, under or upon such property.
 - E. Entry where no physical damage is done to property in the performance of surveying to ascertain property boundaries, and in the performance of necessary work of construction, maintenance and repair of a common property line fence, or buildings or appurtenances which are immediately adjacent to the property line and maintenance of which necessitates entry upon the adjoining owner's property. (WVaC 61-3B-1)

(b) Trespass in Structure or Conveyance. Any person who knowingly enters in, upon or under a structure or conveyance without being authorized, licensed or invited, or having been authorized, licensed or invited is requested to depart by the owner, tenant or the agent of such owner or tenant, and refuses to do so, shall be fined not more than one hundred dollars (\$100.00). If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the unlawful and felonious intent to do bodily injury to a human being in such structure or conveyance at the time the offender knowingly trespasses, such offender shall, notwithstanding the provisions of West Virginia Code 61-7-1, be subject to the penalty provided in Section 501.99(a). (WVaC 61-3B-2)

(c) Trespass on Property Other than Structure or Conveyance.

- (1) Whoever knowingly and without being authorized, licensed or invited, enters or remains on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing or cultivation, shall be fined as follows:
 - A. First Offense Conviction. Upon a first trespassing conviction pursuant to subsection (a) of this section, the person shall be fined not less than \$100.00 nor more than \$500.00.
 - B. Second Offense Conviction. Upon a second trespassing conviction pursuant to subsection (a) of this section, the person shall be fined not less than \$500.00 nor more than \$1,000.
 - C. Third Offense Conviction. Upon a third and subsequent trespassing conviction pursuant to subsection (a) of this section, the person shall be fined not less than \$1,000 nor more than \$1,500.
- (2) If the offender defies an order to leave, personally communicated to him by the owner, tenant or agent of such owner or tenant, or if the offender opens any door, fence or gate, and thereby exposes animals, crops or other property to waste, destruction or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance, he shall be subject to the penalty provided in Section 501.99 (a).
- (3) If the offender is armed with a firearm or other dangerous weapon with the unlawful and felonious intent to do bodily injury to a human being during his commission of the offense of trespass on property other than a structure or conveyance, such offender shall, notwithstanding the provisions of West Virginia Code 61-7-1, be imprisoned not more than thirty days, or fined not more than one hundred dollars (\$100.00), or both.
- (4) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass shall be liable to the property owner in the amount of twice the amount of such damage, provided, that the provisions of this section shall not apply in a labor dispute. (WVaC 61-3B-3)

533.03 PETIT LARCENY.

No person shall commit petit larceny as defined in West Virginia Code 61-3-13 within the City.

533.04 DEALING WITH STOLEN GOODS.

If any person buys or receives from another person, or aids in concealing, or transfers to a person other than the owner thereof, any stolen goods or other thing of value which he knows or has reason to believe has been stolen, he shall be deemed guilty of the larceny thereof, and may be prosecuted although the principal offender is not convicted.

(WVaC 61-3-18)

533.05 INJURY OR DESTRUCTION OF PROPERTY OR MONUMENTS.

(a) No person shall unlawfully, but not feloniously, take and carry away or destroy, tamper with, injure or deface any property, real or personal, not his own.

(b) No person shall break down, destroy, injure, deface or remove any monument erected for the purpose of designating the boundaries of the Municipality, tract or lot of land, or any tree marked for that purpose. (WVaC 61-3-30)

533.06 TAMPERING WITH AND THEFT OF UTILITIES; CATV.

(a) No person with intent to injure or defraud shall procure, make or cause to be made, any pipe, tube, wire or other conductor of gas, water or electric energy, and connect the same, or cause it to be connected, with any main, service pipe or other pipe for conducting or supplying gas, or water or any wires or other conductor of electric energy, in such manner as to supply gas, water or electric energy to any lamp, motor, burner, orifice or any other device, by or at which gas, water or electric energy is consumed, around or without passing through the meter provided for measuring and registering the quantity of gas, water or electric energy consumed, or in any other manner so as to evade payment therefor, and no person, with like intent, shall injure or alter any gas, water or electric meter, or obstruct its action. (WVaC 61-3-44)

(b) No person with intent to injure or defraud shall connect, or cause to be connected, any pipe, tube, wire, electrical conductor or other instrument with any main, service pipe or other pipe or conduit or flume for conducting water, or with any main, service pipe or other pipe or conduit for conducting gas, or with any main, service wire or other electric conductor used for the purpose of conducting electric energy for light, heat or motive services, for the purpose of taking therefrom water, gas or electric energy, without the knowledge of the owner thereof and with intent to evade payment therefor. (WVaC 61-3-45)

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

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

533.07 LITTERING AND DEPOSIT OF GARBAGE, RUBBISH, JUNK, ETC.

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

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

533.08 BARRICADES AND WARNING LIGHTS; ABANDONED EXCAVATIONS.

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

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

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

533.09 UNAUTHORIZED USE OF DUMPSTERS.

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

(WVaC 61-3-53)

533.10 FRAUDULENTLY OBTAINING FOOD OR LODGING.

No person shall, at any hotel, inn, eating, lodging or boardinghouse, or restaurant, receive or cause to be furnished any food or accommodation, with intent to defraud the owner or keeper of such hotel, inn, eating, lodging, or boardinghouse, or restaurant. No person shall obtain credit at any hotel, inn, eating, lodging or boardinghouse, or restaurant, by the use of any false pretense or device, or by depositing in such hotel, inn, eating, lodging or boardinghouse, or restaurant, any baggage or property of less value than the amount of such credit, or of the bill by such person incurred, with such fraudulent intent. No person after obtaining credit or accommodation at any hotel, inn, eating, lodging or boardinghouse, or restaurant, shall abscond from such hotel, inn, eating, lodging or boardinghouse, or restaurant, or shall remove or attempt to remove therefrom any baggage or personal property of any kind subject to the lien provided for in West Virginia Code 38-11-5, with intent to defraud the owner or keeper of such hotel, inn, eating, lodging or boardinghouse, or restaurant, without first having paid, satisfied or arranged all claims or bills for lodging, entertainment or accommodation.

(WVaC 61-3-40)

533.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) Whoever violates Section 533.05(b) or 533.10 shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than thirty days, or both.

(b) Any person convicted of a violation of Section 533.09 shall be subject to the following penalties:

(1) Upon a first conviction, the defendant shall be fined not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250.00).

(2) Upon a second conviction, the defendant shall be fined not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00).

(3) Upon any subsequent conviction in excess of a second conviction, the defendant shall be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000) or imprisoned not more than thirty days, or both.

Notwithstanding the provisions of West Virginia Code 61-11A-4 or West Virginia Code 50-3-2a, the magistrate or court may order restitution not to exceed the value of unauthorized solid waste services received. (WVaC 61-5-33)

ARTICLE 541

Railroads

541.01 Obstructing railroad crossings.

541.02 Trespassing.

541.99 Penalty.

CROSS REFERENCES

Authority to eliminate grade crossings - see W. Va. Code 17-10-7

Grant of right of way - see W. Va. Code 31-2-13

Stopping at grade crossing - see TRAF. 343.01 et seq.

541.01 OBSTRUCTING RAILROAD CROSSINGS.

(a) Definitions. As used in this section:

(1) "Carrier," "railroad" or "railroad company" means a common carrier by railroad.

(2) "Train" or "trains" means engines, cars and any type of railroad equipment or rolling stock, or any part thereof, capable of blocking any crossing of a railroad track or tracks and any public street, road or highway.

(b) Blocking of Crossing Prohibited; Time Limit.

(1) No railroad company, except in an emergency, shall order, allow or permit the operation of or operate its system so that a train blocks the passage of vehicular traffic over the railroad crossing of any public street, road or highway for a period longer than ten minutes. This subsection does not apply to an obstruction of any such street, road or highway caused by a continuously moving train or caused by circumstances wholly beyond the control of the railroad, but does apply to all other obstructions as aforesaid, including, but not limited to, those caused by a stopped train or a train engaged in switching, loading or unloading operations.

(2) Upon receiving notification from a law-enforcement officer, member of a fire department, operator of an emergency medical vehicle, or a member of an emergency services provider that emergency circumstances require the immediate clearing of a public highway railroad grade crossing, the members of the train crew of the train, railroad car or equipment, or engine blocking such crossing shall immediately notify the appropriate railroad dispatcher of the pending emergency situation. Upon receipt of notice of such emergency circumstances by the train crew or dispatcher, the railroad shall immediately clear the crossing, consistent with the safe operation of the train.

(c) Responsibility of Railroad Company. The railroad company shall be solely responsible for the acts of its agents and employees in violating any provision of this section.

(d) Presumption. There shall be a rebuttable presumption that a train is operated by the carrier whose marks, numbers, signs and symbols of identification appear on the engine or caboose of such train.

(e) Service of Process. Process issuing for a violation of this section may be served upon the engineer or conductor of the train causing a violation of the provisions of this section or any other officer, agent or attorney-in-fact of the railroad company authorized by law to receive service of summons or other process issuing against such railroad company.

(WVaC Art. 31-2A)

541.02 TRESPASSING.

No person not a passenger or employee, shall be found trespassing upon any railroad or traction car or train of any railroad, by jumping on or off any car or train in motion, on its arrival at or departure from any station or depot of such railroad, or on the passage of any such car or train over any part of such railroad; nor shall any person drive any horse or any horse-drawn or motor-driven vehicle across or upon any railroad track or bridge, except at public or private crossings.

(WVaC 61-3-43)

541.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) Any railroad company, carrier or railroad violating the provisions of Section 541.01(b)(1) shall be fined not less than one hundred fifty dollars (\$150.00); upon a second conviction occurring at the same crossing within one year thereafter, shall be fined not less than two hundred fifty dollars (\$250.00); and upon a third or subsequent conviction occurring at the same crossing within one year after the first conviction, shall be fined not less than three hundred fifty dollars (\$350.00).

(b) Any railroad company, carrier or railroad violating the provisions of Section 541.01(b)(2) shall be fined not less than one thousand dollars (\$1,000); upon a second conviction occurring at the same crossing within one year thereafter, shall be fined not less than two thousand five hundred dollars (\$2,500); and upon a third or subsequent conviction occurring at the same crossing within one year after the first conviction, shall be fined not less than five thousand dollars (\$5,000).

(WVaC 31-2A-6)

(c) Whoever violates Section 541.02 shall be fined not more than twenty-five dollars (\$25.00) or imprisoned not more than thirty days, or both.

ARTICLE 545

Weapons and Explosives

545.01 Definitions.

545.02 Carrying a deadly weapon without provisional license or other authorization by persons under twenty-one

years of age.

545.03 Exceptions as to prohibitions against carrying concealed handguns for persons at least eighteen years of age and fewer than twenty-one years of age.

545.04 Persons prohibited from possession of firearms.

545.05 Possession of deadly weapons by minors prohibited.

545.06 Possession of machine guns.

545.07 Display or sale of deadly weapons.

545.08 Brandishing deadly weapons.

545.09 Possessing deadly weapons on premises of educational facilities.

545.10 Fireworks sale, possession and discharge.

545.11 Discharging firearms.

545.12 Throwing or shooting missiles.

545.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law

Authority to prohibit carrying weapons - see W. Va. Code 8-12-5(16)

Limitations on power to restrict ownership - see W. Va. Code 8-2-5a

Dangerous weapons - see W. Va. Code Art. 61-7

545.01 DEFINITIONS.

As used in this article, unless the context otherwise requires:

- (a) "Blackjack" means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. "Blackjack" includes, but is not limited to, a billy, billy club, sand club, sandbag or slapjack.
- (b) "Gravity knife" means any knife that has a blade released from the handle by the force of gravity or the application of centrifugal force, and when so released is locked in place by means of a button, spring, lever or other locking or catching device.
- (c) "Knife" means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a handle, which is capable of inflicting cutting, stabbing or tearing wounds. "Knife" includes, but is not limited to, any dagger, dirk, poniard or stiletto with a blade over three and one-half inches in length, any switchblade knife or gravity knife, and any other instrument capable of inflicting cutting, stabbing or tearing wounds. A pocket knife with a blade three and one-half inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports or other recreational uses, or a knife designed for use as a tool or household implement shall not be included within the term "knife" as defined herein, unless such knife is knowingly used or intended to be used to produce serious bodily injury or death.
- (d) "Switchblade knife" means any knife having a spring-operated blade which opens automatically upon pressure being applied to a button, catch or other releasing device in its handle.
- (e) "Nunchuka" means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope or other nonrigid, flexible or springy material, constructed in such a manner as to allow the rigid parts to swing freely, so that one rigid part may be used as a handle and the other rigid part may be used as the striking end.
- (f) "Metallic or false knuckles" means a set of finger rings attached to a transverse piece, to be worn over the front of the hand for use as a weapon, and constructed in such a manner that, when striking another person with the fist or closed hand, considerable physical damage may be inflicted upon the person struck. The term "metallic or false knuckles" includes any such instrument, without reference to the metal or other substance or substances from which the metallic or false knuckles are made.
- (g) "Pistol" means a short firearm having a chamber which is integral with the barrel, designed to be aimed and fired by the use of a single hand.
- (h) "Revolver" means a short firearm having a cylinder of several chambers that are brought successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.
- (i) "Deadly weapon" means an instrument which is designed to be used to produce serious bodily injury or death, or is readily adaptable to such use. The term "deadly weapon" includes, but is not limited to, the instruments defined in subsections (a) to (h) hereof inclusive, or other deadly weapons of like kind or character which may be easily concealed on or about the person. For the purposes of West Virginia Code 18-3-1a and 61-7-11a, in addition to the definition of "knife" set forth in subsection (c) hereof, "deadly weapon" also includes any instrument included within the definition of "knife" with a blade of three and one-half inches or less in length. Additionally, for the purposes of West Virginia Code 18-3-1a and 61-7-11a, "deadly weapon" includes explosives, chemical, biological and radiological materials. Notwithstanding any other provision of this section, the term "deadly weapon" does not include any item or material owned by the school or county board, intended for curricular use, and used by the student at the time of the alleged offense solely for curricular purposes.
- (j) "Concealed" means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed on notice that the deadly weapon was being carried. For purposes of concealed handgun licensees, a licensee shall be deemed to be carrying on or about his or her person while in or on a motor vehicle if the firearm is located in a storage area in or on the motor vehicle.
- (k) "Firearm" means any weapon which will expel a projectile by action of an explosion.
- (l) "Controlled substance" has the same meaning as is ascribed to that term in West Virginia Code 61A-1-101(d).
- (m) "Drug" has the same meaning as is ascribed to that term in West Virginia Code 61A-1-101(l). (WVaC 61-7-2)

545.02 CARRYING A DEADLY WEAPON WITHOUT PROVISIONAL LICENSE OR OTHER

AUTHORIZATION BY PERSONS UNDER TWENTY-ONE YEARS OF AGE.

(a) No person under twenty-one years of age and not otherwise prohibited from possessing firearms under Section 545.03 shall carry a concealed deadly weapon, without a State license or other lawful authorization established under the provisions of the West Virginia Code.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor. (WVaC 61-7-3)

545.03 EXCEPTIONS AS TO PROHIBITIONS AGAINST CARRYING CONCEALED HANDGUNS FOR PERSONS AT LEAST EIGHTEEN YEARS OF AGE AND FEWER THAN TWENTY-ONE YEARS OF AGE.

(a) The provisions in Section 545.02 do not apply to any person at least eighteen years of age and fewer than twenty-one years of age who is:

- (1) Carrying a deadly weapon upon his or her own premises;
- (2) Carrying a firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business; or
- (3) Possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site and returning to his or her home, residence or place of business;
- (4) A member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this State or from the United States for the purpose of target practice from carrying any pistol, as defined in this article, unloaded, from his or her home, residence or place of business to a place of target practice and from any place of target practice back to his or her home, residence or place of business, for using any such weapon at a place of target practice in training and improving his or her skill in the use of the weapons;
- (5) A law-enforcement officer or law-enforcement official or chief executive as defined in West Virginia Code 30-29-1;
- (6) An employee of the West Virginia Division of Corrections duly appointed pursuant to West Virginia Code 25-1-11c, while the employee is on duty;
- (7) A member of the United States Armed Forces, Reserve or National Guard;
- (8) A resident of another state who holds a valid permit or license to possess or carry a handgun issued by a state or a political subdivision subject to the provisions and limitations set forth in West Virginia Code 61-7-6a;
- (9) A federal law-enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer's duty; and
- (10) A parole officer appointed pursuant to West Virginia Code 62-12-14 in the performance of his or her duties.

(b) The following judicial officers and prosecutors and staff are exempt from paying any application fees or licensure fees required under the West Virginia Code. However, they shall make application and satisfy all licensure and handgun safety and training requirements to obtain a license as set forth in West Virginia Code 61-7-4:

- (1) Any justice of the Supreme Court of Appeals of West Virginia;
- (2) Any circuit judge;
- (3) Any retired justice or retired circuit judge designated senior status by the Supreme Court of Appeals of West Virginia;
- (4) Any family court judge;
- (5) Any magistrate;
- (6) Any prosecuting attorney;
- (7) Any assistant prosecuting attorney; or
- (8) Any duly appointed investigator employed by a prosecuting attorney.

(WVaC 61-7-6)

545.04 PERSONS PROHIBITED FROM POSSESSION OF FIREARMS.

(a) Except as provided in this section, no person shall possess a firearm, as such is defined in Section 545.01, who:

- (1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- (2) Is habitually addicted to alcohol;
- (3) Is an unlawful user of or habitually addicted to any controlled substance;
- (4) Has been adjudicated to be mentally incompetent or who has been involuntarily committed to a mental institution pursuant to the provisions of West Virginia Code Chapter twenty-seven or in similar law of another jurisdiction: provided, that once an individual has been adjudicated as a mental defective or involuntarily committed to a mental institution, he or she shall be duly notified that they are to immediately surrender any firearms in their ownership or possession; provided, however, that the Mental Hygiene Commissioner or Circuit Judge shall first make a determination of the appropriate public or private individual or entity to act as conservator for the surrendered property;
- (5) Is an alien illegally or unlawfully in the United States;
- (6) Has been discharged from the armed forces under dishonorable conditions;
- (7) Is subject to a domestic violence protective order that:
 - A. Was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate;
 - B. Restrains such person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - C. 1. Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
2. By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
- (8) Has been convicted of a misdemeanor offense of assault or battery either under the provisions of West Virginia Code 61-2-28, or the provisions of West Virginia Code 61-2-9(a) or (b), or a federal or state statute with the same essential elements in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent

or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or has been convicted in any court of any jurisdiction of a comparable misdemeanor crime of domestic violence.

(b) Any person prohibited from possessing a firearm by the provisions of subsection (a) of this section may petition the circuit court of the county in which he or she resides to regain the ability to possess a firearm and if the court finds by clear and convincing evidence that the person is competent and capable of exercising the responsibility concomitant with the possession of a firearm, the court may enter an order allowing the person to possess a firearm if such possession would not violate any federal law: provided, that a person prohibited from possessing a firearm by the provisions of subsection (a)(4) of this section may petition to regain the ability to possess a firearm in accordance with West Virginia Code 61-7A-5.

(c) Any person may carry a concealed deadly weapon without a license therefor who is:

- (1) At least twenty-one years of age;
- (2) A United States citizen or legal resident thereof;
- (3) Not prohibited from possessing a firearm under the provisions of this section; and
- (4) Not prohibited from possessing a firearm under the provisions of 18 U.S.C. §922(g) or (n).

(d) Any person who has been convicted of an offense which disqualifies him or her from possessing a firearm by virtue of a criminal conviction whose conviction was expunged or set aside or who subsequent thereto receives an unconditional pardon for said offense shall not be prohibited from possessing a firearm by the provisions of the section. (WVAC 61-7-7)

545.05 POSSESSION OF DEADLY WEAPONS BY MINORS PROHIBITED.

(a) Notwithstanding any other provision of this article to the contrary, a person under the age of eighteen years who is not married or otherwise emancipated shall not possess or carry concealed or openly any deadly weapon: provided, that a minor may possess a firearm upon premises owned by such minor or his family or on the premises of another with the permission of his or her parent or guardian and in the case of property other than his or her own or that of his family, with the permission of the owner or lessee of such property. Nothing in this section shall prohibit a minor from possessing a firearm while hunting in a lawful manner or while traveling from a place where he or she may lawfully possess a deadly weapon, to a hunting site, and returning to a place where he or she may lawfully possess such weapon.

(b) A violation of this section by a person under the age of eighteen years shall subject the child to the jurisdiction of the circuit court under the provisions of West Virginia Code 49-4-701 et seq., and such minor may be proceeded against in the same manner as if he or she had committed an act which if committed by an adult would be a crime, and may be adjudicated delinquent. (WVaC 61-7-8)

545.06 POSSESSION OF MACHINE GUNS.

No person shall carry, transport or have in his possession, any machine gun, submachine gun or any other fully automatic weapon unless he or she has fully complied with applicable Federal statutes and all applicable rules and regulations of the Secretary of the Treasury of the United States relating to such firearms. (WVaC 61-7-9)

545.07 DISPLAY OR SALE OF DEADLY WEAPONS.

No person shall publicly display and offer for rent or sale, or, where the person is other than a natural person, knowingly permit an employee thereof to publicly display and offer for rent or sale, to any passersby on any street, road or alley, any deadly weapon, machine gun, submachine gun or other fully automatic weapon, any rifle, shotgun or ammunition for same. (WVaC 61-7-10)

545.08 BRANDISHING DEADLY WEAPONS.

No person armed with a firearm or other deadly weapon, whether licensed to carry the same or not, shall carry, brandish or use such weapon in a way or manner to cause, or threaten, a breach of the peace. (WVaC 61-7-11)

545.09 POSSESSING DEADLY WEAPONS ON PREMISES OF EDUCATIONAL FACILITIES.

(a) No person shall shoot or discharge any firearm as follows:

- (1) Across or in any public road in the Municipality, at any time;
- (2) Within 500 feet of any school or church;
- (3) Within 500 feet of any dwelling house: Provided, that a person who is a resident of a dwelling house, and his or her authorized guest, may shoot or discharge a firearm in a lawful manner within 500 feet of the dwelling house where the person lives, if the firearm is being discharged with the express or implied knowledge and consent of all residents of that dwelling house, and no other dwelling houses are located within 500 feet of where the firearm is discharged; or
- (4) On or near any park or other place where persons gather for purposes of pleasure.

(b) Notwithstanding the provisions of subsection (a) of this section, any person operating a gun repair shop, licensed to do business in the State of West Virginia and duly licensed under applicable federal statutes, is exempt from the prohibition established by this section for the purpose of testing firearms. (Ord. 2208. Passed 11-20-14.)

545.10 FIREWORKS SALE, POSSESSION AND DISCHARGE.

(a) "Fireworks" means any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, the type of unmanned balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs, or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance, except that the term "fireworks" shall not include:

Model rockets and model rocket engines, designed, sold and used for the purpose of propelling recoverable acro models and shall not include toy pistols, toy canes, toy guns or other devices in which paper or plastic caps manufactured in accordance with the United States Department of Transportation regulations for packing and shipping of toy paper or plastic caps are used and toy paper or plastic caps manufactured as provided therein, the sale and use of which shall be permitted at all times. Each package containing toy paper or plastic caps offered for retail sale shall be labeled to indicate the maximum explosive content per cap.

The following sparklers and novelties shall not be considered fireworks and require a business registration fee be paid to be authorized to sell, as provided in West Virginia Code 11-12-86:

- (1) Explosive caps designed to be fired in toy pistols, provided that the explosive mixture of the caps shall not exceed twenty-five

hundredths of a grain for each cap.

- (2) Snake and glow worms composed of pressed pellets of a pyrotechnic mixture that produce a large snake-like ash when burning.
- (3) Smoke devices consisting of a tube or sphere containing a pyrotechnic mixture that produces white or colored smoke.
- (4) Trick noisemakers which produce a small report designed to surprise the user and which include:
 - A. A party popper, which is a small plastic or paper item containing not in excess of twenty-five hundredths of a grain of explosive mixture. A string protruding from the device is pulled to activate the device, expelling paper streamers and producing a small report.
 - B. A string popper which is a small tube containing not in excess of twenty-five hundredths of a grain of explosive mixture with string protruding from both ends. The strings are pulled to activate the friction-sensitive mixture, producing a small report.
 - C. A snapper or drop pop, which is a small paper wrapped item containing no more than twenty-five hundredths of a grain of explosive mixture coated on small bits of sand. When dropped, the device produces a small report.
- (5) Wire sparklers consisting of wire or stick coated with nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition. These items must not exceed one hundred grams of mixture per item.
- (6) Other sparkling devices which emit showers of sparks and sometimes a whistling or crackling effect when burning, do not detonate or explode, are hand-held or ground-based, cannot propel themselves through the air and contain not more than seventy-five grams of chemical compound per tube or not more than a total of two hundred grams if multiple tubes are used: Provided, that sparklers and sparkler devices as provided for herein shall not be sold to anyone below the age of sixteen years old.

(WVaC 29-3-23)

(b) Except as hereinafter provided, no person, firm, copartnership or corporation shall offer for sale, possess, expose for sale, sell at retail, keep with intent to sell at retail, or use or explode any fireworks, provided, permits for the supervised display of fireworks may be granted upon application to the State Fire Marshal and after approval of the Police and Fire Chiefs, and the filing of a bond by the applicant as provided hereinafter. Every such display shall be handled by a competent operator licensed or certified as to competency by the State Fire Marshal and shall be of such composition, character, and so located, discharged or fired as in the opinion of the Fire Chief, after proper inspection, and of the Police Chief shall not be hazardous to property or endanger any person or persons. After such privilege shall have been granted, the sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

The Mayor shall require a bond from the licensee in a sum not less than one thousand dollars (\$1,000) conditioned on compliance with the provisions of this section and West Virginia Code Article 29-3 and the regulations of the State Fire Commission, provided, that the Municipality shall not be required to file such bond.

Before any permit for a pyrotechnic display shall be issued, the person, firm or corporation making application therefor shall furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of such person, firm or corporation or any agent or employee thereof, in such amount, character and form as the State Fire Marshal determines to be necessary for the protection of the public.

(WVaC 29-3-24)

545.11 DISCHARGING FIREARMS.

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

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

545.12 THROWING OR SHOOTING MISSILES.

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

545.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99(a) for general Code penalty if no specific penalty is provided.)

- (a) Whoever violates Section 545.04 shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than thirty days, or both.
- (b) Notwithstanding the provisions of subsection (a) of this section, any person:
 - (1) Who has been convicted in this State or any other jurisdiction of a felony crime of violence against the person of another or of a felony sexual offense; or
 - (2) Who has been convicted in this State or any other jurisdiction of a felony controlled substance offense involving a Schedule I controlled substance other than marijuana, a Schedule II or a Schedule III controlled substance as such are defined in West Virginia Code 60A-2-204, 60A-2-205 and 60A-2-206, and who possesses a firearm as such is defined in Section 545.01 shall be guilty of a felony and shall be prosecuted under appropriate State law. The provisions of Section 545.04(b) shall not apply to persons convicted of offenses referred to in this subsection or to persons convicted of a violation of this subsection.

(WVaC 61-7-7)

CODIFIED ORDINANCES OF KEYSER PART SEVEN - BUSINESS AND TAXATION CODE

CHAPTER ONE - Business Regulations

Art. 705. Secondhand Dealers.

Art. 709. Personal Property Sales.

Art. 713. Taxicabs.

Art. 717. Sexually Oriented Businesses.

CHAPTER THREE - Taxes and Service Charges

Art. 721. Business License Tax.

Art. 725. Business and Occupation Tax.

Art. 729. Public Utility Services Tax.

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Art. 741. Wine Distributors and Retailers.

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CODIFIED ORDINANCES OF KEYSER PART SEVEN - BUSINESS AND TAXATION CODE CHAPTER ONE - Business Regulations

Art. 705. Secondhand Dealers.

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ARTICLE 705

Secondhand Dealers

705.01 Purpose.

705.02 Definitions.

705.03 License required.

705.04 License denial; suspension or revocation.

705.05 Appeal.

705.06 Required records and reports.

705.07 Disposition of stolen property.

705.08 Retention of secondhand personal property.

705.09 Minors.

705.10 Right of inspection.

705.11 Legal proceedings.

705.12 Conflicts.

705.99 Penalty.

CROSS REFERENCES

Dealing with stolen goods - see GEN. OFF. 533.04

705.01 PURPOSE.

The purpose of this article is to promote the safety and welfare of the citizens of Keyser, West Virginia, by prescribing procedures which will assist in the reduction of burglaries and thefts by curtailing the dispositions of certain stolen property and which will assist in identifying that stolen property so that it may be returned to its owners.

705.02 DEFINITIONS.

For the purposes of this article, the following words, phrases have the following meanings:

- (a) "City Administrator" means the City Administrator of Keyser, West Virginia.
- (b) "Chief of Police" means the Chief of Police of Keyser, West Virginia.
- (c) "Purchaser" means any person, individual, corporation, business trust, partnership association, or two or more persons having a joint or common business interest or any other legal or commercial entity engaged in the business of receiving, obtaining, purchasing, receiving as a pawnbroker, or selling secondhand personal property in Keyser, West Virginia, or having his, her, or its place of business for receiving, purchasing, obtaining, receiving as a pawnbroker, or selling secondhand personal property located in Keyser, West Virginia, whether that person acting in his own behalf or as an agent, servant, or employee of another.
- (d) "City Council" means the City Council of Keyser, West Virginia.
- (e) "Transaction" means to carry on or to conduct business or a business deal, including the buying, selling, or trading of secondhand personal property.
- (f) "Secondhand personal property" means any of the following, subject to the exceptions set forth in subsection (h) hereof, if previously owned by a consumer or collector, or not obtained or purchased from a merchant in the usual and ordinary course of business:
 - (1) Any of the following metals, any coins made principally of such metals, and any personal property made in whole or in part of gold, silver, platinum, iridium, palladium, ruthenium, rhodium, osmium in pure or alloyed form, including silverware and silver-plated items;
 - (2) Jewelry, precious and semi-precious stones;
 - (3) Binoculars, watches and cameras;
 - (4) Television sets, radio and stereo equipment;
 - (5) Musical instruments;
 - (6) Typewriters, check writing machines, adding machines, computers, computer printers, computer components, and office equipment;

- (7) Coins or coin collections, or money when not used as the medium for payment.
- (8) Any and all personal property.
- (g) Exemptions from the definition of secondhand personal property: "Secondhand personal property," as defined and implemented in this article, shall not include the following:
 - (1) Personal property which is subject to and has been issued a title under the provisions of the laws of the State of West Virginia or any other state.
 - (2) Personal property which is part of the estate of a deceased person.
 - (3) Personal property purchased from or sold to a retail or wholesale dealer of such personal property in the ordinary course of business.
 - (4) Personal property sold at a "yard sale".
 - (5) Personal property purchased or sold by nonprofit or charitable corporations, service clubs, or organizations.
- (h) "Yard sale" means any public sale at a scheduled time and place held by persons, individuals, corporations, or partnerships not dealing with the buying and selling of personal property in the ordinary course of business and not otherwise exempted from this article by any other provisions of this article.

705.03 LICENSE REQUIRED.

- (a) No person shall engage in the barter, trade or purchase of any secondhand personal property unless such person has obtained a license from the City Administrator.
- (b) The City Administrator is hereby authorized to grant annual licenses to purchasers of secondhand personal property and such license fee shall be in the sum of twenty dollars (\$20.00) per fiscal year.
- (c) Purchasers shall display their licenses granted under this article permanently in a highly visible location on each of the premises from which they conduct transactions in secondhand personal property.
- (d) A license shall not be transferred or assigned.
- (e) Applicants for a license under this subtitle shall file an application on the form provided by the City Administrator, and giving the information and requirements listed below:
 - (1) Name and maiden name, if any.
 - (2) Residence address.
 - (3) Residence addresses for the past ten years.
 - (4) Birth date.
 - (5) Place of birth.
 - (6) Physical description.
 - (7) Whether ever convicted of a felony or whether ever convicted of any criminal law violation concerning the theft of personal property or receiving stolen property. If the answer is yes, when and where the conviction was and what law the applicant was found to have violated.
 - (8) Name and names of current employer or employees, and addresses and telephone numbers of employer or employers.
 - (9) If an agent for a business engaging in the purchase of secondhand personal property, the name, address and telephone number of employer.
 - (10) Address at which secondhand personal property will be retained, which shall be the address of the fixed permanent address of the business for which a license is being requested.
 - (11) The name and address of the owner of the premises at which the secondhand personal property will be retained.
 - (12) The place or places, other than the permanent place of business of the applicant, where within the six months immediately preceding the date of such application the applicant conducted an itinerant business, stating the nature thereof and stating the post office and street address of any building in which such business was conducted.
 - (13) A statement that the applicant authorizes any police officer to inspect the records of purchases and sales, of the business during regular business hours, provided the police officer first states when items of personal property he is looking for.
 - (14) If, during any license years, there is any change in the information an applicant or a purchaser gave in obtaining or renewing a license under this article, the purchaser shall report the change to the City Administrator within thirty days after the change occurs, and certify that the information given is correct under the penalties of perjury.
- (f) A separate license shall be required for each location within the City of Keyser used for the conduct of the business of a purchaser of secondhand personal property.
- (g) Only individuals may apply for and be granted a purchaser's license.
 - (1) An application for a purchaser's license made behalf of a corporation limited liability company or limited partnership shall be applied for by, and upon approval, issued to, the president of the corporation, manager of a limited liability company, or members of the partnership who are authorized to act for it.
 - (2) An application for a purchaser's license made on behalf of a partnership shall be applied for by and, upon approval, issued to, all the partners who are authorized to act for the partnership. If any partner is a corporation or limited partnership, the application shall be made by and, upon approval, issued to, the president of the corporation or members of the limited partnership who are authorized to act for it.
 - (3) Each individual who applies for a purchaser's license under this section is responsible for individually and subject to individually all requirements of of a purchaser as set forth under this article.
- (h) A purchaser of secondhand personal property shall conduct such business only from the fixed permanent location as specified in the application for the license, which fixed permanent location shall be other than a motel or hotel room generally used by transients, and other than a motor vehicle, mobile home, or trailer, unless such vehicle or trailer is permanently affixed to the real estate.

705.04 LICENSE DENIAL; SUSPENSION OR REVOCATION.

Upon receipt of an application, the City Administrator shall forward it to the City of Keyser Chief of Police or his designee who shall conduct an investigation of the background of the applicant. The City Administrator may refuse to grant a license to any applicant, or may suspend, revoke or refuse to renew the license of any licensed purchaser if the police investigation reveals that any of the following has occurred:

- (a) The applicant or purchaser has violated any provisions of this article;

- (b) A similar license issued to the applicant or licensed purchaser has been suspended or revoked, or has been refused, in another jurisdiction;
- (c) The applicant or licensed purchaser has been convicted of a felony or theft offense within the five years immediately proper to the submission of an application or request for renewal of a license in the City of Keyser.
- (d) The applicant has falsified the application for license.

705.05 APPEAL.

(a) Before revoking, suspending or refusing to grant or renew any license, the City Administrator shall afford the applicant or purchaser of secondhand personal property an opportunity to show cause when his license should not be refused, revoked or suspended at an informal conference to be held by the City Administrator, if so requested by the applicant or purchaser within fifteen days of receipt of written notice of the City Administrator's proposed action.

(b) Any purchaser of secondhand personal property aggrieved by any action of the City Administrator under the provisions of this article, shall have the right to appeal to the City Court, provided such appeal is made in writing and delivered to the City Administrator within action taken by the City Administrator. The decision by the City Court shall be final and there shall be no further administrative appeals. The hearing before the City Court shall be within thirty days of the receipt or request for hearing, and the City Court shall give its decision in writing to the applicant or purchaser within ten days of the hearing.

705.06 REQUIRED RECORDS AND REPORTS.

A purchaser shall record each purchase involving secondhand personal property and the following information shall be required.

- (a) The name of the person selling and/or delivering secondhand personal property to the purchaser;
- (b) The date of the purchase;
- (c) The valid driver's license number or age-of-majority identification number from any credit card or identification card (including the name of the type of card from which the identification number is taken) of the person or persons selling the secondhand personal property, or a legible thumbprint;
- (d) The name of the person making the record entry;
- (e) A description of the item purchased by the licensed purchaser, including but not limited to, a description of the metallic composition, any jewels, stones, or glass, and a listing of all numbers, marks, monograms, trademarks, manufacturers names, serial numbers, and any other marks of identification appearing on the items;
- (f) Evidence of obliteration, defacing, removal, alteration or covering of any numbers, marks, monograms, trademarks, manufacturers' names, serial numbers or any other marks of identification on the item;
- (g) The consideration paid for the item;
- (h) The purchaser shall report all the information required by this section in writing to the Chief of Police within twenty four hours of the purchase.

705.07 DISPOSITION OF STOLEN PROPERTY.

(a) If any law enforcement officer has a reasonable belief that second personal property located in a purchaser's premises is "stolen property," the purchaser shall release such property to the officer upon demand and upon receiving a receipt for the property from the officer.

(b) A purchaser shall be granted an opportunity to appear before the City Court, at the next available hearing date immediately following the confiscation of any such property pursuant to subsection (a). The purchaser shall be entitled to representation by an attorney at his or her expense, or in the alternative to proceed pro se, and have the purchaser's case heard before the City Court concerning the return of any such confiscated items, provided it can be established by the purchaser, by preponderance of the evidence, that the purchaser does have legal title to said personal property. Any purchaser aggrieved by the ruling of the City Court of Keyser, West Virginia, shall have the right of appeal said decision to the Circuit Court of Mineral County, West Virginia, by filing a Notice of Appeal with the City Court within thirty days after the date of judgement.

(c) The remedy provided for in subsection (b) shall be binding only upon the City of Keyser and the purchaser concerning each of the parties legal rights to any such personal property in dispute. Nothing contained within this chapter shall deny or prohibit any person, claiming lawful ownership of any personal property in dispute, from pursuing a separate cause of action in the Magistrate Court of Mineral County, West Virginia or any other Court of competent jurisdiction to decide the person's true and lawful interest in any such personal property.

705.08 RETENTION OF SECONDHAND PERSONAL PROPERTY.

(a) A purchaser may not melt, change, take apart, destroy, barter, trade, transfer or sell, any secondhand personal property items or obliterate identification marks, or dispose of any secondhand personal property purchased or otherwise obtained by a purchaser until seven calendar days have elapsed from the date of purchase of the secondhand personal property item, subject of the following exceptions: if the purchaser wishes to do any of the acts set forth in this subsection prior to the expiration of the seven calendar day holding period, the purchaser may do so twenty- four hours or more after notifying the City Police Department of the item to be sold. When secondhand personal property is sold in this manner, the names and addresses of the buyers' must also be made part of the records retained by the purchaser.

(b) All secondhand personal property obtained by a purchaser shall be stored at the business location in Keyser, West Virginia, where it was purchased, until seven calendar days have elapsed from the date of purchase of the item of secondhand personal property, subject to the exception of earlier permissible sale as set forth in subsection (a) hereof.

705.09 MINORS.

A purchaser shall not purchase or obtain any secondhand personal property from any person under eighteen years of age, unless the person is accompanied by a parent or legal guardian. The purchaser or purchaser's employee shall obtain from the parent or guardian of the minor and from the minor all the information required by Section 705.06 of this Article.

705.10 RIGHT OF INSPECTION.

Any law enforcement officers are hereby authorized to inspect the records of purchases and sales of any purchaser at any time when such purchasers are open for the transaction of business, provided the law enforcement officer first states to the purchaser when items of personal property he is looking for and the reasons for any such inspection.

705.11 LEGAL PROCEEDINGS.

The City of Keyser may institute injunctive, mandamus, or any other appropriate action or proceedings at law or equity, necessary for the enforcement of this article, before any court of competent jurisdiction.

705.12 CONFLICTS.

This article and all of its provisions shall take precedence over all other license and penalty provisions of the Code of the City of Keyser. When provisions of this article are in conflict with other provisions of the Keyser City Code, the provisions of this article shall prevail, otherwise, and other provisions of the Keyser City Code shall be in full force and effect.

705.99 PENALTY.

(a) Any purchaser violating any provisions of this article shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not to exceed three hundred dollars (\$300.00), or imprisonment not to exceed thirty days or both. Each day that a violation continues shall be a separate offense.

(b) Any purchaser convicted of a violation of this article, or any purchaser who pleads guilty to a violation of this article, shall be subject to having his, her, or its license to do business within the City of Keyer revoked.

ARTICLE 709

Personal Property Sales

709.01 Intent and purpose.

709.02 Definitions.

709.03 Property permitted to be sold.

709.04 Permit required.

709.05 Written statement required.

709.06 Permit fee.

709.07 Permit conditions.

709.08 Hours of operation.

709.09 Additional sales permitted.

709.10 Pre-Permit investigation.

709.11 Display of sale property.

709.12 Advertising; signs.

709.13 Public nuisances.

709.14 Inspection; arrest authority.

709.15 Parking.

709.16 Revocation and refusal of permit.

709.17 Exemptions.

709.18 Separate violations.

709.99 Penalty.

CROSS REFERENCES

False advertising - see W.Va. Code 61-3-38

709.01 INTENT AND PURPOSE.

(a) The intrusion of nonregulated garage sales is causing annoyance to residents in residential areas in the City and congestion of the streets in residential areas in the City.

(b) The provisions contained in this article are intended to prohibit the infringement of any business in any established residential areas by regulating the term and frequency of garage sales, so as not to disturb or disrupt the residential environment of the area.

(c) The provisions of this article do not seek control of sales by individuals selling a few of their household or personal items.

(d) The provisions and prohibitions hereinafter contained are enacted not to prevent but to regulate yard sales for the safety and welfare of the City's residents.

(1984 Code 8-10-1)

709.02 DEFINITIONS.

For the purposes of this article, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number the plural number. The word "shall" is always mandatory and not merely directory.

(a) "Sale" means all general sales, open to the public, conducted from or on a residential premise in any residential zone, as defined by the Zoning Ordinance, for the purpose of disposing of personal property including, but not limited to, all sales entitled "garage", "lawn", "yard", "attic", "Porch", "room", "backyard", "patio", "flea market" or "rummage" sale. This definition shall not include a situation where no more than five specific items are held out for sale and all advertisement of such sale specifically names those items to be sold.

(b) "Personal property" means property which is owned, utilized and maintained by an individual or members of his or her residence and acquired in the normal course of living in or maintaining a residence. It does not include merchandise which was purchased for resale or obtained on consignment. (1984 Code 8-10-2)

709.03 PROPERTY PERMITTED TO BE SOLD.

No person shall sell or offer for sale, under authority granted by this article, property other than personal property. (1984 Code 8-10-3)

709.04 PERMIT REQUIRED.

No garage shall be conducted unless and until the individuals desiring to conduct such sale shall obtain a permit therefor from the City Clerk's Office. Members of more than one residence may join in obtaining a permit for a yard sale to be conducted at the residence of

one of them.
(1984 Code 8-10-4.)

709.05 WRITTEN STATEMENT REQUIRED.

Prior to issuance of any yard sale permit, the individuals conducting such sale shall file a written application to be provided by the City Clerk with the City Clerk, at least five days in advance of the proposed sale, mailed applications must be postmarked at least seven days in advance of the sale, which application shall set forth the following information:

- (a) The full name and address of applicant.
- (b) The location at which the proposed garage sale is to be held.
- (c) The date, or dates upon which the sale shall be held.
- (d) The date, or dates of any other yard sales within the current calendar year.
- (e) An affirmative statement that the property to be sold was owned by the applicant as his own personal property and was neither acquired or cosigned for the purpose of resale. (1984 Code 8-10-5)

709.06 PERMIT FEE.

There shall be an administrative processing fee of two dollars (\$2.00) for the issuance of such permit. No other City tax, including the City Business and Occupation Tax, shall be levied on yard sales conducted in accordance with this article.
(1984 Code 8-10-5)

709.07 PERMIT CONDITIONS.

The permit shall set forth and restrict the time and location of such garage sale. No more than two such permits may be issued to one residence and/or family household during any calendar year. If members of more than one residence join in requesting a permit then such permit shall be considered as having been issued for each and all of such residences.
(1984 Code 8-10-7)

709.08 HOURS OF OPERATION.

Such yard sales shall be limited in time to no more than the daylight hours of three consecutive days. No yard sale shall be conducted on Sunday.
(1984 Code 8-10-8)

709.09 ADDITIONAL SALES PERMITTED.

(a) Inclement Weather. If a yard sale is not held on the dates for which the permit is issued or is terminated during the first day of the sale because of inclement weather conditions, and an affidavit by the permit holder to his effect is submitted, the City Clerk may issue another permit to the applicant for a yard sale to be conducted at the sale location within thirty days from the date when the first sale was to be held. No additional permit fee is required.

(b) Third Sale Permitted. A third yard sale shall be permitted in a calendar year if satisfactory proof of a bona fide change in ownership of the real property is first presented to the City Clerk or his duly authorized representative.
(1984 Code 8-10-9)

709.10 PRE-PERMIT INVESTIGATION.

Before issuing a permit, the City Clerk may conduct an investigation as may reasonably be necessary to determine if there is compliance with this article.
(1984 Code 8-10-10)

709.11 DISPLAY OF SALE PROPERTY.

Personal property offered for sale may be displayed within the residence, in a garage, carport, and/or in a rear yard, but only in such areas. No personal property offered for sale at a yard sale shall be displayed on the front or side yard areas of any such premise or in any public right of way. However, a vehicle offered for sale may be displayed on a permanently constructed driveway within such front or side yards.
(1984 Code 8-10-11.)

709.12 ADVERTISING; SIGNS.

(a) Signs Permitted. Only the following specified signs may be displayed in relation to a pending yard sale:

- (1) Two signs permitted. Two signs of not more than four square feet shall be permitted to be displayed on the property of the residence where the garage sale is being conducted.
- (2) Directional signs. Two signs of not more than two square feet each are permitted provided that the premises upon which the yard sale is conducted is not a major thoroughfare, and written permission to erect such signs is received from the property owners upon whose property such signs are to be placed.

(b) Time Limitations. No sign or other form of advertisement shall be exhibited for more than two days prior to the day such sale is to commence.

(c) Removal of Signs. Signs shall be removed each day at the close of the garage sale activities or by the end of daylight, whichever first occurs.

(d) Placement of Signs. No signs shall be placed on or attached to any utility poles, street signs or traffic control signs. (1984 Code 8-10-12)

709.13 PUBLIC NUISANCE.

The individual to whom such permit is issued and the owner or tenant of the premises on which such sale or activity is conducted shall be jointly and severally responsible for the maintenance of good order and decorum on the premises during all hours of such sale or activity. No such individual shall permit any loud or boisterous conduct on such premises nor permit vehicles to impede the passage of traffic on any roads or streets in the area of such premises. All such individuals shall obey the reasonable orders of any member of the Police or Fire Departments of the City, in order to maintain the public health, safety and welfare.
(1984 Code 8-10-13)

709.14 INSPECTION; ARREST AUTHORITY.

A police officer or any other official designated by any City ordinance to make inspections under the licensing or regulating ordinances or to enforce the same shall have the right of entry to any premises showing evidence of a yard sale for the purpose of enforcement or inspection and may close the premises from such a sale or arrest any individual who violates the provisions of this article. (1984 Code 8-10-14)

709.15 PARKING.

All parking of vehicles shall be conducted in compliance with all applicable laws and ordinances. Further, the Police Department may enforce such temporary controls to alleviate any special hazards and/or congestion created by any yard sale. (1984 Code 8-10-15)

709.16 REVOCATION AND REFUSAL OF PERMIT.

(a) False Information. Any permit issued under this article may be revoked or any application for issuance of a permit may be refused by the City Clerk if the application submitted by the applicant or permit holder contains any false, fraudulent or misleading statement.

(b) Conviction of Violation. If any individual is convicted of an offense under this article, the City Clerk is instructed to cancel any existing yard sale permit held by the individual convicted and not to issue such individual another yard sale permit for a period of two years from the time of conviction.

(1984 Code 8-10-16)

709.17 EXEMPTIONS.

The provisions of this article shall not apply to or affect the following:

- (a) Person selling goods pursuant to an order or process of a court of competent jurisdiction.
- (b) Persons acting in accordance with their powers and duties as public officials.
- (c) Any sale conducted by any merchant or mercantile or other business establishment from or at a place of business wherein such sale would be permitted by the zoning regulations of the City or under the protection of the nonconforming use section thereof or any other sale conducted by a manufacturer, dealer or vendor and which sale would be conducted from properly zoned premises and not otherwise prohibited in other ordinances.
- (d) Any bona fide charitable, eleemosynary, educational, cultural or government institution or organization when the proceeds from sale are used directly for the institution or organization's charitable purposes and the goods or article are not sold on a consignment basis.

(1984 Code 8-10-17)

709.18 SEPARATE VIOLATIONS.

Every article sold and every day a sale is conducted in violation of this article shall constitute a separate offense.

(1984 Code 8-10-18)

709.99 PENALTY.

Whoever violates any provision of this article shall be fined no less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars (\$250.00) for each offense, or imprisoned for not more than ten days, or both.

(1985 Code 8-10-19)

ARTICLE 713

Taxicabs

713.01 Definitions.

713.02 License required.

713.03 License fee; term.

713.04 License tax prorating.

713.05 Issuance of license.

713.06 Failure to secure license.

713.07 Injunction against unlicensed operator.

713.08 Designated parking spaces; fees.

713.09 Double or triple parking.

713.10 Call boxes.

CROSS REFERENCES

Stand defined - see W.Va. Code 17-1-24

Certificate of convenience required - see W.Va. Code 24A-2-5

Use to promote prostitution prohibited - see W.Va. Code 61-8-5

713.01 DEFINITIONS.

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

- (a) "Call boxes" means all direct telephone connections from various points in the City with the main office of the taxicab business maintaining such call boxes.
- (b) "Licensee" means any person engaged in the taxicab business within the City and licensed under the provisions of this article.
- (c) "License tax" means all taxes, interest or penalties levied under the provisions of this article.
- (d) "Stand" means any building or room, parking place, call box, telephone or other place from which one or more taxicab operate, or which is regularly used in conjunction with such business.
- (e) "Taxicab business" means the business of carrying passengers for hire in one or more motor vehicles commonly called taxicabs operated from a business location or stand within the City. (1967 Code 20-1)

713.02 LICENSE REQUIRED.

No person shall operate a taxicab business for carrying passengers for hire from any stand located in the City without first securing a license therefor from the City and paying the license tax provided by this article. (1967 Code 20-2)

713.03 LICENSE FEE; TERM.

The annual tax for the license required by Section 713.02 shall be one hundred dollars (\$100.00) for each stand, office or sub-office operated, except call boxes. The license year shall begin on July 1 of each year and end the following June 30. (1967 Code 20-3)

713.04 LICENSE TAX PRORATING.

The license required by this article may be issued for any quarterly part of the fiscal year remaining at the date the licensee shall become liable hereunder, and the tax prorated for such period. (1967 Code 20-4)

713.05 ISSUANCE OF LICENSE.

The City Clerk shall issue the license prescribed by this article upon receipt of the annual license tax. (1967 Code 20-5)

713.06 FAILURE TO SECURE LICENSE.

The tax levied under the provisions of this article shall be due and payable on July 1 of any year or at the date on which the person shall become liable for the tax imposed hereunder if it is a different date from the beginning of the tax year. Any person operating a taxicab business within the City who fails to secure the license and pay the tax at the time required shall, in addition to all other penalties, pay a penalty or ten percent (10%) on such license tax. Any license tax due and unpaid hereunder shall be a debt due the City. It shall be a personal obligation of the taxpayer, and enforceable as all other such obligations, and shall also be a lien upon all of the property of the taxpayer, and shall be enforceable by the City as any other lien against the property of a debtor. (1967 Code 20-6)

713.07 INJUNCTION AGAINST UNLICENSED OPERATOR.

If any taxpayer refuses to secure the license required by this article within thirty days after it is required under the provisions hereof, the City may proceed in the proper legal form to obtain an injunction against the taxpayer, restraining the further exercise of the privilege to use the streets and facilities of the City for the conduct of his business. (1967 Code 20-7)

713.08 DESIGNATED PARKING SPACES; FEES.

(a) Council shall have authority to designate a portion of a street where taxicabs may park and to prohibit parking of other vehicles or other taxicabs in the space so designated for taxicab parking. Council may designate a portion of a street where taxicabs may park if deemed advisable, having due regard for the best interest of the City and taking into consideration the locations now used by taxicab businesses in the City and other facts and circumstances.

(b) An annual fee of fifty dollars (\$50.00) shall be charged for the space designated for each taxicab. No taxicab shall park or stand in a particular or regular place on or in any street without paying the fee provided for herein. No other person, or any other taxicab except those operated by the licensee shall use, park or stand a vehicle in the space so designated for a taxicab. (1967 Code 20-8)

713.09 DOUBLE OR TRIPLE PARKING.

No double or triple parking by a taxicab shall be permitted at any time on any street. (1967 Code 20-9)

713.10 CALL BOXES.

Any taxicab business may maintain call boxes at such points as may be designated by the Chief of Police upon the procuring of a permit therefor. (1967 Code 20-10)

ARTICLE 717

Sexually Oriented Businesses

- 717.01 Definitions.**
- 717.02 Classification.**
- 717.03 Permit or license required.**
- 717.04 Issuance of permit.**
- 717.05 Permit fee.**
- 717.06 Expiration of permit.**
- 717.07 Revocation.**
- 717.08 Transfer of permit.**
- 717.09 Locational restrictions.**
- 717.10 Exterior portions of businesses.**
- 717.11 Signage.**
- 717.12 Minors.**
- 717.13 Exemptions.**
- 717.14 Injunction.**
- 717.15 Severability.**
- 717.99 Penalty.**

CROSS REFERENCES

Indecency and obscenity - see GEN. OFF. Art. 517

717.01 DEFINITIONS.

For the purposes of this Chapter the terms hereafter set forth shall have the following meanings:

- (a) Adult bookstore or adult video store means a commercial establishment that, as one of its principle business purposes offers for

sale or rental any form of consideration any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes or video reproduction, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas."
- (2) Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities".
- (b) A commercial establishment may have other principle purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore or adult video store so long as one of its principle business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specified sexual activities" or "specified anatomical areas". A principle business purpose need not be a primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.
- (c) Adult cabaret means a night club, bar, restaurant or other similar commercial establishment that regularly features:
 - (1) Persons that appear in a state of nudity or semi nudity; or
 - (2) Live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
 - (3) Films, motion pictures, video cassettes or photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
 - (4) Persons engaged in lewd, lascivious, or erotic dancing or performances that are intended for the sexual interest or titillation of an audience or customers.
- (d) Adult motion picture theater means a commercial establishment where, for any form of consideration, films, motion pictures, videos cassettes, slides or similar photograph reproduction are regularly shown that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".
- (e) Commercial establishment means and includes any of the following:
 - (1) The opening or commencement of any sexually oriented business as a new business;
 - (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
 - (3) The addition of any sexually oriented business to any other existing sexually oriented business; or
- (f) Licensed day care center means a facility by the State of West Virginia, whether situated within the City or not that provides care, training, education, custody, treatment or supervision for four or more children under the age of eighteen years of age, where such children are not related by blood, marriage or by adoption to the owner of the facility, for less than twenty-four hours a day, regardless of whether or not the facility is operated for profit or charges for services it offers.
- (g) Permittee means a person in whose name a City permit to operate a sexually oriented business has been issued as well as the individual(s) listed as an applicant on the application for a permit.
- (h) Nudity or state of nudity means the appearance of human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque covering of the breast below a point immediately above the top of the areola or human male genitals in a discernibly turgid state even if completely and opaquely covered.
- (i) Person means an individual, proprietorship, partnership, corporation, association or other legal entity.
- (j) Specified anatomical areas means the male genitals and/or the vulva or more intimate parts of the female genitals.
- (k) Specified sexual activities means and includes any of the following:
 - (1) The fondling or other erotic touching of human genitals, public region, buttocks, anus, or female breasts;
 - (2) Sex acts, normal or perverted, actual or simulated including intercourse, oral copulation, or sodomy
 - (3) Masturbation, actual or simulated; or
 - (4) Excretory functions as part of or in connection with any of the activities set forth paragraphs (k)(1) to (3).
- (l) City Administrator shall mean the person designated by the Mayor and approved by the City Council as the City Administrator for the City of Keyser or any other such person as said City Administrator so designates in his or her place or stead to receive the filing of forms, registrations, exemption applications, and to undertake the duties of this Ordinance. (Ord. 260. Passed 3-7-02.)

717.02 CLASSIFICATION.

Sexually oriented business are classified as follows:

- (a) Adult bookstore or adult video stores
 - (b) Adult cabaret
 - (c) Adult motion pictures theaters
 - (d) Commercial establishment as defined within Section 717.01.
- (Ord. 260. Passed 3-7-02.)

717.03 PERMIT OR LICENSE REQUIRED.

- (a) No person shall operate a sexually oriented business without a valid permit issued by the City Administrator.
- (b) Application for a permit whether original or renewal must be made to the office of the City Administrator by the intended operator of the enterprise. Applications must be submitted by hand delivery to the office of the City Administrator during regular working hours. Application forms shall be available through the office of the City Administrator. The intended operator shall be required to give the following information on the application form:
 - (1) The name, street address and mailing address and West Virginia Drivers license number of the intended operator.
 - (2) The name, street address and mailing address of each individual who has a 10% or greater interest in the respective business.
 - (3) The name under which the establishment is to be operated and a general description of the services to be provided.
 - (4) The telephone number of the establishment.
 - (5) The address and legal description of the tract of land upon which the establishment is to be located.
 - (6) The date on which the establishment intends to commence operations as a sexually oriented business at the location for which the permit is sought.
- (c) If a person who wishes to operate a sexually oriented business is an individual, he or she must sign the application for a permit. If

the person who Wishes to operate a sexually oriented business is other than an individual, each individual who has a 10% or greater interest in the business must sign the application for a permit.

(d) Upon submission of the application to the City Administrator for approval the application shall be accompanied by:

- (1) Payment of the application fee in full.
- (2) If the establishment is a West Virginia corporation, a certified copy of the Articles of Incorporation.

(Ord. 260. Passed 3-7-02.)

717.04 ISSUANCE OF PERMIT.

(a) The City Administrator shall approve the issuance of a permit to an applicant within thirty (30) days after receipt of an application unless he finds one or more of the following to be true:

- (1) Any one of the applicants is under 18 years of age.
- (2) Any one of the applicants is overdue in his or her payment to the City, State of West Virginia or the United States government for taxes, fines or penalties assessed against him or imposed upon him in relation to a sexually oriented business.
- (3) An applicant has failed to provide information reasonably necessary for issuance of the permit or has falsely answered a question on the application form.
- (4) The permit fee as required by this Ordinance has not been paid.
- (5) The applicant or sexually oriented business is in violation of any of the provisions of this Article.

(Ord. 260. Passed 3-7-02.)

717.05 PERMIT FEE.

The annual City fee for a sexually orientated business permit is one thousand five hundred dollars (\$1,500). This fee is to be used for the costs of the administration and enforcement of this article. (Ord. 260. Passed 3-7-02.)

717.06 EXPIRATION OF PERMIT.

Each permit issued pursuant to Section 717.04 shall expire one (1) year from the date of issuance and may be renewed only by making renewal application to the office of the City Administrator. (Ord. 260. Passed 3-7-02.)

717.07 REVOCATION.

(a) The City Administrator shall revoke a permit if he determines that:

- (1) A permittee gave false or misleading information in the materials submitted during the application process;
- (2) A permittee or an employee has knowingly allowed possession, use or sale of a controlled substance (as defined by West Virginia State Law) on the premises;
- (3) A permittee or an employee has knowingly allowed prostitution on the premises;
- (4) A permittee or an employee has knowingly operated the sexually orientated business during a period of time when the permittee's permit was suspended;
- (5) A permittee or an employee has knowingly permitted an act to occur in or on the licensed premises in violation of the provisions of this Ordinance;
- (6) A permittee is delinquent in payment to the City, State or Federal governments for any taxes or fees past due;
- (7) The owner operator of the permitted establishment knowingly allowed a person under 18 years of age to enter the establishment or;
- (8) There was a change of ownership for which a transfer application was not timely filed.

(b) When the City Administrator revokes a permit the revocation shall continue for a period of one year and the permittee and/or any person listed on the original application form shall not be issued a sexually orientated business permit for one year from the date the revocation became effective. (Ord. 260. Passed 3-7-02.)

717.08 TRANSFER OF PERMIT.

(a) A permittee shall not transfer his permit to another person, nor shall a permittee operate a sexually orientated business under the authority of a permit at any place other than the address designated in the application.

(b) Any sale or transfer of any interest from one individual to another person shall require the application of a new permit to be issued by the City Administrator accompanied by a new application fee. (Ord. 260. Passed 3-7-02.)

717.09 LOCATIONAL RESTRICTIONS.

(a) Sexually orientated businesses shall be permitted in any area of the City provided that such sexually orientated business may not be operated within one thousand (1,000) feet of:

- (1) A church, synagogue or regular place of religious worship;
- (2) A public or private elementary or secondary school
- (3) A boundary of any primarily residential area
- (4) A public park
- (5) A licensed day care center
- (6) Another sexually orientated business

(b) For purposes of this Section measurements shall be made in a straight line without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually orientated business is conducted, to the nearest property line of a premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school or to the nearest boundary of an affected public park, primary residential area, residential lot or licensed daycare center.

(Ord. 260. Passed 3-7-02.)

717.10 EXTERIOR PORTIONS OF BUSINESSES.

(a) It shall be unlawful for an owner or operator of a sexually orientated business to allow the merchandise or activities of the establishment to be visible from a point outside of the establishment.

(b) It shall be unlawful for the owner or operator of a sexually orientated business to allow the exterior portion of the sexually orientated business to have flashing lights or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this article.

(c) It shall be unlawful for the owner or operator of a sexually orientated business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. (Ord. 260. Passed 3-7-02.)

717.11 SIGNAGE.

(a) Notwithstanding any other City Ordinance, Code, or regulation to the contrary, it shall be unlawful for the owner or operator of any sexually orientated business or any person to erect, construct, or maintain any sign for the sexually orientated business other than one primary sign.

(b) Primary signs shall have no more than two as displaced surfaces. Each such displaced surface shall:

- (1) Not contain any flashing lights;
- (2) Be a flat plane, rectangular in shape;
- (3) Not exceed eight (8) feet in height; eight (8) feet in length; nor exceed ten (10) feet in height distance from the ground to the lowest or bottom portion of the sign.

(c) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.

(Ord. 260. Passed 3-7-02.)

717.12 MINORS.

(a) No person younger than eighteen (18) years of age shall be allowed entry into or to be on the premises of a sexually orientated business at any time said establishment is open for business.

(b) It shall be the requirement of the operator of each sexually orientated business to ensure that an attendant is stationed at each public entrance to the sexually orientated business at all times during such sexually orientated businesses' regular business hours. It shall be the responsibility and duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the sexually orientated business. For purposes of ensuring compliance with this provision, an attendant shall, if necessary, inspect an individual's valid operators, commercial operators or chauffeur's drivers license or any other valid personal identification card reflecting that such a persons age is eighteen (18) years of age or older.

(Ord. 260. Passed 3-7-02.)

717.13 EXEMPTIONS.

It is a defense to prosecution under this Article that a person appearing in a state of nudity did so in a modeling class operated:

- (a) By a proprietary school licensed by the State of West Virginia; a college, junior college, or university supported entirely or partly by taxation;
- (b) By a private college or university that maintains and operates educational programs where credits are transferrable to a college, junior college or university supported entirely or partly by taxation; or
- (c) That such person appeared in a theatrical performance of socially redeeming quality or generally accepted Broadway type production.

(Ord. 260. Passed 3-7-02.)

717.14 INJUNCTION.

Any person who operates or causes to be operated a sexually orientated business without a valid permit or otherwise violates this article is subject to a suit for injunction before the Circuit Court of Mineral County as well as prosecution for criminal violations before the Municipal Court as provided herein. and subject to all suspension and revocation powers of the City Administrator for non-compliance with the provisions of this article.

(Ord. 260. Passed 3-7-02.)

717.15 SEVERABILITY.

If any section, subsection, or clause of this article shall be deemed to be unconstitutional or otherwise invalid, the validity of any remaining sections, subsections and clauses shall not be affected thereby. (Ord. 260. Passed 3-7-02.)

717.99 PENALTY.

Any person violating any provision of this article shall in addition to any other actions which may be taken by the City Administrator or the City of Keyser hereunder, shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than thirty (30) days or both.

(Ord. 260. Passed 3-7-02.)

CHAPTER THREE - Taxes and Service Charges

Art. 721. Business License Tax.

Art. 725. Business and Occupation Tax.

Art. 729. Public Utility Services Tax.

Art. 733. Hotel Occupancy Tax.

Art. 737. Intoxicating Liquor.

Art. 741. Wine Distributors and Retailers.

Art. 745. Fire Protection Services Fee.

Art. 749. Park and Recreation Service Fee.

ARTICLE 721

Business Tax License

EDITOR'S NOTE: See Attachment to Ordinance 185 for current standards.

CROSS REFERENCES

Authority to tax - see W.Va Code 8-13-4, 11-12-4

ARTICLE 725

Business and Occupation Tax

- 725.01 Definitions.
- 725.02 Imposition of privilege tax.
- 725.03 Measure of tax.
- 725.04 Computation of tax.
- 725.05 Exemptions.
- 725.06 Payment of taxes.
- 725.07 Return and remittance by taxpayer.
- 725.08 Erroneous computation.
- 725.09 Failure to make return; assessment by supervisor.
- 725.10 Appeal from assessment.
- 725.11 Tax year.
- 725.12 Tax cumulative.
- 725.13 Tax a debt; lien of unpaid tax.
- 725.14 Collections.
- 725.15 Sale of business.
- 725.16 Recordation of tax lien.
- 725.17 Collection by distraint.
- 725.18 Offenses and penalties.
- 725.19 Administration of powers and duties of Supervisor.
- 725.20 Disclosure of information.
- 725.21 Construction of article.

725.01 DEFINITIONS.

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

- (a) Amusement or Entertainment. Circuses, carnivals, moving picture shows, fairs, shows of all kinds, dances, baseball, basketball, football, wrestling, boxing, skating rinks and all sports or exhibitions, dramatical entertainments and all other public amusements or entertainments conducted for private profit or gain and not specifically named in this section.
- (b) Association. A partnership, limited partnership, or any other form of unincorporated enterprise owned by two or more persons.
- (c) Board of Review. The Income Tax Board of Review of the City, or a committee duly appointed by the Mayor of the City for purpose of review of tax rates and problems, or the finance committee of Council.
- (d) Business. An enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, copartnership, association or any other entity.
- (e) Corporation. A joint stock association organized under the laws of the United States, the state or any other state, territory or foreign country or dependency.
- (f) City Tax Collector or Collector. The City Clerk.
- (g) Employer. An individual, copartnership, association, corporation (including nonprofit corporations), governmental body or unit or agency or any other entity, who or that employs one or more persons on a salary wage, commission or other basis, whether or not such employer is engaged in business as hereinbefore defined.
- (h) Gross Income. The gross receipts of the taxpayer received as compensation for personal services and the gross receipts of the 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 interest, discount, rentals, royalties, fees or other emoluments however designated and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties, interest or discount paid or any other expense whatsoever.
- (i) Gross Proceeds of Sales. The value actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind. The words "gross income" and "gross proceeds or sales" shall not be construed to include cash discounts allowed and taken on sales; the proceeds of sales of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit; or the sale of any article accepted as part payment on any new article sold, if the full price of the new article is included in the "gross income" or "gross proceeds of the sales."
- (j) Net Profits. The net gain from the operation of a business, profession or enterprise after provision for all costs and expenses incurred in the conduct thereof, on either a cash or accrual basis in accordance with recognized accounting procedures, and without deduction of taxes based on income.
- (k) Nonresident. An individual, copartnership, association or other entity not domiciled in the City.
- (l) Resident. An individual, copartnership, association or other entity domiciled in the City.
- (m) Sale. The exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale.
- (n) Service Business or Calling. All activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the production or sale of tangible property, but shall not include the services rendered by an employee to his employer.
- (o) Tax. All taxes, interest or penalties levied in this article.
- (p) Taxpayer. A person, whether an individual, copartnership, association, corporation or any other entity required hereunder to file a return or to pay a tax.
- (q) Tax Year or Taxable Year. Either the calendar year or the taxpayer's fiscal year when permission is obtained from the supervisor to use the same as the tax period in lieu of the calendar year.
- (r) Wholesaler or Jobber. When used as a means of classification, shall apply only to a person doing a regularly organized jobbing business, known to the trade as such, selling to licensed retail merchants or jobbers, or to others in wholesale prices.

725.02 IMPOSITION OF PRIVILEGE TAX.

(a) There shall be levied and 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 Section 725.04. If any person liable for any tax under Section 725.04 shall ship or transport his products or any part thereof out of the City without making sale of such products, the value of the products in the condition or form in which they exist, immediately before transportation out of the City shall be the basis for the assessment of tax imposed in such sections. Council shall prescribe equitable and uniform rules for ascertaining such value.

(b) 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 to the sale. Council shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

(c) Gross income included in the measure of the tax under Section 725.04 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.

(d) A person exercising any privilege taxable under Section 725.04 and engaged in the business of selling his natural resources or manufactured products at retail in the City shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed 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 Section 725.04 and engaging in the business of selling his natural resources or manufactured products to manufacturers, wholesalers or jobbers, and in the case of limestone, and sand, gravel or other mineral products, to commercial consumers, shall not be required to pay the tax imposed for the privilege of selling such natural resource products or manufactured products at wholesale.

(e) Manufacturers exercising any privilege taxable under Section 725.04 shall not be required to pay the tax imposed for the privilege of selling their manufactured products for delivery outside of the City, but the gross income derived from the sale of such manufactured products outside of the City shall be included in determining the measure of the tax imposed on such manufacturer.

(f) 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 725.04, and using or consuming the same in this business, shall be deemed to be engaged in the business of mining and producing coal, oil, natural gas, minerals, timber or other natural resource products for sale, profit or commercial use, and shall be required to make returns on account of the production of the business showing the gross proceeds or equivalent in accordance with uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers, which rules Council shall prescribe. (Ord. 181. Passed 7-19-78.)

725.03 MEASURE OF TAX.

The measure of the tax assessed in this article shall not include gross income derived from commerce between this state and other states of the United States or between this state and foreign countries. (Ord. 181. Passed 7-19-78.)

725.04 COMPUTATION OF TAX.

CO DE	BUSINESS CLASSIFICATION	GROS S INCO ME	EXEMPTIO NS SEE REVERSE SIDE	TAXABLE GROSS	RATE/ \$100	TAX DUE
A1	Production Coal				.75	
A2	Limestone or Sandstone, Quarried or Mined & Timber				1.50	
A3	Sand, Gravel, Etc., Not Quarried/Mined				2.95	
A4	Natural Gas in Excess of \$1,250				5.95	
A5	Timber				.50	
A6	Other Natural Resources				1.95	
B	Manufacturing				.20	
C1	Selling Retail				.25	
C2	Selling Wholesale				.15	
D1	Electric Light & Power - Domestic & Commercial				4.00	
D2	Electric Light & Power - All Others				3.00	
D3	Natural Gas Companies				3.00	
D4	All Other Public Utilities				1.95	
E	Contracting				.75	
F	Loans				.40	
G	Amusements				.40	
H	Services and All Other Business				.35	

CO DE	BUSINESS CLASSIFICATION	GROS S INCO ME	EXEMPTIO NS SEE REVERSE SIDE	TAXABLE GROSS	RATE/ \$100	TAX DUE
I	Rents, Royalties				.40	

J	Banking							.35		
A) TOTAL AMOUNT OF TAX DUE										
B) LESS EXEMPTION OF \$10.00 Annually, \$2.50 Quarterly, .833 Cents Per Month, .0277 Cents Per Day For Period Covered by Report										
C) PENALTY OF 5% FOR FIRST 30 DAYS DELINQUENCY AND 1% EACH SUCCEEDING 30 DAYS										
D) ADJUSTED TAX (Line A less Line B plus C)										
E) LESS CREDIT FROM A PREVIOUS PERIOD										
F) TOTAL REMITTANCE (Line D Less E)										

PERSONS TO FILE QUARTERLY (ESTIMATED) RETURN - All persons whose taxes exceed \$10.00 annually.

725.05 EXEMPTIONS.

(a) There shall be an exemption in every case of ten dollars (\$10.00) 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, whether he exercises one or more privileges taxable hereunder.

(b) The provisions of the article shall not apply to:

- (1) Insurance companies which pay the state a tax upon premiums, provided, that such exemptions 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 royalties;
 - (2) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members;
 - (3) 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 W.Va. Code, 60-7-1 et seq.;
 - (4) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes;
 - (5) Production credit association, organized under the provisions of the federal "Farm Credit Act of 1933;"
 - (6) Any credit union organized under the provisions of W.Va. Code, 31-1-1 et seq., or any other chapter of the Code of West Virginia; provided further, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of W.Va. Code, 19-4-1 et seq.;
 - (7) Gross income derived from advertising service rendered in the business of radio and television broadcasting; and
 - (8) Any demonstration, pilot or research project for the gasification or liquefaction of coal when the same is totally or partially funded by public moneys; provided, that the exemptions contained in this clause;
 - (9) Shall not apply to any gross income after June 30, 1981.
- (Ord. 181. Passed 7-19-78.)

725.06 PAYMENT OF TAXES.

(a) The taxes levied in this article shall be payable in quarterly installments on or before the expiration of thirty days from the end of the quarter in which they accrue. The taxpayer shall, within thirty days from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, verify the same by oath, and mail the same together with a remittance in the form required by subsection (b) of this section for the amount of the tax, to the office of the supervisor of business, privilege and occupation tax. The supervisor, if he deems it necessary to insure 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 in the taxpayer may deduct one-fourth of the total exemption allowed for the year.

(b) All remittances of taxes imposed by this article shall be made to the City, by bank draft, certified check, cashier's check, money order or certificate of deposit, and the City Clerk shall issue his receipts therefor to the taxpayer and shall pay the money into the City Treasury to be kept and accounted for as provided by law.

(Ord. 181. Passed 7-19-78.)

725.07 RETURN AND REMITTANCE BY TAXPAYER.

On or before thirty days after the end of the tax year, each person liable for the payment of a tax under Section 725.05 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 725.06 covering the residue of the tax chargeable against him to the office of the supervisor, 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 same may be made by any duly authorized agent. The supervisor, 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 same as may, by him, be deemed advisable.

(Ord. 181. Passed 7-19-78.)

725.08 ERRONEOUS COMPUTATION.

(a) If the taxpayer shall make any error in computing the tax assessable against him the supervisor shall correct such error or reassess the proper amount of taxes, and notify the taxpayer of his action by mailing to him promptly a copy of the corrected assessment, and any additional tax for which such taxpayer may be liable shall be paid within ten days after the receipt of such statement.

(b) If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be immediately refunded to the taxpayer upon the requisition of the supervisor and shall be payable out of any funds available for the purpose of the City Clerk and Mayor. The taxpayer may, at his election, apply an overpayment credit to taxes subsequently accruing

hereunder.

(Ord. 181. Passed 7-19-78.)

725.09 FAILURE TO MAKE RETURN; ASSESSMENT BY SUPERVISOR.

If any person fails or refuses to make a return, either in whole or in part, or if the supervisor has reasonable grounds to believe that any return made is so deficient as not to form the basis of a satisfactory assessment of the tax, he may proceed as he deems best to obtain information on which to base the assessment of the tax. The supervisor may by himself or his duly appointed agent, make examination of the books, records and papers, and audit the accounts of any such person, and may take evidence, administered by himself or his agent, on oath, of any person who he may believe shall be in possession of any relevant information. As soon as possible after procuring such information as he may be able to obtain as to any person failing or refusing to make a return, the supervisor shall proceed to assess the tax and shall notify the person assessed of the amount of the tax. The assessment of the tax by the supervisor shall be final as to any person who refused to make a return. (Ord. 181. Passed 7-19-78.)

725.10 APPEAL FROM ASSESSMENT.

If any person, having made the return and paid the tax as provided by this article, feels aggrieved by the assessment so made upon him for any years by the supervisor, he may apply to Council by petition, in writing, within thirty days after notice is mailed to him by the supervisor for a hearing and correction of the amount of the tax so assessed upon him by the supervisor, in which petition shall be set forth the reason why such hearing should be granted and the amount of such tax should be reduced. Council shall promptly consider such petition, and may grant such hearing or deny the same. If denied, the petitioner shall be forthwith notified thereof; if granted, Council shall notify the petitioner of the time and place fixed for such hearing. After such hearing, Council may make such order in the matter as may appear to it just and lawful and shall furnish a copy of such order to the petitioner. Any person improperly charged with any tax and required to pay the same may recover the amount paid, together with interest, in any proper action or suit against the City as may be authorized by law.

(Ord. 181. Passed 7-19-78.)

725.11 TAX YEAR.

The assessment of taxes herein made and the returns required therefore shall be for the calendar year ended December 31; if the taxpayer, in exercising a privilege taxable under this article, keeps the books reflecting the same on a basis other than such year, he may, with the assent of the supervisor, make his annual returns, and pay taxes for the year covering his accounting period, as shown by the method of keeping his books.

(Ord. 181. Passed 7-19-78.)

725.12 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 accruing taxes under this article.

(Ord. 181. Passed 7-19-78.)

725.13 TAX A DEBT; LIEN OF UNPAID TAX.

(a) A tax due and unpaid under this article shall be a debt due the City. It shall be the personal obligation of the taxpayer and shall be a lien upon the property used in the business or occupation upon which such tax is imposed, and lien shall have priority over all other liens and obligations, except those due the United States of America and the state.

(b) A penalty of five percent of the tax shall be added for any default for thirty days or less and for each succeeding thirty days lapsing before payment, there shall be secured by the lien herein provided. (Ord. 181. Passed 7-19-78.)

725.14 COLLECTION.

(a) The supervisor may, by himself, or by duly appointed agent as mentioned in Section 725.19 collect taxes due and unpaid under this article, together with all accrued penalties. After delinquency shall have continued sixty days, the supervisor may proceed when authorized by Council in the circuit court of the county, to obtain an injunction restraining the further exercise of the privilege until full payment shall have been made of all taxes and penalties due under this article. In any proceeding under this section upon judgment or decree for the plaintiff he shall be awarded his cost.

(b) In the event a business subject to the tax imposed by this article shall be operated in connection with a receivership or insolvency proceeding, the court under whose direction such business is operated shall, by the entry of a proper order in the cause, make provision for the regular payment of such taxes as the same become due.

(Ord. 181. Passed 7-19-78.)

725.15 SALE OF BUSINESS.

The tax imposed by this article shall be lien upon the property of any person subject to the provisions hereof who shall sell out his business or stock of goods, or shall quit business, and such person shall be required to make the return provided for under Section 725.07 within thirty days after the date he sold out his business or stock of goods, or quit business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of such taxes due and unpaid until such time as the former owner shall produce a receipt from the City showing that the taxes have been paid. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and the taxes shall be due and unpaid after the thirty day period allowed, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner.

(Ord. 181. Passed 7-19-78.)

725.16 RECORDATION OF TAX LIEN.

The supervisor, for the more effective collection of the tax, may file with the Clerk of County Commission of Mineral County, a certified copy of an assessment of taxes under this article for recordation. A certificate so filed shall be recorded or in any book provided for that purpose, and thereafter shall constitute binding notice of the lien created by this article upon all lands of the taxpayer located in the City as against all parties whose interest arose after such recordation. Upon payment of taxes delinquent under this article, the lien of which shall have been recorded, the supervisor shall certify in duplicate the fact and amount of payment and the balance due, if any, and

shall forward the certificate, one to the taxpayer and one to the Clerk of County Commission. The Clerk of the County Commission shall record the certificate in the book in which releases are recorded. From the date that such a certificate is admitted to record the land of the taxpayer in the City shall be free from any lien for taxes under this article accrued to the date that the certificate was issued. (Ord. 181. Passed 7-19-78.)

725.17 COLLECTION BY DISTRAINT.

When authorized and directed by Council, the supervisor shall distraint upon any goods, chattels, or intangibles represented by negotiable evidences of indebtedness of any taxpayer delinquent under the article for the amount of all taxes and penalties accrued and unpaid hereunder. The lien created by this article on real estate may be enforced by any means provided by law. (Ord. 181. Passed 7-19-78.)

725.18 OFFENSES AND PENALTIES.

It shall be unlawful for any person to refuse to make a return provided to be made in Section 725.06 and 725.07 of this Article; or to make any false or fraudulent return or false statement in any return, with intent to defraud the City or to evade payment of the tax, or any part thereof, imposed by this article; or for the president, vice-president, secretary or treasurer of any corporation to make or permit to be made for any corporation or association any false return, or any false statement in any return required in this article, with the intent to evade the payment of any tax hereunder, and any person violating any of the provisions of this section shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not more than one thousand dollars or imprisoned not exceeding one year in the county jail or punished by both fine and imprisonment at the discretion of the Court within the limitations aforesaid. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense of false swearing and, on conviction thereof, shall be punished in the manner prescribed by law. Any corporation for which a false return, or a return containing a false statement, as aforesaid, shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000.00).

725.19 ADMINISTRATION OF POWERS AND DUTIES OF SUPERVISOR.

This article shall be administered by an official who shall be known as: "Supervisor of Business, Privilege and Occupation Tax Ordinance of the City of Keyser," and such official has herein been referred to as "Supervisor."

- (a) The supervisor shall be a competent person for the duties of his office; he shall be appointed by the Mayor and the appointment shall require confirmation by the Council; the supervisor shall serve at the will and pleasure of the Mayor, and receive such salary as the Council may prescribe.
- (b) The supervisor shall qualify for his office by taking the oath of office prescribed by the City Charter, and by filing a proper bond in the penal sum of five thousand dollars (\$5,000.00).
- (c) The supervisor shall perform all the duties and functions as are devolved upon him by this article and as may be prescribed hereafter by the Council. He shall prescribe forms and reasonable rules of procedure in conformity with this article, subject to approval of the Council, for the making of returns and for the ascertainment of any of the provisions of this article in any of the courts, either state or federal, shall be under its jurisdiction of the supervisor.
- (d) The supervisor shall make a complete report to the Council at the first regular meeting of each month. (Ord. 181. Passed 7-17-78.)

725.20 DISCLOSURE OF INFORMATION.

All information provided by the taxpayer for the purpose of collection of the tax imposed by this ordinance shall be treated as confidential in nature and shall not be made available to any unauthorized person or persons and shall not be made available to the general public. Only persons authorized by the City shall have access to the information provided by the taxpayer, and any authorized dissemination of taxpayer information may result in dismissal of any employee of the City who shall disseminate such information to any unauthorized person.

(Ord. 181. Passed 7-19-78.)

725.21 CONSTRUCTION OF ARTICLE.

This article is based upon the so-called "gross sales and privilege tax" law enacted by the legislature of West Virginia and it is intended that the same be construed within the light of such law, so far as the premises admit hereof.

(Ord. 181. Passed 7-19-78.)

ARTICLE 729

Public Utility Service Tax

- 729.01 Definitions.**
- 729.02 Levy of tax; amount.**
- 729.03 Collection; effective date; administration.**
- 729.04 Records.**
- 729.05 Exemptions.**
- 729.06 Nonliability of utility.**
- 729.07 Enforcement.**
- 729.08 Notice.**

CROSS REFERENCES

Public utilities tax - see W.Va. Code 8-13-5(a)

729.01 DEFINITIONS.

The following words and phrases when used in this ordinance shall have the following respective meanings:

- (a) "Person" includes individuals, firms, partnerships, associations, corporations and government entities of whatever form or character.

- (b) "Public utility service" means any service or tangible personal property supplied by a person who is a public utility subject to the jurisdiction of the Public Service Commission of West Virginia and which is purchased, used or consumed within the corporate limits of this municipality.
- (c) "Purchaser" includes every person who purchases, uses or consumes a public utility service.
- (d) "Supplier" includes every person who sells, furnishes or supplies a public utility service. (Ord. 160(B). Passed 5-23-01.)

729.02 LEVY OF TAX; AMOUNT.

There is hereby levied against the purchaser of any public utility service an excise tax as set forth herein. Such tax shall be in the amount of two percent of the gross amount (exclusive of any federal or state tax thereon) of each periodic statement for each such public utility service rendered such purchaser by the supplier thereof. The tax hereby levied is in addition to all other taxes levied by this municipality.

(Ord. 160(B). Passed 5-23-01.)

729.03 COLLECTION; EFFECTIVE DATE; ADMINISTRATION.

(a) The amount of tax levied pursuant to this ordinance shall be added to and constitute a part of the cost of the purchaser of the public utility service purchased, used or consumed by such purchaser. Each purchaser of a public utility service shall pay to the supplier thereof, at the time of payment of each periodic statement therefor, the amount of tax levied pursuant to this ordinance, and such supplier shall collect such tax and account to this municipality for the same on or before the last day of the second calendar month following the calendar month in which the tax was collected.

(b) The tax levied by this ordinance shall apply to periodic statements rendered after November 1, 1972, for public utility service purchased, used or consumed subsequent to said date. In the event any such periodic statement includes charges for public utility service rendered both before and after said date, only that portion of the total charge shall be subject to such tax as the number of days after October 31, 1972, within the period covered by such periodic statement, bears to the total number of days covered by such statement.

(c) The official of this municipality charged with responsibility for collection of taxes due this municipality shall have authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this ordinance.

(Ord. 160(B). Passed 5-23-01.)

729.04 RECORDS.

Every supplier shall keep and maintain complete records showing all purchases of its public utility service, which records shall show each charge billed each purchaser, the dates during which such public utility service was supplied, the date of payment therefor and the amount of tax collected pursuant hereto. Such records shall be available for inspection by the duly authorized agent of this municipality during normal business hours. (Ord. 160(B). Passed 5-23-01.)

729.05 EXEMPTIONS.

Charges resulting from the following transactions shall not be included in the gross amount subject to the measure of the tax hereby levied.

- (a) Sales of telecommunications services to another telecommunications provider for the purpose of access, interconnection or resale to consumers;
- (b) Purchases of tangible personal property such as appliances or the like as distinguished from the public service supplied;
- (c) Charges for telephone services which are paid by the insertion of coins into coin-operated telephones, and specific charges for telephone calls to points outside the corporate limits of the municipality; and
- (d) Nonrecurring or one-time charges incidental to the furnishing of public utility service.

(Ord. 160(B). Passed 5-23-01.)

729.06 NONLIABILITY OF UTILITY.

There shall be no liability upon a supplier for erroneous collection of, or failure to collect, such tax as a result of a good faith mistake on the part of the supplier. A supplier shall not be liable for any such tax billed by it and not paid by a purchaser, nor shall a supplier be required to enforce collection thereof by means other than rendering a single statement therefore by its normal billing procedure.

(Ord. 160(B). Passed 5-23-01.)

729.07 ENFORCEMENT.

(a) In the event a purchaser fails or refuses to pay any tax when due hereunder, such tax shall thereupon become a lien upon the property of the purchaser and shall be collected by this municipality in the same manner and by the same remedies as are provided by law for enforcement of levies and liens of other municipal taxes.

(b) Any purchaser who fails or refuses to pay the tax hereby levied, and any purchaser or supplier who violates any of the provisions hereof or any lawful rule or regulation promulgated hereunder, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars. The failure or refusal to pay such tax when first billed therefore in accordance with the provisions hereof shall constitute a separate offense.

(Ord. 160(B). Passed 5-23-01.)

729.08 NOTICE.

The tax hereby levied shall not be effective prior to sixty days after written notice of the effective date of this ordinance shall have been given by this municipality by certified mail to every supplier doing business with the municipality.

(Ord. 160(B). Passed 5-23-01.)

ARTICLE 733

Hotel Occupancy Tax

733.01 Authority, purpose, title, effective date.

733.02 Rate of tax.

733.03 Definitions.

733.04 Collection and payment.

CROSS REFERENCES

Hotel occupancy tax - see W.Va. Code Art. 7-18

733.01 AUTHORITY, PURPOSE, TITLE, EFFECTIVE DATE.

(a) Authority. By authority of the Code of West Virginia, Chapter 5, Article 18, the City of Keyser is empowered to adopt a Hotel Occupancy Tax.

(b) Purpose. The purpose of this article is to impose and collect a privilege tax upon the occupancy of hotel rooms located in the City limits of Keyser, West Virginia.

(c) Title. This article shall be known and may be cited and referred to as the City of Keyser Hotel Occupancy Tax.

(d) Effective Date. The Hotel Occupancy Tax established by Ordinance 229 shall become effective on the 1st day of June, 1989.
(Ord. 229. Passed 4-19-89.)

733.02 RATE OF TAX.

The rate of tax shall be that allowed by West Virginia Code, Chapter 7, Article 18, Section 2. The current rate of tax is 3% of the consideration paid for use or occupancy of a hotel room. As provided by W.Va. Code 7-18-4, the consumer shall pay to the hotel operator the amount of tax imposed by this article. The tax collected by such operator shall be accounted for and remitted directly to the City. The City of Keyser may enter into an agreement with the Mineral County Commission in the collection of the Hotel Occupancy Tax. The hotel operator shall separately state the tax authorized by this ordinance on all bills, invoices, accounts, books of account and records relating to consideration paid for occupancy or use of hotel rooms.

(Ord. 229. Passed 4-19-89.)

733.03 DEFINITIONS.

For the purpose of this article:

(a) "Consideration paid" or "consideration" means the amount received in money, credits, property or other consideration for or in exchange for the right to occupy a hotel room as herein defined.

(b) "Hotel" means any facility, building or buildings, publicly or privately owned (including a facility located in a state, county or municipal park), in which the public may, for a consideration, obtain sleeping accommodations. The term shall include, but not be limited to, boarding houses, hotels, motels, inns, courts, condominiums, lodges, cabins and tourist homes. The term "hotel" shall include state, county and city parks offering accommodations as herein set forth. The term "hotel" shall not be construed to mean any hospital, sanitarium, extended care facility, nursing home or university or college housing unit, or any facility providing fewer than three rooms in private homes, not exceeding a total of ten days in a calendar year, nor any tent, trailer or camper campsites; provided, that where a university or college housing unit provides sleeping accommodations for the general nonstudent public for a consideration, the term "hotel" shall, if otherwise applicable, apply to such accommodations for the purposes of this tax.

(c) "Consumer" means any person who pays the consideration for the use or occupancy of a hotel room. The term "consumer" shall not be construed to mean the government of the United States of America, its agencies or instrumentalities, or the government of the State of West Virginia or political subdivision thereof.

(d) "Hotel operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, mortgagee in possession, license, trustee in possession, trustee in bankruptcy, receiver, executor or in any other capacity. Where the hotel operator performs his functions through a managing agent of any type or character other than an employee, the managing agency shall have the same duties and liabilities as his principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both.

(e) "Hotel rooms" means any room or suite of rooms or other facility affording sleeping accommodations to the general public and situated within a hotel. The term "hotel room" shall not be construed to mean a banquet room, meeting room or any other room not primarily used for, or in conjunction with, sleeping accommodations.

(f) "Person" means any individual, firm, partnership, joint venture, association, syndicate, social club, fraternal organization, joint stock company, receiver, corporation, guardian, trust, business trust, trustee, committee, estate, executor, administrator or

any other group or combination acting as a unit.

- (g) "State park" means any state-owned facility which is part of this state's park and recreation system established pursuant to this code. For purposes of this article any recreational facility otherwise qualifying as a "hotel" and situated within a state park shall be deemed to be solely within the county in which the building or buildings comprising said facility are physically situated, notwithstanding the fact that the state park within which said facility is located may lie within the jurisdiction of more than one county.
 - (h) "Tax," "taxes" or "this tax" means the hotel occupancy tax authorized by this article.
 - (i) "Taxing authority" means a municipality or county levying or imposing the tax authorized by this article.
 - (j) "Taxpayer" means any person liable for the tax authorized by this article.
- (Ord. 229. Passed 4-19-89.)

733.04 COLLECTION AND PAYMENT.

(a) Collection and Payment.

- (1) Taxes collected by the hotel operator shall be due and payable to the City of Keyser in monthly installments on or before the 15th day of each month; provided, that for credit sales in which the tax authorized by this article is not collected by the hotel operator at the time of such sale, such tax shall not be considered accrued until the date which it is received by the hotel operator or upon the expiration of the thirty-day payment period. The hotel operator shall deliver with each tax payment a return, as prescribed by the city, detailing sales activity for that taxing period. The City of Keyser may enter into an agreement with Mineral County Commission in the collection of the Hotel Occupancy Tax.
- (2) The first month that the tax is delinquent, there shall be assessed a penalty in the amount of five (5) percent of the tax due for the delinquent period. For each additional month that the tax remains delinquent, there shall be further assessed an additional one (1) percent penalty per month until the tax is paid. No payment for a subsequent period shall be collected until all prior delinquent taxes have been paid in full with all penalties assessed thereto.

(b) General Procedures and Administration.

- (1) The City Administrator shall be the City's agent for administration and collection of the tax and shall have the power to distrain property and to initiate civil suits for collection of this tax. The City may enter into an agreement with the Mineral County Commission in the collection of the Hotel Occupancy Tax. The City Council may promulgate such additional administrative regulations and return forms as may be necessary or desirable for the administration and the collection of the tax. The City Administrator shall have the power and the duty to issue and to receive tax returns for this tax.
- (2) Hotel operators shall keep complete and accurate records of taxable sales and charges, together with a record of the tax collected thereon and shall keep all invoices and other pertinent documents for a period not less than three years unless written permission to destroy such records is obtained from the City Administrator.
- (3) The administration of the article shall be in full compliance with West Virginia Code Chapter 7, Article 18, and as such shall be governed by all its provisions whether or not they are expressly set forth by this article.

(c) Proceeds of Tax. The proceeds of the tax collected by the City shall be deposited in the General Fund and shall be accounted for separately from other funds received by the City. All expenditures made from these revenues shall be approved by the Mayor/Council and such expenditures shall be in compliance with West Virginia Code Chapter 7, Article 18, Section 14.

(d) Criminal Penalties. Persons violating the provisions of this article shall be subject to criminal penalties as provided by West Virginia Code Chapter 7, Article 18, Section 15.

(e) Exclusions. The following exclusions shall apply in the administration of this tax:

- (1) Hotel room occupancy billed directly to the federal government shall be exempt from this tax.
- (2) Hotel room occupancy billed directly to the State of West Virginia or its political subdivisions shall be exempt from this tax.

(Ord. 229. Passed 4-19-89.)

ARTICLE 737

Intoxicating Liquor

737.01 Levy.

737.02 Annual fee.

CROSS REFERENCES

Authority to levy - see W.Va. Code 8-13-7; 60-7-7

Liquor control - see GEN. OFF. Art. 521

737.01 LEVY.

There is hereby imposed an annual license tax upon retailers of liquor within the City limits. No person may engage in business in the capacity of retailer of liquor as provided by West Virginia Code Chapter 8, Article 13, Section 7, 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.

(Ord. 232. Passed 12-5-90.)

737.02 ANNUAL FEE.

(a) The City shall collect an annual fee for license issued under this section as follows:

- (1) CLASS A (retail license): Fifteen hundred dollars per store.
- (2) CLASS B (retail license): Five hundred dollars.

(b) The license period shall begin on the first day of July of each year commencing with July 1, 1990, and ending on the thirtieth day of June of the following year, and if the initial license is granted for less than a year, the fee shall be computed in preparation to the

number of days remaining the fiscal year, including the quarter in which application is made.

(c) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment.
(Ord. 232. Passed 12-5-90.)

ARTICLE 741

Wine Distributors and Retailers

741.01 Levy.

CROSS REFERENCES

Authority to levy - see W.Va. Code 8-13-4

Liquor control - see GEN. OFF. Art 521

741.01 LEVY.

There is imposed an annual license tax upon distributors and retailers of wine within the City limits of Keyser, whereas no person may engage in business in the capacity of distributor or retailer of wine, 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 had expired, been suspended or revoked. Fees collected by the City are as follows:

DISTRIBUTOR'S LICENSE: Twenty-five hundred dollars per annum

RETAILER'S LICENSE: One hundred fifty dollars per annum.

(Ord. 202A. Passed 12-19-90.)

ARTICLE 745

Fire Protection Service Fees

745.01 Monthly charge.

745.02 Property classification determination.

745.03 Regulations.

745.04 Liability of the owner.

745.05 Assessment year.

745.06 Payment date.

745.07 Remedy of collections.

745.08 Filing of lien.

745.09 Use of funds.

745.99 Penalty.

CROSS REFERENCES

Special changes for municipal services - see W.Va. Code 8-13-13

745.01 MONTHLY CHARGE.

(a) There is hereby levied the following charges monthly against the owner or owners of all residential or commercial structures within the fire protection area. All structures regardless of their type of types or construction will be a user of fire protection service and assessed fees by their class and square footage.

(b) The square footage will be calculated by the footprint of the structure multiplied by the number of floors above and below ground or any portion thereof.

CLASS I	up to 2,499 sq. ft.
CLASS II	2,500 - 9,999 sq. ft.
CLASS III	10,000 - 29,999 sq. ft.
CLASS IV	30,000 - 49,999 sq. ft.
CLASS V	50,000 sq. ft. and above

RESIDENTIAL.	\$2.40 Monthly
COMMERCIAL CLASS I	\$6.50 Monthly
COMMERCIAL CLASS II	\$7.75 Monthly
COMMERCIAL CLASS III	\$19.00 Monthly
COMMERCIAL CLASS IV	\$29.00 Monthly
COMMERCIAL CLASS V	\$35.00 Monthly

(c) Any structure with a state certified sprinkler system will receive a 25% discount on the charges for the class in which the structure falls.

(Ord. 224. Passed 6-12-13.)

745.02 PROPERTY CLASSIFICATION DETERMINATION.

All structures in the fire protection area will be classed Commercial unless they are owner occupied as a single family residence or a storage facility including private use garage only used by the resident on a residential property. (Ord. 224. Passed 6-12-13.)

745.03 REGULATIONS.

Council shall have the right to make and promulgate from time to time suitable regulations governing the fire protection service, making of statements of accounts, the collection thereof and other proper and appropriate regulations as it may deem proper and necessary for the enforcement of this article. Council hereby authorizes said fees to be added to the water bill where the property owner or property manager is the water bill recipient. Where the property owner or property manager is not the recipient of the water bill, the billing will be assessed monthly and billed annually by direct mailing.

(Ord. 224. Passed 6-12-13.)

745.04 LIABILITY OF THE OWNER.

Billing for rendered fees of residential service will be in the name of the registered owner of record for the water utility service. Commercial rendered fees will be rendered in the name of the owner or property manager where a monthly water utility bill is rendered to the same. Any property owner that does not have a monthly water utility bill rendered will be billed annually.

(Ord. 224. Passed 6-12-13.)

745.05 ASSESSMENT YEAR.

The fees and charges imposed, levied and assessed by this Article shall be in addition to all other licenses and taxes levied by the statutes of the State of West Virginia or by ordinances of the City of Keyser and the payment thereof shall be a condition precedent to the use and enjoyment of the special and essential service of fire protection within the service area.

(Ord. 224. Passed 6-12-13.)

745.06 PAYMENT DATE.

The rate, fees and charges hereby levied and assessed shall be collected from each user on a monthly installment where the user or property manager receives a monthly water utility bill. Where the owner or manager is not the person receiving the monthly water utility bill, the charges will be collected on an annual basis billed in January of each year for the previous calendar year.

(Ord. 224. Passed 6-12-13.)

745.07 REMEDY OF COLLECTIONS.

Debt due the City of Keyser and recoverable in any Court of competent jurisdiction in Mineral County West Virginia or such Court of competent jurisdiction in the jurisdiction where the property owner may reside if not a resident of Mineral County.

(Ord. 224. Passed 6-12-13.)

745.08 FILING OF LIEN.

To collect unpaid and delinquent fees due under this article, the City is authorized to file a lien on real property after giving written notice to the property owner, return receipt requested, that the municipality will file the lien unless the delinquency is paid by a date stated in the notice, which must be no less than ninety days from the date the notice is mailed. The property owner has the right to appeal the City's notice to the Circuit Court of Mineral County, West Virginia, which appeal must be filed before the date stated in the notice.

(Ord. 224. Passed 6-12-13.)

745.09 USE OF FUNDS.

The funds, moneys and revenues received from the collection of the rates, fees and charge herein provided shall be used solely for the continuance, maintenance and improvement of the essential or special service of fire protection within the service area, and no part of said funds, moneys or charges shall be used for any other municipal purpose. (Ord. 224. Passed 6-12-13.)

745.99 PENALTY.

Failure or refusal to abide by and comply with any of the rules and regulations promulgated by the City Council to effectuate the provisions of this article shall, upon conviction thereof, for the first offense be fined not less than one dollar (\$1.00) nor more than one hundred dollars (\$100.00); for the second offense be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) and for the third or any subsequent offense be fined not less than seventy-five dollars (\$75.00) nor more than one hundred fifty dollars (\$150.00).

(Ord. 224. Passed 6-12-13.)

ARTICLE 749

Parks and Recreation Service Fee

749.01 Monthly charge.

749.02 Regulations.

749.03 Liability of Tenants and owners.

749.04 Assessment year.

749.05 Payment date.

749.06 Exemption.

749.07 Use of funds.

749.99 Penalty.

749.01 MONTHLY CHARGE.

There is hereby levied the following charges payable monthly against the owner or owners of all residential, commercial, industrial or other building or buildings of every kind and nature regardless of the type or types of construction within the City of Keyser as beneficiaries and users of parks and recreation facilities, a fee as follows, to-wit:

Residential	\$1.05 per month
Business Property	\$1.05 per month
Apartment Building	\$1.05 per month
Manufacturing	\$1.05 per month
Church Building-Parsonage only	\$1.05 per month
Schools	\$1.05 per month

(Ord. 268. Passed 12-15-07.)

749.02 REGULATIONS.

Council shall have the right to make and promulgate from time to time suitable regulations governing the parks and recreation service fee, making of statements of accounts, the collection thereof and other proper and appropriate regulations as it may deem proper or necessary for the enforcement of this article. The Council hereby authorizes said fees to be added to the water bills now issued by the City Administrator's office.

(Ord. 268. Passed 12-15-07.)

749.03 LIABILITY OF TENANTS AND OWNERS.

Both the occupants or tenants, and owners of office buildings, houses, mobile homes or apartments or other structures subject to the parks and recreation service fee shall be jointly and severally liable for the same. Billings for the fees shall be rendered to and in the name of the owner as fixed by the real and personal property records of Mineral County as determined by the Assessor of Mineral County and as certified by the West Virginia State Tax Department as of July 1 of the year next preceding the fiscal year of the tax as hereinafter established, but, in the absence of payment thereunder, the occupant or tenant and/or the owner shall be liable for the same. Any accounts not paid within thirty (30) days of billing shall be subject to interest at the rate of 12% per annum. The City shall have the right to pursue collections or delinquent accounts plus interest and court costs through civil actions or to pursue any other remedy available under the laws of the State of West Virginia.

(Ord. 268. Passed 12-15-07.)

749.04 ASSESSMENT YEAR.

The fees and charges imposed, levied and assessed by this article shall be in addition to all other licenses and taxes levied by the statutes of the State of West Virginia or by ordinance of the City of Keyser and the payment thereof shall be a condition precedent to the use and enjoyment of the special service of parks and recreation within the City of Keyser. The fee shall be based on a fiscal year basis commencing December 20, 2007 and ending June 30, 2008 for the initial fee service period from enactment of this Ordinance and on a fiscal year basis thereafter commencing July 1, 2008 and ending June 30 of each succeeding year.

(Ord. 268. Passed 12-15-07.)

749.05 PAYMENT DATE.

The rates, fees and charges hereby levied and assessed shall be collected from each user in monthly installments which shall be due and payable within 30 days of receipt of said bill. All of said rates, fees and charges shall be collected by the City. No lien may be enforced upon any property as security for payments due under this article. The rates, fees and charges levied and assessed under the provisions of this article shall be a debt due to the City and shall be a personal obligation of the user of the special services of parks and recreation within the City.

(Ord. 268. Passed 12-15-07.)

749.06 EXEMPTION.

No resident of the City of Keyser shall be subject to the provisions of this article for residential property for which the resident, and his or her spouse, qualifies and maintains a homestead exemption. Determination of a resident's eligibility for exemption shall be made on a case by case basis in accordance with the property tax records kept and maintained by the Offices of the Clerk of the County Commission of Mineral County.

(Ord. 268. Passed 12-15-07.)

749.07 USE OF FUNDS.

The funds, moneys and revenues received from the collection of the rates, fees and charges herein provided shall be used and expended solely for the continued maintenance and improvement of the special service of parks and recreation services and facilities within the City of Keyser, and no part of said funds, moneys or charges shall be used for any other municipal purpose.

(Ord. 268. Passed 12-15-07.)

749.99 PENALTY.

Failure or refusal to abide by and comply with any of the rules and regulations promulgated by City Council to effectuate the provisions of this article shall, upon conviction thereof, for the first offense be fined not less than one dollar (\$1.00) nor more than one hundred dollars (\$100.00), for the second offense be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00); and for the third or any subsequent offense may be confined in jail not less than one (1) nor more than thirty (30) days, or fined not less than seventy-five dollars (\$75.00) nor more than one hundred fifty dollars (\$150.00) or both fined and imprisoned in the discretion of the police judge, and in addition thereto shall pay court costs and the cost of prosecution.

(Ord. 268. Passed 12-15-07.)

CODIFIED ORDINANCES OF KEYSER

PART NINE - STREETS, UTILITIES AND PUBLIC SERVICES CODE

CHAPTER ONE - Street and Sidewalk Areas

Art. 901. Sidewalks.

Art. 905. Streets.

CHAPTER THREE - Utilities

Art. 921. Water
Art. 925. Sewers

CODIFIED ORDINANCES OF KEYSER

PART NINE - STREETS, UTILITIES AND PUBLIC SERVICES CODE

CHAPTER ONE - Street and Sidewalk Areas

Art. 901. Sidewalks.
Art. 905. Streets.

ARTICLE 901

Sidewalks

- 901.01 Sidewalks required.**
- 901.02 Width and grade.**
- 901.03 Installation by City.**
- 901.04 Notice.**
- 901.05 Ascertaining costs.**

CROSS REFERENCES

Sidewalk assessment - see W.Va. Code Art 8-18

901.01 SIDEWALKS REQUIRED.

It is the duty of every person owning real property fronting on a public street of the City of Keyser to pave and curb a sidewalk adjacent to such property, in such manner and according to such grades and specifications as Council may prescribe. It shall also be the duty of said abutting property owner to keep same in repair and in a safe condition for public travel thereon and to repave and recurb same when required by Council.

(Ord. 114. Passed 3-6-51.)

901.02 WIDTH AND GRADE.

Council shall, by resolution, establish the width and grades of any sidewalk along any street of the City. (Ord. 114. Passed 3-6-51.)

901.03 INSTALLATION BY CITY.

In the event that the owner of real estate abutting upon any street in the City fails or refuses to pave or repave, curb or recurb, or repair any such sidewalk adjacent to their property and such failure or refusal continues for a period of thirty (30) days following written notice to said property owner to make such improvements or repairs, then Council may cause the same to be properly paved, curbed or repaired and shall levy and collect from said owner the whole cost of same, with a penalty of five percent (5%) per annum together with interest at the rate of six percent (6%) per annum until paid. In all cases of such assessment, whether for the original paving and curbing, or for the repaving, recurbing, or repairing thereof, payment thereof, including penalty and interest, shall be made to the City Clerk within thirty (30) days after the completion of the work. Upon completion of said work, the Clerk shall prepare an itemized statement of the cost of same, including penalty and interest. One copy thereof shall be dispatched by registered mail, to the abutting owner, and one copy, certified by said Clerk to the Clerk of the County Court of Mineral County, West Virginia, shall be filed for record in the office of said Clerk of said County. There shall be a lien on abutting property so assessed under this article, which lien shall become effective as against creditors of the owners thereof, or purchasers for value without actual notice of such lien, only from and after the filing for record of said certified statement. Said lien shall have priority over all other liens except liens for taxes and may be enforced by Council by a suit in equity in the corporate name of the Municipality in the same manner as is prescribed by law for the enforcement of liens upon real estate.

(Ord. 114. Passed 3-6-51.)

901.04 NOTICE.

Notice required under Section 901.03 shall be in writing addressed to the abutting property owner or owners. It may be by personal service upon the abutting owner or owners, or where personal service cannot be obtained, by registered mail, return receipt requested, addressed to said abutting owner at his or her last known address. Said notice shall describe the improvements or repairs required to be made and set forth all necessary grades, dimensions and specifications necessary for the performance of said work.

(Ord. 114. Passed 3-6-51.)

901.05 ASCERTAINING COSTS.

In ascertaining the total cost of the improvements or repair required to be made hereunder, there shall be included the cost and expense of surveys, engineering, and attorneys' fees, recording fees and the cost and expense of all labor, work, supervision, inspection, equipment leased, and materials furnished and used in completing said work.

(Ord. 114. Passed 3-6-51.)

ARTICLE 905

Streets

- 905.01 Permit required to open or grade street.**
- 905.02 Permit required to erect structure on or pave street or sidewalk.**
- 905.03 Regulations governing work.**
- 905.04 Sweeping debris into street.**
- 905.05 Duty to remove injurious materials from street.**
- 905.06 Closing of streets and alleys.**

CROSS REFERENCES

Street Assessments - see W.Va. Code Art. 8-18

905.01 PERMIT REQUIRED TO OPEN OR GRADE STREET.

No person shall open or grade any public street, alley or public way or change the elevation or location thereof, or physically change or alter the same without first obtaining a permit therefore.

905.02 PERMIT REQUIRED TO ERECT STRUCTURE ON OR PAVE STREET OR SIDEWALK.

No person shall build, erect, construct or reconstruct any structure, barrier, obstruction or sidewalk in any public street, alley or public way; or fill, pave or repave the same or any part thereof, or construct erect, install, change or replace any drain or drainage structures therein; or physically alter or change any public street, sidewalk, alley or public way; or change the elevation or grade thereof in the City, without first obtaining a permit therefor.

905.03 REGULATIONS GOVERNING WORK.

(a) Any person desiring to do any of the acts or things provided for in Sections 905.01 and 905.02 shall first apply for and obtain a permit from Council, and if permit is obtained, granted and issued, the work shall be done in accordance with the terms, conditions and specifications thereof. Council shall have the power to authorize and direct the Street Commissioner to see that such work is done in accordance with the permit issued and in accordance with the directions, conditions and specifications set forth in the permit.

(b) Council may empower and authorize a designated City Official to receive and act upon applications for such permits, and to issue or refuse to issue the same, and the action of such designated official shall be of the same force and effect as if done by Council.

905.04 SWEEPING DEBRIS INTO STREET.

No person shall sweep, throw or deposit dirt, trash, debris, sweeping, paper, rubbish or other waste material or substance of any kind upon any street or sidewalk.

905.05 DUTY TO REMOVE INJURIOUS MATERIAL FROM STREET.

Any person who drops, or permits to be dropped or thrown upon any street or sidewalk, mud, dirt, glass or other substance likely to be injurious or likely to cause a sidewalk or street to become dusty, slippery, muddy or dangerous shall immediately remove the same, or cause it to be removed.

905.06 CLOSING OF STREETS AND ALLEYS.

(a) Authority. Council, pursuant to the authority granted it by the Charter and the West Virginia Code, reserves the right to permanently close, abandon and discontinue, for public use, any street, alley, lane, road or other public right of way presently owned by the City or dedicated to the City.

(b) Procedure.

(1) Any person seeking to permanently close, abandon and discontinue a public street, alley, lane, road or other public right of way, shall file:

- A. An ordinance and petition, the form of which shall be prescribed by the City Administrator, to Council in the Office of the City Planning Commission;
- B. The ordinance and petition shall be accompanied by an accurately scaled map of such right of way;
- C. A list of all owners of property immediately adjacent and extending one hundred feet from such right of way;
- D. A filing fee of twenty-five dollars (\$25.00).

(2) Upon receipt of the application, the City Planning Commission shall deliver one copy of the ordinance to the City Clerk's office for the assignment of a number. Thereafter, the ordinance shall be introduced at the next Council meeting and it shall be referred to the City Planning Commission for a public hearing.

(3) Prior to holding a public hearing, the City Planning Commission shall notify all persons on the list supplied by the petitioner of the place, time and date of hearing. This notice shall be given in writing to all persons on the list not less than fifteen days prior to the public hearing. After considering the evidence presented at the public hearing as well as any other documented evidence which may come before the Planning Commission the Planning Commission shall report its recommendations to Council at the next Council meeting.

(4) Upon receipt of the Planning Commission's recommendations, Council shall refer the ordinance to Council's Committee on Planning for its consideration. After consideration of the ordinance, Council's Committee on Planning shall report back to Council with its recommendation for passage or rejection of the ordinance. In any event, Council shall refer the ordinance to Council's Committee on Finance, and such Committee shall report its recommendations to Council. Council shall then vote on passage or rejection of the ordinance. Council's final action shall be a simple majority vote of the members present at a regular or special meeting at which a quorum is present.

(c) Contents of Petition to Vacate. A petition requesting the City to permanently close, abandon and discontinue a public street, alley, lane, road or other public right of way, shall include explicit reasons and the necessity for the public abandonment together with the petitioner's need for the property for purposes of construction, improvement or other reasons which could not be accomplished otherwise.

(d) Contents of Ordinance. An ordinance passed by Council to permanently close, abandon and discontinue a public street, alley, lane, road or other public right of way, shall include an accurate description of the public street, alley, lane, road or other public right of way which is permanently closed, abandoned and discontinued.

CHAPTER THREE - Utilities

Art. 921. Water

Art. 925. Sewers

ARTICLE 921

Water

921.01 Rules and regulations.

- 921.02 Rates.**
921.03 Cleaning service connections.
921.04 Emergency water usage rules.
921.05 Cross-connection water control.

CROSS REFERENCES

Authority to collect charges - see W.Va. Code 8-12-5; 16-13-16

921.01 RULES AND REGULATIONS.

The rules and regulations for the Government of Water Utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission. (Passed 10-14-15)

921.02 RATES.

- (a) Applicability. Applicable within the entire territory served.
 (b) Availability of Service. Available for general domestic, commercial and industrial service.
 (c) Rates (For all customers with metered water supply).

Gallons used per month	Per 1,000 gallons
First 2,000	\$9.04
Next 5,000	\$7.89
Next 50,000	\$7.12
Next 50,000	\$5.46
All over 107,000	\$4.17

- (d) Minimum Charge. No bill will be rendered for less than the following amounts, according to the size of the meter installed:

Inch meter	Per month
5/8	\$18.08
3/4	\$27.12
1	\$42.20
1-1/4	\$65.99
1-1/2	\$90.40
2	\$144.64
3	\$289.28
4	\$452.00
6	\$904.00
8	\$1,446.40

- (e) Resale Rate. To be used when the City is selling water to another water utility for resale.
 Rate - \$3.24 per 1,000 gallons used per month

(f) Returned Check Charge. A service charge equal to the actual bank fee assessed to the City, or a maximum of \$25.00, will be imposed upon any customer whose check for payment of charges is returned by their bank due to insufficient funds.

(g) Delayed Payment Penalty. The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the next current amount paid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

(h) Reconnection Fee. - \$35.00. To be charged whenever the supply of water is turned off for violations of rules, non-payment of bills or fraudulent use of water.

- (i) Tap Fee.

(1) The following charges are to be made whenever the utility installs a new tap to serve an applicant:

(2) A tap fee of \$150.00 will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre- construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

(3) A tap fee of \$425.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

(j) Leak Adjustment. \$0.93 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above customer's historical average usage.

(k) Security Deposit. Not to exceed two-twelfths (2/12) of the average annual usage of the applicant's specific customer class, or fifty dollars, whichever is greater. This fee may be changed by applicable statutory provisions.

- (l) Private Fire Protection Service. Where connections, hydrants, sprinklers, etc., on private property are maintained by the customer: Rate \$199.84 per month. (Passed 10-14-15)

921.03 CLEANING SERVICE CONNECTIONS.

(a) The property owner shall first have contacted a plumber and the plumber has been unsuccessful in unstopping the service connection and so notifies the property owner.

(b) The property owner shall then contact the City Clerk and inform him that the plumber has been unsuccessful in unstopping the service connection.

(c) The City Clerk shall then inform the said owner that the City will uncover the service connection on the City's portion of same and determine if said service connection is stopped up on the City portion and if it is, the City will unstop same on its portion of the connection and then inform the property owner that it is the property owner responsibility to unstop his portion.

(d) If the property owner cannot get a plumber to open his portion of the service connection and desires the City to attempt to open his or her portion of said connection on a time and material basis said owner shall so notify said City Clerk and also sign an agreement and same shall be certified by said City Clerk stating that said property owner will reimburse said City for all direct labor equipment and material costs plus a direct overhead allowance of twenty-five percent (25%) to defray Workmans Compensation, social security, unemployment insurance, pension and handling costs and other incidental costs that the City might and does incur.

(Ord. 198. Passed 4-1-81.)

921.04 EMERGENCY WATER USAGE RULES.

(a) General.

(1) Scope. This legislative rule establishes the rules and regulations for the use and consumption of water by the inhabitants and all users, regardless of class of service, during times of emergency and periods of temporary inadequacy of supply of available water.

(2) Authority - West Virginia Code Chapter 24-1-1, 24-1-7, 24-2-1 and 24-2-7.

(3) Filing Date - April 3, 1989

(4) Effective Date - June 1, 1989

(b) Water Rationing Plan.

(1) General. That upon any water utility declaring that there is a temporary shortage of water, and that it is necessary for the health and welfare of the utility's customers to supply, the utility shall, upon the giving of public notice, restrict the use of said water supply to human consumption and sanitary purposes as noted in the Local Water Rationing Plan.

The utility is herein authorized to enforce a Water Rationing Plan by virtue of the declaration of a public water emergency proclamation by the utility.

(2) Definitions.

A. Special Emergency Area - the area or areas within which the utility has declared a state of drought and water shortage emergency.

B. Service area - the territory and the customers serviced by the utility.

C. Emergency Service Area - the service areas of the water supply covered by this Local Water Rationing Plan.

D. Residential Customer - any customer who receives water service for a single or multi-family dwelling unit. The term residential customer does not include educational or other institutions, hotels, motels, or similar commercial establishments.

E. Non-Residential Customer - commercial, industrial, institutional, public and all other users with the exception of hospitals and health care facilities.

F. Service Interruption - the temporary suspension of water supply, or reduction of pressures below that required for adequate supply, to any customer, portion of a water supply system, or an entire system.

G. Excess Use - the usage of water by a water customer in excess of the water allotment provided under the Local Water Rationing plan for that customer, over any applicable period.

H. Water Customer - any person who is connected to and receives water services from a water supply system.

(3) Purpose. This local water rationing plan is intended to establish measures for essential conservation of water resources, and to provide for equitable distribution of limited water supplies, in order to balance demand and limited available supplies and to assure that sufficient water is available to preserve public health and safety within the Emergency Service Area.

(4) Scope. This Local Water Rationing Plan shall apply to all water uses within the service area of all customers and entities served by the utility including uses by customers of wholesale customers of the utility.

(5) Objective of the Plan.

A. It is imperative that water customers within the Emergency Service Area achieve an immediate and further reduction in the water use in order to extend existing water supplies and, at the same time, assure that sufficient water is available to preserve the public health and sanitation, and provide fire protection service and electric power generation.

B. The Plan provides for equitable reductions in water usage, and for equal sacrifice on the part of each water customer, insofar as such restrictions do not interfere with the public health, adequate fire protection and the generation of electric power. The success of this plan depends on the cooperation of all water customers in the emergency service area.

(6) Measures to Implement the Water Rationing Plan. Each water supply purveyor within the Emergency Service Area will develop and adopt such implementing measures as are necessary and appropriate to assure compliance with requirements of this Local Water Rationing Plan.

(7) Prohibited Non-Essential Water Uses. The following water uses are declared non-essential and are prohibited within the Emergency Service Area:

A. Watering of outside shrubbery, trees, lawns, grass, plants or any other vegetation, except from a watering can or other container not exceeding three (3) gallon capacity. This limitation shall not apply to vegetable gardens, greenhouse or nursery stocks and newly established lawns or sod less than five (5) weeks old, which may be watered in the minimum amount required to preserve plant life before 8:00 a.m. or after 6:00 p.m.

B. The watering of golf course fireways.

C. The washing of automobiles, trucks, trailers or other type of mobile equipment except in vehicle wash facilities operating with

a water recycling system with a prominently displayed sign in public viewing so stating, or from a bucket or other container not exceeding three (3) gallons.

- D. The washing of streets, driveways, parking lots, service station aprons, office buildings, exteriors of homes or apartments or other outdoor surfaces.
 - E. The serving of water in restaurants, clubs or eating places unless specifically requested by the individual.
 - F. Ornamental water use, including but not limited to fountains, artificial waterfalls, and reflecting pools.
 - G. The use of water or flushing sewers or hydrants by municipalities or any public or private individual or entity except as deemed necessary and approved in the interest of public health or safety by the utility.
 - H. The use of fire hydrants by fire companies for testing fire apparatus and for fire department drills except as deemed necessary in the interest of public safety and specifically approved by the municipal governing body.
 - I. The use of fire hydrants by municipal road departments, contractors and all others, except as necessary for fire fighting or protection purposes.
 - J. The filling of swimming or watering pools requiring more than five (5) gallons of water, or the refilling of swimming or wading pools which are drained after the effective date of the order, except that pools may be filled to a level of two feet below normal, or as necessary to protect the structure from hydrostatic damage, as to pools constructed or contracted for on or after the date of the final order.
- (8) Recourse. Any person aggrieved by a decision relating to these rules rendered by a public utility may file a complaint with the Public Service Commission.
- (9) Penalties. Any person who violates the provisions of this plan, who fails to carry out duties and responsibilities imposed by this plan, or who impedes or interferes with any action undertaken or ordered pursuant to this plan, shall be subject to the following penalties:
- A. For the first excess use, a warning of possible discontinuation of service shall be issued to the customer by the utility.
 - B. For the second or subsequent excess use, the water supplier may interrupt or shut off service to the customer pursuant to Rule 4.08 as fraudulent use.
 - C. For the second or subsequent excess use, the utility may add a surcharge of 10% to the end users monthly bill for the month of the infraction, which surcharge shall be held by the utility in a separate bank account pending disposition as directed by the Public Service Commission.
- (10) Effective Period. This plan shall remain in effect until terminated by action of the utility declaring an end to the emergency condition or until terminated by order of the Public Service Commission, whichever comes first. (Passed 8-14-91.)

921.05 CROSS-CONNECTION WATER CONTROL.

(a) Authority. By authority under the Federal Safe Drinking Water Act of 1974, and the Code of the State of West Virginia, Chapter 16, Article 1 et. seq. and the Public Health Laws of the State of West Virginia Department of Health and Human Resources pursuant to enforcement by the Bureau for Public Health and Office of Environmental Health Services, the City of Keyser has a primary responsibility for preventing water from unapproved sources, or any other substances, from entering the public potable water system.

(b) Responsibility. The City of Keyser shall be responsible for the protection of the public potable water distribution system from contamination or pollution due to the back-flow or back-siphonage of contaminants or pollutants through commercial and industrial water service connections. If, in the judgment of the City of Keyser, an approved back-flow device is required at the water service connection to any customer's commercial or industrial premises, the City of Keyser, the Keyser Board, or its delegated agents, employees or assigns shall give notice in writing to said customer to install an approved back-flow prevention device at each service connection to its premises. The customer shall within ninety days install such an approved device or devices, as its own expense, and failure or refusal, or inability on the part of the customer to install said device or devices within ninety (90) days shall constitute a ground for discontinuing water service to the premises until such device or devices have been properly installed.

(c) Definitions. Unless the context specifically indicates otherwise, the meaning of terms used in this Ordinance shall be as follows:

- (1) "Auxiliary Water Supply" shall mean any water supply on or available to the premises other than the City of Keyser's approved public potable water supply.
- (2) "Auxiliary Water Supply" shall mean any water supply on or available to the premises other than the City of Keyser's approved public potable water supply.
- (3) "Backflow" shall mean the flow of water other liquids, mixtures or substances, under positive or reduced pressure in the distribution pipes of a potable water supply from any source other than its intended source.
- (4) "Backflow Preventer" shall mean a device or means designed to prevent backflow or back siphonage. Most commonly categorized as air gap, reduced pressure principle devices, double check valve assembly, pressure vacuum breaker, atmospheric vacuum breaker, hose bibb vacuum breaker, residential dual check, double check with intermediate atmospheric vent and barometric loop.
- (5) "Air Gap" shall mean a physical separation sufficient to prevent backflow between the free-flowing discharge end of the potable water system and any other system. Physically defined as a distance equal to twice the diameter of the supply side pipe diameter but never less than one (1) inch.
- (6) "Atmospheric Vacuum Breaker" shall mean a device which prevents back-siphonage by creating an atmospheric vent when there is either a negative pressure or sub atmospheric pressure in a water system.
- (7) "Barometric Loop" shall mean a fabricated piping arrangement rising at least thirty-five (35) feet at its topmost point above the highest fixture it supplies. It is utilized in water supply systems to protect against back-siphonage.
- (8) "Double Check Valve Assembly" shall mean an assembly of two (2) independently operating spring loaded check valves with tightly closing Shutoff valves on each side of the check valves, and properly located test cocks for the testing of each check valve.
- (9) "Double Check Valve with Intermediate Atmospheric Vent" shall mean a device having two (2) spring loaded check valves separated by an atmospheric vent chamber.
- (10) "Hose Bibb Vacuum Breaker" shall mean a device which is permanently attached to a hose bibb and which acts as an atmospheric vacuum breaker.
- (11) "Pressure Vacuum Breaker" shall mean a device containing one or two independently operated spring loaded check valves and

an independently operated spring loaded air inlet valve located on the discharge side of the check or checks. The device includes tightly closing shut-off valves on each side of the check valves and properly located test cocks for the testing of the check valve(s).

- (12) "Reduced Pressure Principle Backflow Preventer" shall mean an assembly consisting of two (2) independently operating approved check valves with an automatically operating differential relief valve located between the two (2) check valves, tightly closing shut-off valves on each side of the check valves plus properly located test cocks for the testing of the check valves and the relief valve.
- (13) "Residential Dual Check" shall mean an assembly of two (2) spring-loaded, independently operating check valves without tightly closing shut-off valves and test cocks. Generally employed immediately downstream of the water meter to act as a containment device.
- (14) "Backpressure" shall mean a condition in which the owner's system pressure is greater than the supplier's system pressure.
- (15) "Back-Siphonage" shall mean the flow of water or other liquids, mixtures or substances into the distribution pipes of a potable water supply system from any source other than its intended source caused by the sudden reduction of pressure in the potable water supply system.
- (16) "Containment" shall mean a method of backflow prevention which requires a backflow prevention device at the water service entrance.
- (17) "Contaminant" shall mean a substance that will impair the quality of the water to a degree that it creates a serious health hazard to the public leading to poisoning or the spread of disease.
- (18) "Cross-connection" shall mean any actual or potential connection between the public water supply and a source of contamination or pollution.
- (19) "Fixture Isolation" shall mean a method of backflow prevention in which a backflow preventer is located to correct a cross connection at an in-plant location rather than at a water services entrance.
- (20) "Owner" shall mean any commercial or industrial facility whether owned or operated by any individual, partnership, company, public or private corporation, political subdivision or agency or department of the State of West Virginia, the United States or any other legal entity which has legal title to or license to operate upon property upon which a cross-connection inspection is to be made or upon which a cross-connection is present.

Examples of facilities subject to this Ordinance shall include but not be limited to the following:

INDUSTRIES

Automotive manufacturing plants
Chemical, plating, processing plants, chemical tank car cleaning facilities
Breweries, bottling plants
Canneries, packing houses, meat processing operations
Dairy processing operations
Photographic developing laboratories
Research laboratories
Oil and gas production, storage or transmission operations
Power plants

COMMERCIAL ESTABLISHMENTS

Hospitals, medical buildings, sanitariums, nursing or convalescent homes, clinics, dentist
Offices
Mortuaries, morgues, funeral homes
Refrigeration or cold storage plants
Laundries, dry cleaning operations
Car washes
Grain elevators
Restaurants, taverns
Beauty salons, barber shops
Greenhouses

OTHER

Schools, churches
Parks
Golf courses (lawn sprinkling systems)
Cemeteries (lawn sprinkling systems)
Sewage treatment plants, sewage lift stations
Water treatment plants
Apartment complexes

- (21) "Pollutant" shall mean a foreign substance, which if permitted to get into the public water system, will degrade its quality so as to constitute a moderate hazard, or impair the usefulness or quality of the water to a degree which does not create an actual hazard to the public health, but which does adversely and unreasonably affect such water for domestic use.
- (22) "Water Purveyor" shall mean the City of Keyser Municipal Water Department, Water Board, or other administrative authority or designee of the City of Keyser invested with the authority and responsibility for the implementation of a cross-connection control program and for the enforcement of the provisions of the Ordinance.
- (23) "Water Service Entrance" shall mean that point in the owner's water system beyond the sanitary control of the water purveyor, generally considered to be the outlet end of the water meter and always before any unprotected branch.
- (24) "West Virginia Bureau for Public Health" Shall hereinafter be identified as "WVBPH"
- (d) Responsibility. The water purveyor shall be responsible for the protection of the public potable water distribution system from

contamination or pollution due to the backflow or back-siphonage of contaminants or pollutants through commercial and industrial water service connections. If, in the judgment of the water purveyor, an approved backflow device is required at the water service connection to any customer's premises, the water purveyor, or his designated agent, shall give notice in writing to said customer to install an approved backflow prevention device at each service connection to its premises. The customer shall within 90 days, install such approved device, or devices, at its own expense, and failure or refusal, or inability on the part of the customer to install said device or devices within 90 days, shall constitute a ground for discontinuing water service to the premises until such device or devices have been properly installed.

(e) Administration.

- (1) The water purveyor shall operate a cross-connection control program, to include the keeping of necessary records, which fulfills the requirements of the WVBPH Cross Connections and Backflow Prevention Regulations.
- (2) The owner shall allow his property to be inspected for possible cross-connections and shall follow the provisions of the water purveyor's program and the WVBPH Regulations if a cross-connection is permitted.
- (3) If the water purveyor requires that the public supply be protected by containment, the owner shall be responsible for water quality beyond the outlet end of the containment device and should utilize fixture outlet protection for that purpose. The owner may utilize local public health officials, or personnel from the water purveyor, or their designated representatives, to assist it in the survey of its facilities and to assist it in the selection of proper fixture outlet devices, and the proper installation of these devices.

(f) Requirements.

(1) Water Purveyor.

- A. On new installations, the water purveyor shall provide on site evaluation and/or inspection of plans in order to determine the type of backflow preventer, if any, that will be required and will perform inspection and testing.
- B. For premises existing prior to the adoption of this Ordinance, the water purveyor will perform evaluations and inspections of plants and/or premises, as may be necessary, and inform the owner by letter of any corrective action deemed necessary, the method of achieving the correction, and the time allowed for the correction to be made. Ordinarily, ninety (90) days will be allowed. However, this time period may be extended, if necessary, or shortened depending upon the degree of hazard involved and the history of the device(s) in question.
- C. The water purveyor shall not allow any cross-connection to remain unless it is protected by an approved backflow preventer which will be regularly tested to insure satisfactory operation.
- D. The water purveyor shall inform the owner by letter, of any failure to comply, by the time of the first re-inspection. The water purveyor shall allow an additional fifteen (15) days for the correction. In the event the owner fails to comply with the necessary correction by the time of the second re-inspection, the water purveyor shall inform the owner by letter, that the water service to the owner's premises will be terminated within a period not to exceed five (5) days. In the event that the owner informs the water purveyor of extenuating circumstances as to why the correction has not been made, a time extension may be granted by the water purveyor, but in no case may exceed an additional thirty (30) days.
- E. If the water purveyor determines at any time that a serious threat to the public health exists, the water service shall be terminated immediately.
- F. The water purveyor shall begin initial premises inspections to determine the nature of existing or potential hazards. Initial focus will be on high hazard industries and commercial premises.

(2) Owner.

- A. The owner shall be responsible for the elimination or protection of all cross-connections on its premises.
- B. The owner, after having been informed by a letter from the water purveyor, shall at its expense, install, maintain and test, or have tested, any and all backflow preventers on its premises.
- C. The owner shall correct any malfunction of the backflow preventer which is revealed by periodic testing.
- D. The owner shall inform the water purveyor of any proposed or modified cross connections and also any existing cross-connections of which the owner is aware, but have not been found by the water purveyor.
- E. The owner shall not install a bypass around any backflow preventer unless there is a backflow preventer of the same type on the bypass. Owners who cannot shut down operation for testing of the device(s) must supply additional devices necessary to allow testing to take place.
- F. The owner shall install backflow preventers in a manner approved by the water purveyor.
- G. The owner shall install only backflow preventers approved by the water purveyor or the WVBPH.
- H. Any owner having a private well or other private water source must have the approval of the water purveyor and the WVBPH if the well or source is cross-connected to the water purveyor's system. Permission to cross-connect may be denied. The owner may be required to install a backflow preventer at the service entrance if a private water source is maintained, even if it is not cross-connected to the water purveyor's system.
- I. In the event the owner installs plumbing to provide potable water for domestic purposes which is on the water purveyor's side of the backflow preventer, such plumbing must have its own backflow preventer installed.
- J. The owner shall be responsible for the payment of all fees for permits, annual or semiannual device testing retesting in the case that the device fails to operate correctly, and second re-inspections for non-compliance with water purveyor or WVBPH requirements.

(g) Degree of Hazard. The water purveyor recognizes the threat to the public water system arising from cross connections. All threats will be classified by degree of hazard and will require the installation of approved backflow prevention device.

(h) Existing In-use Backflow Prevention Devices. Any existing backflow preventer shall be allowed by the water purveyor to continue in service unless the degree of hazard is such as to supersede the effectiveness of the present backflow preventer, or result in an unreasonable risk to the public health. Where the degree of hazard has increased, as in the case of a residential installation converting to a business establishment, any existing backflow preventer must be upgraded to a reduced pressure principle device, or a reduced pressure principle device must be installed in the event that no backflow device is present.

(i) Periodic Testing.

- (1) Backflow prevention devices shall be tested and inspected at least annually.
- (2) Periodic testing shall be performed by a WVBPH certified tester. This testing will be done at the owner's expense.
- (3) Any backflow preventer which fails during a periodic test shall be required or replaced. When repairs are necessary, upon completion of the repair the device will be retested at owner's expense to insure correct operation. High hazard situations will not be allowed to continue unprotected if the backflow preventer fails the test and cannot be repaired immediately. In other situations, a compliance date of not more than thirty (30) days after the test date will be established. The owner is responsible for spare parts, repair tools, or a replacement device. Parallel installation of two (2) devices is an effective means of the owner insuring that uninterrupted water service during testing or repair of devices and is strongly recommended when the owner desires such continuity.
- (4) Backflow prevention devices will be tested more frequently than specified in paragraph "A" above, in cases where there is a history of test failures and the water purveyor is of the opinion that due to the degree of hazard involved, additional testing is warranted. Cost of additional tests shall be born by the owner.

(j) Record. The water purveyor will initiate and maintain the following:

- (1) Master files on customer cross-connections.
- (2) Master files on customer cross-connection tests and/or inspections
- (3) Copies of lists and summaries supplied to the WVBPH.

Upon request, the water purveyor will submit records of inspection, surveys, tests or corrective actions to the West Virginia Bureau of Public Health.

(k) Non-liability. Neither the Keyser Water Board, the City of Keyser or any of its delegated agents, employees or assigns shall be liable for any damage resulting from the enforcement of this Ordinance or any work, services, inspections, etc. undertaken by the City of Keyser in accordance with the terms of this Ordinance or any other laws, regulations or directives of the WVBPH which may be required for purposes of the City of Keyser, it's citizens and users under the directives of the WVBPH.

(l) Right of Entry for Purpose of Inspection. The water purveyor, and any of its duly authorized employees, agents or other representatives of the City of Keyser and the Keyser Water Board bearing proper credentials for purposes of inspection, observation, measurements, sampling and testing pertinent to the compliance of the instant ordinance and for the protection of the Keyser City water supply shall have a right of entry onto private property for purposes of compliance and enforcement in accordance with the provisions of this Ordinance.

(m) Required Safety Procedures. While performing the necessary work on private properties under the terms of this Ordinance, the water purveyor and any of its duly authorized employees, agents or other representatives shall observe all safety rules applicable to the premises established by the City of Keyser or other state or federal law regulation.

(n) Penalties. Any owner violating any provisions of this Ordinance shall be guilty of a misdemeanor and liable unto the City of Keyser in an amount equal to the amount of damages incurred by the City as a result of the violation. In addition to any such damages incurred by the City as a result of such violation, the violator shall be fined not less than \$50.00 nor more than \$250.00 for a first offense under this Ordinance. For a second or any subsequent offense, the violator shall be fined not less than \$100.00 nor more than \$500.00.

(Ord. 265. Passed 12-27-04.)

ARTICLE 925

Sewers

925.01 Definitions.

925.02 Use of public sewers required.

925.03 Connection to public sewers.

925.04 Discharge into public sewers.

925.05 Powers and authority of inspectors.

925.06 Minimum standards for privately constructed sanitary sewers.

925.07 Amendments.

925.08 Conflict clause.

925.09 Penalties.

925.10 Rules and regulations.

925.11 Schedule No. 1.

925.12 Schedule No. 2.

925.13 Schedule No. 3.

925.14 Schedule No. 4.

925.15 Schedule No. 5.

925.16 Rates effective for service rendered after the project has been certified as substantially complete.

CROSS REFERENCES

Authority to regulate utility - see W.Va. Code 8-12-5(32)

Connecting to sewer - see W.Va. Code 8-18-22

925.01 DEFINITIONS.

Unless the context specifically indicates otherwise, the meaning of terms used in this article shall be as follows:

- (a) "Biochemical Oxygen Demand (BOD)" shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 deg. C, expressed in milligrams per liter.
- (b) "Council" shall mean the Mayor and fellow Members of the City Council of Keyser, West Virginia as constituting the governing body of said municipality.

- (c) "Building drain" shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.
 - (d) "Building sewer" shall mean the extension from the building drain to the public sewer or other place of disposal, also called house connection.
 - (e) "Combined sewer" shall mean a sewer intended to receive both wastewater and storm or surface water.
 - (f) "Easement" shall mean an acquired legal right for the specific use of land owned by others.
 - (g) "Floatable oil" is oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.
 - (h) "Garbage" shall mean the animal and vegetable waste resulting from the handling, preparation, cooking, and service of foods.
 - (i) "Industrial waste" shall mean the wastewater from industrial processes, trade, or business as distinct from domestic or sanitary strength wastes.
 - (j) "Manager" shall mean the duly appointed representative of the Keyser Utility Board, who is charged with the responsibility of the day to day operations of the wastewater facilities or his/her authorized deputy, agent or representative.
 - (k) "Utility Board" is the organization created by the City of Keyser by separate ordinance for the management, control and operation of the municipal waterworks system and sewerage system of the City of Keyser.
 - (l) "Natural outlet" shall mean any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake, or other body of surface or groundwater.
 - (m) "May" is permissive (see "Shall", within this Article).
 - (n) "Person" shall mean any individual, firm, company, association, society, corporation, or group.
 - (o) "pH" shall mean the logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of hydrogen-ion, in grams, per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen-ion concentration of 10^{-7} .
 - (p) "Properly shredded garbage" shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than $\frac{1}{2}$ inch (1.27 centimeters) in any dimension.
 - (q) "Public sewer" shall mean a common sewer controlled by a governmental agency or public utility.
 - (r) "Sanitary sewer" shall mean a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.
 - (s) "Sewage" is the spent water of a community. The preferred term is "wastewater", as hereinafter described.
 - (t) "Sewer" shall mean a pipe or conduit that carries wastewater or drainage water.
 - (u) "Shall" is mandatory (see "May", within this Article).
 - (v) "Slug" shall mean any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow excess for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration of flows during normal operation and adversely affects the collection system and/or performance of the wastewater treatment works.
 - (w) "Storm drain" (sometimes termed "storm sewer") shall mean a drain or sewer for conveying water, groundwater, subsurface water, or unpolluted water from any source.
 - (x) "Suspended solids" shall mean total suspended matter that either floats on the surface of, or is in suspension in, water, wastewater, or other liquids, that is removable by laboratory filtering as prescribed in "Standard Methods for the Examination of Water and Wastewater" and referred to as nonfilterable residue.
 - (y) "Unpolluted water" is a water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefitted by discharge to the sanitary sewers and wastewater treatment facilities provided.
 - (z) "Wastewater" shall mean the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any groundwater, surface water, and storm water that may be present.
 - (aa) "Wastewater facilities" shall mean the structures, equipment, and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.
 - (bb) "Wastewater treatment works" shall mean an arrangement of devices and structures for treating wastewater, industrial wastes, and sludge. Sometimes used as synonymous with "waste treatment plant" or "wastewater treatment plant" or "water pollution control plant".
 - (cc) "Watercourse" shall mean a natural or artificial channel for the passage of water either continuously or intermittently.
- (Ord. 252. Passed 9-9-99.)

925.02 USE OF PUBLIC SEWERS REQUIRED.

(a) Authority to Establish and Maintain a Sewer. For State law as to authority of the City to establish and maintain a sewer system and sewage treatment and disposal system and to acquire property necessary therefore, see W.Va. Code Sections 8-12-5 and 8-20-1. As to authority of the City to make improvements including construction, renewing and preparation of storm, sanitary and combined sewers; to levy assessments for sewer improvements and to regulate sewer connections see W.Va. Code Sections 8-18-22 and 8-20-1 et. seq. As to requirement that method of drainage and system for excreta disposal conform to plans specifications and instructions of State Department of Health, see W.Va. Code Section 16-1-9.

(b) Declaration of Necessity.

- (1) The use of the sewer system of the City is determined and declared to be essential for the protection and preservation of the public health, comfort, safety, economy and general welfare of the inhabitants of the City of Keyser and of the area served thereby.
- (2) The owner, tenant or occupant of premises which abut on a street, easement or other public way containing a sewer service, or

which, in the judgment of the Utility Board is located within such a distance thereof that sewer service is reasonably available thereto and upon which premises a building or other inhabitable structure has been or shall be erected for residential, commercial, or industrial use, or where persons are employed or congregate or are intended to be employed or congregate, shall be required to connect the building or structure to the sewer system or to such part of the sewer system as may from time to time be extended or become reasonably available, and shall thereafter refrain from using or cease to use any other method in place of the sewer services which are now, or may hereafter become available; and shall thereafter pay all the charges, rates or fees as herein, or may hereafter be, provided for. All such connections shall be in accordance with the rules and regulations which shall be adopted from time to time by the Utility Board and such rules and regulations may provide for reasonable charges, fees or deposits required for making such connections.

- (3) For provisions as to authority of the Utility Board to compel owners, etc., of property abutting on or near the street in which public sewer is laid and upon which any building, etc., is erected, to connect such property to the sewer; see W.Va. Code, 8-18-22.

(c) Application for Sewer Service Required.

- (1) It shall be unlawful for any person, including public bodies, as well as natural persons, to make an initial cut-in or connection with the City sewer system and use that system without first making written application for such connection and service to the Utility Board and paying all costs, charges, fees and deposits incident thereto. Such application shall be made on forms prescribed and furnished by the Board, and shall constitute an agreement by the applicant with the City to abide by all provisions of this article and such applicable rules and regulations of the State of West Virginia in regard to the use of the sewer system. Such application for service by firms, partnerships, associations, and corporations shall be submitted only by their duly authorized agent, and the official title of such agent shall be signed to the application.

- (2) The application upon approval by the Utility Board, shall grant or cause to be granted to the applicant the right to connect to the City sewer system. Duly authorized employees of the City shall have access at all reasonable hours to the premises of the applicant for the purpose of installing or removing any of its property, examining pipes or fixtures, or for any purpose incidental to the rendering of sewer service.

(d) Permit for Connection: Tapping Charge. It shall be unlawful for any person, whether property owner, drainlayer or otherwise, to connect with or tap a City sewer, either directly or indirectly, without first having a permit from the Utility Board and having paid the tapping or maintenance charge fixed by law. In all cases, the tapping and maintenance charges for tapping a City sewer shall be as specified from time to time by the Utility Board in an appropriate schedule, which shall be maintained on file in City Hall; and until such a schedule is prescribed by the Utility Board pursuant to the foregoing provisions of this section, the tapping and maintenance charges for City sewers shall be those in effect immediately prior to the effective date of this article. (Ord. 252. Passed 9-9-99.)

925.03 CONNECTION TO PUBLIC SEWERS.

(a) Tapping or Opening Sewer Without Permit. No person shall cut, break, pierce or tap any public sewer or appurtenances thereof, or introduce any tube, pipe, trough or conduit into any public sewer or appurtenance thereof without a written permit from the Utility Board.

(b) Sewer Taps Only by Authorized Persons. No person, except those persons duly employed or authorized by the Utility Board or its representatives for such purpose, shall tap the City sewer mains.

(c) Sewer Tap Construction.

- (1) All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner(s). The owner(s) shall indemnify the City of Keyser from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

- (2) A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another or an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the front building may be extended to the rear building and the whole considered as one building sewer, but the City does not and will not assume any liability for any damages arising from nor assume any obligation or responsibility for damage caused by or resulting from such single connection aforementioned.

(d) Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Manager, or other agent of the Utility Board to meet all requirements of this article.

- (e) (1) The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City and the State of West Virginia. In the absence of code provisions or in clarification thereof, the material and procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No.9 shall apply.

- (2) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

(f) No person(s) shall make connection of roof downspouts, foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer, unless such connection is approved by the Utility Board for purposes of disposal of polluted surface drainage.

(g) The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City, State of West Virginia, or the procedures set forth in appropriate specifications of the ASTM and the WPCF Manual of Practice No.9. All such connections shall be made gas-tight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the Utility Board before installation.

(h) The applicant for the building sewer permit shall notify the Manager when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the Utility Board or its representative.

- (i) All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public

from such hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored to a reasonably comparable condition of that existing immediately prior to the commencement of the excavation.

(j) Approval of Connections by Utility Board Inspector.

- (1) No sewer service shall be connected until the plumbing and connections incident thereto shall have been inspected and approved by an inspector of the Utility Board or its representatives.
- (2) No sewer service line shall be connected to the sanitary sewer system if that service line will contain flows other than sanitary wastewater. Roof drains, yard and area drains, footer drains, or any line other than that which serves a sanitary plumbing system are prohibited from connection to the City Sewer system.

(k) Unauthorized Connections Prohibited.

- (1) No person shall connect to or turn on any sewer service, or cut-in, interconnect, tap or make any alterations to any main or distribution or collection pipe of the City sewer system or permit any connection or tapping to be made to the sewer system on his premises or the premises occupied by him, or knowingly use the sewer service from connections in violation of any of the provisions of this article or any rules or regulations adopted by the Utility Board or the State of West Virginia, with respect thereto.
- (2) Roof drains, yard and area drains, footer drains, or any line carrying flow other than exclusively sanitary wastewater is prohibited from connection to the sanitary sewer system.

(l) Establishment of Schedule of Rates: Use of Water Meters.

- (1) For the payment of the proper and reasonable expense of operation, repair, replacement, improvements, additions, betterment, extensions and maintenance of the sewer system and for the payment of the sums required to pay the principal and interest of all sewer revenue bonds as they become due, the Utility Board shall enact and may from time to time amend a schedule of just and equitable rates or charges for the use of and service rendered by the municipal sewer system, which schedule of rates or charges shall be based upon the metered amount of water supplied to the premises; and each schedule shall be maintained on file in the office of the City Administrator while it is in effect.
- (2) Until such time as the Utility Board adopts a schedule of rates or charges pursuant to the foregoing provisions of this section, the rates and changes in effect immediately prior to the effective date of this article shall continue in full force and effect.

(m) Established Rates Applicable to Premises Subsequently Served. The rates or charges so established for any class of users or property served shall be extended to cover any additional premises hereafter served which fall within the same class, without the necessity of any hearing or notice.

(n) Subject to Established Rates or Charges. The City of Keyser shall be subject to the established charges and rates, or to charges and rates established in harmony therewith, for services rendered to the City and shall pay such rates or charges, when due, from corporate funds which shall be deemed to be a part of the revenues of the sewage system and works and be applied as provided for the application of such revenues.

(o) Authority Vested in Keyser Utility Board for Billing and Collecting. All rates or charges provided for by this article shall be billed and collected monthly by the Utility Board or by persons or agencies authorized by the Utility Board. All bills shall be considered due and payable on or before the tenth day following the date rendered.

(p) Lien for Enforcement of Collection of Billed Rates or Charges. All such rates or charges, if not paid when due, shall be a lien upon the premises served by such system or works, and if such rates or charges are not paid within thirty (30) days after due, then the amount thereof, together with a penalty of ten percent (10%) and a reasonable attorney's fee, may be recovered by the City in a civil action in the name of the Utility Board. In connection with such action, such lien may be foreclosed against such lot, parcel of land or building, in accordance with the laws relating thereto.

(q) Industrial Use of Sewers. Where the character of sewage from any manufacturing or industrial plant, building or premises is such that it imposes a burden upon the sewer system in addition to the burden imposed by the average sewage entering the sewer system, such additional charge shall be made therefore as the Utility Board shall deem to be fair and equitable to meet the additional cost of collection, treatment and disposal of such sewage; and the Utility Board may, if it deems advisable to do so, compel the owner, tenant or occupant of such manufacturing or industrial plant, building or premises to treat such sewage in such manner as shall be specified by the Utility Board or other applicable State law before discharging into the sewer system.

(r) Duration of Liability for Sewer Service. Liability for service shall begin for a user on the date of connection to the sewer system, and such liability shall continue thereafter unless such premises are disconnected from the sewer system with the approval of the Utility Board. After such liability begins, no allowance shall be made for vacant houses unless user requests in writing that the Utility Board have the same system shut off, nor will any allowance be made for any shut off period that is less than thirty (30) days.

(s) User's Responsibility to Keep Sewer Clean. The owner, tenant or occupant of the property shall be continuously and solely responsible for maintaining and keeping the sewer pipe leading to and between the plumbing system of his premises to the connecting sewer line clean and free from obstruction, and shall not cause, suffer or permit any article or thing, liquid as well as solid, to be introduced into the pipe which causes a stoppage thereof. In the event of any such obstructions or stoppage, the Utility Board shall have the right to cut off the water connection, which shall not be reconnected until such sewer pipe is cleaned and maintained properly, and in the further event of the failure of such user to remedy such obstruction or stoppage, the Utility Board or its representatives shall have the right to enter upon said premises and make necessary repairs, the costs and expenses of which shall be included as part of the charges against such premises.

(t) Leaks. No allowance or adjustment of any sewer bill shall be made for water leaks of any nature occurring on the user's side of the meter if the water so leaked enters the sewer.

(u) Not Liable for Damage. Neither the Utility Board or the City shall be liable for any damage resulting from bursting of any sewer main, service pipe or valve, or from discontinuing the operation of its sewer collection, treatment and disposal facilities, for repairs, extensions or connections, or from the accidental failure of the sewage collection, treatment and disposal facilities from any cause whatsoever. In cases of emergency, the Utility Board shall have the right to restrict the use of its sewage collection, treatment and disposal facilities in any reasonable manner for the protection of the City and its sewer system.

(v) Tampering with Sewer Appurtenances. No person shall turn, lift, remove, raise or tamper with any cover or any manhole, basin, inlet or other appurtenance of any public sanitary and/or storm sewer or of any combined sewer or sanitary sewer of the City without a

written permit from the Utility Board.

(w) Entering Sewer. No person, other than one employed by the Utility Board, or its representatives, shall enter any public sanitary and/or storm sewer or appurtenance thereof or enter any public combined sewer or sanitary sewer without a written permit from the Utility Board.

(x) Injury to Sewer. No person shall break or damage any public sewer or appurtenance of part thereof. (Ord. 252. Passed 9-9-99.)

925.04 DISCHARGE INTO PUBLIC SEWERS.

(a) Unpolluted Discharge. No person(s) shall discharge or cause to be discharged any unpolluted waters such as storm water, groundwater, roof runoff, subsurface drainage, or cooling water to any sewer, except storm water runoff from a limited area, which stormwater may be polluted at times, may be discharged to the sanitary sewer without permission of the Utility Board and the necessary permit obtained.

(b) Storm water. Storm water other than that exempted herein, and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or to a natural outlet approved by the Utility Board and other regulatory agencies. Unpolluted industrial cooling water or process waters may be discharged on approval of the Manager to a storm sewer, combined sewer, or natural outlet.

(c) Flammable, Explosive or Hazardous Substances and Foreign Matter. No person(s) shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:

- (1) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.
- (2) Any waters containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes which injure or interfere with any waste treatment process; constitute a hazard to humans or animals; create a public nuisance; or create any hazard in the receiving waters of the wastewater treatment plant.
- (3) Any waters or wastes having a pH lower or higher than that normally encountered in the system, or having any other corrosive property capable of causing damage or hazard to structures, equipment/operation and personnel of the wastewater works without a permit to do so.
- (4) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the wastewater facilities such as, but not limited to, ashes, bones, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, ungrounded garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

(d) Toxic Substances. The following described substances, materials, waters, or waste shall be limited in discharges to City sewer system to concentrations or quantities which will not harm either the sewers, wastewater treatment process or equipment, will not have an adverse effect on the receiving stream, or will not otherwise endanger lives, limb, public property, or constitute a nuisance. The Utility Board may set limitations lower than the limitations established in the regulations below if, in its opinion, such additional limitations are necessary to meet the above

objectives. In forming its opinion as to the acceptability, the Utility Board will give consideration to such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process employed, capacity of the wastewater treatment plant, degree of treatability of the waste in the wastewater treatment plant, and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewater discharged to the sanitary sewer, which shall not be violated without approval of the Utility Board, are as follows:

- (1) Wastewater having a temperature higher than 150 degrees Fahrenheit (65 deg. Celsius).
- (2) Wastewater containing more than 25 milligrams per liter of petroleum oil, nonbiodegradable cutting oils, or product of mineral oil origin.
- (3) Wastewater from industrial plants containing floatable oils, fat, or grease.
- (4) Any garbage that has not been properly shredded to dimensions as specified under Definitions. Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments, or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers.
- (5) Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances to such degree that any material received in the composite wastewater at the wastewater treatment works exceeds the limits established by the Utility Board for such materials.
- (6) Any waters or wastes containing odor-producing substances exceeding limits, which may be established by the Utility Board.
- (7) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Utility Board or applicable state or federal regulations.
- (8) Quantities of flow concentrations, or both which constitute a "slug" as defined herein.
- (9) Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
- (10) Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, from suspended solids which interfere with the collection system, or create a condition deleterious to structures and treatment processes.

(e) Conditional Service.

(1) If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which in the judgment of the Utility Board may have a deleterious effect upon the wastewater facilities, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Utility Board may:

- A. Reject the wastes.
- B. Require pretreatment to an acceptable condition for discharge to public sewers.
- C. Require control over the quantities and rates of discharge, and/or
- D. Require payment to cover the added cost of handling and treating the wastes covered by existing taxes or sewer charges.
- E. Terminate the users sewerage service.

(2) When considering the above alternatives, the Utility Board shall give consideration to the economic impact of each alternative on the discharger. If the Utility Board permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Utility Board.

(f) Grease, Oil and Sand Separators. Grease, oil and sand interceptors shall be provided when, in the opinion of the Manager, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Utility Board, and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors the owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the dates, and means of disposal, which are subject to review by the Utility Board. Any removal and hauling of the collected materials not performed by owner(s) personnel must be performed by currently licensed waste disposal firms.

(g) Pretreatment. Where pretreatment or flow-equalizing facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner(s) at his expense.

(h) Metering and Sampling Devices. When required by the Utility Board, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of wastes. Such structure, when required, shall be easily accessible, safely located and shall be constructed in accordance with plans approved by the Utility Board. The structure shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.

(i) Design Data on Connection. The Manager may require a user of sewer services to provide information needed to determine compliance with this ordinance. These requirements may include, but are not limited to:

- (1) Wastewaters discharge peak rate and volume over a specified time period.
- (2) Chemical analysis of wastewaters.
- (3) Information on raw materials, processes, and products affecting wastewater volume and quality.
- (4) Quantity and disposition of specific liquid, sludge, oil, solvent, or other materials important to sewer use control.
- (5) A plot plan of sewers of the user's property showing sewer and pretreatment facility location.
- (6) Details of wastewater pretreatment facilities.
- (7) Details of systems to prevent and control the losses of materials through spills to the City sewer.

(j) Measurements, Tests, and Analysis. All measurements, tests, and analysis of the characteristics of waters and wastes to which reference is made in this ordinance shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater", published by the American Public Health Association. Sampling methods, location, times, durations, and frequencies are to be determined on an individual basis subject to approval by the Manager.

(k) Disclaimer. No statement contained in this article shall be construed as preventing any special agreement or arrangement between the Utility Board and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the Utility Board for treatment. (Ord. 252. Passed 9-9-99.)

925.05 POWERS AND AUTHORITY OF INSPECTORS.

(a) Right of Entry for Purpose of Inspection. The Manager, duly authorized employees or other representatives of the Utility Board bearing proper credentials for the purpose of inspection, observation, measurements, sampling, and testing pertinent to discharge to the community system shall have a right of entry to private property for purposes of inspection in accordance with the provisions of this article.

(b) Collection of Information. The Manager, duly authorized employees or other representatives of the Utility Board are authorized to obtain information concerning industrial processes that have a direct bearing on the kind and source of discharge to the wastewater collection system.

(c) Required Safety Procedures. While performing the necessary work on private properties, the Manager, duly authorized employees or other representatives of the Utility Board shall observe all safety rules applicable to the premises established by the company or other State or Federal regulation.

(d) Right of Entry To and From All Negotiated Easements. The Manager, duly authorized employees or other representatives of the Utility Board bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the wastewater facilities lying within said easement. All entry and subsequent work if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

(Ord. 252. Passed 9-9-99.)

925.06 MINIMUM STANDARDS FOR PRIVATELY CONSTRUCTED SANITARY SEWERS.

Sanitary sewers shall be designed and constructed in accordance with the following minimum standards.

(a) Minimum Size. No public sewer shall be less than eight (8) inches in diameter except that six (6) inch diameter pipe may be used for short, dead-end sewers where no possibility of future extension exists.

(b) Depth. In general, sewers shall be sufficiently deep so as to receive sewage from basements and to prevent freezing.

(c) Slope. All sewers shall be so designed and constructed to give mean velocities, when flowing full, of not less than 2.0 feet per second, based on Manning's formula using an "n" value of 0.013. The following are the minimum slopes which shall be provided:

Sewer size

Minimum Slope in Feet per 100 feet

6 inch
0.62
8 inch
0.40
10 inch
0.28
12 inch

0.22
15 inch
0.15

Sewers on 20 percent slope or greater shall be anchored securely with concrete anchors, or equal, spaced as follows:

- Not over 36 feet center to center on grades 20 percent and up to 35 percent.
- Not over 24 feet center to center on grades 35 percent and up to 50 percent.
- Not over 16 feet center to center on grades 50 percent and over.

(d) Alignment. Sewers shall be laid with straight alignment and constant slope between manholes.

(e) Increasing Size. When a smaller sewer joins a larger one, the invert of the larger sewer should be lowered sufficiently to maintain the same energy gradient. An approximate method for obtaining these results is to place the crown of both sewers at the same elevation.

(f) High Velocity Protection. Where velocities greater than 15 feet per second are expected, special provisions shall be made to protect against internal erosion by high velocity. The pipe shall conform to appropriate ASTM or AWWA specifications which provide protection against internal erosion.

(g) Materials.

(1) Any generally accepted material for sewers will be given consideration, but the material selected should be adapted to local conditions, such as character of industrial wastes, possibility of septicity, soil characteristics, exceptionally heavy external loadings, abrasion and similar problems.

(2) All sewers shall be designed to prevent damage for superimposed loads. Proper allowance for loads on the sewer shall be made based on the width and depth of trench. When standard strength sewer pipe is not sufficient, the additional strength needed may be obtained by using extra strength pipe or by special construction.

(h) Joints and Infiltration.

(1) Sewer joints shall be designed to prevent infiltration and to prevent the entrance of roots. When clay sewer pipe is used, the joints shall be compression joints for vitrified claybell and spigot pipe and made in conformance with the appropriate ASTM Specification. When concrete pipe is used, single rubber ring gasket joints shall conform to the appropriate ASTM specification. When asbestos cement pipe is used, joints using couplings and gaskets shall be made in conformance with the requirements of the manufacturer. Joints for organic material pipe shall be compression gaskets. No joints or material shall be less than those hereinafter described.

(2) An acceptance test shall be specified for all gravity sewer lines. The test may be either a water test or an air test. Where water testing is used (infiltration or exfiltration), the leakage outward or inward shall not exceed 100 gallons per inch of nominal pipe diameter per mile per day for any section of the system including manholes. Where the exfiltration test is employed, the line shall be subjected to a minimum of 4 feet of head or head to top of the manhole, whichever is the lesser above the crown of the pipe at the upstream manhole of the section being tested. The infiltration test shall be allowed only when it can be shown that the hydrostatic head at the pipeline is a minimum of 4 feet above the crown of the pipe for the entire length of the pipe being tested.

(3) Where air testing is used, test methods and acceptability criteria shall be in accordance with the appropriate ASTM specifications. Air testing shall generally be acceptable for all types of pipe materials. If air testing is employed, the manholes shall be tested by exfiltration. Inflatable stoppers shall be used to plug all lines into and out of the manhole being tested. The stoppers shall be positioned in the lines far enough from the manhole to insure testing of those portions of the lines not air tested. The manhole shall then be filled with water to the top. A 12-hour soak shall be allowed. Leakage shall not exceed ½ gallon per hour.

(i) Bedding.

(1) The sewer pipe shall be bedded in compacted granular material placed on a flat trench bottom. The granular bedding shall have a minimum thickness of 6 inches under the barrel of the pipe and shall extend up the sides to a minimum height of one-half the outside diameter of the pipe. The remainder of the side fills and to a minimum depth of 12 inches over the top of the pipe shall be filled with compacted select backfill material, containing no stones.

(2) Bedding material shall be placed in maximum 6 inch layers and compacted of 98% density in accordance with ASSHTO T-99.

(j) Backfill and Tamping. The following procedures shall govern for placing and compacting backfill above the bedding zone (the bedding zone extends to at least 12 inches above the crown of the pipe):

(1) Trenches shall be carefully backfilled with excavated material approved for backfilling, consisting of earth, loam, sandy clay, sand and gravel, soft shale or other approved materials, free from large clods of earth or stones larger than four inches in diameter.

(2) Backfill above the bedding zone shall be placed in maximum two (2) foot layers and thoroughly tamped to 95% density.

(3) Trenches in state highway right-of-ways shall be excavated, backfilled and compacted in accordance with the requirements of the West Virginia Department of Highways and Transportation.

(k) Manholes shall conform to the following requirements:

(1) Manhole location. Manholes shall be installed at the end of each line; at all changes in grade, size or alignment; at all intersections; and at distance not greater than 400 feet. Terminal cleanouts may be acceptable on lines less than eight inches in diameter in lieu of manholes on a case-by-case basis.

(2) Drop Manholes. Drop pipe shall be provided for a sewer entering a manhole at an elevation of 24 inches or more above the manhole invert. Outside drop connections shall be encased in concrete. Where the difference in elevation between the incoming sewer and the manhole invert is less than 24 inches, the invert shall be filleted to prevent solids deposition.

(3) Manhole Diameter. The minimum diameter of manholes shall be 48 inches. Manholes shall be constructed with an eccentric top.

(4) Manhole Materials. Manholes shall be constructed of precast concrete conforming to ASTM designation C-478. Manhole wall and bottom construction shall be such as to ensure water tightness.

- (5) Manhole Flow Channel. The flow channel through manholes shall be of such shape and slope to provide smooth transition between inlet and outlet sewers and to reduce turbulence. Benches shall be sloped to the channel to prevent accumulation of solids.
 - (6) Manhole Connections. Line connections directly to the manhole or to short stubs integral with the manhole shall be made with flexible joints. Flexible joints are joints which permit the manhole to settle without destroying the watertight integrity of the line connections.
 - (l) Building Connections.
 - (1) Building connections to the sewer mains shall be made by means of full-body eye fittings.
 - (2) Sewers shall be designed and constructed in a manner that will protect the water system from any possible contamination. Wherever possible, sewers should be laid at least 10 feet, horizontally, from any existing or proposed water main. Should local conditions prevent a lateral separation of 10 feet, a sewer may be laid closer than 10 feet to a water main if the elevation of the crown of the sewer can be maintained at least 18 inches below the invert of the water main. Whenever sewers must cross under water mains, the sewer shall be laid at such an elevation that the top of the sewer is at least 18 inches below the bottom of the water main.
 - (3) Properly engineered plans and specifications for the sewage collection system shall be submitted to the City of Keyser for review and approval. In addition, documentation shall be submitted showing that State Health Department approval of the plans and specifications and a permit to proceed with construction have been obtained.
 - (4) During construction, the City of Keyser shall have the right to inspect the work and to ascertain that the system has been tested and meets the minimum requirements set forth in the approved plans and specifications.
 - (5) If the proposed sewage collection system contains special items such as pumping stations, inverted siphons, aerial sewers, etc., the design shall be in accordance with standard engineering practice, subject to the final approval of the City of Keyser.
 - (6) The City of Keyser shall be reimbursed by the applicant for all costs incurred for plan review, construction inspection, testing, administrative activities, and related matters.
- (Ord. 252. Passed 9-9-99.)

925.07 AMENDMENTS.

(a) The City of Keyser shall, upon an annual basis, or as deemed necessary from time to time between annual reviews, review and cause to be enacted, such amendments to the Sewer Use Ordinance as may be recommended by the Utility Board as otherwise are necessary to bring this Ordinance into compliance with applicable Federal and State regulations and changes thereto. All such amendments shall clearly delineate Article and Section to the altered or expanded.

(b) It shall be the responsibility of the Utility Board and the Keyser City Attorney to review and render a decision as to a precedence involving a present or past Ordinance to insure compliance with applicable statutes prior to rendering such precedence. Upon resolution of the discrepancy and the precedence set, an amendment to the Sewer Use Ordinance.

(Ord. 252. Passed 9-9-99.)

925.08 CONFLICT CLAUSE.

(a) All Ordinances or parts of Ordinances of the City of Keyser in conflict herewith are hereby repealed.

(b) The invalidity of any section, clause, sentence, or provision of this article shall not affect the validity of any part of this article, which can be given effect without such invalid part or parts. (Ord. 252. Passed 9-9-99.)

925.09 PENALTIES.

Any person, business, or corporation violating any provisions of this Ordinance shall be guilty of a misdemeanor and liable unto the Utility Board or the City in an amount equal to the amount of damages incurred by the City as a result of the violation. In addition to any such damages incurred by the City as a result of such. violation, the violator shall be fined not less than \$50.00 nor more than \$250.00 for a first offense. For a second or any subsequent offense, the violator shall be fined not less than \$100.00 nor more than \$500.00.

(Ord. 252. Passed 9-9-99.)

925.10 RULES AND REGULATIONS.

(a) Rules and regulations for the government of sewerage utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.

(b) In the event a building or premises discharging sewage, water or other liquid wastes into the municipal sanitary sewer system uses water supplied on other than a metered basis from the City of Keyser municipal water system or from any other source of water supply, the owner or occupant shall be required to cause a water or sewer meter or other measuring devise to be installed but pending such installation the sewer service rates and charges to such building or premises shall be based upon an estimated quantity of water used based upon prior average usage.

(c) In the event a lot, parcel of land, building or premises uses water in excess of 50,000 gallons per month and it can be shown to the satisfaction of the City Council that a substantial portion of the water as measured by the water meter does not and cannot enter the sewer facilities of the City, then the City may determine, in such manner as may be found practical, the amount of sewage entering the sewer system and the sewer service rate or charge shall be based thereon, or, the City may require or permit, at user's expense and fees, the installation of additional meters or measuring devices in such manner as to determine the quantity of sewage actually entering the sewer facilities, in which case the sewer service rate or charge shall be based thereon. (Issued 12-14-16.)

925.11 SCHEDULE NO. 1

(a) Applicability. Applicable within the entire territory served.

(b) Availability of Service. Available for domestic, commercial, industrial and resale sanitary sewer service.

(c) Rates. (Customer with metered water supply). A customer service charge of \$1.84 per month shall be made to each customer connected to the system.

In addition to the service charge, commodity charges shall be based on the following usages of water:

First 500,000 gallons used per month	\$6.91 per 1,000 gallons
Over 500,000 gallons used per month	\$5.53 per 1,000 gallons

(d) Minimum Charge. (Customers with a metered water supply). No bill will be rendered for less than \$1.84 per month.

(e) Resale Rates.

\$3.27 per 1,000 gallons used per month based on metered water usage.

\$2.86 per 1,000 gallons used per month based on metered flows of sewage.

(f) Unmetered Flat Rate. (Customers with non-metered water supply).

Equivalent of 4,000 gallons of water usage \$29.48 per month

(g) Delayed Payment Penalty. The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

(h) Tap Fee. The following charges are to be made whenever the utility installs a new tap to serve an applicant:

(1) A tap fee of \$150.00 will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre- construction tap fee will be invalid after the completion of construction adjacent to the applicant's premises that is associated with a certificate proceeding.

(2) A tap fee of \$350.00 will be charged to customer applying for service outside of a certificate proceeding before the Commission for each new tap to the system.

(i) Leak Adjustment. \$0.38 per 1,000 gallons of water is to be used when a bill reflects unusual water consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

(j) Security Deposit. Not to exceed two-twelfths (2/12) of the average annual usage of the applicant's specific customer class, or fifty dollars, which is greater. This fee may be changed by applicable statutory provisions.

(k) Cap Fees. In the event of demolition or removal of a building, trailer, or structure, it is necessary to first obtain a sewer cap permit from the Sanitary Board. The fee of the sewer cap permit is \$30.00.

(l) Septic or Wastewater Hauler's Permit.

(1) Unless covered by a wastewater contribution permit, all haulers of septic waste, leachate or wastewater shall be required to secure an annual permit from the Sanitary Board. The annual fee for this permit is \$100.00

(2) Rates for trucked septic waste, leachate or other wastewater are set forth in Rate Schedule 5.

(3) In the event that collection of bills creates a burden on the Sanitary Board or its staff, the permit to discharge may be suspended or revoked by the Supervisor. If the permit is revoked, a new permit will be required.

(m) Service to Trailer Courts.

(1) House trailer courts shall be provided with a master meter. No bill shall be rendered for less than the minimum bill herein established multiplied by the number of units situated on the court site at the time the meter is read or the actual charge for sewer service based upon water used, whichever is greater. House trailers (as used herein above) shall include both mobile and immobile units.

(2) House trailers either mobile or immobile, located on sites other than a part or court, shall be billed on the same manner as any other family or business unit. (Issued 12-14-16)

925.12 SCHEDULE NO. 2

(a) Surface or Ground Water Surcharge. An additional amount shall be charged where surface or groundwater is introduced into the sanitary system where evidence of a violation exists. Surcharge formula to be applied in cases where surface drainage is connected to the utility's sewer system.

(b) Applicability.

(1) Whenever the utility has discovered that a customer's roof drain, downspout, storm sewer or similar facilities conducting surface water have been connected to the utility's sewer system and such customer has failed to take appropriate actions, within thirty (30) days of receipt of a demand by the utility in accordance with the Rules of the Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$$S = A \times R \times 0.0006233 \times C$$

S = the surcharge in dollars

A = the area under roof and/or the area of any other water collection

R = the measured monthly rainfall, in inches

0.0006233 = a conversion factor to change inches of rain x square feet of surface water to thousands of gallons of water

C = the utility's approved rate per thousand gallons of metered water usage

(2) The Utility shall not impose the surcharge unless and until the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing or on-site inspection that rain or surface water is being introduced into the sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the sanitary sewer system. The surcharge shall be calculated and imposed for each month that the condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules of the Public Service Commission of West Virginia. (Issued 12-14-16)

925.13 SCHEDULE NO. 3.

Surcharge Formula to be Applied in the Case of Users Producing Unusual Waste. The charge for the treatment of unusual waste will be calculated on the basis of the following formula:

$$Ci = VoVi + BoBi + SoSi$$

Ci =charge to unusual users per year

Vo =average unit cost of transport and treatment chargeable to volume, in dollars per gallon

Vi =volume of wastewater from unusual users, in gallon per year

Bo =average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD) in dollars per pound

Bi =weight of BOD from unusual users, in pounds per year

So =average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound

Si =weight of total solids from unusual users in pounds per year

When an unusual user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in judgment of the City of Keyser Sanitary Board, should not be introduced into the sewer system need not be handled by it. The results of this preliminary study will be used to determine the feasibility of the proposed sewer service and the charge thereof, based upon the formula set out above.

Thereafter, unusual sewage will be monitored on a regular basis and at the conclusion of each fiscal year, based on the investigation and audit of the City of Keyser Sanitary Board records, new cost figures will be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the unusual user. Based on these audited figures, additional billings covering the past fiscal year will be made for payment by each unusual user, or refund given by the City of Keyser Sanitary Board, as the case may be. Such audited figures will then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment will be made as aforesaid. (Issued 12-14-16)

925.14 SCHEDULE NO. 4.

Where the amount of sanitary sewage discharged into the Sanitary Board's System by certain industrial plant or plants cannot be accurately determined by the use of the plant's water meter or meters, and said plant cannot install a flow meter to measure such waste, a special formula will be used whereby such plant or plants will pay to the Sanitary Board a sewer charge calculated at fifty (50) gallons of water per each employee at the plant each working day.

(Issued 12-14-16)

925.15 SCHEDULE NO. 5

(a) Availability. Available for haulers of septic waste, leachate or other wastewater.

(b) Rates. Each hauler shall pay a minimum charge of \$20.00 per load. Additionally, each hauler shall pay a commodity charge of \$20.00 per 1,000 gallons per load. Load will be the actual capacity of the truck or other transport method delivering the septic waste, leachate or other wastewater. Actual load shall be determined or verified solely by the Sanitary Board.

(c) Delayed Payment Penalty. The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate. (Issued 12-14-16)

925.16 RATES EFFECTIVE FOR SERVICE RENDERED AFTER THE PROJECT HAS BEEN CERTIFIED AS SUBSTANTIALLY COMPLETE.

(a) Rules and Regulations.

(1) Rules and regulations for the government of sewerage utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.

(2) In the event a building or premises discharging sewage, water or other liquid wastes into the municipal sanitary sewer system uses water supplied on other than a metered basis from the City of Keyser municipal water system or from any other source of water supply, the owner or occupant shall be required to cause a water or sewer meter or other measuring devise to be installed but pending such installation the sewer service rates and charges to such building or premises shall be based upon an estimated quantity of water used based upon prior average usage.

(3) In the event a lot, parcel of land, building or premises uses water in excess of 50,000 gallons per month and it can be shown to the satisfaction of the City Council that a substantial portion of the water as measured by the water meter does not and cannot enter the sewer facilities of the City, then the City may determine, in such manner as may be found practical, the amount of sewage entering the sewer system and the sewer service rate or charge shall be based thereon, or, the City may require or permit, at user's expense and fees, the installation of additional meters or measuring devices in such manner as to determine the quantity of sewage actually entering the sewer facilities, in which case the sewer service rate or charge shall be based thereon.

(b) SCHEDULE NO. 1.

APPLICABILITY.

Applicable within the entire territory served.

AVAILABILITY OF SERVICE.

Available for domestic, commercial, industrial and resale sanitary sewer service.

RATES (customer with metered water supply).

A customer service charge of \$3.24 per month shall be made to each customer connected to the system.

In addition to the service charge, commodity charges shall be based on the following usages of water:

First 500,000 gallons used per month	\$12.16 per 1,000 gallons
Over 500,000 gallons used per month	\$9.73 per 1,000 gallons

MINIMUM CHARGE (customers with a metered water supply).

No bill will be rendered for less than \$3.24 per month.

OTHER SYSTEMS RATE FOR NEW CREEK PUBLIC SERVICE DISTRICT.

\$3.27 per 1,000 gallons used per month based on metered flows of sewage.

OTHER SYSTEMS RATE FOR ALLEGHENY COUNTY PUBLIC WORKS.

\$4.69 per 1,000 gallons used per month based on metered flows of sewage.

UNMETERED FLAT RATE (Customers with non-metered water supply).

Equivalent of 4,000 gallons of water usage \$51.88

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest is to be collected only once for each bill where it is appropriate.

TAP FEE

The following charges are to be made whenever the utility installs a new tap to serve an applicant:

A tap fee of \$150.00 will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to the applicant's premises that is associated with a certificate proceeding.

A tap fee of \$350.00 will be charged to customers applying for service outside of a certificate proceeding before the Commission for each new tap to the system.

LEAK ADJUSTMENT

\$2.45 per 1,000 gallons of water is to be used when a bill reflects unusual water consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical usage.

SECURITY DEPOSIT

Not to exceed two-twelfths (2/12) of the average annual usage of the applicant's specific customer class or fifty dollars, whichever is greater. This fee may be changed by applicable statutory provisions.

CAP FEES

In the event of demolition or removal of a building trailer, or structure, it is necessary to first obtain a sewer cap permit from the Sanitary Board. The fee for the sewer cap permit is \$30.00.

SEPTIC OR WASTEWATER HAULER'S PERMIT

Unless covered by a wastewater contribution permit, all haulers of septic waste, leachate or other wastewater shall be required to secure an annual permit from the Sanitary Board. The annual fee for this permit is \$100.00.

Rates for trucked septic waste, leachate or other wastewater are set forth in Rate Schedule 5.

In the event that collection of bills creates a burden on the Sanitary Board or its staff, the permit to discharge may be suspended or revoked by the Supervisor. If the permit is revoked, a new permit will be required.

SERVICE TO TRAILER COURTS

House trailer courts shall be provided with a master meter. No bill shall be rendered for less than the minimum bill herein established multiplied by the number of units situated on the court site at the time the meter is read or the actual charge for sewer service based upon water used, whichever is greater. House trailers (as used herein above) shall include both mobile and immobile units.

House trailers either mobile or immobile, located on sites other than a part or court, shall be billed on the same manner as any other family or business unit.

(c) SCHEDULE NO. 2

SURFACE OR GROUND WATER SURCHARGE

An additional amount shall be charged where surface or groundwater is introduced into the sanitary system where evidence of a violation exists. Surcharge formula to be applied in cases where surface drainage is connected to the utility's sewer system.

APPLICABILITY

Whenever the utility has discovered that a customer's roof drain, downspout, storm sewer or similar facilities conducting surface water have been connected to the utility's sewer system and such customer has failed to take appropriate action, within thirty (30) days of receipt of a demand by the utility in accordance with the Rules of the Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$$S = A \times R \times 0.0006233 \times C$$

S = the surcharge in dollars

A = the area under roof and/or the area of any other water collection surface connected to the sanitary sewer, in square feet

R = the measured monthly rainfall, in inches

0.0006233 = a conversion factor to change inches of rain x square feet of surface water to thousands of gallons of water

C = the utility's approved rate per thousand gallons of metered water usage

The Utility shall not impose the surcharge unless and until the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing or on-site inspection that rain or surface water is being introduced into the sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the sanitary sewer system. The surcharge shall be calculated and imposed for each month that the condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules of the Public Service Commission of West Virginia.

(c) SCHEDULE NO. 3

SURCHARGE FORMULA TO BE APPLIED IN THE CASE OF USERS PRODUCING UNUSUAL WASTE

The charge for the treatment of unusual waste will be calculated on the basis of the following formula:

$$Ci = VoVi + BoBi + SoSi$$

Ci = charge to unusual users per year

Vo = average unit cost of transport and treatment chargeable to volume, in dollars per gallon

Vi = volume of wastewater from unusual users, in gallons per year

Bo = average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD) in dollars per pound

Bi = weight of BOD from unusual users, in pounds per year

So = average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound

Si = weight of total solids from unusual users in pounds per year

When an unusual user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in judgement of the City of Keyser Sanitary Board, should not be introduced into the sewer system

need not be handled by it. The results of this preliminary study will be used to determine the feasibility of the proposed sewer service and the charge thereof, based upon the formula set out above.

Thereafter, unusual sewage will be monitored on a regular basis and at the conclusion of each fiscal year, based on the investigation and audit of the City of Keyser Sanitary Board records, new cost figures will be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the unusual user. Based on these audited figures, additional billings covering the past fiscal year will be made for payment by each unusual user, or refund given by the City of Keyser Sanitary Board, as the case may be. Such audited figures will then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment will be made as aforesaid.

(d) SCHEDULE NO. 4

Where the amount of sanitary sewage discharged into the Sanitary Board's System by certain industrial plant or plants cannot be accurately determined by the use of the plant's water meter or meters, and said plant cannot install a flow meter to measure such waste, a special formula will be used whereby such plant or plants will pay to the Sanitary Board a sewer charge calculated at fifty (50) gallons of water per each employee at the plant each working day.

(e) SCHEDULE NO. 5

AVAILABILITY

Available for haulers of septic waste, leachate or other wastewater.

RATES

Each hauler shall pay a minimum charge of \$20.00 per load. Additionally, each hauler shall pay a commodity charge of \$20.00 per 1,000 gallons per load. Load will be the actual capacity of the truck or other transport method delivering the septic waste, leachate or other wastewater. Actual load shall be determined or verified solely by the Sanitary Board.

DELAYED PAYMENT PENALTY.

The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount paid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

(Issued 3-17-16)

**CODIFIED ORDINANCES OF KEYSER
PART ELEVEN - HEALTH AND SANITATION CODE**

Art. 1121. Trash, Garbage, Refuse, Junk, Weeds, Grasses and Brush.

Art. 1131. Pubic Nuisances.

Art. 1141. Safety and Sanitation.

Art. 1151. Junked and Abandoned Vehicles.

**CODIFIED ORDINANCES OF KEYSER
PART ELEVEN - HEALTH AND SANITATION CODE**

ARTICLE 1121

Trash, Garbage, Refuse, Junk, Weeds, Grasses and Brush

1121.01 Offensive unhealthy growth of vegetation prohibited.

1121.02 Deposit of garbage, rubbish, junk, etc., prohibited.

1121.03 Notice to cut, destroy and remove.

1121.04 Action upon the noncompliance of owner or agent.

1121.05 Charge to a property owner.

1121.06 Filing of lien.

1121.07 Payment not a defense to violation of Article.

1121.99 Penalty.

1121.01 OFFENSIVE UNHEALTHY GROWTH OF VEGETATION PROHIBITED.

No owner of any lot, or the agent of any owner of any lot or parcel of land in the City of Keyser, shall suffer to permit thereon any offensive noxious, deleterious or unhealthy growth of vegetation, weeds, grasses, vegetation or brush to the height of more than 10 inches, nor shall any such persons suffer or permit the growth of any weeds, or grasses, vegetation or brush on any part of any sidewalk abutting upon such premises. (Ord. 257. Passed 9-14-11.)

1121.02 DEPOSIT OF GARBAGE, RUBBISH, JUNK, ETC., PROHIBITED.

No owner of any lot, or the agent of any owner of any lot or parcel of land in the City of Keyser shall suffer or permit trash, garbage, waste, rubbish, refuse, junk, abandoned tires or any other noxious or offensive materials or substances to be collected or remain in or on any parcel of land within the City of Keyser to the detriment or prejudice of others or of the public. (Ord. 257. Passed 9-14-11.)

1121.03 NOTICE TO CUT, DESTROY AND REMOVE.

(a) The Building Inspector or Chief of Police is hereby authorized, empowered and directed to notify in person, the owner, or the agent of the owner, of any lot or parcel of land in the City, to cut, destroy and remove any offensive, noxious, deleterious and unhealthful growth of weeds, grasses, vegetation or brush found growing upon any such lot or parcel of land and/or to remove any such trash, garbage, waste, rubbish, junk, abandoned tires, refuse or other noxious or offensive material or substances which have been permitted to accumulate on said property, and to issue on site a citation for the violation of this Article. The citation shall clearly state that within five (5) business days of receipt of said citation, the offender shall rectify the violation, or shall request in writing to City Hall that a hearing be held before the Municipal Judge.

(b) If the City Building Inspector or Chief of Police is unable to deliver said citation in person and notify the owner, or the agent of the owner, of any lot or parcel in the City to be found in violation of this Article, then service of said citation shall be accomplished by registered mail, certified mail, or process server, or if these methods are unsuccessful, by publication once a week for two successive

weeks in a newspaper of general circulation in the City of Keyser, West Virginia, to cut, destroy and remove any offensive, noxious, deleterious and unhealthful growth of weeds, grasses, vegetation or brush found growing upon any such lot or parcel of land and/or to remove any such trash, garbage, waste, rubbish, junk, abandoned tires, refuse or other noxious or offensive materials or substances which have been permitted to accumulate on said property. Such notice shall be addressed to the last known address of the owner, or agent of the owner, of such lot or parcel of land. The notice shall identify the parcel by physical description and location as well as by street address (or postal address if available) and may also include the tax map and parcel number of said property if helpful, but such inclusion of tax map and parcel number shall not be required. Such notice shall clearly state the time within which such action shall be completed, the potential penalties for the noncompliance with the notice and the courses of action available to the City to enforce the provisions of this Article.

(Ord. 257. Passed 9-14-11.)

1121.04 ACTION UPON THE NONCOMPLIANCE OF OWNER OR AGENT.

Upon the failure, neglect, or refusal of any such owner or agent so notified as provided herein to cut, destroy and remove such offensive, noxious, deleterious and unhealthful growth of weeds, grasses, vegetation, or brush found growing on any lot or parcel of land in the City of Keyser or upon the failure, neglect or refusal to remove any trash, garbage, waste, rubbish, refuse, junk, abandoned tires or any other noxious or offensive materials or substances from the lot or parcel of land within the City of Keyser within 5 business days after receipt of the notice as provided for in Section 1121.03, the City Administrator or Mayor is hereby authorized to contract independently, or assign a City work crew, for the cutting and removal of such weeds, grasses, vegetation, and brush and/or the removal of any trash, garbage, waste, rubbish, refuse, junk, abandoned tires or any other noxious or offensive materials or substances on the lot or parcel of land in issue and all expenses incurred by the City shall be chargeable to and be paid by the owner of such property and may be collected in any manner authorized by law. Such expenses incurred by the City may be filed as a lien against the property as provided in Section 1121.06. The office of the City Administrator shall be responsible for maintaining an accurate itemization of the exact cost of the work and expenses incurred for the services provided in accordance with this Article.

(Ord. 257. Passed 9-14-11.)

1121.05 CHARGE TO A PROPERTY OWNER.

The costs of the contract and expenses incurred by the City of Keyser for having such weeds, grasses, vegetation or brush cut, destroyed and removed and/or such trash, garbage, waste, rubbish, refuse, junk, or any other noxious or offensive materials or substances removed as provided in Section 1121.04, shall be a debt due the City of Keyser and recoverable in any Court of competent jurisdiction in Mineral County West Virginia or such Court of competent jurisdiction in the jurisdiction where the property owner may reside if not a resident of Mineral County.

(Ord. 257. Passed 9-14-11.)

1121.06 FILING OF LIEN.

In the event of removal of such offensive noxious, deleterious or unhealthful growth of weeds, grasses, vegetation and brush and/or the removal of any trash, garbage, waste, rubbish, refuse, junk, abandoned tires or any other noxious or offensive materials or substances as provided in Section 1121.04, the charge therefore shall become a lien against the property in favor of the City of Keyser and notice of a said lien shall be filed in the Office of Clerk of the County Court of Mineral County West Virginia with a copy provided to the owner.

(Ord. 257. Passed 9-14-11.)

1121.07 PAYMENT NOT A DEFENSE TO VIOLATION OF ARTICLE.

The payment of any amount so chargeable to such owner, or agent of any owner, as provided in Section 1121.04 and 1121.05 shall not relieve that person of any fine imposed for, or constitute a defense against, any violations of the provisions of this Article.

(Ord. 257. Passed 9-14-11.)

1121.99 PENALTY.

Any person violating the provisions of this Article may be charged criminally by the City Police Department and shall be guilty of a misdemeanor. In addition to any other penalties provided for within this Article, any individual in violation hereof shall be fined an amount not less than \$100.00 nor more than \$500.00.

(Ord. 257. Passed 9-14-11.)

ARTICLE 1131

Public Nuisances

- 1131.01 Definition of "public nuisance".**
- 1131.02 Nuisances affecting health.**
- 1131.03 Nuisances affecting morals and decency.**
- 1131.04 Nuisances affecting peace and safety.**
- 1131.05 Deposit of deleterious material in creeks.**
- 1131.06 Complaints; notice of hearing before Council.**
- 1131.07 Hearing before Council; disposition of complaint.**
- 1131.08 Responsibility of owner, lessee, tenant.**
- 1131.99 Penalty.**

CROSS REFERENCES

Authority to regulate various public nuisances - see W.Va. Code Sec. 8-12-5 et seq.

1131.01 DEFINITION OF "PUBLIC NUISANCE".

For the purpose of this article, a public nuisance shall be taken to mean a thing or act, committed or permitted, failure to act, occupation or use of property which:

- (a) Shall annoy, injure or endanger the safety, health, comfort or repose of any number of persons;

- (b) Shall offend the public decency;
- (c) Shall unlawfully interfere with, obstruct or tend to obstruct or render dangerous for passage, any public park, public playground, street, alley or highway; or,
- (d) Shall in any way render any number of persons insecure in life or in the use and enjoyment of their property. (1984 Code 9-1-1)

1131.02 NUISANCES AFFECTING HEALTH.

The following are hereby declared to be public nuisances affecting health:

- (a) All decayed or unwholesome food offered for sale to the public, or kept or maintained so as to be obnoxious.
- (b) All diseased animals running at large.
- (c) All ponds, pools of water, or vessels holding stagnant water in which mosquitoes can breed.
- (d) Carcasses of animals not buried or otherwise disposed of in a sanitary manner within eighteen (18) hours after death.
- (e) Accumulation of manure or rubbish which are breeding places for flies, mosquitoes or vermin.
- (f) Privy vaults and garbage cans which are not airtight.
- (g) All noxious weeds and other rank growth of vegetation upon public or private property.
- (h) All public exposure of persons having contagious disease.
- (i) All other acts, omission of acts, occupations and use of property which are in fact a menace or detriment to the public health. (1984 Code 9-1-2)

1131.03 NUISANCES AFFECTING MORALS AND DECENCY.

The following are hereby declared to be public nuisances affecting public morals and decency:

- (a) All gambling devices, slot machines and punchboards, not permitted by state statute.
- (b) All houses, apartments, tenements, or any part or parts thereof, kept for the purpose of prostitution or promiscuous sexual intercourse and houses of ill fame and bawdy houses.
- (c) All places where alcoholic liquors are manufactured, sold, bartered or given away in violation of law, or where persons are permitted to resort for the purpose of drinking alcoholic liquors kept for sale, barter or distribution in violation of law, and all liquors, bottles, kegs, pumps, bars and other property kept at and used for maintaining such a place.
- (d) Any vehicle used for any immoral or illegal purposes.
- (e) All indecent or obscene pictures, books, pamphlets, magazines and newspapers.
- (f) Betting, bookmaking, selling baseball pools, race horse pools, and all apparatus used in such connection.
- (g) Gambling houses and all poolrooms where minors under the age of eighteen (18) years are permitted to enter and are permitted to loaf and loiter therein; where punchboards, slot machines, race horse pools, baseball pools or any other scheme, device or apparatus is kept and promoted which constitutes a game of chance, gambling device or any other scheme by whatsoever name known which is classed as and is defined by state statute as a game of chance. (1984 Code 9-1-3)

1131.04 NUISANCES AFFECTING PEACE AND SAFETY.

The following are declared to be public nuisances affecting peace and safety:

- (a) All snow and ice not removed from public sidewalks in accordance with rules and regulations promulgated and approved by Council.
- (b) All limbs of trees which project over a sidewalk or street and which are less than eight (8) feet above the surface of such public sidewalk or ten (10) feet above the surface of such street.
- (c) All buildings, walks or other structures which have been damaged by fire, decay or otherwise, and which are so situated as to endanger the safety of the public.
- (d) All explosives, flammable liquids and other dangerous substances stored in any manner or in any amount other than that provided by this Code or other ordinances of the City.
- (e) All use or display of fireworks, except as provided by this Code or other ordinances of the City.
- (f) All loud or unusual noises, either made or permitted to be made or condones, and annoying vibrations, which offend the peace and quiet of persons of ordinary sensibilities.
- (g) Obstructions and excavations affecting the ordinary use by the public, of streets, alleys and sidewalks, or public grounds, except under such conditions as are provided by this Code or other ordinances of the City.
- (h) All hanging signs, awnings and other similar structures over the street or sidewalks so situated or constructed as to endanger public safety.
- (i) The allowing of rainwater, ice or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk.
- (j) All barbed-wire fences which are located within three (3) feet of any public sidewalk or thoroughfare.
- (k) This distribution of handbills, except as provided by this Code and other ordinances of the City. (1984 Code 9-1-4)

1131.05 DEPOSIT OF DELETERIOUS MATERIAL IN CREEKS.

(a) No person shall deposit or throw or cause to be deposited or thrown any offal from any slaughterhouse or any other building or any dead animals or fowl or other deleterious material into any creek or tributaries within the corporate limits of the City.

(b) Upon conviction of a violation of any provision of the first paragraph of this section, the person so convicted shall have a reasonable time to remove the offal or dead animal or fowl or other deleterious material involved in the conviction, within the discretion of the Chief of Police, but such time shall not exceed five (5) days.

(1984 Code 9-1-5)

1131.06 COMPLAINTS; NOTICE OF HEARING BEFORE COUNCIL.

(a) The Police Chief, any police officer, the Chief of the Fire Department, any member of the Fire Department, the City Health Officer, or any member of the Health Department, or any bona fide citizen residing in the City may file under oath a complaint against any person maintaining or harboring any nuisance.

(b) If such complaint is filed by a citizen other than by some one of the City officials above designated, such complaint may be laid before Council at its next regular or special session or meeting, and if Council directs, the City Recorder shall issue notice to be served

upon the person charged with maintaining or harboring such nuisance, requiring him to appear before Council, at a designated time, and to show cause, if any he can, why such nuisance should not be abated. Such notice shall be served, as other legal notices are served, on the owner, lessee, agent, manager in charge, or any servant or employee in charge or control of the premises where the nuisance in question is alleged to exist, at least five (5) days prior to the time set therein for the hearing before Council.

(c) If the complaint is filed by any City official above named, the City Recorder shall forthwith issue such notice without the necessity of referring the complaint to Council.

(1984 Code 9-1-6)

1131.07 HEARING BEFORE COUNCIL; DISPOSITION OF COMPLAINT.

Pursuant to notice, Council shall conduct a hearing pursuant to this title, at which hearing a continuance for proper cause shown may be granted at the insistence of either party. If upon the hearing of the matter the Council by majority vote of the members constituting a quorum thereof shall determine that such nuisance exists as charged in the complaint, it shall provide by resolution for its abatement as follows:

- (a) If such nuisance be in a place of business or other establishment for the conduct of which the City has issued a license, then such license may be revoked.
- (b) If the nuisance found to exist be that of conducting a house of ill fame, bawdy house, house of prostitution, gambling house, or place for the handling, sale or other disposition of alcoholic liquors contrary to the statutes of the state or the provisions of this Code or other ordinances of the City, the resolution of Council may authorize and direct the City Attorney to institute on behalf of the City a suit in equity in the proper form for the abatement of such nuisance and the closing of such premises as provided by statute.
- (c) If any nuisance be found to exist other than those specifically enumerated in subsections (a) and (b) of this section, and the provisions of this Code and other ordinances of the City do not provide for its abatement, the Council may authorize the issuance of a warrant before the Mayor or, upon the complaint of any official of the City, or any bona fide resident, filed before the Mayor, prosecution shall immediately be had of any person shown to be maintaining or harboring such nuisance. (1984 Code 9-1-7)

1131.08 RESPONSIBILITY OF OWNER, LESSEE, TENANT.

(a) Any person having control over any premises upon or in which a nuisance is maintained or harbored in violation of this chapter whether he be the owner, lessee, sublessee, tenant, occupant or the agent or manager in charge for any such owner, lessee, sublessee, tenant or occupant thereof, shall be subject to the provisions of this article and may be proceeded against in all respects as fully as is provided in the foregoing provisions of this chapter with reference to the occupant of such premises.

(b) Prosecutions under this title shall not be deemed to be exclusive, but shall be in addition to all other penalties provided by any other provisions of this Code or other ordinance of the City authorizing the prosecution and conviction of any violation of the provisions of this Code or other ordinances of the City, even though the result of the offense charged would be the setting up, maintaining or harboring of a nuisance and within the purview of this title.

(1984 Code 9-1-8)

1131.99 PENALTY.

Any person who shall knowingly cause or create any public nuisance or permit any public nuisance to be created or to be placed upon or to remain upon any premises owned or occupied by him, shall be guilty of a misdemeanor, and shall, in addition to all other penalties provided for in this title or any other provision of this Code or ordinance of the City, be punished as provided in this title, and each day a nuisance is maintained or harbored shall constitute a separate offense and may be proceeded against by separate prosecution until such nuisance is abated.

(1984 Code 9-1-9)

ARTICLE 1141

Safety and Sanitation

1141.01 Abandoned airtight containers.

1141.02 Stagnant water; dangerous conditions.

1141.03 Littering.

1141.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law

Authority to eliminate hazards to public safety - see W.Va. Code 8-12-5(23), (44)

1141.01 ABANDONED AIRTIGHT CONTAINERS.

No person shall abandon any refrigerator or food freezer appliance or other airtight appliance having a height or length of greater than two feet without first removing all entry doors therefrom. (WVaC 61-2-26; 1984 Code 9-2-1)

1141.02 STAGNANT WATER; DANGEROUS CONDITIONS.

(a) Whenever one or more residents of this City, living in the vicinity of any pond, excavation, open ditch or other structure containing putrid or stagnant water, shall notify the Health Officer, City Clerk or Mayor that such pond, excavation, open ditch or other structure is a nuisance, being dangerous to life or detrimental to the health of the neighborhood in which it is situated or when the Health Officer, City Clerk or Mayor shall be notified by the police of the existence of any pond, excavation, open ditch or any other structure or unwholesome, impure or offensive water or dangerous condition created by the existence of water therein, the Health Officer, City Clerk or Mayor shall notify the owner, agent, lessee or occupant of the ground upon which such pond, excavation, open ditch or other structure is situated to show good cause before Council at the time and place to be specified in such notice, why such pond, excavation, open ditch or other structure should not be abated by filling or draining and the cause of such nuisance removed. The notice of the Health Officer,

City Clerk or Mayor shall not be valid unless served at least five days before the time specified in such notice and such notice shall be served in the manner as writs of summons are required to be served in civil cases.

(b) If, after careful inquiry into the same, Council shall decide that such pond, excavation, open ditch or other structure is a nuisance and dangerous to life or detrimental or injurious to the health of the neighborhood, Council shall condemn the same as a nuisance and shall order the abatement of the same either by filling or draining. No owner, agent, lessee or occupant to whom such order has been issued shall refuse or neglect to comply with the same within the time indicated in such order or notice and fail to abate such nuisance.

(c) Each days' failure to comply after the time specified in the notice shall constitute a separate and distinct offense.
(1967 Code § 14-32; 1984 Code 9-2-2)

1141.03 LITTERING.

(a) No person shall place, deposit, dump or throw, or cause to be placed, deposited, dumped or thrown, any litter, garbage, refuse, trash, can, bottle, paper, accumulation of ashes or cigarette or cigar butts, carcass of any dead animal or any part thereof, offal or any other offensive or unsightly matter in or any public or private highway, road, street or alley within the City or upon the surface of any land within 100 yards thereof without the consent of the owner, or in or upon any private property into or upon which the public is admitted by easement or license, or upon any private property without the consent of the owner, or in or upon any public park or other public property other than in such place as may be set aside for such purpose by the governing body having charge thereof.

(b) If any such materials by thrown, cast, dumped or discharged from a motor vehicle in violation of the provisions hereof, such action shall be deemed prima facie evidence that the owner and driver of such motor vehicle intended to violate the provisions of this section.

(c) No portion of this section shall be construed to restrict a private owner in the use of his own private property or to prohibit the disposal of materials designated in this section in any manner authorized by law.

(d) Any law enforcement officer who observes a person violating the provisions of this section shall have a mandatory duty to make an arrest or otherwise prosecute the violator to the limits provided in Section 1141.99(b).
(1984 Code 9-2-3)

1141.99 PENALTY.

(a) Whoever violates Section 1141.01 shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than thirty days or both.

(b) Whoever violates any provision of Section 1141.03 shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both. Provided, that at the election of the person charged with violating any provision of Section 1141.03, execution of any such sentence shall be suspended upon the condition that such person for a total of sixteen hours pick up and remove from any area of any public highway, road, street or alley, land or property, or public park or other public property, the area to be specified by the court, any and all litter, garbage, refuse, trash, cans, bottles, papers, accumulation of ashes, cigarette or cigar butts, carcass of any dead animal or any part thereof, offal or any other offensive or unsightly matter placed, deposited, dumped or thrown contrary to the provisions of Section 1141.03 by anyone prior to the date of such conviction. If execution of any such sentence is so suspended and the person convicted satisfied the conditions upon which execution was suspended, he shall be discharged with like effect as if the fine had been fully paid and the sentence had been full executed, and if he does not satisfy such condition then such sentence shall be executed.
(1984 Code 9-2-4)

ARTICLE 1151

Junked and Abandoned Vehicles

1151.01 Definitions.

1151.02 Abandonment of vehicles.

1151.03 Junk vehicles prohibited.

1151.04 Old vehicle tires; abandoned household appliances.

1151.05 Authority to take possession of abandoned vehicles.

1151.06 Notification.

1151.07 Disposal of unclaimed vehicles.

1151.08 Proceeds from sale.

1151.09 Injunctive relief.

1151.10 Junk on private property with permission of owner.

1151.99 Penalty.

1151.01 DEFINITIONS.

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (a) "Abandoned household appliance" means a refrigerator, deep freeze, range, stove, automatic dishwasher, clothes washer, clothes dryer, trash compactor, television set, radio, air conditioning unit, commode or bed springs, to which no person claims ownership and which is not in an enclosed building or a licensed salvage yard or in the actual possession of a demolisher.
- (b) "Abandoned motor vehicle" means any motor vehicle or major part thereof which is inoperative and which has been abandoned on public or private property for any period of time over five days, other than in an enclosed building or in a licensed salvage yard or at the business establishment of a demolisher; or any motor vehicle or major part thereof, which has remained illegally on public or private property for any period of time over five days; or any motor vehicle or major part thereof which has remained on private property without consent of the owner or person in control of the property for any period of time over five days; or any motor vehicle or a major part thereof which is unattended, discarded, deserted and is unlicensed and is not in an enclosed building or a licensed salvage yard or in actual possession of a demolisher.
- (c) "Demolisher" means any person licensed by the State whose business to any extent or degree, is to convert a motor vehicle or any part thereof or an inoperative household appliance into processed scrap or scrap metal, or into saleable parts, or otherwise

to wreck or dismantle vehicles or appliances.

- (d) "Enclosed building" means a structure surrounded by walls or one continuous wall, and having a roof enclosing the entire structure, including a permanent appendage thereto.
 - (e) "Enforcement agency" means the Police Department of the City.
 - (f) "Inoperative household appliance" means a refrigerator, deep freeze, range, stove, automatic dishwasher, clothes washer, clothes dryer, trash compactor, television set, radio, air conditioning unit, commode or bed springs, which by reason of mechanical or physical defects can no longer be used for its intended purpose, and which either not serving a functional purpose or use or is not in an enclosed building, a licensed salvage yard or in the actual possession of a demolisher.
 - (g) "Junk motor vehicle" means a motor vehicle, or any part thereof, other than an on-premises farm utilities vehicle, which:
 - (1) Is discarded, wrecked, ruined, scraped or dismantled;
 - (2) Cannot pass the State inspection required by West Virginia Code 17C-16-1 et seq., fails to display a State inspection sticker or displays a State inspection sticker which has been expired for more than sixty days;
 - (3) Fails to display a valid registration plate; or
 - (4) Is either not serving a functional purpose or use or is not in an enclosed building, a licensed salvage yard or in actual possession of a demolisher.
 - (h) "Motor vehicle" means a vehicle which is or was self-propelled, including but not limited to automobiles, trucks, buses and motorcycles.
 - (i) "Old vehicle tire" means a pneumatic tire in which compressed air is designed to support a load, but which, because of wear, damage or defect, can no longer safely be used on a motor vehicle, and which is either not serving a functional purpose or use or is not in an enclosed building, a licensed salvage yard or in actual possession of a demolisher.
- (1984 Code 9-3-1)

1151.02 ABANDONMENT OF VEHICLES.

No person shall, within the City, abandon a motor vehicle upon the right of way of any public highway, upon any other public property, or upon any private property which he does not own, lease, rent or otherwise control unless it be a licensed salvage yard or at the business establishment of a demolisher. (1984 Code 9-3-2)

1151.03 JUNK VEHICLES PROHIBITED.

No person shall, within the City, place or deposit any junk motor vehicle upon the right of way of any public highway or upon any other public property; nor shall any person within this City place or deposit any junk motor vehicle upon any private property which he does not own, lease, rent or otherwise control unless it is at a licensed salvage yard or at the business establishment of a demolisher. (1984 Code 9-3-3)

1151.04 OLD VEHICLE TIRES; ABANDONED HOUSEHOLD APPLIANCES.

No person shall, within the City, place or deposit any old vehicle tire or inoperative household appliance upon the right of way of any public highway or upon any other public property nor place the same upon any private property which he does not own, lease, rent or otherwise control, unless it be a licensed salvage yard or at the business establishment of a demolisher. (1984 Code 9-3-4)

1151.05 AUTHORITY TO TAKE POSSESSION OF ABANDONED VEHICLES.

Any enforcement agency which has knowledge of or discovers or finds any abandoned motor vehicle, any junk motor vehicle, old vehicle tire or inoperative or abandoned household appliance on either public or private property shall take the same into its custody and possession. For that purpose, the enforcement agency shall employ its own personnel, equipment and facility or hire persons, equipment and facilities for the purpose of removing, preserving and storing abandoned motor vehicles, junk motor vehicles, old vehicle tire, or inoperative or abandoned household appliances. Before taking any abandoned motor vehicle or junk motor vehicle into custody and possession from private property, the enforcement agency shall give the private property owner and the owner of such motor vehicle, if ascertainable, thirty days notice by registered or certified mail, that such action shall be taken unless such motor vehicle is restored to a functional use. (1984 Code 9-3-5)

1151.06 NOTIFICATION.

(a) The enforcement agency which takes into custody and possession an abandoned motor vehicle or a junk motor vehicle shall, within seven days after taking custody and possession thereof, notify the last known registered owner of such motor vehicle and all lien holders of record that such motor vehicle has been taken into custody and possession, such notification to be by registered or certified mail, return receipt requested. The notice shall contain a description of such motor vehicle, including the year, make, model, manufacturer's serial or identification number, or any other number which may have been assigned to such motor vehicle by the State and any distinguishing marks; setting forth the location of the facility where such motor vehicle is being held and the location where such motor vehicle was taken into custody and possession; inform the owner and any lien holders of record of their right to reclaim such motor vehicle within ten days after the date notice was received by the owner or lien holders upon payment of all towing, preservation and storage charges resulting from taking and placing such motor vehicle into custody and possession; and state that the failure of the owner or lien holders of record to exercise their right to reclaim such motor vehicle within such ten day period shall be deemed a waiver of the owner and lien holders of record of all right, title and interest in such motor vehicle and of their consent to the sale or disposal of the abandoned motor vehicle or junk motor vehicle at a public auction or to a licensed salvage yard or demolisher.

(b) If the identity of the last registered owner of the abandoned motor vehicle or junk motor vehicle cannot be determined, or if the certificate of registration or certificate of title contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and address of all lien holders, notice shall be published as a Class I legal advertisement in compliance with the provisions of West Virginia Code 59-3-1 et seq., and the publication area for such publication shall be the City wherein such motor vehicle was located at the time such enforcement agency took custody and possession thereof, and such notice shall be sufficient to meet all requirements of notice pursuant to this article. Any notice by publication may contain multiple listings of abandoned motor vehicles and junk motor vehicles. The notice shall be published within ten days after such motor vehicle is taken into custody and possession and shall have the same contents required for a notice pursuant to subsection (a) hereof, except that the ten day period shall run from the date such notice is published as aforesaid.

(c) The consequences and effect of failure to reclaim an abandoned motor vehicle or junk motor vehicle within the ten day period after notice is received by registered or certified mail or within ten days after the notice is published in a newspaper as aforesaid shall be set forth in such notice. (1984 Code 9-3-6)

1151.07 DISPOSAL OF UNCLAIMED VEHICLES.

If an abandoned motor vehicle or junk motor vehicle is not reclaimed as provided above, the enforcement agency in possession of the abandoned motor vehicle or junk motor vehicle shall sell it either at a public auction or to a licensed salvage yard or demolisher. The purchaser of such motor vehicle shall take title to such motor vehicle free and clear of all liens and claims of ownership and shall receive a sales receipt from the enforcement agency which disposed of such motor vehicle. The sales receipt at such sale shall be sufficient title only for purposes of transferring such motor vehicle to a licensed salvage yard or to a demolisher for demolition, wrecking or dismantling, and no further titling of such motor vehicle shall be necessary by either the purchaser at the auction, the licensed salvage yard or the demolisher, who shall be exempt from the payment of any fees and taxes required pursuant to West Virginia Code 17A-3-1 et seq.; provided, that the purchaser at the auction shall place such motor vehicle in the possession of a licensed salvage yard or demolisher within twenty days from the date he purchases such motor vehicle; and if such licensed salvage yard or demolisher does not demolish such vehicle, such licensed salvage yard or demolisher shall be required to pay all fees and taxes required pursuant to West Virginia Code Article 17A-3. (1984 Code 9-3-7)

1151.08 PROCEEDS FROM SALE.

(a) From the proceeds of the sale, the Police Department shall reimburse itself for any expenses it may have incurred in conducting the auction, any costs of towing, preserving and storing the vehicle which resulted from placing the abandoned vehicle in custody and all notice and publication costs incurred pursuant to this article.

(b) Any remainder from the proceeds of sale after payment of these costs shall be held for the last registered owner of the vehicle or entitled lien holder for ninety days, after which time, if no owner or lien holder claims the remainder, it shall be deposited in the City Treasury to be kept and maintained as a special revolving account designated as the Abandoned Vehicle Disposal Account and any monies so collected and deposited shall be used solely by the Police Department for the payment of auction, towing, preserving, storage and all notice and publication costs which result from placing other abandoned vehicles in custody, whenever the proceeds from the sale of those abandoned vehicles are insufficient to meet these expenses and costs.

(c) The abandoned vehicle disposal account shall be under the direction and control of the City Treasurer, who shall assure that all the money is properly deposited in the account by the Police Department and that any money necessary to pay costs and expenses of those sales, as specified in the preceding paragraph are disbursed in accordance with required accounting procedures applicable to law enforcement agencies selling abandoned vehicles.

(d) The abandoned vehicle disposal account shall never be maintained in excess of the amount necessary to efficiently and properly carry out the intentions of this article and in no event shall the abandoned vehicle disposal account be maintained in excess of the sum of one thousand dollars (\$1,000.00); and whenever the abandoned vehicle disposal account exceeds that amount, the City Treasurer shall transfer the excess to the General Revenue Fund.
(1984 Code 9-3-8)

1151.09 INJUNCTIVE RELIEF.

In addition to all other remedies provided for in this article, the City Attorney may apply to the Circuit Court for an injunction to restrain, prevent or abate the maintenance and storage of abandoned motor vehicles, junk motor vehicles, old vehicles tires or inoperative or abandoned household appliances which are in violation of any provisions of this article.
(1984 Code 9-3-9)

1151.10 JUNK ON PRIVATE PROPERTY WITH PERMISSION OF OWNER.

(a) It is hereby declared to be a nuisance and no person shall store or allow to be stored, accumulate or exist on real estate within the City any junk, disabled or nonserviceable automobiles, automobile bodies, automobile parts and other debris.

(b) In addition to the penalty provided below, the City, in order to abate such nuisance, shall have the power and authority to order the removal of such nuisance by giving the owner of the property, or the person in lawful possession thereof, ten days' notice and in the event such nuisance is not abated within ten days the City shall have such right to abate such nuisance and remove any junk, disabled and nonserviceable automobiles, automobile bodies, automobile parts and other debris and charge the expenses thereof against such property, and the expense of removing and abating such nuisance shall constitute a lien against such property.
(1984 Code 9-3-10)

1151.99 PENALTY.

Whoever violates any provision of this article shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both. Each day's continued violation shall constitute a separate offense.
(1984 Code 9-3-11)

CODIFIED ORDINANCES OF KEYSER PART THIRTEEN - PLANNING AND ZONING CODE

EDITOR'S NOTE: The City currently has no Zoning Ordinance. The Part Thirteen is reserved for any future legislation.

CODIFIED ORDINANCES OF KEYSER PART FIFTEEN - FIRE PREVENTION CODE

Art. 1501. West Virginia Fire Code.

Art. 1511. Indoor and Outdoor Installation and Usage of Wood, Coal and/or Coke Fired Boilers.

Art. 1521. Fireworks.

CODIFIED ORDINANCES OF KEYSER PART FIFTEEN - FIRE PREVENTION CODE

ARTICLE 1501

West Virginia State Fire Code

1501.01 Adoption of Code.

1501.02 Modifications.

1501.03 Appeals from actions of Chief of Fire Department.

1501.04 New materials, processes or occupancies which may require permits.

1501.99 Penalty.

CROSS REFERENCES

Adoption by reference - see W. Va. Code 8-11-4

Promulgation of State Fire Code - see W. Va. Code 29-3-5

1501.01 ADOPTION OF CODE.

There is hereby adopted and incorporated by reference as if set out at length herein, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosions, that certain code known as the West Virginia State Fire Code, which became effective March 30, 1984.

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

1501.02 MODIFICATIONS.

The Chief of the Bureau of Fire Prevention shall have power to modify any of the provisions of the Fire Prevention Code adopted by this article upon application in writing by the owner or lessee or his duly authorized agent when there are practical difficulties in the way of carrying out the strict letter of such Code; provided, that the spirit of such Code shall be observed, public safety secured and substantial justice done. The particulars of such modification, when granted or allowed, and the decision of the Chief of the Bureau of Fire Prevention thereon shall be entered upon the records of the Fire Department, and a signed copy shall be furnished the applicant.

1501.03 APPEALS FROM ACTIONS OF CHIEF OF FIRE DEPARTMENT.

Whenever the Chief of the Fire Department disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the Fire Prevention Code adopted by this article do not apply or that the true intent and meaning of the Fire Prevention Code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the Chief of the Fire Department to Council within thirty days from the date of the decision appealed.

1501.04 NEW MATERIALS, PROCESSES OR OCCUPANCIES WHICH MAY REQUIRE PERMITS.

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

1501.99 PENALTY.

Whoever violates any provision of this Part Fifteen - Fire Prevention Code, for which no other penalty is provided or fails to comply therewith; or violates or fails to comply with any order made thereunder; or builds in violation of any detailed statement of specifications or plans submitted and approved thereunder or any certificate or permit issued thereunder and from which no appeal has been taken; or fails to comply with such an order as affirmed or modified by Council or by a court of competent jurisdiction within the time fixed herein, shall severally for each such violation and noncompliance respectively, be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue. All such persons shall be required to correct or remedy such violations or defects within a reasonable time. When not otherwise specified, each ten days that prohibited conditions are maintained shall constitute a separate offense. The application of any penalty pursuant to this section shall not be held to prevent the enforced removal of prohibited conditions.

ARTICLE 1511

Indoor and Outdoor Installation and Usage of Wood, Coal and/or Coke Fired Boilers

1511.01 Definitions.

1511.02 Registration of outdoor wood and/or coal and/or coke burning boiler unit.

1511.03 Deadline.

1511.04 Warm months prohibition.

1511.05 Prohibition against burning, trash, refuse or other debris in boiler units or otherwise.

1511.06 Smoke stacks.

1511.07 Exemption.

1511.08 Criteria for exemption.

1511.09 Presumption.

1511.99 Penalty.

1511.01 DEFINITIONS.

For the purposes of this Article, the terms hereafter set forth shall have the following meanings:

- (a) "Person" shall include, but not be limited to, any individual, firm, partnership, limited partnership, co-partnership, joint venture, association, corporation, limited liability company, organization, receiver, estate, trust, guardian, executor, administrator, and also any officer, employee or member of any of the foregoing who, as such officer, employee or member, is under a duty to perform or is responsible for the performance of an act on behalf of any such above referred to person.

- (b) "Outdoor Wood and/or Coal and/or Coke Burning Boiler Unit" (sometimes referred to in this Chapter as "Boiler Unit") shall mean and include any mechanism primarily designed to burn materials, other than natural gas, oil, or propane gas, for the purposes of providing household heat or heating water where said unit is not fully contained in the building for which it services for heating and/or water heating. Said unit may be comprised of a boiler unit which is contained in a structure whose primary purpose is to house said unit.
- (c) "Registration" shall mean the submission of an appropriate form as prescribed by the City of Keyser, duly signed and completed and delivering the same to the City Administrator or designee who is authorized to receive said forms at the City Office.
- (d) "The City" shall mean the City of Keyser, a municipal corporation, whose principal office is located as 111 Davis Street, Keyser, West Virginia 26726.
- (e) "City Administrator" shall mean the person designated by the Mayor and approved by the City Council as the City Administrator for the City of Keyser or any such person as said City Administrator so designates in his or her place or stead to receive the filing of forms, registrations, exemption applications and to undertake duties of this Article.
- (f) "Exemption" shall mean the approval by the City Council of the right to use a boiler unit for the heating of water for residential use for the remainder 2000 calendar year which may be issued by the City Council in accordance with Sections 1511.07 and 1511.08 of this Article. (Ord. 256. Passed 5-24-00.)

1511.02 REGISTRATION OF OUTDOOR WOOD AND/OR COAL AND/OR COKE BURNING BOILER UNIT.

Any person who owns and now uses, intends to use in the future, or upon installation of any wood and/or coal and/or coke burning boiler units must file with the City Administrator a registration form in the manner provided by the City of Keyser setting forth the owner and the location of such boiler unit. (Ord. 256. Passed 5-24-00.)

1511.03 DEADLINE.

For those boiler units currently located within the City of Keyser registration of such boiler units must occur on or before the 1st day of July, 2000, at the close of business on said day. Thereafter, all persons installing boiler units within the City of Keyser must register such unit with the City Administrator within 30 days after installation. (Ord. 256. Passed 5-24-00.)

1511.04 WARM MONTHS PROHIBITION.

No wood and/or coal and/or coke burning boiler unit may be used within the City of Keyser for any purpose during the warm months between the dates of June 1st, at 12:01 a.m. thereof through September 1st, at 12:01 a.m. (Ord. 256. Passed 5-24-00.)

1511.05 PROHIBITION AGAINST BURNING TRASH, REFUSE OR OTHER DEBRIS IN BOILER UNITS OR OTHERWISE.

No person shall within the City of Keyser burn either in a boiler unit or other container any trash, debris, garbage, refuse, or materials other than wood and/or coal and/or coke and/or wood pellets or other commercially produced products devised specifically for burning in fireplaces, stoves or boiler unit. (Ord. 256. Passed 5-24-00.)

1511.06 SMOKE STACKS.

All smoke stacks for boiler units shall extend one foot (1') or more above the highest point of the roof to which the smoke stack is attached or the building which the boiler services. (Ord. 256. Passed 5-24-00.)

1511.07 EXEMPTION.

Any person who believes that this Article will create a financial hardship for purposes of complying during the year 2000 may apply to the City Council for an exemption from compliance for the year 2000 only. (Ord. 256. Passed 5-24-00.)

1511.08 CRITERIA FOR EXEMPTION.

The City Council may grant an exemption only if it can be demonstrated that the applicant for exemption does not possess the means to replace or supplement their hot water system with a natural gas or electric water heater prior to the effective date of the warm months prohibition. Any such exemption may continue only for so long as is reasonably necessary for the applicant to make alterations to his existing hot water system for purposes of complying with the provisions of this Article. (Ord. 256. Passed 5-24-00.)

1511.09 PRESUMPTION.

It shall be conclusively presumed that any person shall have the ability financially to comply with these provisions. (Ord. 256. Passed 5-24-00.)

1511.99 PENALTY.

Any person violating any provision of this Article shall be guilty of a misdemeanor and shall be subject to a fine of not to exceed one hundred dollars (\$100.00). Each day that a violation continues to exist without correction shall be a separate offense. (Ord. 256. Passed 5-24-00.)

ARTICLE 1521

Fireworks

1521.01 Restrictions.

1521.99 Penalty.

1521.01 RESTRICTIONS.

Subject to compliance with all applicable State and Federal laws, consumer fireworks may be ignited, discharged, or used within the City of Keyser's municipal boundaries only on the following dates and times:

- (a) Between dusk and 10:00 p.m. on July 2, 3, 4, 5 and 6.
- (b) Between dusk on December 31 and 1:00 a.m. on January 1.

Furthermore, there is to be NO use of fireworks with the exception of sparklers on City owned property at any time.
(Ord. 291. Passed 8-8-18.)

1521.99 PENALTY.

Any person violating the provisions of this Article may be charged criminally by the City Police Department and shall be guilty of a misdemeanor. Any individual in violation hereof shall be fined an amount not to exceed one hundred dollars (\$100.00) for each offense.
(Ord. 291. Passed 7-25-18.)

CODIFIED ORDINANCES OF KEYSER PART SEVENTEEN - BUILDING AND HOUSING CODE

Art. 1711. Building Permits.
Art. 1721. Flood Control.
Art. 1731. Mobile Homes.

CODIFIED ORDINANCES OF KEYSER PART SEVENTEEN - BUILDING AND HOUSING CODE

ARTICLE 1711

Building Permits

- 1711.01 General provisions.**
- 1711.02 Administration.**
- 1711.03 Definitions.**

CROSS REFERENCES

Permits for construction and alteration - see W.Va. Code 8-12-14

1711.01 GENERAL PROVISIONS.

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

- (1) Promote the general health, welfare and safety of the community;
- (2) Encourage the utilization of appropriate construction practices to minimize flood damage in the future;
- (3) Minimize danger to public health by protecting water supply and natural drainage.

- (b) Applicability.

- (1) It shall be unlawful for any person, partnership, business or corporation to undertake or cause to be undertaken, the construction, reconstruction, enlargement, alteration or relocation of any building or structure unless an approved building permit has been obtained from the Building Permit Officer.
- (2) A building permit shall not be required for routine maintenance as referred to in Section 1711.03 (b)(5) and upkeep to existing buildings or structures, provided that no structural changes or modifications are involved; and provided further that the estimated cost (as referred to in Section 1711.02 (g)) of the routine maintenance and upkeep does not exceed \$500.00.

(c) Abrogation and Greater Restrictions. This article supersedes any provisions or restrictions currently in effect in flood-prone areas. However, any underlying ordinance shall remain in full force and effect to the extent that those provisions are more restrictive.

(d) Severability. If any section, paragraph, sentence, clause or phrase of this article should be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this article which shall remain in full force and effect, and for this purpose the provisions of this article are hereby declared to be severable.

(e) Municipal Liability. The granting of a permit or approval of a subdivision plan in identified flood-prone area(s) shall not constitute a representation, guarantee, or warranty of any kind by the Municipality or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the Municipality, its officials or employees.
(Ord. 173. Passed 8-12-09.)

1711.02 ADMINISTRATION.

(a) Issuance of Permit. The Building Permit Officer shall issue a building permit only after it has been determined that the proposed construction will be in conformance with all applicable requirements and regulations.

(b) Application Procedures. Application for such a building permit shall be made, in writing, to the Building Permit Officer on forms supplied by the Municipality. Such application shall contain at least the following:

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

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

(d) Placard. In addition to the building permit, the Building Permit Officer shall issue a placard which shall be displayed on the premises during the time construction is in progress. This placard shall display the number of the building permit, the date of its issuance and signature of the Building Permit Officer.

(e) Start of Construction. Work on the proposed construction shall begin within six (6) months after the date of the issuance of the

building permit or the permit shall expire, unless a time extension is granted in writing, by the Building Permit Officer. Construction shall be considered to have started with the first replacement of permanent construction of this site, such as the pouring of slabs or footings or any work beyond the stage of excavation. For a structure without a basement or poured footings, the start of construction includes the first permanent framing or assembly of the structure of any part thereof on its pilings or foundation, or the affixing of any prefabricated structure or mobile home to permanent site. Permanent construction does not include land preparation, land clearing, grading, filling, excavation for basement, footings, piers or foundation, erection of temporary forms, the installation of piling under proposed subsurface footings, or the installation of sewer, gas and water pipes, or electric or other service lines from the street.

(f) 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 on the permit application and with all applicable municipal laws and ordinances. In the event the Building Permit Officer discovers that the work does not comply with the permit application or any applicable laws and ordinances, or that there has been a false statement or misrepresentation by the applicant, the Building Permit Officer shall revoke the building permit and report such fact to the City Building Commission for whatever action it considers necessary.

(g) Fees. Application for a building permit shall be accompanied by a fee, payable to the municipality, based upon the estimated cost of the proposed construction as determined by the Building Permit Officer at the following rates:

Estimated Cost	Fee
\$00.00 to \$500.00	\$0.00
\$501.00 to \$2,000.00	\$10.00
\$2,001.00 to \$3,000.00	\$15.00
\$3,001.00 to \$4,000.00	\$20.00
\$4,001.00 to \$5,000.00	\$24.00
\$5,001.00 to \$6,000.00	\$28.00
\$6,001.00 to \$7,000.00	\$32.00
\$7,001.00 to \$8,000.00	\$36.00
\$8,001.00 to \$9,000.00	\$40.00
\$9,001.00 to \$10,000.00	\$44.00
\$10,001.00 to \$11,000.00	\$48.00
\$11,001.00 to \$12,000.00	\$52.00

And: an additional assignment of \$20.00 for each addition \$1,000.00 or part thereof beyond the first \$12,000.00.

For purposes of determining an estimated cost of the proposed construction, the Building Permit Officer shall have the right to review and inspect any contractor estimates, mortgage applications or other information in the possession of the applicant, which would assist the Building Permit Officer in assessing a fair cost of construction.

(h) Appeals. Any person aggrieved by the Building Permit Officer's estimate of the cost of the proposed construction may appeal to the City Building Commission. Such appeal must be filed, in writing, within thirty (30) days after the determination of the Building Permit Officer. Upon receipt of such appeal, the City Building Commission shall set a time and place not less than ten (10) nor more than thirty (30) days for the purposed hearing of the appeal. Notice of the time and place of the hearing of the appeal shall be given to all parties at which time they may appear to be heard. The determination of the estimated cost by the City Building Commission shall be final in all cases. Any person aggrieved by a final determination of the City Building Commission shall be entitled to seek an appeal before the Circuit Court of Mineral County within twenty (20) days of the date of the final determination.

(i) Penalties. Any person, partnership, business or corporation who fails to comply with any or all the requirements or provisions of this article who knowingly provides false information or makes misrepresentations upon the application for a building permit shall be guilty of a misdemeanor offense and, upon conviction, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). Issuance of a citation against any person violating the provisions of this article may be effected by any member of the City Police Department, the City Administrator, or the City Building Inspector. Jurisdiction for prosecution of violations under this article shall be before the Municipal Court for the City of Keyser. Each day during which any violation of this article continues shall constitute a separate offense.

Exclusive of or in addition to the potential for prosecution herein, the City Building Commission shall be entitled to seek injunctive relief before the Circuit Court of Mineral County to enjoin any person, partnership, business or corporation from any further construction or improvements until there is compliance with the provisions of this article.

Any structure or building constructed, reconstructed, enlarged, altered, or relocated, in noncompliance with this article may be declared by the City Building Commission to be a public nuisance and abatable as such. (Ord. 173. Passed 8-12-09.)

1711.03 DEFINITIONS.

(a) General. Unless specifically defined below, words and phrases used in this article shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this article its most reasonable application.

(b) Specific Definitions.

- (1) Accessory Use or Structure - a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
- (2) Building - a combination of materials to form a permanent structure having walls and a roof. Included shall be all mobile homes and trailers to be used for human occupation.
- (3) Person - any person, persons, partnership, business or corporation.
- (4) Structure - anything constructed or erected on the ground or attached to the ground, including, but not limited to, building, factories, sheds, cabins, mobile homes and other similar items.
- (5) Routine maintenance and upkeep - customary and regularly performed procedures and activities of any ordinary nature to preserve or keep in good and proper condition of repair, including, painting, sealing roofs from leaks and reroofing

(i.e. roll to shingles) repairing gutters and down-spouts, maintaining HVAC systems, repairing plumbing or electrical equipment, and pest control.

Routine maintenance does not include siding structures, replacing HVAC systems, replacing or adding gutters and/or down-spouts, renovations of plumbing or electrical equipment, or additions to or demolition of structures.

(6) Building Permit Officer - the City Building Inspector or the City Administrator.

(7) City Building Commission - all members as duly elected and appointed in accordance with the City Charter and applicable ordinances.

(Ord. 173. Passed 8-12-09.)

ARTICLE 1721

Flood Control

1721.01 General provisions.

1721.02 Interpretations and definitions.

1721.03 Establishment of the special flood hazard area.

1721.04 Utilization of the special flood hazard area.

1721.05 Criteria for building and site plan approval.

1721.06 Specific requirements.

1721.07 Administration.

1721.08 Appeals and penalties.

1721.09 Government actions.

1721.10 Severability and municipal liability.

CROSS REFERENCES

Flood plain area management - see W.Va. Code 7-1-3(v)

Flood control projects - see W.Va. Code 8-30-1

1721.01 GENERAL PROVISIONS.

(a) Authority.

(1) The provisions of this article have been prepared with the intention of meeting the requirements of the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) Amended by the Congress of the United States through the 15th of February, 1975 (PUBLIC LAW 91-152).

(2) Authority to adopt, administer and enforce this Ordinance is vested in the City of Keyser pursuant to West Virginia State Codes 8-12-14, 7-1-3n, 7-1-3v, and 7-1-3kk and/or West Virginia State Codes 8A-4-2, 8A-5-7, 8A-7-2.

(b) Intent. The intent of this Article is to:

(1) Promote the general health, welfare and safety of the City of Keyser.

(2) Encourage the utilization of appropriate construction practices in order to prevent or minimize flooding damage in the future and protect natural drainage.

(3) Minimize danger to public health and safety by protecting water supply and sanitary sewage disposal in cooperation with the County Sanitarian.

(4) Assure the County Assessor obtains information concerning improvement of real property as required by WV Code §11-3-3a.

(5) Assure all County E-911 addresses are obtained to maintain the currency of established emergency response dispatch systems.

(6) Reduce financial burdens imposed on the City of Keyser, its governmental units and its residents by preventing the unwise design and construction of development in areas subject to flooding.

(c) Abrogation and Greater Restrictions. This article supersedes any Ordinance currently in effect in flood prone areas. Any Ordinance, however, shall remain in full force and effect to the extent that those provisions are more restrictive.

(d) Applicability.

(1) It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development, new construction, substantial improvement, repair of substantial damage, or the placement or relocation of any structure (including manufactured homes) within City of Keyser, unless a permit application has been completed and a permit or certificate of compliance has been obtained from the Floodplain Administrator. In addition, where land is partially or fully in the special flood hazard area is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed as defined in this Ordinance, a site plan with elevation data shall be submitted to, and approved by, the Floodplain Administrator prior to any development.

(2) Provision of all other codes, ordinances, and regulations shall be applicable insofar as they are consistent with the provisions of this Article and the community's need to minimize the hazards and damage resulting from flooding.

(e) Matters Not Provided for Specifically. Where conditions are encountered that are not specifically provided for herein, the Floodplain Administrator shall determine the applicability of the provisions of this Ordinance in accordance with its intent, and shall require the applicant to take appropriate measures pursuant to such determination. (Passed 2-14-18.)

1721.02 INTERPRETATIONS AND DEFINITIONS.

(a) Interpretations. For the purpose of this article, the following interpretations shall apply:

(1) Words used in the present tense include the future tense

(2) The singular includes the plural

(3) The plural includes the singular

(4) The word "person" includes a corporation, unincorporated association or partnership as well as an individual

(5) The term "shall" or "will" is always mandatory

(6) The word "building" or "structure" shall be construed as if followed by the phrase "or part thereof"

(7) The word "ordinance" shall refer to the Floodplain Ordinance.

(b) Definitions. Unless specifically defined below, words and phrases used in this Ordinance shall be interpreted so as to give this Ordinance its most reasonable application.

- (1) Appurtenant Structure. A structure on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. This does not include a gas or liquid storage tank. These structures cannot be used as living space.
- (2) Base Flood. Means the flood having a one percent (1%) chance of being equaled or exceeded in any given year.
- (3) Base Flood Elevation (BFE). The water surface elevation of the base flood in relation to the datum specified on the CITY OF KEYSER'S Flood Insurance Rate Map. For the purposes of this Ordinance, the one hundred (100) year flood or 1% annual chance flood.
- (4) Basement. Any area of the building having its floor sub grade (below ground level) on all sides.
- (5) Certificate of Compliance. A certification that all development is in compliance with all the provisions of this Ordinance.
- (6) Compensatory storage. An artificially excavated, hydraulically equivalent volume of storage within the special flood hazard area used to balance the loss of natural flood storage capacity when artificial fill or structures are placed within the special flood hazard area.
- (7) Contractor - WV State Code §21-11-3(c).
 - A. A person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of undertaking is one thousand dollars or more. Contractor includes a construction manager who performs management and counseling services on a construction project for a professional fee.
 - B. Contractor does not include:
 1. One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;
 2. A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;
 3. A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work;
 4. A pest control operator licensed under the provisions of section seven, article sixteen-a, chapter nineteen of this code to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding one thousand dollars on property treated for insect pests; or
 5. A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in this section and who employs full time a registered architect licensed to practice in this State or a registered professional engineer licensed to practice in this State. Contractor also does not include employees of such corporation, partnership or sole proprietorship.
- (8) Critical Facility. Any facility in which even a slight chance of flooding is too great a threat. Typical critical facilities include hospitals, fire stations, police stations, storage of critical records, and similar facilities. These should be given special consideration when formulating regulatory alternatives and floodplain management plans. A critical facility should not be located in a special flood hazard area if at all possible. If a critical facility must be located in a special flood hazard area it should be provided a higher level of protection so that it can continue to function and provide services during a flood.
- (9) Development. Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.
- (10) Flood. A general and temporary inundation of water in an area of normally dry land.
- (11) Flood Insurance Rate Map (FIRM). The official map on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the City of Keyser. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM)
- (12) Flood Insurance Study. The official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and water surface elevations.
- (13) Floodplain.
 - A. A relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation;
 - B. An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.
- (14) Floodway. The channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the base flood without increasing the water surface elevation of that flood more than one foot at any point.
- (15) Flood Proofing. Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
- (16) Freeboard. A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for unknown factors that may contribute uncertainty to flood heights of any given flood and floodway condition, such as wave action, blockage at stream crossings, and increased runoff from urbanization of the watershed. Freeboard also tends to lower the cost of flood insurance.
- (17) Highest Adjacent Grade (HAG). The highest natural elevation of the ground surface immediately adjacent to the development

or structure foundation. This is primarily used during insurance rating in approximated floodplains.

- (18) Historic Structure. Any structure that is:
- Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing in the National Register;
 - Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
 - Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - By an approved state program as determined by the Secretary of the Interior; or,
 - Directly by the Secretary of Interior in states without approved programs.
- (19) Licensed Manufactured Home Dealer. A business licensed to sell manufactured homes in the State of West Virginia as set forth in the WV State Code.
- (20) Licensed Manufactured Home Installer. A contractor licensed to install manufactured homes in WV as set forth in the WV State Code.
- (21) Licensed Professional Surveyor. Any person licensed by the WV State Board of Examiners of Land Surveyors to engage in the practice of land surveying as defined in the WV State Code.
- (22) Lowest Adjacent Grade (LAG). Lowest natural elevation of the ground surface immediately adjacent to the proposed development or structure foundation. The primary use of the LAG is to determine whether the structure is located within a special flood hazard area by comparing it to the base flood elevation.
- (23) Lowest Floor. The lowest floor of the lowest enclosed area (including basement). An unfinished enclosure constructed with flood resistant materials as defined in FEMA Technical Bulletin 2 and usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; Provided, that such enclosure has proper flood openings and is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance.
- (24) Manufactured Home. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".
- (25) New Construction. Structures for which the start of construction as herein defined commenced on or after 09/27/1991 and including any subsequent improvements to such structures. Any construction started after effective date of the City of Keyser's first floodplain ordinance adopted by City of Keyser and before the effective start date of this floodplain management ordinance is subject to the ordinance in effect at the time the ordinance was issued, provided the start of construction was within 180 days of permit issuance.
- (26) One-Hundred (100) Year Flood. A flood that has one chance in one-hundred or a one percent or greater chance of being equaled or exceeded in any given year.
- (27) Person. Any individual or group of individuals, corporation, partnership, association or other entity, including State and Local governments and agencies.
- (28) Practice of Engineering.
- Any service or creative work, as described in WV State Code Article 13, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems; planning the use of land and water; teaching of advanced engineering subjects, engineering surveys and studies; and the review of construction for the purpose of assuring compliance with drawings and specifications any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Engineering surveys include all survey activities required to support the sound conception, planning, design, construction, maintenance and operation of engineered projects.
 - Any person who practices any branch of the profession of engineering or who, by verbal claim, sign, advertisement, letterhead, card or in any other way represents himself to be a Registered Professional Engineer, or by using another title implies that he or she is a Registered Professional Engineer or that he or she is registered under WV State Code, article 13 or who holds himself or herself out as able to perform, or who performs any engineering service or work or any other service designated by the practitioner which is recognized as engineering, is considered to practice or offer to practice engineering within the meaning and intent of WV State Code article 13.
- (29) Principally Above Ground. Where at least 51 percent of the Actual Cash Value of a structure, less land value, is above ground.
- (30) Recreational Vehicle. A vehicle which is:
- Built on a single chassis;
 - 400 square feet or less when measured at the largest horizontal projection;
 - Designated to be self-propelled or permanently towable by a light duty truck; and
 - Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

- (31) Registered Professional Engineer. A person who has been duly registered or licensed as a Registered Professional Engineer by the West Virginia State Board of Registration for Professional Engineers as required under WV State Code article 13 et seq.
- (32) Remedy a Violation. To bring a structure or other development into compliance with the requirements of this Ordinance, or if full compliance is not possible, to reduce the adverse impact of the non-compliance to the greatest extent feasible.
- (33) Reasonably Safe from Flooding. Means that during the base flood, water should not damage structures and any subsurface waters related to the base flood should not damage existing or proposed structures.
- (34) Special Flood Hazard Area. The land in the Floodplain subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency in Flood Insurance Studies and on Flood Insurance Rate Maps as Zones A, AE, AO, A1-30, and A99. This term shall also include areas shown on other flood hazard maps that are specifically listed or otherwise described in this Ordinance.
- (35) Start of Construction. The date the permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Although a permit must be obtained prior to beginning, permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (36) State Coordinating Office. The West Virginia Division of Homeland Security and Emergency Management.
- (37) Stream. As defined in WV State Code §7-1-3u, any watercourse, whether natural or man-made, distinguishable by banks and a bed, regardless of their size, through which water flows continually or intermittently, regardless of its volume.
- (38) Structure. A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.
- (39) Substantial Damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means cumulative flood-related damages sustained by a structure on two separate occasions during a 10 year period for which the cost of repairs at the time of each flood event, on the average, equals or exceeds 25 percent of the fair market value of the structure before the damage occurred. See "Substantial Improvement".
- (40) Substantial Improvement.
- A. Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the fair market value of the structure before the start of construction of the improvement.
 - B. This term includes structures, which have incurred "substantial damage", as defined herein regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violation of State or local health, sanitary or safety code specifications which have been identified by the local Code Enforcement Official and which are the minimum necessary to assure safe living conditions.
 - C. Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all Ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific Ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic Places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from Ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.
 - D. For the purpose of this definition 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 the alteration affects the external dimensions of the structure.
- (41) Top of Bank. The lines depicted on the FIRM maps delineating each side of a stream indicate the top of the bank. In the field a professional familiar with fluvial geomorphology should document the top of the bank. When a professional is not employed the top of the bank may be considered to be the top of the first significant slope landward of the water's edge when it is followed by at least 50 feet of relatively flat land.
- (42) Variances. If compliance with any of the requirements of this article would result in an exceptional hardship to a prospective builder, developer or landowner, the City of Keyser may, upon request, grant relief from the strict application of the requirements.
- Considerations for the issuance of Variances to this article shall adhere to the following criteria:
- A. A decision granting or denying the variance request shall only be issued by the Floodplain Appeals Board upon; (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the permit would result in exceptional hardship to the applicant, and (iii) a determination that granting the permit 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 laws, regulations or ordinances.
 - B. An affirmative decision granting a variance shall be issued only upon determination that it is the minimum necessary, considering the Special Flood Hazard Area, to afford relief. Financial hardship, used as sole criteria, shall not be considered sufficient justification to grant a variance.

- C. An affirmative decision granting a Floodplain variance shall be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- D. The Floodplain Appeals Board shall notify the applicant in writing and signed by a majority of the Floodplain Appeals Board 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, and
 - (ii) Such construction below the Base Flood Elevation increases risk to life and property. Such notification shall be maintained with a record of all decisions as required in this Ordinance; and
- E. The Floodplain Appeals Board shall:
 - (i) Maintain a record of all decisions including justification for the decisions, and
 - (ii) Report such decisions issued in its biannual report to the Federal Emergency Management Agency.
- (43) Violation. The failure of any structure or development to be fully compliant with all the requirements of this Ordinance. Any structure or other development lacking the certifications, finished construction elevation certificate or other evidence of compliance required by this Ordinance is presumed to be in violation until such time as the documentation is provided. (Passed 2-14-18.)

1721.03 ESTABLISHMENT OF THE SPECIAL FLOOD HAZARD AREA.

- (a) Identification.
 - (1) The identified special flood hazard area shall be those areas of the City of Keyser which are subject to the one hundred (100) year flood as shown on the Flood Insurance Rate Map (FIRM) and described in the Flood Insurance Study (FIS) prepared for the City of Keyser by the Federal Emergency Management Agency (FEMA) dated 03/19/2013 or the most recent revision thereof including all digital data developed as part of the FIS.
 - (2) The identified special flood hazard area shall also be those special flood hazard areas identified by the City of Keyser by use of historic or other technical data and shown on an officially recognized "Local Flood Hazards Map". These areas shall be designated as appropriate with the level of technical data described below and shall be managed accordingly.
- (b) Descriptions of Special Flood Hazard Areas. The identified special flood hazard area shall consist of the following four specific areas:
 - (1) The Floodway Area shall be those areas of AE zone identified as Floodways in the FIS and as shown on the FIRM. The term shall also include any floodway areas delineated by developers in the approximated floodplain and designated as such by the community.
 - (2) The Floodway Fringe shall be those areas of AE zone for which specific one hundred (100) year flood elevations have been provided in the FIS but which lie beyond the floodway area.
 - (3) The AE Area Without Floodway shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which 100-year flood elevations have been provided but no Floodway has been delineated.
 - (4) The Approximated Floodplain shall be those areas identified as an A Zone on the FIRM included in the FIS prepared by FEMA and for which no one hundred (100) year flood elevations have been provided
- (c) Changes in Designation of Area.
 - (1) The delineation of the identified special flood hazard area may be revised by City of Keyser where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, a River Basin Commission or other qualified agency or individual document the necessity for such changes. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency (FEMA).
 - (2) City of Keyser's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practical but, not later than six months after the date such information becomes available, the City of Keyser shall notify the NFIP Administrator of the changes by submitting technical or scientific data.
 - (3) City of Keyser may identify and regulate new flood hazard or ponding areas. These areas may be delineated on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks or approximate study methodologies.
- (d) Boundary Disputes. Should a dispute concerning the location of a proposed development relative to a special flood hazard area arise, an initial determination shall be made by the Floodplain Administrator and any party aggrieved by this decision may appeal to the City of Keyser. The burden of proof shall be on the appellant/applicant.
- (e) Elevations Prevail. Elevation data certified by a Licensed Professional Surveyor or Registered Professional Engineer shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.
 - (1) The proposed development will automatically conform to the flood damage reduction requirements of this ordinance if the natural lowest adjacent grade (LAG) to the proposed development is at or above the closest applicable base flood elevation (BFE) specified in the flood insurance study. The applicant shall be advised to apply for a Letter of Map Amendment (LOMA) from FEMA to have the special flood hazard area designation removed from the structure or specific area. A LOMA is required within 90 days of a permit being issued. If a LOMA is not received within 90 days of the permit being issued the applicant will not receive a Certificate of Occupancy or Completion, thus denying the applicant occupation of the structure or activation of power until this requirement is met. If the difference between LAG and BFE is modest the applicant will also be advised to use caution during site preparation or excavation and information concerning the Preferred Risk Policy should be provided.
 - (2) The proposed development shall be considered to be within the special flood hazard area if the natural LAG to the proposed development is below either; The closest applicable BFE specified in the flood insurance study, or The reasonably safe from flooding elevation determined by the City of Keyser in approximate floodplains. The proposed development shall then be required to conform to all appropriate flood damage reduction provisions of this ordinance.

1721.04 UTILIZATION OF THE SPECIAL FLOOD HAZARD AREA.

(a) Floodway. Within any Floodway Area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the City of Keyser during the occurrence of the base flood discharge. The resultant engineering study shall include a cover letter, signed and sealed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.

(1) Because Floodways present increased risk to human life and property due to their relatively faster and deeper flowing waters the Floodways shall be preserved to the greatest extent possible.

- A. New development shall not be permitted in the Floodway where reasonable alternatives exist elsewhere. In addition to the requirements below the applicant shall demonstrate that there are no reasonable alternatives other than the Floodway encroachment before a permit is issued.
- B. When the Floodway is the only reasonable alternative the applicant shall demonstrate that the Floodway encroachment is the minimum necessary to accomplish the project.
- C. All permitted uses, activities, and development shall be undertaken in strict compliance with the flood proofing and related provisions contained herein, and in all other applicable codes, ordinances and regulations.
- D. In special flood hazard areas for which no regulatory floodway has been designated, the regulatory floodway for small, single lot development not incorporating significant amounts of fill can, at the discretion of the City of Keyser, be determined to be the channel of the stream and the adjacent land areas to a distance of one-half the width of the special flood hazard area as measured from the top of the bank nearest the site to the upland limit of the 1% annual chance special flood hazard area boundary.

(b) Floodway Fringe. Within any Floodway Fringe area any development and/or use of land shall be permitted provided that all such uses, activities, and/or development shall be under taken in strict compliance with the flood-proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.

(c) AE Without Floodway. Within any AE without Floodway Area, no new construction or development shall be allowed unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the 100-year flood more than one (1) foot at any point. This requirement can be satisfied by utilization of the floodway where determined.

(d) Approximated Floodplain (Zone A).

(1) Within any Approximated Floodplain Area:

- A. The Floodplain Administrator shall use elevation and floodway information from Federal, State, or other acceptable sources when available to determine the elevation above which development will be reasonably safe from flooding.
- B. When data from an acceptable source is not available, the Floodplain Administrator shall review, or shall cause to be reviewed; all proposed development to determine (1) the amount being invested and (2) the specific flood risk at the site. The Floodplain Administrator shall then require the applicant to determine the elevation above which the development will be reasonably safe from flooding using elevation data, hydrologic and hydraulic analyses or other techniques. When hydrologic and hydraulic analyses are required, they shall only be undertaken by a Registered Professional Engineer who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.
- C. 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 flood-proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.

(e) Alteration or Relocation of a Stream.

- (1) Whenever a developer intends to alter or relocate a stream within the special flood hazard area the developer shall notify in writing, by certified mail, the City of Keyser's Floodplain Administrator, the State Coordinating Office, any adjacent communities and any adjacent property owners of all such intended activities prior to the alteration or relocation of the stream. Copies of all required notifications must be submitted to the Federal Emergency Management Agency (FEMA). In addition prior to issuing the local permit the Floodplain Administrator shall require copies of all necessary permits from which Federal or State Law requires approval.
- (2) The developer shall also assure the CITY OF KEYSER in writing that the flood carrying capacity within the altered or relocated portion of the stream will be maintained. The Floodplain Administrator may require the applicant to demonstrate that the altered or relocated portion of stream will provide equal or greater conveyance than the original stream segment. If hydrologic and hydraulic analyses are required, they shall only be undertaken by a Registered Professional Engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.
- (3) Alteration of a stream includes placement of culverts, bridges or other stream crossings. The Floodplain Administrator may require the use of certain "best practice" techniques in the construction of bridges, culverts or stream crossings to prevent damage, loss of stream crossings and localized flooding caused by blockage. These techniques may include, but are not limited to, wing walls, trash grates or requiring openings to be of sufficient size to pass debris and/or anticipated future increases in flood heights.
- (4) All new and replacement bridges, culverts and other stream crossings shall adhere to the relevant anchoring requirements contained in this Ordinance.

- (5) The developer is required to provide the City of Keyser a legal agreement detailing all scheduled inspections and maintenance to be performed on altered or relocated watercourses including culverts, bridges and other stream crossings. It shall be the responsibility of the applicant to transfer this agreement to the new owner when the land associated with the watercourse alteration is transferred. A copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 1721.08 (c).
- (6) The applicant shall submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and shall pay any fees or other costs assessed by FEMA for this purpose. (Passed 2-14-18.)

1721.05 CRITERIA FOR BUILDING AND SITE PLAN APPROVAL.

(a) General.

- (1) Permits are required in order to determine whether all new construction or substantial improvements are:
 - A. Located in an identified Floodplain, Floodway or other special flood hazard area.
 - B. Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - C. Constructed with material and utility equipment resistant to flood damage as outlined in FEMA Technical Bulletin 2 or the most recent revision thereof.
 - D. Constructed by methods and practices that minimize flood damage.
 - E. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding.
 - F. To comply with WV State Code §11-3-3a concerning County Assessor "Building or Real Property Improvement Notice".
 - G. Approved by County Health Department for Water and Sewer to assure facilities are designed and located in compliance with the flood damage reduction requirements of this Ordinance.

(b) Basic Format.

- (1) The basic format of the permit shall include the following:
 - A. Name and address of applicant.
 - B. Name and address of owner of land on which proposed development is to occur.
 - C. Names, addresses, and valid WV license numbers of all contractors working at the building site, or affidavits stating that work is being performed by individuals exempt from contractor licensing as set forth in Title 28, Series 2, section 3.9(b) of the West Virginia Code of State Regulations or the most recent revision thereof.
 - D. A description of site location sufficient to locate the project including tax map and parcel numbers and most recent deed book and page number.
 - E. A standard site plan showing size and location of the proposed development as well as any existing buildings or structures. The site plan shall also show all adjacent roads and watercourses with direction of flow, the lowest adjacent grade to the proposed foundation and/or toe of fill, the Base Flood Elevation and the location of the Floodway boundary when applicable.
 - F. An acknowledgement that the applicant agrees to pay any and all fees associated with the permitting process as set forth in Section 1721.10.
 - G. An acknowledgment that the applicant agrees to allow authorized representatives of floodplain management programs access to the development to inspect for compliance.
 - H. The contract required by WV Code of State Regulations, Title 28, Series 4, and all addendums to the contract(s) shall be presented to the Floodplain Administrator for review within five (5) business days of contract signing. The City of Keyser does not require and will not keep copies of the contracts or addendums. Failure to present contract or addendums for review shall void the permit. If a licensed contractor is not involved, or the work is of an aggregate value of less than ten thousand dollars including material and labor, a brief written description of proposed work and the estimated value will suffice.

(c) Elevation and Flood Proofing Information.

- (1) All applicants are encouraged to exceed the minimum elevation requirements contained herein. Flood insurance rates can be lowered significantly by increasing the elevation of the lowest floor above the freeboard height required by this Ordinance.
- (2) Depending on the type of structure involved, the following information shall also be included in the application for work within the Special flood hazard area:
 - A. For all structures to be elevated two feet above 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 Base Flood, existing ground, proposed finished ground and lowest floor, certified by a Registered Professional Engineer or licensed Professional Surveyor.
 3. Plans showing the methods of elevating the proposed structure including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc. When required by the Floodplain Administrator, a Registered Professional Engineer or Architect shall prepare these plans.
 4. Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to two feet above the Base Flood Elevation at the building site.
 5. During the course of construction, as soon as the basic elements of the lowest floor are in place and before further vertical construction, it is highly recommended that the applicant check for error by obtaining elevation data completed by a Registered Professional Engineer or licensed Professional Surveyor certifying the height of the lowest floor. If a mistake in elevation has been made this is the best time to correct the error.
 6. A finished construction elevation certificates shall be prepared by a Licensed Professional Surveyor or others of demonstrated

qualifications. The elevation certificate shall confirm that the structure in question, together with attendant utilities, is elevated in compliance with permit conditions.

7. A non-conversion agreement shall be signed by the applicant whenever the City of Keyser determines that the area below the first floor could be converted to a non-conforming use (generally applies to enclosed areas below base flood elevation that are 5 ft. high or more). This agreement shall state:

- i. The area below Base Flood Elevation shall not be converted for use other than for parking, building access or for allowable storage as detailed in this Ordinance.
- ii. The applicant agrees to notify prospective buyers of the existence of the non-conversion agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 1721.08 (c).

- B. For all structures to be flood proofed to two feet above the Base Flood Elevation (nonresidential structures only):

All applicants are encouraged to exceed the minimum flood proofing requirements contained herein. Flood insurance rates can be lowered significantly by increasing the level of flood proofing above the height required by this Ordinance. In order to obtain an "elevation credited" flood insurance rate on dry flood proofed buildings, flood proofing must extend at least one foot above the Base Flood Elevation.

1. Plans showing details of all flood proofing measures, prepared by a Registered Professional Engineer, 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 Base Flood, existing ground, proposed finished ground, lowest floor, and flood proofing limits, certified by a Registered Professional Engineer or Licensed Professional Surveyor.
3. A Flood Proofing Certificate, FEMA 81-65, as revised by FEMA, shall be prepared by the Registered Professional Engineer who prepared the plans in subsection (c)(2)B.1. hereof, stating that the finished structure, together with attendant utility and sanitary facilities, are designed so that:
 - i. The structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.
 - ii. 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.

- C. For Appurtenant structures constructed of flood resistant materials used solely for parking of vehicles, or limited storage, (Appurtenant Structures only)

1. A site plan prepared by a Licensed Professional Surveyor or others of demonstrated qualifications showing elevation of existing ground, proposed finished ground and lowest floor. The plan shall also show details of proposed flood resistant materials usage and the size of the proposed structure and its relation to the lot where it is to be constructed. The location of the floodway boundary shall be represented on the plan when a floodway is present on the site.
2. An elevation certificate, based on finished construction, must be prepared by a Licensed Professional Surveyor or others of demonstrated qualifications. The elevation certificate must confirm that the structure in question, together with attendant utilities is designed so that:
 - i. Flood resistant materials as detailed in FEMA Technical Bulletin 2 are used in the construction of the structure from the lowest structural element to two feet above the Base Flood Elevation and that all utilities are located at least two feet above the Base Flood Elevation.
 - ii. Hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a Registered Professional Engineer or Architect or meet or exceed the following minimum criteria:
 - a) A minimum of two openings have a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b) The bottom of all openings shall be no higher than one foot above grade.
 - c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
3. In addition, the applicant shall sign a non-conversion agreement and notify prospective buyers of the existence of the agreement. It shall be the responsibility of the applicant to transfer the non-conversion agreement to any new owner at closing via notarized signature. A signed copy of the transferred non-conversion agreement shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 1721.08 (c).

(d) Site Plan Criteria.

- (1) Site plans are required for all development, new construction and substantial improvements determined to be located in a special flood hazard area and all proposed subdivisions and manufactured home parks. These proposals shall be reviewed by the Floodplain Administrator to assure that they are consistent with the need to minimize flood damage.
- (2) The owner or developer shall submit a preliminary site plan to the Floodplain Administrator that includes the following information:
 - A. Name of Registered Professional Engineer, Licensed Professional 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 special flood hazard areas, proposed lot sites, and fill areas.
 - C. Where the subdivision or manufactured home park lie partially or completely in the special flood hazard 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 (2) or five (5) feet depending upon the slope of the land and identify accurately the boundaries of the special flood hazard areas. A Registered Professional Engineer or Licensed Professional Surveyor shall certify the site plan.

- D. All subdivision proposals and other proposed new developments which are proposed to take place either fully or partially within the approximated floodplain and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include Base Flood Elevation data and shall delineate a floodway when directed to do so by the Floodplain Administrator.

1. When a Flood Insurance Study (FIS) is available from FEMA, the data contained in that study shall be used to substantiate the Base Flood.
2. If a FEMA Flood Insurance Study is not available the required data may be available from an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resource Conservation Service or State and Local Water Resource Department.
3. If the required data is not available from other sources the applicant shall develop the technical data using detailed methodologies comparable to those contained in a Flood Insurance Study. This data shall be prepared and certified by a Registered Professional Engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts.

- E. Where the subdivision or other development site lies partially in the special flood hazard area and all proposed development including fill will take place on natural grade a significant vertical distance above the Approximated Floodplain Area (Zone A) boundary depicted on the map, development of detailed Base Flood Elevation data may not be necessary. In these cases the site plan for the proposed development must show contours at intervals of two (2) or five (5) feet depending on the slope, and clearly delineate the area to be developed and the location of the special flood hazard boundary area as scaled from the FEMA map. A Registered Professional Engineer or Licensed Professional Surveyor shall certify the site plan.

(e) Restrictions to Subdivision of Land in Special Flood Hazard Areas. Subdivision of land in the special flood hazard area shall result in lots that include a buildable portion outside of the special flood hazard area and be served by streets within the proposed subdivision having surfaces not lower than 1 foot below the elevation of the line defining the special flood hazard area limits. All new structures shall be sited on the portion of the subdivided lot that is located outside of the special flood hazard area. (Passed 2-14-18.)

1721.06 SPECIFIC REQUIREMENTS.

Design and Construction Standards. In order to prevent excessive damage to buildings, structures, and related utilities and facilities, the following restrictions apply to all development, subdivision proposals, manufactured home parks, new construction and to construction of substantial improvements, and the repair of substantial damage, to existing structures occurring in the Special flood hazard area.

(a) Basements and Lowest Floors.

- (1) Residential Structures - All new construction, relocation, substantial improvements, including repair of substantial damage, of residential structures shall have the lowest floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation.
- (2) Non-residential Structures - All new construction, relocation, substantial improvements, including repair of substantial damage, of non-residential structures shall have the lowest floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation; or, together with attendant utility and sanitary facilities, be designed so that the structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.
- (3) Openings - For all new construction, relocation, substantial improvements, and repair of substantial damage, those fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:
 - A. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - B. The bottom of all openings shall be no higher than one foot above grade.
 - C. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (4) A non-conversion agreement shall be signed by the applicant on all flood-proofed structures and any elevated structures when the City of Keyser determines that the area below the first floor could be converted to a non-conforming use (generally applies to the enclosed areas below base flood elevation that are 5 ft. high or more). This agreement shall state:
 - A. The area below the Base Flood Elevation shall not be converted for use other than for parking, building access or for allowable storage as detailed in this Ordinance.
 - B. The applicant agrees to notify prospective buyers of the existence of the non-conversion agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature. A copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 1721.08 (c).

- (b) Manufactured Home Placement. Certain unique characteristics of manufactured homes installed in special flood hazard areas pose an elevated risk to safety and substantial damage to property. Therefore:

- (1) All manufactured homes to be sited within the special flood hazard areas of the City of Keyser shall be installed by a contractor possessing a valid WV Manufactured Home Installer's License. The Licensed Manufacturer Home Installer shall use an installation design engineered to withstand flood hazards specific to the particular home site. Manufactured homes to be placed or substantially improved within the special flood hazard areas shall be installed in

accordance with the following standards:

- A. The lowest floor, ductwork and utilities including HVAC/heat pump shall be elevated two feet above the Base Flood Elevation.
 - B. Elevation shall be on reinforced piers on a permanent foundation or shall use foundation elements of at least equivalent strength engineered for use in a flood hazard area. Installation designs incorporating dry stacked block piers shall not be used in special flood hazard areas.
 - C. All manufactured homes shall be securely anchored to an adequately anchored foundation system in compliance with the requirements of 42 West Virginia Code of State Regulations, Series 19, Sections 10.1, 10.2, and 10B as authorized by West Virginia Code § 21-9-4 or the most recent revisions thereof. The anchoring shall be adequate to resist flotation, collapse, or lateral movement. Methods of anchoring may include but are not limited to the over-the-top and frame ties, attached to permanent foundation elements. Ground anchors may not be adequate to satisfy flood specific anchoring requirements. This requirement is in addition to applicable State and Local anchoring requirements for resisting wind forces.
 - D. Permanently attached rigid skirts and/or perimeter wall skirts of brick or block shall have openings to prevent collapse and damage to supporting piers. The openings shall be designed to automatically equalize hydrostatic flood forces by allowing for entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:
 - i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - ii. The bottom of all openings shall be no higher than one foot above grade.
 - iii. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
 - E. Any additions to a manufactured home shall be similarly anchored and vented.
- (2) The licensed WV manufactured home installer placing the unit shall perform a site inspection and certify in writing that the manufactured home has been installed to the standards set forth in this Ordinance.
- (c) Appurtenant Structures.
- (1) Except as provided in subsection 2 below, appurtenant structures shall be located out of the Special Flood Hazard Area or elevated to two feet above the Base Flood Elevation.
 - (2) Where appurtenant structures not connected to the principal structure are to be located on sites below the Base Flood Elevation, the following flood damage reduction provisions apply:
 - (3) Use of the structure shall be restricted to parking or limited storage.
 - A. Structures shall be no more than 200 square feet in size and valued at less than \$5,000.00.
 - B. Floors shall be at or above grade on at least one side.
 - C. Structures shall be located, oriented and constructed to minimize flood damage.
 - D. Structures shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - E. Flood resistant materials as detailed in FEMA Technical Bulletin 2 shall be used in the construction of the below BFE.
 - F. Machinery, electric devices or appliances, and all utilities shall be located at least two feet above the Base Flood Elevation.
 - G. The venting requirements contained in subsection (a) hereof are applicable and shall be strictly adhered to.
 - (4) A non-conversion agreement shall be signed by the applicant stating that the use of the appurtenant structure or detached or attached garage shall not be changed from the use permitted, acknowledging that the structure may be subject to greater flood risk and that higher flood insurance premiums may be possible, and that a change in use may require full compliance with this Ordinance. The applicant agrees to notify prospective buyers of the existence of this agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature. A copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 1721.08 (c).
- (d) Recreational Vehicle Placement. Recreational vehicles to be placed within any special flood hazard area shall either:
- (1) Be on site for fewer than 180 consecutive days. Or,
 - (2) Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnected utilities and security devices, and has no permanently attached additions. Or,
 - (3) Be installed in accordance with the manufactured home placement requirements and all other flood reduction requirements contained in this Ordinance.
- (e) Fill.
- (1) The City of Keyser officially recognizes the beneficial functions the floodplain serves in storage and transportation of water during floods. Therefore:
 - (2) Placement of fill in the special flood hazard area is discouraged and should be minimized.
 - (3) Placement of fill in other areas of the special flood hazard area shall be restricted to functional purposes such as elevating a structure. Fill shall only be permitted in the same permit with the related structure or other functional purpose. Placement of fill to dispose of soil from excavation or to elevate yards, parking lots, or fields will not generally be considered a functional purpose. The Floodplain Administrator may require the developer to provide compensatory storage before permitting fill.
 - (4) No fill shall be permitted in the Floodway
 - (5) No fill shall be permitted unless it meets the requirements of Section 1721.04 (a). All fill placed in the special flood hazard area shall meet or exceed the following standards:
 - A. Fill shall be used only to the extent to which it does not adversely affect adjacent properties. The City of Keyser may require the applicant to demonstrate through engineering reports that proposed fill would not adversely affect adjacent properties. When required,

hydrologic and hydraulic analyses shall be undertaken only by Registered Professional Engineers who shall certify that the technical methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed and sealed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the City of Keyser. During permit review the City of Keyser shall consider the following issues that have the potential to cause adverse impact to the subject property and adjacent properties:

- i. Unacceptable increases in flood heights.
 - ii. Blocking drainage from adjacent properties.
 - iii. Deflection of floodwaters onto adjacent existing structures.
 - iv. Increases to stream velocity initiating or exacerbating erosion problems.
 - v. Other unique site conditions may be considered when determining whether fill will cause adverse impact to adjacent property including, but not limited to, subsidence areas, karst topography, stream blockages, and steep topography adjacent to the channel.
- B. Fill shall be used only to the extent to which it does not adversely affect the capacity of channels or floodways of any tributary to the main stream, drainage ditch, or any other drainage facility or system.
- C. Fill Site shall be contoured to drain properly (avoid ponding)
- D. Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen (15) feet beyond the building line from all points before the start of sloping required in following subsection. For non-residential structures, fill shall be placed to provide access acceptable for intended use. At grade access, with fill extending laterally fifteen (15) feet beyond the building line shall be provided to a minimum of twenty-five (25) percent of the perimeter of a non-residential structure.
- E. Fill shall consist of soil or rock material only. Sanitary landfills shall not be permitted; no trash or woody debris shall be buried on site.
- F. Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring or settling. Fill compaction standards shall be appropriate to proposed post fill use, particular attention is necessary when fill is being used to elevate a structure.
- G. Fill slopes shall be no steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Floodplain Administrator.
- H. Fill site and fill must be protected from erosion.
- i. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of five feet per second or less will be protected from erosion by covering them with grass, vines, weeds, or similar vegetative undergrowth.
 - ii. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of greater than five feet per second will be protected from erosion by armoring them with stone or rock slope protection.
- I. All applicants placing fill in a special flood hazard area shall obtain a Conditional Letter of Map Revision (CLOMR) from FEMA when directed to do so by the Floodplain Administrator before a permit can be issued. After fill is finished the applicant shall convert the CLOMR to a Letter of Map Revision based on Fill (LOMR-F) before a Certificate of Compliance can be issued.
- J. The applicant shall submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and shall pay any fees or other costs assessed by FEMA for this purpose.
- (f) Placement of Structures and Other Development. All structures and other development 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.
- (1) Whenever possible, structures and other development shall be constructed with the longitudinal axis parallel to the direction of flood flow and,
 - (2) So far as practicable, structures and other development shall be placed approximately on the same flood-flow lines as those of adjoining structures or development.
- (g) Anchoring.
- (1) All structures and other development including stream crossings shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, and lateral movement, thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse
 - (2) All air ducts, large pipes, swimming pools and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.
- (h) Flood Protection Setback. A Flood Protection Setback equal to twice the width of the watercourse channel measuring from the top of one bank to the top of the opposite bank or 50 feet, whichever is less, shall be maintained from the top of the banks of all watercourses. To reduce erosion, natural vegetation shall be maintained in this area. Where natural vegetation does not exist along the watercourse and conditions for replanting are suitable, high priority shall be given to planting vegetation in the setback area to stabilize banks, enhance flood protection and benefit aquatic resources.
- (1) Necessary public works and temporary construction may be exempted from this subsection.
 - (2) The Floodplain Administrator may consider an appeal to the Flood Protection Setback requirement if the applicant demonstrates that it is impossible to allow any development without encroachment into the Flood Protection Setback Area. The conditions shall be the minimum necessary and shall be made only after due consideration is given to varying other siting standards, such as side, front and back lot line setbacks.
- (i) Storage.
- (1) No materials that are buoyant, flammable, explosive, or in times of flooding could be injurious to human, animal or plant life,

shall be stored below Base Flood Elevation.

- (2) Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or readily removable from the area within the time available after flood warning.
 - (3) Due to the potential of masking the natural elevation and making it more difficult to enforce this Ordinance, material that resembles "fill" material shall not be considered "storage" material for purposes of this subsection.
- (j) Utility and Facility Requirements.
- (1) All new or replacement water systems whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
 - (2) All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
 - (3) All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.
 - (4) Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (k) Drainage.
- (1) Adequate drainage shall be provided to reduce exposure to flood hazard.
 - (2) Adequate drainage paths are required around structures on slopes within zones AH and AO to guide floodwaters around and away from proposed structures
- (l) Backflow Preventers. Back flow prevention valves should be used for all enclosed structures with sewage or drainage facilities located in the special flood hazard area Floodplain Area. (Passed 2-14-18.)

1721.07 ADMINISTRATION.

(a) Designation of Floodplain Administrator. The Tax Clerk is hereby appointed as Floodplain Administrator and is vested with the responsibility, authority and means to implement the commitments made in our agreement with Federal Government to administer and implement this local law by granting or denying floodplain development permits in accordance with its provisions. The Floodplain Administrator shall also be responsible for submitting all required reports to FEMA concerning the City of Keyser's participation in the National Flood Insurance Program.

(b) Development Permits and Site Plan Approvals Required. It shall be unlawful for any contractor, person, partnership, business or corporation to undertake or cause to be undertaken, any development or the new construction, substantial improvement, repair of substantial damage, the placement or relocation of any structure (including manufactured homes) within City of Keyser, unless a permit application and standard site plan has been completed, and a permit has been obtained from the Floodplain Administrator. In addition, where land that is either partially or fully in the special flood hazard area is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a detailed site plan must be submitted to, and approved by, the Floodplain Administrator prior to any development.

(c) Approval of Permits and Plans.

- (1) The Floodplain Administrator shall review, or shall cause to be reviewed; all permit applications and plans in order to determine whether proposed building sites are reasonably safe from flooding.
- (2) All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of the State and all other applicable codes and Ordinances.
- (3) The Floodplain Administrator shall not issue a permit to any person who does not possess a valid contractor's license when a contractor's license is required by West Virginia State Code §21-11-10.
- (4) The Floodplain Administrator, before issuance of the permit, shall require the applicant to furnish satisfactory proof that such person is duly licensed as a contractor under the provisions of West Virginia State Code. If the applicant is not licensed a written affidavit that such person is not subject to licensure as a contractor or subcontractor as defined in §21-11-3 shall be provided to the Floodplain Administrator and placed in a permit file.
- (5) The Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State requires approval.
- (6) The Floodplain Administrator shall provide a copy of all permits to the County Assessor as required by West Virginia State Code §11-3-3a.
- (7) The floodplain Administrator shall provide a copy of all permits for new structures to the County E-911 addressing coordinator.
- (8) The County E-911 addressing coordinator shall provide a copy of all requests for addresses for new structures to the County Floodplain Administrator.
- (9) The City of Keyser shall provide sufficient space to allow the Floodplain Administrator to keep on file in perpetuity in a location safe from natural hazards, all information collected during the course of the administration of this ordinance.

(d) Application Procedures. Application for a permit and/or site plan approvals shall be made, in writing, on the forms supplied by the City of Keyser, and shall include all information stipulated under Section 1721.05 .

(e) Changes. After the issuance of a permit or site plan approval by the Floodplain Administrator, no changes of any kind shall be made to the application, permit; or any of the plans, specification or other documents submitted with the application without the written consent and approval of the Floodplain Administrator.

(f) Permit Placards. The Floodplain Administrator shall issue a permit placard, which shall be prominently displayed on the premises during the time construction is in progress. This placard shall show the number of the permit, the date of its issuance and be signed by the Floodplain Administrator.

(g) Start of Construction. Work on the proposed development shall begin within 180 days after the date of issuance of the permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. All work on the proposed development shall be completed within 18 months of permit issuance, at which time the permit shall expire, unless a time extension is granted, in writing by the Floodplain Administrator. The request for a time extension shall be in writing and shall state the reasons for the extension. When considering an extension, the Floodplain Administrator shall consider the following criteria:

- (1) Has the applicant diligently pursued the completion of the proposed development during the 18 months?
- (2) Will the granting of the extension be detrimental to public safety, health, or welfare or injurious to other property?

(h) Inspections, Stop-Work Orders, Violation Notice and Revocations.

(1) Inspections.

- A. Upon learning of a potential violation of this Ordinance, the Floodplain Administrator or staff shall investigate to determine whether a violation has occurred.
- B. During the construction period, the Floodplain Administrator or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable laws and ordinances.
- C. The Floodplain Administrator or other authorized official may inspect any development covered by this or previous ordinances to determine whether any portion of the development has been altered to be non-compliant with the requirements of this or other Ordinances.

(2) Stop-Work Orders.

- A. The Floodplain Administrator shall immediately issue, or cause to be issued, a "Stop Work Order" for any development found ongoing without having obtained a Floodplain Permit. Disregard of a "Stop Work Order" shall subject the violator to the penalties described in Section 1721.08 (c).
- B. The Floodplain Administrator shall issue, or cause to be issued, a "Stop Work Order Notice" for any development found non-compliant with the provisions of this Ordinance and/or the conditions of the Floodplain Permit. Disregard of a "Stop Work Order Notice" shall subject the violator to the penalties described in Section 1721.08 (c).

- (3) Violation Notice and Revocations. When it appears after investigation that a permitted development is non-compliant with the provisions of this law and/or the conditions of the permit, the Floodplain Administrator shall notify the violator by means of written violation notice. Violation notice

shall specify the nature of the violation and request that the violation be corrected within fifteen (15) days from the date appearing on the notice. Failure to correct the violation within this time period shall be cause for revocation of the permit and the governing body or authorized employee or agent to;

- A. Seek an injunction in the Circuit Court of Mineral County to restrain the violator from continuing the violation including but not limited to request for the removal of structure and land use from the property involved; and
- B. Seek a misdemeanor conviction in Magistrate Court or Circuit Court.

(i) Certificate of Compliance.

- (1) In areas of flood hazard it shall be unlawful to occupy, or to permit the use of occupancy, of any building or premises, or both, or part thereof hereafter created, erected, installed, changed, converted or wholly or partly altered or enlarged in its use or structure until a Certificate of Compliance has been issued by the local Floodplain Administrator stating that the building or land conforms to the requirements of this Ordinance. Occupying or using a building or premises in violation of this section shall subject the violator to the penalties described in Section 1721.08 (c).
- (2) In areas of flood hazard area it shall be unlawful to inspect and approve a permanent utility connection to any building or premises, or both, or part thereof hereafter created, erected, installed or rebuilt until the utility inspector is in possession of a copy of the Certificate of Compliance issued by the Floodplain Administrator stating that the particular development being inspected conforms to the requirements of this Ordinance. Inspection and approval of utilities in violation of this section shall subject the violator to the penalties described in Section 1721.08 (c).
- (3) In areas of flood hazard area it shall be unlawful to install a permanent utility connection to any building or premises, or both, or part thereof hereafter created, erected, installed or rebuilt until a Certificate of Compliance has been issued by the Floodplain Administrator stating that the development conforms to the requirements of this Ordinance. Installation of utilities in violation of this section shall subject the violator to the penalties described in Section 8.3 of this Ordinance.
- (4) A Certificate of Compliance shall be issued by the Local Administrator upon satisfactory completion of all development in areas of special flood hazard.
- (5) Issuance of the certificate shall be based upon the inspections conducted as prescribed in this Ordinance or local administrative procedures and any finished construction elevation certificate, hydraulic data, flood proofing certificate, or encroachment analyses which may have been required as a condition of the permit approval process.

(j) Fees.

- (1) A Floodplain Determination fee shall be assessed on all proposed development. This shall be a flat fee approved by the City of Keyser.
- (2) Proposed development determined to be occurring in a special flood hazard area regulated by this ordinance shall be assessed an additional fee, payable to City of Keyser based upon a set schedule approved by the City of Keyser using the estimated value of the proposed construction as determined by the Floodplain Administrator.
- (3) In addition, the applicant shall be responsible for reimbursing the City of Keyser for any additional costs for services necessary for review and/or inspection of proposed development. Services include, but are not limited to, professional engineering and surveying. The Floodplain Administrator may require a deposit towards these additional costs. Additional costs may include reimbursement for contracted services.
- (4) Due to the increased cost of processing, when any work for which a permit is required by this ordinance is started or proceeded with prior to obtaining a permit the fees above specified shall be doubled. The additional fee is intended to partially reimburse the County for the additional cost of processing permits for work already underway. To more fully recover this cost the fees above shall be tripled for every subsequent occurrence by the same person. Payment of the increased fee shall not relieve any person from complying fully with the requirements of this Ordinance in the execution of the work or from other penalties prescribed herein.

(Passed 2-14-18.)

1721.08 APPEALS AND PENALTIES.

(a) Appeals. Whenever any person is aggrieved by a decision of the Floodplain Administrator with respect to the provisions of this Ordinance, it is the right of that person to appeal to the town Council of the City of Keyser which shall be known as the Appeals Board. Such appeal shall be filed with the Town Council of the City of Keyser, in writing, within thirty (30) days after notification of the decision. Upon receipt of such appeal, the Appeals Board shall set a time, date and place not less than ten (10) nor more than sixty (60) days for the purpose of hearing the appeal. Notice of the time and place of the hearing shall be given to all parties at which time they may appear and be heard. The determination by the Appeals Board shall be final in all cases.

(b) Appeal Review Criteria.

- (1) All appeals contesting only the permit fee, the cumulative substantial damage requirement, the flood protection setback requirement, or the freeboard requirements, may be handled at the discretion of the Appeals Board.
- (2) All decisions on appeals to all other provisions of this Ordinance shall adhere to the following criteria:
 - A. Affirmative decisions shall only be issued by the Appeals Board upon a showing of good and sufficient cause, a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and 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.
 - B. An affirmative decision shall be issued only upon determination that it is the minimum necessary, considering the flood hazard, to afford relief. Financial hardship, as a sole criterion, shall not be considered sufficient justification to grant an appeal.
 - C. An affirmative decision shall be issued for the repairs or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structures continued designation as a historic structure and the variance in the minimum necessary to preserve the historic character and design of the structure.
 - D. The Appeals Board shall notify the applicant in writing over the signature of a City of Keyser official that 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, such construction below the Base Flood Elevation increases risk to life and property. Such notifications shall be maintained with a record of all decisions as required in subsection (b)(2)E. hereof; and

- E. The Appeals Board shall maintain a record of all decisions including justification for their issuance, and report such decisions issued in this biannual report to the Federal Emergency Management Agency (FEMA).
- F. An affirmative decision shall not be granted for any construction development use or activity within any floodway area that would cause any increase in the Base Flood Elevation.

(c) Penalties. Any person who fails to comply with any or all of the requirements or provisions of this Ordinance or direction of the Floodplain Administrator, or any other authorized employee of the City of Keyser, shall be unlawful and shall be referred to the Prosecuting Attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, pay a fine to the City of Keyser of no less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) plus cost of prosecution. In default of such payment such person shall be imprisoned for a period not to exceed ten days (10). Each day during which any violation of this Ordinance continues shall constitute a separate offense. In addition to the above penalties, all other actions are hereby reserved including an action in equity for the proper enforcement of this Ordinance. The imposition of a fine or penalty for any violation of, or non-compliance with, this Ordinance shall not excuse the violation or non-compliance with the Ordinance or permit it to continue; and all such persons shall be required to correct or remedy such violations or non-compliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in non-compliance with this Ordinance may be declared by the Town Council of the City of Keyser to be a public nuisance and abated as such.

(Passed 2-14-18.)

1721.09 GOVERNMENT ACTIONS.

(a) Municipal Annexation.

- (1) The County Floodplain Ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the Municipality for all annexed areas until the Municipality adopts and enforces an ordinance which meets or exceeds the requirements for participation in the National Flood Insurance Program.
- (2) Municipalities with existing Floodplain Ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing Floodplain Ordinance Standards prior to annexation of any area containing identified flood hazards.
- (3) All plats or maps of annexation shall show the special flood hazard area boundaries, Base Flood Elevation and location of the Floodway where determined.
- (4) In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22(a)(9)(v) all NFIP participating communities will notify the Federal Emergency Management Agency (FEMA) or the State Coordinating Office in writing whenever the boundaries of the City of Keyser have been modified by annexation or the City of Keyser has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that all Flood Insurance Rate Maps accurately represent the City of Keyser's boundaries, a copy of a map of the City of Keyser suitable for reproduction, clearly delineating the new corporate limits or new area for which the City of Keyser has assumed or relinquished floodplain management regulatory authority shall be included with the notification.
- (5) NFIP participating governments must notify the State Coordinating Office in writing whenever the boundaries of the governments have been modified by annexation or the government has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area. A copy of a map of the government boundaries suitable for reproduction, clearly delineating the new boundaries or new area for which the government has assumed or relinquished floodplain management regulatory authority must be included with the notification.

(b) Permits for Governmental Entities. Unless specifically exempted by law, all public utilities and Municipal, County, State and Federal entities are required to comply with this Ordinance and obtain all necessary permits. Any entity claiming to be exempt from the requirements of this Ordinance shall provide a written statement setting forth the rationale for exemption. In addition the entity claiming exemption shall provide copies of all relevant legal documentation demonstrating the exemption. (Passed 2-14-18.)

1721.10 SEVERABILITY AND MUNICIPAL LIABILITY.

(a) Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this Ordinance which shall remain in full force and effect and for this purpose the provisions of this Ordinance are hereby declared to be severable.

(b) Liability. The granting of a permit or approval of a subdivision, development plan in an identified flood/prone area, shall not constitute a representation, guarantee, or warranty of any kind by the City of Keyser or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the City of Keyser.

(Passed 2-14-18.)

CHAPTER 1731

Mobile Homes

1731.01 Findings of Council; authority to enact.

1731.02 House trailer and mobile home defined.

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1731.06 Map showing location of trailers as of December 15, 1986.

1731.07 City permits not to issue, or sewer connections made, for homes in violation of article.

1731.08 Anchoring, skirting and smoke alarms.

1731.09 Restrictions.

1731.99 Penalty.

1731.01 FINDINGS OF COUNCIL; AUTHORITY TO ENACT.

Council make the following findings of fact:

- (a) Numerous house trailers or mobile homes have been located in various areas of the City in recent years without adequate regard and consideration for planning for traffic, parking, health and the general welfare of the citizens of Keyser.
- (b) The location and occupancy of such house trailers and mobile homes have created and are creating serious traffic and health problems and endangering the general welfare of the citizens of Keyser.
- (c) It is therefore necessary, in order to protect the public welfare, health and safety of the citizens of the City to prohibit the further location and occupancy of house trailers and mobile homes in certain areas of the City.
- (d) Council has the authority to enact this article under the provisions of W.Va. Code 8-12-5, subsection 30, the Charter of the City, and other statutes and laws of the State of West Virginia.

For Charter provisions as to authority of City Council to promote the general welfare of the Municipality and to do such things as Council shall deem necessary for the interest, propriety and good order of the citizens, see Charter, Section 16.

For state law as to authority of the City to prohibit, with or without zoning, the location of occupied house trailers or mobile homes in certain residential areas, see W.Va. Code 8-12-5, subsection 30. As to authority of City to protect and promote the public safety, health, welfare and good order, see W.Va. Code 8-12-5, subsection 44.

(Ord. 225. Passed 2-10-93.)

1731.02 HOUSE TRAILER AND MOBILE HOME DEFINED.

For the purposes of this article, the terms "house trailer" and "mobile home" shall mean any vehicle or similar portable structure having no foundation other than wheels, jacks or skirtings, or any vehicle or similar portable structure which originally had no foundation other than wheels, jacks or skirtings including but not limited to a manufactured relocatable living unit designed and intended for year round occupancy as a residence or a business situated and located within the City. (Ord. 225. Passed 2-10-93.)

1731.03 PERMIT REQUIRED TO PLACE OR PARK WITHIN CITY; APPLICATION.

(a) No house trailer or mobile home shall, from and after December 15, 1986, be placed or parked within the corporate limits of the City of Keyser without the prior issuance of a special permit by the City Council. Application for such permit by a person interested in the placement of such house trailer or mobile home shall be made at the City Administrator's Office upon forms to be furnished by the City and containing the following required information:

- (1) Name and address of the person or persons desiring to place such trailer or mobile home as well as the name and address of the owner or owners of the real estate upon which such trailer or mobile home is to be parked.
- (2) A description of the real estate, indicating the depth and width of the lot to be used, as well as an affirmative statement that adequate facilities are available for the installation of water and sewerage.
- (b) A charge of twenty-five dollars shall be made for each such application and shall be paid by the applicant after the application has been approved.

(Ord. 225. Passed 2-10-93.)

1731.04 ISSUANCE OR DENIAL OF PERMIT; PROHIBITED LOCATIONS.

The issuance or denial of a permit for the parking of a house trailer or mobile home under the provisions of this article shall be in the sole discretion of City Council, except to the following extent:

A house trailer or mobile home:

- (a) Under no circumstances shall be parked or placed on a lot of less than three thousand square feet in area.
- (b) Including their porches, canopies, and similar appurtenances, shall be separated from other mobile homes, from other buildings and structures, and from the property lines of others by at least 15 feet, (when used in this article, "porches, canopies, and similar appurtenances" shall not include nonflammable structures or metal and/or concrete).
- (c) Shall be at least 10 feet from any public street, mobile home park street, common parking areas or other common use area, and
- (d) Shall not be located upon a lot unless permanent markers of the mobile home or house trailer lot are clearly marked on the ground by permanent flush stakes, markers or other suitable means.

Additionally, any Mobile Home Park, as defined by 64 CSR 40, Section 3.6 (Subsection 64-40-3.6) of the West Virginia Code of State Rules as from time to time amended, shall comply with Title 64 Series 40 of said Code of State Rule. (Ord. 225. Passed 2-10-93.)

1731.05 APPLICABILITY TO HOUSE TRAILERS AND MOBILE HOMES IN PLACE AS OF THE DECEMBER 15, 1986 (I.E. FEBRUARY 11, 1987) AND THE JANUARY 1, 1990 MAP.

Any owner or occupant of any house trailer or mobile home parked within the City as of either December 15, 1986 or January 1, 1990 shall not be subject to these regulations so long as mobile home then in existence continues upon said lot without interruption except for the immediate replacement or if the ordinary course of business by a mobile home of later manufacture than the one replaced. (Ord. 225. Passed 2-10-93.)

1731.06 MAP SHOWING LOCATION OF TRAILERS AS OF DECEMBER 15, 1986.

The City Administrator, assisted by the Chief of Police and the Police Department of the City, shall compile a map showing thereon the location and ownership of all house trailers and mobile homes on January 1, 1990. (Ord. 225. Passed 2-10-93.)

1731.07 CITY PERMITS NOT TO ISSUE, OR SEWER CONNECTIONS MADE, FOR HOMES IN VIOLATION OF ARTICLE.

In order to aid the enforcement of this article, no building, wiring, plumbing or other required permit shall be granted for any house trailer or mobile home which is located, or attempted to be located on any lot or other area in violation of any provision of this article, and no connections to or with the sanitary sewerage system of the City for any such house trailer or mobile home shall be permitted. (Ord. 225. Passed 2-10-93.)

1731.08 ANCHORING, SKIRTING AND SMOKE ALARMS.

Effective July 1, 1990, all mobile home units presently parked in the City must have secured anchoring, skirting to screen its wheels and undercarriage and UL listed smoke alarms in manufacturer's recommended numbers. (Ord. 225. Passed 2-10-93.)

1731.09 RESTRICTIONS.

Effective January 1, 1990, motor vehicles (including, but not limited to, automobiles, trucks, four-wheelers, and motorcycles) boats and trailers, either utility or special purposes, shall not be parked or stored on mobile home lots. (Ord. 225. Passed 2-10-93.)

1731.99 PENALTY.

Anyone found guilty of the violation of Section 1731.08 shall be fined by the police judge in an amount not less than twenty-five dollars (\$25.00) and not more than fifty dollars (\$50.00). Each succeeding day any violation continues to exist shall be construed as a separate violation. (Ord. 225. Passed 2-10-93.)