

**CODIFIED ORDINANCES
OF
McMECHEN,
WEST VIRGINIA**

Complete to December 31, 2012

I, Michael A. Gracik, Mayor of McMechen, West Virginia, pursuant to West Virginia Code 8-11-4(b), hereby certify that the general and permanent ordinances of the City of McMechen, West Virginia, as revised, rearranged, compiled, renumbered as to sections, recodified and printed herewith in component codes are correctly set forth and constitute the Codified Ordinances of the City of McMechen, West Virginia, 2013.

/s/ Michael A. Gracik
Mayor

Codified, edited and prepared for
publication by
THE WALTER H. DRANE COMPANY
Cleveland, Ohio

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CITY OF McMECHEN
ROSTER OF OFFICIALS
(2013)

COUNCIL

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Jill Hawkins
Alice Hill
David Kobasko
Eric Thornton
Patricia Wilson

ADMINISTRATION

Michael A. Gracik
Suzanne L. DeBolt
David Robinson
Gary Williams
John Carroll
Brett M. Ferro

Mayor
City Clerk
Police Chief
Water Superintendent
Street Commissioner
City Attorney

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Larry Bratton-Vice Chairman
Tom Fox
Tony Polsinelli

ZONING BOARD OF APPEALS

John Davis-Chairman
James Deloretta
Joseph Giovengo
Ralph Rich
James Schubert

The publisher expresses his appreciation
to

MICHAEL A. GRACIK
Mayor

and to all other City officials
who gave time and counsel in
the 2012 recodification
of the McMechen City Ordinances

AN ORDINANCE TO APPROVE THE 2012 CODIFIED ORDINANCES; TO ADOPT NEW MATTER; AND TO AMEND AND REPEAL CERTAIN OBSOLETE AND CONFLICTING LEGISLATIVE PROVISIONS.

WHEREAS, a determination has been made that the ordinances of the City of a permanent and general nature should be recodified, and

WHEREAS, Council has heretofore entered into a contract with the Walter H. Drane Company to prepare and publish such recodification, and

WHEREAS, the recodification of such ordinances, together with the new matter to be adopted, the matters to be amended and those to be repealed are before Council,

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF McMECHEN, WEST VIRGINIA, that

Section 1. The ordinances of McMechen, West Virginia, of a general and permanent nature, as revised, codified, rearranged and consolidated into component codes, chapters, articles and sections are hereby approved, adopted and enacted as the Codified Ordinances of McMechen, West Virginia, 2012.

Section 2. Pursuant to West Virginia Code 8-11-4(b):

- (a) Notice of the proposed adoption of the Codified Ordinances shall be given by publication as provided in West Virginia Code 8-11-4(a)(2);
- (b) One book-form copy of the Codified Ordinances shall be certified as correct by the Mayor and filed as a permanent record in the office of the City Clerk.

Section 3. The provisions of this Ordinance, including all provisions of the Codified Ordinances, shall be in full force and effect at the earliest time permitted by law. All ordinances or parts thereof enacted to December 31, 2012, which are inconsistent with any provision of the Codified Ordinances, are hereby repealed as of the effective date of this Ordinance except as follows:

- (a) The enactment of the Codified Ordinances shall not be construed to affect a right or liability accrued or incurred under any legislative provisions prior to the effective date of such enactment, or an action or proceeding for the enforcement of such right or liability. Such enactment shall not be construed to relieve any person from punishment for an act committed in the violation of any such legislative provisions, nor to affect an indictment or prosecution therefor. For such purposes, any such legislative provisions shall continue in full force notwithstanding its repeal for the purpose of revision and recodification.
- (b) The repeal provided above shall not affect:
 - (1) The grant or creation of a franchise, license, right, easement or privilege.
 - (2) The purchase, sale, lease or transfer of property.
 - (3) The appropriation or expenditure of money or promise or guarantee of payment.
 - (4) The assumption of any contract or obligation.
 - (5) The issuance and delivery of any bonds, obligations or other instruments of indebtedness.
 - (6) The levy or imposition of taxes, assessments or charges.
 - (7) The establishment, naming, vacating or grade level of any street or public way.
 - (8) The dedication of property or plat approval.
 - (9) The annexation or detachment of territory.
 - (10) Any legislation enacted subsequent to December 31, 2012.

Section 4. Each section of the Codified Ordinances without an ordinance or resolution history at the end thereof indicates that the section contains new material which is hereby enacted by this adopting ordinance.

Section 5. Through authentication and approval of this Ordinance the Mayor shall certify that the permanent and general ordinances of the City as codified therein are correctly set forth and constitute the Codified Ordinances of McMechen, West Virginia, 2012.

SPONSORED BY: _____

APPROVED AS TO FORM: /s/ _____

DATE _____

1ST READING: May 16, 2013

2ND READING: June 4, 2013

/s/ Michael D. Beach
Mayor

June 4, 2013
Date

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EDITOR'S NOTE

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

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

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

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

GENERAL INDEX

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

- (a) The Comparative Section Table, which indicates in the Codified Ordinances the disposition of the ordinances or resolutions integrated therein.
- (b) The Table of Contents preceding each component code, and the sectional analysis preceding each chapter.
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CODIFIED ORDINANCE McMECHEN

PART ONE - ADMINISTRATIVE CODE

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- Art. 101. Codified Ordinances.
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CODIFIED ORDINANCES OF MCMECHEN
PART ONE - ADMINISTRATIVE CODE

CHAPTER ONE - General Provisions
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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.
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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 McMechen, West Virginia, 2012, 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 Marshall 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 McMechen, 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 103
Elections

103.01 Election regulations.
103.02 Permanent registration of voters.

103.03 Duties of Clerk.

CROSS REFERENCES

Application of State election law to municipal elections - see W. Va.
Code 8-5-6
Qualification and election of the Mayor and Council - see W. Va.
Code 8-57

103.01 ELECTION REGULATIONS.

(a) The general laws of the State of West Virginia shall apply to and control, as near as may be, all procedures regarding elections, except as such laws relate to political parties or partisan procedure. The City Council shall be the municipal election authority, and may prescribe other rules for the conduct of other elections not inconsistent with general law or the provisions of this article.

(b) The powers and duties prescribed by State Law for county commissions shall devolve upon the City Council, and the powers and duties prescribed by State Law for clerks of circuit courts and for clerks of county commissions shall devolve upon the Recorder, insofar as the State Law may be made applicable to municipal elections and subject to the provisions of this article.

103.02 PERMANENT REGISTRATION OF VOTERS.

Pursuant to West Virginia Code 8-5-13, the conduct of all City elections shall be integrated with the system of "permanent registration of voters" as set out in Article 2, Chapter 3 of the Code of West Virginia, the provisions of which, insofar as they are applicable to this City, are hereby adopted and made a part of this chapter.

103.03 DUTIES OF CLERK.

At least one day prior to each election of this City, it shall be the duty of the City Clerk to procure from the office of the Clerk of the County Commission of Marshall County the municipal registration records necessary for the conduct of such election. Such records shall, within ten days after the date of the municipal election, be returned to the office of the Clerk of the County Commission by the Recorder.

ARTICLE 105
Ethics

105.01 Purpose.
105.02 Adoption.

105.03 Exemptions.
105.04 Amendment.

CROSS REFERENCES

Government Ethics Act - see W. Va. Code Ch. 6B
Conflict of interest - see W. Va. Code 8-5-19

105.01 PURPOSE.

Council hereby finds that the purposes of the West Virginia Governmental Ethics Act have reasonable, necessary and appropriate application to matters involving all elected and appointed municipal officials and employees, whether full or part time, who derive a salary, payment of wages or other direct remuneration from the City, and does now hereby affirm, ratify and adopt said State-defined purposes as being the same purposes of this Municipal Government Ethics Ordinance, without specifically republishing said State purposes herein.

105.02 ADOPTION.

Council further finds that for the purpose of assisting in the administration of the provisions of this article, that various statutory sections of the aforesaid State Act shall be hereby expressly adopted and incorporated as provisions of this article, except as otherwise expressly provided herein, and which said State statutory sections specifically hereby adopted and incorporated herein are as follows: (1) Section 6B-1-1 through 5; and (2) Section 6B-2-5.

105.03 EXEMPTIONS.

Notwithstanding the affirmation and adoption of the purposes of the State Act and further the specific adoption of the selected, statutory sections which were immediately hereinbefore set forth in Section 2-74 hereof, the Council specifically finds that certain statutory provisions of the aforesaid State Act are either inapplicable to the administration of this article or would otherwise be unduly burdensome for the City to require and administer, and specifically, the Council finds that the purposes of the State Act and of this article can be effectively executed at the municipal level without the specific adoption and incorporation of the statutory provisions of Chapter 6B, Article 2, Sections 6 and 7 of the West Virginia Code respecting financial disclosure, and Chapter 6B, Article 3 regarding the regulation and registration of lobbyists, and which said statutory provisions the Council hereby expressly opts not to include as provisions of this article, and affirmatively elects that such provisions shall not apply to this City and its officers and employees.

105.04 AMENDMENT.

Any amendment to any of the aforesaid statutory provisions of the State of West Virginia which are expressly herein adopted and incorporated as provisions of this article, shall upon enactment by the State Legislature, pursuant to the State prescribed effective date thereof, be deemed to be an amendment to this article unless the City expressly opts not to adopt any such amendment by ordinance duly adopted by the Council evidencing the non-adoption of such amendments.

CHAPTER THREE - Legislative
Art. 115. Council

ARTICLE 115
Council

- | | | | |
|--------|--|--------|--|
| 115.01 | Regular and special meetings; quorum. | 115.07 | Recorder's duties. |
| 115.02 | Annual tax estimate and levy. | 115.08 | Order of business. |
| 115.03 | Organizational. | 115.09 | Ordinances generally. |
| 115.04 | Meetings to be public, except for executive session. | 115.10 | Attestation; record of ordinances. |
| 115.05 | Procedure when meeting lacks quorum. | 115.11 | Ordinances to repeal, amend or add to Codified Ordinances. |
| 115.06 | Sergeant at arms. | 115.12 | Resolutions and record thereof. |
| | | 115.13 | Rules. |

CROSS REFERENCES

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

115.01 REGULAR AND SPECIAL MEETINGS; QUORUM.

(a) Regular meetings of the City Council shall be held at the Council chamber on the first and third Thursdays of each month, beginning at 7:00 p.m.; provided, that when any such day falls upon a holiday the Council may fix another day for such meeting; and provided further, that if the Council chamber is not available or is not suitable for any such meeting, the Council may designate another place in the City which is open to the public as the place for holding such meeting.

(b) Special meetings of the City Council, in addition to the annual tax estimate and levy meeting and the biennial organizational meeting may be called by the Mayor or by any two other members of the Council. All such calls for special meetings shall be in writing and (1) signed by the Mayor or by the other two or more members joining in the call; (2) shall set forth the purposes of the meeting and the business to be transacted; (3) a true copy of such call shall be delivered to each member of the Council not joining in the call; and delivery to his home shall be sufficient. This provision, however, may be waived by any member of the Council and any such waiver shall be entered in the journal of the Council in the minutes of the called meeting to which it relates; and (4) the calls shall be delivered as hereinbefore provided not less than eight hours before the time specified for the meeting to convene. At any special meeting which is called pursuant to this subsection, only those subjects stated in the call shall be considered or acted upon, except by affirmative vote of four members of the Council then and there present.

(c) A majority of the members of the City Council shall be necessary for a quorum for the transaction of business at any meeting, regular, adjourned or special.

115.02 ANNUAL TAX ESTIMATE AND LEVY.

Each year the City Council shall fix a date and hour between the seventh and twenty-eighth days of March, and at the time so fixed the Council shall meet in public session in the Council chamber at the City building and then and there proceed with the transaction of the business which is the subject of West Virginia Code 11-8-14. Upon completion of that business, the session shall stand adjourned until the same meeting hour on the next following third Tuesday in April, at which time it shall reconvene and the Council shall proceed in conformity with the provisions of West Virginia Code 11-8-14a.

115.03 ORGANIZATIONAL.

(a) Prior to the first regular meeting in July of each even numbered year the Mayor-elect, the Recorder-elect and the Councilmen-elect shall meet in special public session in the Council chamber and shall be called to order by the incumbent Mayor or, in his absence, by the incumbent Recorder or, in the absence of both the incumbent Mayor and the incumbent Recorder, by the eldest Councilman or Councilman-elect, whereupon those officers-elect who have not as yet taken the prescribed oath of office shall do so before an officer who is authorized by law to administer oaths, at which time they shall be deemed to have qualified for the office to which they, respectively, have been elected; provided, that no officer who is required to give bond shall be deemed to have qualified until such bond has been given, except for the specific purpose of participating and voting in this particular meeting and any adjourned session thereof.

(b) The City Council shall then proceed to adopt, readopt or amend rules governing the official conduct of its members and the transaction of its business, and the failure to do so shall have the effect of continuing in force the rules of the preceding Council. The Council shall then proceed to consider and act upon other matters of an organizational nature such as filling vacancies in appointive offices which are within the appointive authority of the Council or of the Mayor and Council; but no such office shall be deemed vacant when it is in fact held by an incumbent unless the office be declared vacant by a majority vote of the Council.

115.04 MEETINGS TO BE PUBLIC, EXCEPT FOR EXECUTIVE SESSION.

All meetings of the City Council shall be open to orderly members of the public; provided, that the Council when sitting as a committee of the whole may go into executive session and exclude all persons from attending such executive session except those whose presence is deemed necessary by such committee of the whole; and provided further, that the committee of the whole shall not reconstitute itself as the City Council until the executive session is terminated and the meeting is again open to orderly members of the public.

115.05 PROCEDURE WHEN MEETING LACKS QUORUM.

It shall be lawful for any two or more members of the City Council who have assembled at a time appointed for a meeting thereof, and a quorum is not present, to recess temporarily or to adjourn to a subsequent time, and to cause the sergeant at arms to compel the attendance of the absent members or give notice to the absent members of the time to which adjournment has been made, requiring their attendance at such adjourned meeting.

115.06 SERGEANT AT ARMS.

It shall be the duty of the Chief of Police to attend all meetings of the City Council, or cause a competent policeman to do so, to serve as sergeant at arms and maintain order in the Council chamber and in the immediate vicinity thereof; and to execute all lawful orders and process directed to him by the Council or by its presiding officer.

115.07 RECORDER'S DUTIES.

The Recorder shall attend all meetings of the City Council and shall keep, in a well-bound book, which may be known as the journal, an accurate record of all its proceedings, which shall be fully indexed and open to the inspection of all interested persons. Upon request of any member of the Council the aye's and no's on any question shall be taken and entered upon the journal.

115.08 ORDER OF BUSINESS.

At each meeting of the City Council the roll shall be called and members shall be recorded in the journal as present or absent. The subsequent proceedings at any regular meeting shall then be as specified in the order below, except as may be provided otherwise under the rules of the Council:

- (a) Call to order by Mayor.
- (b) Roll call by Recorder.
- (c) Reports and grievances of citizens.
- (d) Reading of the minutes of previous meeting by Recorder.
- (e) Action on accounts.
- (f) Communications from the Mayor.
- (g) Reports from committees.
- (h) Other business.
- (i) Adjournment.

115.09 ORDINANCES GENERALLY.

The action of the City Council shall be by Ordinance in all cases enumerated in West Virginia Code 8-11-3, except as may be otherwise provided by the Code of West Virginia; and the requirements and procedures set out in West Virginia Code 8-11-4 shall be adhered to by the City Council with respect to the introduction, action upon and passage of all ordinances.

115.10 ATTESTATION; RECORD OF ORDINANCES.

Each ordinance, upon its final passage, shall be signed by the presiding officer of the City Council and attested by the Recorder, who shall then number it consecutively and record it in the Record of Ordinances.

115.11 ORDINANCES TO REPEAL, AMEND OR ADD TO CODIFIED ORDINANCES.

(a) Each bill which proposes an ordinance to repeal, amend or add to any portion of this Code, and each bill which proposes an ordinance of a general and permanent nature suitable for inclusion in this Code though constituting new subject matter not therein contained, shall be drafted so regarding specify the specific section numbers, subsections, etc., of this Code which are to be repealed or amended and, with respect to additions and to new subject matter, so regarding provide appropriate chapter, article, section, etc., numbers therefore; and each amendment of and addition to this Code shall be set out in full and appropriate chapter and article headings and section catch lines shall be included.

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

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

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

115.12 RESOLUTIONS AND RECORD THEREOF.

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

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

115.13 RULES.

The City Council adopts Roberts' Rules of Order for the conduct of all its meetings.

CHAPTER FIVE - Administrative

- Art. 121. Mayor.
- Art. 123. Clerk.
- Art. 125. City Treasurer.
- Art. 127. City Attorney.
- Art. 129. Fire Department.
- Art. 131. Police Department.
- Art. 133. Planning Commission.
- Art. 135. Municipal Building Commission.
- Art. 137. Building Enforcement Agency.
- Art. 139. Employment Provisions.

ARTICLE 121 Mayor

121.01 Powers and duties.

CROSS REFERENCES

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

121.01 POWERS AND DUTIES.

The Mayor shall be the Chief Executive Officer of the City, and he shall see that all provisions of this Code and other ordinances, orders, acts, resolutions, rules and regulations of the City Council are faithfully executed. He shall have control of the police of the City and may appoint special police officers whenever he deems it necessary, except when otherwise provided by law, and it shall be his duty especially to see that the peace and good order of the City are preserved, and that persons and property therein are protected; and to this end he may cause the arrest and detention of all riotous and disorderly individuals in the City before a warrant for arrest is issued. He shall, from time to time, recommend to the City Council such measures as he may deem needful for the welfare of the City; and he shall have such other powers and perform such other duties as may be prescribed for him by law, this Code or other ordinance or resolution of the City Council.

ARTICLE 123
Clerk

123.01 Duties.**123.02 Cost for reproductions
of public records.**

CROSS REFERENCES

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

123.01 DUTIES.

(a) It shall be the duty of the Clerk to keep the journal of the proceedings of the City Council, and he shall have charge of and preserve the records of the Council.

(b) The Clerk shall be custodian of all City records, books, documents, correspondence and other instruments and papers for which the custody is not otherwise provided, and he shall certify to all true copies thereof for persons entitled thereto by law and shall charge therefore such fees as may be prescribed by resolution or order of the City Council. The Clerk shall issue all City licenses and permits, except as may be provided otherwise; and he shall have such other powers and perform such other duties as may be provided for the office of Clerk by State Law, this Code or other Ordinance, resolution or order of the City Council.

(c) The Clerk shall be Acting Mayor in the Mayor's absence or disability.

123.02 COST FOR REPRODUCTIONS OF PUBLIC RECORDS.

Pursuant to West Virginia Code 29B-1-3(5) the City of McMechen hereby establishes the following fees to be charged for the reproduction and/or photocopying of public records requested pursuant to the West Virginia Freedom of Information Act:

- (a) Duplicate copies of public records in magnetic, electronic and/or computer form, including but not limited to cassette tape recordings. \$ 25.00
- (b) Duplicate copies of any writings, including any books, papers, maps, photographs, cards or other documentary materials. \$ 0.25 per page

ARTICLE 125
City Treasurer

125.01 Powers and duties.

CROSS REFERENCES

Supervision of public offices - see W. Va. Code Art. 6-9
Purchasing; competitive bidding - see W. Va. Code 8-12-10
Collection of moneys - see W. Va. Code 8-13-15 et seq.
Financial statements - see W. Va. Code 8-13-23
Accounting principles; funds - see W. Va. Code 8-13-17 et seq.

125.01 POWERS AND DUTIES.

(a) Except as may be otherwise provided in this Code or by State Law, the City Treasurer shall collect all taxes, fines, special assessments and other money due the City, and shall receive from all City officers and employees money paid to them for the City, and all City money so collected or received by him shall be deposited promptly in the depositories designated for such purpose by the City Council. He shall not pay out any money of the City except as it shall have been apportioned and ordered by the City Council to be paid, and he shall sign all checks, drafts and warrants against the City Treasury or any depository of the City. The City Treasurer shall have such other powers and perform such other duties as may be prescribed for such office by State Law, this Code or other ordinance, resolution or order of the City Council.

(b) The City Treasurer shall keep complete and accurate fiscal accounts and records as required by law and in the manner prescribed by the State Tax Commissioner and other State officers having authority to prescribe therefore, and in accordance with directives from the City Council; and he shall render such reports as may be required of him by law, this Code or other ordinance, resolution or order of the City Council.

(c) The City Treasurer shall have power to collect all debts owing to the City by appropriate civil action in any court of competent jurisdiction.

ARTICLE 127
City Attorney

127.01 Powers and duties.

CROSS REFERENCES

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

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

127.01 POWERS AND DUTIES.

(a) The City Attorney shall be the legal adviser and counselor of the City Council and all other officers of the City. He shall represent the City in all courts in all proceedings in which the City, or any City officer or employee in his official capacity, is a party, and he shall perform such duties incidental to his office as may be required of him by the City Council. The City Attorney shall receive such regular compensation, and such fees for special services, as may be agreed upon by the City Council and the City Attorney.

(b) The City may designate a firm of attorneys to perform the duties required of the City Attorney in which case the firm so designated shall have all the responsibilities of the City Attorney's office as would be required of an individual attorney appointed to such position.

**ARTICLE 129
Fire Department**

129.01 Establishment.
129.02 Fire Chief.

129.03 Chain of command
129.04 Rules and regulations.

CROSS REFERENCES

Authority to use fire equipment outside City - see W. Va. Code 8-15-3
Volunteer fire companies - see W. Va. Code 8-15-4 to 8-15-8

129.01 ESTABLISHMENT.

There is hereby established a Fire Department for the purpose of providing fire protection and fire fighting facilities for the safety and protection of persons and property within the City and the area contiguous thereto.

129.02 FIRE CHIEF.

The office of Fire Chief is hereby established. The Fire Chief shall be the Chief of the Fire Department and the commanding officer thereof, and shall be responsible to the Mayor and City Council for the administration, training, discipline, morale and effective deployment and utilization of the members of the department and for the maintenance and effective deployment and utilization of the property, equipment and apparatus of the Fire Department.

129.03 CHAIN OF COMMAND.

Authority within the Fire Department shall flow from the Fire Chief through the Assistant Fire Chief and other officers and firemen downward in order of rank and seniority within rank; and subordinates shall have the powers and perform the duties of their immediate superiors when such superiors are absent or disabled. Each member of the Fire Department shall obey all lawful orders of his superiors in the chain of command.

129.04 RULES AND REGULATIONS.

The Fire Chief shall prepare rules and regulations not inconsistent with State Law, this Code or other ordinance, for the government and training of the Fire Department and the personnel, property and equipment thereof. Such rules and regulations, when approved by the Mayor by endorsement thereon and approved by resolution of the City Council, and when filed in the office of the Clerk for public inspection and use, with a copy thereof filed in the headquarters of the Fire Department for the information of all members, shall be binding on all members of the department; and it shall be unlawful for any member of the Fire Department to violate or fail to comply with any such rule or regulation which has been so promulgated, approved and filed.

ARTICLE 131
Police Department

- | | |
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| <p>131.01 Property, personnel and organization generally.</p> <p>131.02 Chief of Police.</p> <p>131.03 Powers and duties of Department and members.</p> | <p>131.04 Chain of command.</p> <p>131.05 Rules and regulations.</p> |
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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

131.01 PROPERTY, PERSONNEL AND ORGANIZATION GENERALLY.

The Police Department shall have such property and equipment, and such personnel, holding such ranks, as may from time to time be authorized by the City Council. The organization and deployment of the Police Department shall be as proscribed in the rules and regulations of the department promulgated pursuant to this article.

131.02 CHIEF OF POLICE.

The Chief of Police, subject to the authority of the Mayor as specified in section 8-10-1 of the Code of West Virginia, shall be the head of the Police Department and the commanding officer thereof. He shall be responsible for the administration, training, discipline and morale of the personnel of the department and for their effective and efficient employment to prevent crime, apprehend law violators, protect persons and property, maintain law and order and enforce State Law, this Code and other Ordinances within the City.

131.03 POWERS AND DUTIES OF DEPARTMENT AND MEMBERS.

(a) The Police Department and the members thereof shall, under the overall direction of the Mayor and the immediate direction of the Chief of Police, protect persons and property and preserve law and order within the City, and for such purposes all police officers shall have the powers and authority conferred on municipal police officers by State Law.

(b) Members of the Police Department shall be vigilant in the enforcement of the laws of the State as they may be applicable within this City and the enforcement of the provisions of this Code and other Ordinances of the City. They shall cooperate with other City officers and employees.

131.04 CHAIN OF COMMAND.

The Police Department chain of command shall run from the Mayor to the Chief of Police and from him down through the officers of the department in order of rank to the patrolmen; and it shall be unlawful for any member of the Police Department to disobey or fail to comply with any lawful order given him by a superior officer in line of duty.

131.05 RULES AND REGULATIONS.

The Chief of Police shall prepare rules and regulations not inconsistent with State Law, this Code or other Ordinance, for the government of the Police Department and the personnel, property and equipment thereof. Such rules and regulations, when approved by the Mayor by endorsement thereon and approved by resolution of the City Council, and when filed in the office of the Recorder for public inspection and use, with a copy thereof filed in the headquarters of the Police Department for the information of all members, shall be binding on all members of the department; and it shall be unlawful for any member of the Police Department to violate or fail to comply with any such rule or regulation which has been so promulgated, approved and filed.

ARTICLE 133
Planning Commission

EDITOR'S NOTE: There are no sections in Article 133. This article has been established to provide a place for cross references and future legislation.

CROSS REFERENCES

Authority to establish - see W. Va. Code 8-24-1

General provisions - see W. Va. Code 8-24-5

Adoption of comprehensive plan - see W. Va. Code 8-24-16
et seq.

Approval of subdivision plats - see W. Va. Code 8-24-28 et seq.

Zoning recommendations - see W. Va. Code 8-24-42 et seq.

ARTICLE 135
Municipal Building Commission

135.01 Creation.

135.02 Powers and duties.

CROSS REFERENCES

Building Commissions - see W. Va. Code Art. 8-33

135.01 CREATION.

(a) This article is enacted pursuant to authority contained in the West Virginia Code, Chapter 8, Article 33, Section 1.

(b) There is hereby adopted by the City Council a Municipal Building Commission.

(c) The Building Commission, when created, shall be a public corporation, and shall have perpetual existence.

(d) All property, powers, duties, and the management and control of the Building Commission shall be vested in a board consisting of representatives appointed by the City Council. Such board shall consist of not less than three nor more than five members. All members of the Building Commission shall be appointed for terms of five years. Prior to making the initial appointments to the Building Commission, the City Council shall make such initial appointments so that approximately one-fifth of the total number of members of the Building Commission shall be appointed for a term of one year, approximately one-fifth of the total number of members of the Building Commission shall be appointed for a term of two years, approximately one fifth of the total number of members of the Building Commission shall be appointed for a term of three years, approximately one-fifth of the total number of members of the Building Commission shall be appointed for a term of four years, and approximately one-fifth of the total number of members of the Building Commission shall be appointed for a term of five years. As the term of each such initial appointee expires, the successor to fill the vacancy created by such expired term shall be appointed for a term of five years.

(e) If any member of the Building Commission should die, resign, or for any reason cease to be a member of the Building Commission, the City Council which such member represented, shall appoint another individual to fill the unexpired portion of the term of such member. No more than two-thirds of the total number of members of the Building Commission shall be from the same political party, and no member of the Building Commission shall hold any office (other than the office of notary public) or employment under the United States of America, the State of West Virginia, any county or political subdivision thereof, or any political party. All members of the Building Commission shall be residents of the City. No member of the Building Commission shall receive any compensation for his services as such, but each member shall be reimbursed by the Building Commission for any reasonable and necessary expenses actually incurred in the discharge of his duties as a member of the Building Commission.

135.02 POWERS AND DUTIES.

The Building Commission shall have plenary power and authority to:

- (a) Sue and be sued;
- (b) Contract and be contracted with;
- (c) Adopt, use, and alter a common seal;
- (d) Make and adopt all necessary, appropriate, and lawful bylaws, rules, and regulations pertaining to its affairs;
- (e) Elect such officers, appoint such committees and agents, and employ and fix the compensation of such employees and contractors as may be necessary for the conduct of the affairs and operation of the Building Commission;
- (f) Acquire, purchase, own, and hold any property, real or personal, and acquire, construct, equip, maintain, and operate public buildings, structures, projects, and appurtenant facilities, of any type or types for which the City Council creating the Building Commission is permitted by law to expend public funds (all hereinafter in this article referred to as facilities);
- (g) Apply for, receive and use grants-in-aid, donations, and contributions from any source or sources, including but not limited to, the United States of America, or any department or agency thereof, and accept and use bequests, devises, gifts, and donations from any source whatsoever;
- (h) Sell, encumber, or dispose of any property, real or personal;
- (i) Issue negotiable bonds, notes, debentures, or other evidence in indebtedness, and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefore which it may deem necessary or advisable in connection with exercising powers as provided herein;
- (j) Raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of Chapter 8 of the West Virginia Code, being: sections seven, ten, twelve, and sixteen [§§8-16-7, 8-16-10, 8-16-12, and 8-16-16], article sixteen, without regard to the extent provided in section five [§8-33-5] of this article, to the limitations specified in said section twelve [§8-16-12], article sixteen, it being hereby expressly provided that for the purpose of the issuance and sale of revenue bonds, the Building Commission is a governing body as that term is used in article sixteen [§8-16-1 et seq.] only.
- (k) Subject to such reasonable limitations and conditions as the City Council may prescribe by ordinance or by order, exercise the power of eminent domain in the manner provided by chapter fifty-four [§54-1-1 et seq.] of the West Virginia Code for business corporations, for the purposes set forth in subsection (f) hereof, which purposes are hereby declared public purposes for which private property may be taken or damaged;

- (l) Lease its property or any part thereof, for public purposes, to such persons and upon such terms as the Building Commission deems proper, but when the City is a lessee under any such lease, such lease must contain a provision granting the City the option to terminate such lease during any fiscal year covered thereby; and
- (m) Do all things reasonable and necessary to carry out the foregoing powers.

ARTICLE 137
Building Enforcement Agency

137.01 **Established.**

137.02 **Authority.**

CROSS REFERENCES
Building Enforcement Agency - see W.Va. Code 8-12-16

137.01 ESTABLISHED.

There is hereby created a Building Enforcement Agency, which shall consist of the Mayor, the City Building Inspector, and one member at large, to be selected by and to serve at the will and pleasure of the Mayor. The County Health Officer or his designee and the Chief of the Fire Department shall serve as ex-officio members of the Agency.

137.02 AUTHORITY.

The Building Enforcement Agency shall have the power and authority to require the repair, closing or demolition of any dwelling or other building, situated in the City, which is unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such building to be unsafe, unsanitary, dangerous or detrimental to the public welfare.

ARTICLE 139
Employment Provisions

EDITOR'S NOTE: The Personnel Policy is on file with the
City Clerk.

**139.01 Drug and alcohol testing
policy.**

CROSS REFERENCES

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

139.01 DRUG AND ALCOHOL TESTING POLICY.

(a) Purpose. To promote the health, safety and welfare of its employees and the public by striving to eliminate the negative effects of substance use and abuse from the workplace, and to assist those employees who have a drug-related or alcohol-related problem with rehabilitation. In furtherance of this purpose, any employee who has a drug-related or alcohol-related problem is encouraged, for his/her own benefit as well as the benefit of fellow employees and the public, to voluntarily seek treatment of such problem through a treatment program/facility of his/her choice.

(b) Policy Statement.

(1) It is the policy of the City of McMechen, West Virginia, a Municipal Corporation to ensure that its workplaces are free of illegal drugs and controlled substances by prohibiting the use, possession, purchase, distribution, sale or presence in the body system, without medical authorization, of illegal or controlled substances. This is applicable while employees are engaged in any work-related activity, which includes

performance of agency business during regularly scheduled work days, meal breaks and/or social occasions having a connection with the job or the agency. The unlawful possession, use, manufacture, distribution, or dispensation of alcohol and/or a controlled substance; the reporting to work under the influence of a controlled substance or alcohol; the presence of a non-medically prescribed controlled substance or alcohol in the body system; or possession of drug paraphernalia are all prohibited in the workplace.

- (2) Possession and/or distribution of a controlled substance will be dealt with promptly in accordance with legal and administrative disciplinary procedures. Employees who are in violation of the provisions of the Drug-Free Workplace Act shall be subject to disciplinary action up to and including termination, and may be required to participate in a drug rehabilitation or assistance program.
- (3) The policy's primary goal is to ensure that illegal drug use is eliminated and that the City of McMechen's municipal workplace is safe, healthful, productive, and secure for its employees and citizens.

(c) Coverage. This policy shall cover all employees of the City of McMechen, West Virginia, including executive, administrative, full-time, part-time, exempt, and temporary employees.

(d) Employee Responsibilities.

- (1) Employees are prohibited from engaging in the following activities: (For the purpose of this section, "on the job" will be deemed to include meal periods, breaks, stand-by duty and any time that an employee is acting in his/her capacity as a City employee, whether on or off City property).
- (2) Using, purchasing, selling, possessing, distributing, or accepting illegal drugs or drug-related paraphernalia while on or off the job.
- (3) Using, purchasing, selling, possessing, distributing or accepting alcohol while on the job.
- (4) Showing up for work or being on the job while impaired by illegal drugs, alcohol and/or prescription or non-prescription (i.e., over-the-counter) drug(s)/medication(s); and transporting illegal drugs, drug-related paraphernalia and/or alcoholic beverages in a City owned vehicle.
- (5) Although the medically authorized use of prescription drug(s)/medication(s), is not prohibited, any employee who is taking prescription or non-prescription drug(s)/medication(s) and has reason to believe, based on information provided by his/her physician, pharmacist, or the drug/medication label that the drug/medication may impair the ability to safely and effectively perform the duties and responsibilities required of his/her position, will advise his/her immediate supervisor of the use of such drug(s)/medication(s) prior to beginning work. The information provided to the supervisor will be transmitted to the Department Head for review and recommendations.

- (e) Occasions for Drug/alcohol Testing.
- (1) Pre-employment, pre-transfer, and pre-promotion testing. Testing will be required of any applicant selected to fill a City position, or of any employee selected for transfer or promotion from a position considered a safety-sensitive position to a position directly involving the public safety. Such examination will include a drug screen. The determination that a position directly involves the public safety will be made by the Department Head with the approval of the City Council and the City Attorney or their duly authorized designees.
 - (2) Random testing. Those employees in safety-sensitive positions shall be subject to random testing at the discretion of a competent corporate health division at a local hospital or any other corporate health or drug/alcohol testing facility. Said corporate health division shall be chosen at the discretion of the City of McMechen, West Virginia. Safety-sensitive positions are defined as those positions that require the use of dangerous tools and equipment, use of potentially dangerous chemicals in the testing or monitoring of the City of McMechen's water supply, and routinely operating motor vehicles in the course of employment.
 - (3) Reasonable suspicion. An employee will be required to submit to a urine, blood, or breath test for chemical analysis to determine the presence, if any of drug(s) or alcohol in the employee's system when the employee's supervisor has a reasonable suspicion that the employee is under the influence of drug(s) or alcohol. "Reasonable suspicion" is defined as the presence or occurrence of specific objective facts or events and reasonable inferences drawn from those facts or events in light of experience, that the employee is, at the time of the suspicion, under the influence of drug(s) or alcohol. The following procedural safeguards will be observed to ensure that reasonable suspicions do, in fact, exist:
 - (4) The supervisor must have knowledge of objective facts or events that would reasonably lead him/her to suspect that an employee is under the influence of drug(s) or alcohol. Such facts or events may include, but are not limited to, the following:
 - A. Observed possession or use of drugs or alcohol by the employee "on-the-job" or prior to reporting for duty;
 - B. The smell of marijuana or alcohol on the employee's person;
 - C. The occurrence of an accident or incident involving personal injury or damage to property when there is no reasonable explanation for the occurrence thereof;
 - D. Mood swings, agitation, hyperactivity, explosiveness, uncharacteristic of the employee; and
 - E. Excessive absenteeism, tardiness or other significant changes in job performance.
 - (5) The determination by a supervisor that reasonable suspicion exists will be supported by at least one additional supervisory-level employee. The Mayor of the City of McMechen is considered a supervisor of all employees.
 - (6) The facts or events leading to a determination that reasonable suspicion exists will be documented in writing.
(Passed 2-5-09.)

(f) Testing Procedures.

- (1) A drug screen conducted in accordance with the provisions of this policy may include an analysis for any substance which could impair an employee's ability to safely and effectively perform the duties and responsibilities required of his/her job, including, but not limited to, the following:

<u>Drug Class:</u>	<u>Specific Classes & Sub-Classes</u>
Amphetamines	
	Amphetamine Methamphetamine
MDA Analogues	
	MDA(Methylenedioxyamphetamine) MDMA (Methyenedioxymethamphetamine)
Barbituates	
	Amobarbital Butalbital Pentobarbital Phenobarbital Secobarbital
Benzodiazepines Cocaine Metabolites Marijuana Metabolites Methadone Methaqualone Opiates	
	Morphine Codeine Hydromorphone Hydrocodone
Oxycodones	
	Oxymorphone Oxycodone
Phencyclidine Propoxyphene	
and/or;	
Anabolic steroids, androgenic steroids, or any other controlled substances used to enhance physical development and/or athletic performance.	

- (2) When a determination has been made that reasonable suspicion exists, the following procedures will be applicable:
 - (3) Drug(s). The employee will be transported to the nearest hospital, will be provided a "Consent Form" (Exhibit A) for signature and, after signing the Form, will be required to provide a urine or blood sample for chemical analysis to determine the presence, if any, of drugs) in the employee's system.
 - (4) Alcohol. The employee will be transported to the Marshall County Sheriff's Department, will be provided a "Consent Form" for signature, and, after signing the Form, will have a sample of his/her breath taken by a certified Intoximeter operator for chemical analysis to determine the presence, if any, of alcohol in the employee's blood.
 - (5) Whenever an applicant's or employee's urine, or blood sample, tests positive for the presence of drug(s) in the applicant's or employee's system, the urine or blood sample can be subjected to a second independent chemical test at the request of the employee or applicant.
 - (6) The request will be made, in writing, to the Department Head within three (3) calendar days of the date on which the employee receives the potential positive test. The laboratory that conducts the independent confirmatory test will be selected by the applicant or employee from a list of laboratories approved by the City Council.
 - (7) The City will bear the costs for all alcohol tests and drug tests. Applicants and employees will bear the cost of independent tests. When an applicant or employee requests an independent test, he/she will be required to pay for the test prior to its administration. Notwithstanding the above, when the results of an independent test are negative, the City will reimburse the applicant or employee for the cost of the test.
 - (8) Breath tests shall be administered in accordance with the rules and regulations set forth by the West Virginia Department of Health. Those tests administered pursuant to the same shall be deemed conclusive. Those not, shall be disregarded. An employee/applicant is deemed to have a positive test for alcohol when the employee/applicant has a blood alcohol content of .02 or greater.
(Passed 6-18-09.)
- (g) Post-Testing Procedures.
- (1) When a supervisor, or his duly authorized designee, determines, based on reasonable suspicion of impairment, that an employee should not be permitted to continue working, the employee will be transported home by a supervisory-level employee or will be required to remain on the premises until a responsible friend or relative can provide transportation.
 - (2) Nothing herein will be deemed to prohibit management from temporarily reassigning an employee, or from placing the employee in an approved leave status, pending the results of a drug test when such action is deemed to be in the best interest of the City. Such action, however, will not be considered disciplinary in nature, nor will any presumption of guilty arise therefrom. However, when the results of the confirmatory test are negative, an employee required to take leave pending the results of a drug test will have his/her leave reinstated or will be compensated for hours spent in a leave-without-pay status.

- (h) Treatment/Discipline.
- (1) An applicant whose test results are positive will be denied employment with the City of McMechen, West Virginia.
 - (2) An employee whose test results are positive shall be subject to discipline up to, and including, dismissal.
 - (3) If the Department Head recommends treatment, the employee will be required to participate in, and successfully complete, the treatment plan that is recommended. The employee will be required to execute a release of information form allowing the City of McMechen to verify his/her participation in, and successful completion of the treatment plan. Failure of the employee to successfully complete the treatment plan or to execute the release of information form may result in disciplinary action in addition to that which may have already been taken in accordance with the City Discipline Policy and Procedure.
 - (4) Management may also require the employee to submit to periodic drug or alcohol tests during treatment, prior to the employee's return to work or release from leave status, and/or during the one (1) year period immediately following the employee's return to work.
- (i) Refusal to Execute Consent Form or to Submit to Urine, Blood or Breath Test.
- (1) An applicant who refuses to execute the Consent Form or to submit to a urine, blood or breath test will be denied employment.
 - (2) An employee who refuses to execute the Consent Form or to submit to a urine, blood or breath test will be subject to immediate discipline up to, and including, dismissal. (Passed 2-5-09.)
 - (3) The refusal to take such test shall be interpreted as a positive test. (A.O.)
- (j) Miscellaneous.
- (1) Employees who have a drug-related or alcohol-related problem are always encouraged to voluntarily contact the Department Head for counseling and/or treatment. No information regarding voluntary referral to the Department Head, or follow-up treatment as a result thereof, will be shared with any individual in the City without the employee's consent. Those employees who voluntarily come forward will be subject to random testing regardless of position.
 - (2) An applicant's or employee's executed Consent Form, test results, treatment information, and any other documentation generated as a result of this policy will be confidentially maintained. Such information will only be released upon written authorization of the applicant or employee involved, to City personnel on a need-to-know basis, or as otherwise required or permitted by law.
 - (3) The Department Heads are hereby authorized to develop and implement such rules and regulations as may be necessary for the administration and enforcement of this policy.
 - (4) The provisions of this policy may, at the sole discretion of the City Council, be amended from time to time when such amendment(s) are deemed to be in the best interest of the City and its employees.
 - (5) The provisions of this policy will be severable and should any one or more of such provisions be declared or adjudged to be invalid or unenforceable, the remaining provisions will be unaffected and will remain in full force and effect. (Passed 2-5-09.)

CHAPTER SEVEN - Judicial
Art. 171. Municipal Court.

ARTICLE 171
Municipal Court

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|--------|---|--------|--|
| 171.01 | Court created; jurisdiction generally. | 171.05 | Alternate Municipal Judge. |
| 171.02 | Municipal Judge. | 171.06 | Court costs. |
| 171.03 | Warrants, orders and process. | 171.07 | Reinstatement fee; drivers license. |
| 171.04 | Rules governing court and judges; maintenance of records. | 171.08 | Failure of accused person to appear for Court. |

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

171.01 COURT CREATED; JURISDICTION GENERALLY.

There is hereby created a court, to be known as the "Municipal Court," which shall have criminal jurisdiction over violations of City Ordinances and the criminal jurisdiction of a magistrate of the State of West Virginia with respect to offenses committed within the City limits.

171.02 MUNICIPAL JUDGE.

(a) There shall be a judge, to be known as the "Municipal Judge," who shall be appointed by the Mayor with the consent and approval of the City Council, who shall serve for a term of two years and who shall be subject to removal for cause only. The Municipal Judge shall receive such compensation as may be fixed by the City Council. The person(s) so appointed as Municipal Judge shall qualify by taking the oath of office as such and shall give bond in an amount fixed by Council, under which bond he shall be responsible for all funds coming into his hands by virtue of such appointment.

(b) In the event of the temporary absence or disability of the Municipal Judge, the Mayor shall appoint a person to serve as Acting Municipal Judge during such absence or disability; and such Acting Municipal Judge shall have all and the same powers and authority as the Municipal Judge.

(c) In the event of the death, resignation, removal or permanent disability of the Municipal Judge, the Mayor shall appoint a person to serve as Municipal Judge for the unexpired term.

(d) The Municipal Judge shall preside over the Municipal Court. He shall be a conservator of the peace within the City, and insofar as any ordinance of the City is concerned, shall have and exercise all such powers and duties in criminal cases as a magistrate may lawfully exercise under the statutes of the State, and he shall also be ex officio a magistrate within the City, and shall, within the City, have and exercise all of the criminal powers and perform all duties fixed by law in a magistrate, except that he shall have no jurisdiction in civil cases; and he shall have such further powers and perform such other duties as may be from time to time prescribed or conferred by any law of the State or by ordinance of the City.

(e) The Municipal Judge shall have power to issue warrants upon complaint under oath by any person or officer for the arrest of anyone charged with any offense within the jurisdiction of the court. The Municipal Judge shall hear and determine all cases over which the court has jurisdiction, and within the limits prescribed by ordinance or by general law shall have the power to punish by fine or imprisonment, or both. The Municipal Judge shall have power to summon persons or subpoena witnesses for the trial of any case before him, to compel the attendance of police officers of the City, to require the Chief of Police to enforce all judgments or orders entered by him in the exercise of his powers as Municipal Judge and to issue executions for all fines, penalties and costs imposed by him. The proceedings for the recovery of fines or for the enforcement of penalties fixed by any ordinance or law shall, so far as applicable, conform to the provisions of the general law governing civil proceedings before a magistrate of the State of West Virginia.

171.03 WARRANTS, ORDERS AND PROCESS.

All warrants and other process and orders of the Municipal Court shall be directed to the Chief of Police, to be executed by him or by one of his subordinates. The police officer executing any such process or order shall have the same authority and be subject to the same liability as a sheriff of the State of West Virginia in performance of like services.

171.04 RULES GOVERNING COURT AND JUDGES; MAINTENANCE OF RECORDS.

In the discharge of his duties and in the trial of cases, the Municipal Judge shall follow the rules prescribed by law for criminal proceedings before a magistrate of the State of West Virginia. The Municipal Judge shall keep a record of all warrants issued by him, of all persons arrested and brought before him and of all trials, fines or sentences imposed or judgments entered by him in a permanent book to be known as the Municipal Court docket. A record of all entries made in such docket shall be signed by the Municipal Judge on the date of such entry.

171.05 ALTERNATE MUNICIPAL JUDGE.

The City Clerk of the City of McMechen shall be permitted to serve as an alternative Municipal Judge in times of necessity as designated by the Mayor, provided however, that said City Clerk has been certified pursuant to the laws of the State of West Virginia to act as a Municipal Judge within said State and said certification is current and valid.
(Passed 1-6-05.)

171.06 COURT COSTS.

(a) There shall hereafter be assessed in all proceedings before the Municipal Court, Court costs in the highest amount permitted by law.

(b) Court costs shall be assessed for each case that comes before Municipal Court.

(c) In all cases of violation of City ordinances, the Court costs shall be assessed against the losing party.

(d) In all other cases which may come before Municipal Court, whether of a civil or criminal nature, the Court costs shall be assessed against the losing party.
(Passed 12-20-90.)

(e) (1) In addition to all fines imposed upon anyone convicted of any violation of any ordinance, regulation or law of the City of McMechen, there shall be imposed and assessed the sum of \$10.00 as an Administrative Cost incurred by the Municipal Court.

(2) The above referenced Administrative Cost and fines are in addition to any costs required by State law to be imposed upon persons convicted of such offense.

(Passed 4-17-97.)

171.07 REINSTATEMENT FEE; DRIVERS LICENSE.

(a) A fee of fifteen dollars (\$15.00) is hereby imposed upon any person whose drivers license of privilege to operate a motor vehicle in this state is reinstated after having been suspended for any of the following:

(1) Failure to timely pay costs, fines, forfeitures or penalties imposed by the municipal court for motor vehicle violations;

(2) Default on a payment plan for such costs, fines, forfeitures or penalties; or

(3) Failure to appear or otherwise respond in court when charges with a motor vehicle violation, all as provided for by the West Virginia Code.

(b) The fee imposed by this section shall be paid at the time the person's drivers license or privilege to drive is reinstated by the state division of motor vehicles. Such fee is imposed to defer the costs to the City associated with administrative expenses related to the suspension and reinstatement.

(Passed 4-1-04.)

171.08 FAILURE OF ACCUSED PERSON TO APPEAR FOR COURT.

(a) If any person fails to appear at a duly scheduled hearing or trial in municipal court, who was issued a citation or summons to appear, or who has been arrested, and thereafter released upon his personal recognizance or otherwise admitted to bail, and who shall willfully and without just cause fail to appear as and when it may be required, may be apprehended and brought before the court by capias.

(b) Any person, who has been issued a citation or summons to appear, or arrested, and thereafter released upon his personal recognizance or otherwise admitted to bail, and who shall willfully and without just cause fail to appear at a duly scheduled hearing or trial in municipal court, shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or confined to jail for not more than thirty days, or both such fine and confinement. (Passed 10-22-12.)

CODIFIED ORDINANCES OF McMECHEN

PART THREE - TRAFFIC CODE

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. 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.

CHAPTER NINE - Pedestrians and Bicycles

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

CODIFIED ORDINANCES OF McMECHEN

PART THREE - TRAFFIC CODE

CHAPTER ONE - Administration

Art. 301. Definitions.

Art. 303. Enforcement, Impounding and Penalty.

Art. 305. Traffic Control.

**ARTICLE 301
Definitions**

- | | | | |
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| 301.01 | Meaning of words and phrases. | 301.27 | Railroad sign or signal. |
| 301.02 | Authorized emergency vehicle. | 301.28 | Railroad train. |
| 301.03 | Bicycle. | 301.29 | Residence district. |
| 301.04 | Bus. | 301.30 | Residential street. |
| 301.05 | Business district. | 301.31 | Right of way. |
| 301.06 | Controlled-access highway. | 301.32 | Roadway. |
| 301.07 | Crosswalk. | 301.33 | Safety zone. |
| 301.08 | Driver. | 301.34 | School bus. |
| 301.081 | Electric personal assistive mobility device. | 301.35 | School grounds. |
| 301.09 | Explosives. | 301.36 | Semitrailer. |
| 301.10 | Flammable liquid. | 301.37 | Sidewalk. |
| 301.11 | Gross weight. | 301.38 | Stop. |
| 301.12 | Intersection. | 301.39 | Stop, stopping or standing. |
| 301.13 | Laned roadway. | 301.40 | Street or highway; alley. |
| 301.14 | Moped. | 301.41 | Through street or through highway. |
| 301.15 | Motorcycle. | 301.42 | Traffic. |
| 301.16 | Motor-driven cycle. | 301.43 | Traffic control devices. |
| 301.17 | Motor vehicle. | 301.44 | Traffic control signal. |
| 301.18 | Owner. | 301.45 | Trailer. |
| 301.19 | Park. | 301.46 | Truck. |
| 301.20 | Parking area. | 301.47 | Vehicle. |
| 301.201 | Passenger van. | 301.48 | Wheelchair. |
| 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. | | |

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 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 combustive units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb. (WVaC 17C-1-24)

301.10 FLAMMABLE LIQUID.

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

301.11 GROSS WEIGHT.

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

301.12 INTERSECTION.

"Intersection" includes:

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

301.13 LANED ROADWAY.

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

(WVaC 17C-1-39)

301.14 MOPED.

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

(WVaC 17C-1-5a)

301.15 MOTORCYCLE.

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

(WVaC 17C-1-4)

301.16 MOTOR-DRIVEN CYCLE.

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

(WVaC 17C-1-5)

301.17 MOTOR VEHICLE.

"Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, 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

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

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**

**305.01 Authority of Council as to
traffic control signs.**

CROSS REFERENCES

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

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

305.01 AUTHORITY OF COUNCIL AS TO TRAFFIC CONTROL SIGNS.

Any sign erected by Council pursuant to authority contained in this Traffic Code may be ordered changed or removed by Council; and nothing in this Traffic Code shall be construed as limiting the authority of Council from directing that traffic control signs be erected in such form and at such places as Council may deem proper.

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

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| <p>311.01 Placing injurious material
in street.</p> <p>311.02 Play streets.</p> <p>311.03 Toy vehicles on streets.</p> | <p>311.04 Parades and assemblages.</p> <p>311.05 Depositing snow on public
streets or private property.</p> <p>311.99 Penalty.</p> |
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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.

311.05 DEPOSITING SNOW ON PUBLIC STREETS OR PRIVATE PROPERTY.

(a) Discharging or depositing of snow by truck, plow, blower or other snow removal equipment on to any street, highway or public sidewalk is prohibited except for accumulations which are necessary residuals of street or roadway cleaning operations by the City or other public authority.

(b) Any person being the operator or the owner or in charge of any truck, plow, blower or other snow removal equipment from which such substance has fallen, sifted, been pushed or deposited upon the surface of a public street or highway in violation of this section shall, on the direction of any member of the Police or Fire Department of the City, immediately remove such substance from the street or highway.

(c) No person, being the operator or the owner or in charge of any truck, plow, blower, or other snow removal equipment removing snow from a private driveway or sidewalk, shall deposit snow upon a streetlawn, unless said snow is completely on the streetlawn and not upon the street, highway or public sidewalk.

(d) No person being the operator or the owner or in charge of any truck, plow, blower, or other snow removal equipment removing snow from a private driveway or sidewalk shall push or deposit snow at or near any intersection so as to impair visibility at any intersection.

311.99 PENALTY.

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

**ARTICLE 313
Traffic Control Devices**

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

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

313.01 OBEDIENCE TO TRAFFIC CONTROL DEVICES.

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

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

313.02 OBEDIENCE TO TRAFFIC CONTROL INSTRUCTIONS AT STREET CONSTRUCTION.

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

(WVaC 17C-3-4a)

313.03 TRAFFIC CONTROL SIGNAL TERMS AND LIGHTS.

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

- (a) Green alone or "go":
 - (1) Vehicular traffic facing the signal, except when prohibited under Section 343.02, may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.
 - (2) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.
- (b) Yellow alone or "caution" when showing following the green or "go" signal:
 - (1) Vehicular traffic facing the signal is thereby warned that the red or "stop" signal will be exhibited immediately thereafter and such vehicular traffic shall not enter or be crossing the intersection when the red or "stop" signal is exhibited.
 - (2) Pedestrians facing such signal are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right of way to all vehicles.
- (c) Red alone or "stop":
 - (1) Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "go" is shown alone except as provided in subsection (c)(2) and (3) hereof.
 - (2) A vehicle which is stopped in obedience to a red or "stop" signal as close as practicable at the entrance to the crosswalk on the near side of the intersection or, if none, then at the entrance to the intersection, may cautiously make a right turn but such vehicle shall yield the right of way to pedestrians lawfully within a crosswalk and to other vehicular traffic proceeding as directed by the signal at such intersection, except that Council may by ordinance prohibit any such right turn against a red or "stop" signal at any intersection which ordinance shall be effective when a sign is erected at such intersection giving notice thereof.

- (3) A vehicle which is stopped in obedience to a red or "stop" signal as close as practicable at the entrance to the crosswalk on the near side of the intersection or, if none, then at the entrance to the intersection on a one-way street which intersects another one-way street on which traffic moves to the left, may cautiously make a left turn into the one-way street but such vehicle shall yield the right of way to pedestrians lawfully within a crosswalk and to other vehicular traffic proceeding as directed by the signal at such intersection, except that Council may by ordinance prohibit any such left turn against a red or "stop" signal at any intersection, which ordinance shall be effective when a sign is erected at such intersection giving notice thereof.
- (4) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.
- (d) Red with green arrow:
 - (1) Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right of way to pedestrians lawfully within a crosswalk and to other traffic lawfully using the intersection.
 - (2) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.
- (e) In the event an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.
(WVaC 17C-3-5)

313.04 PEDESTRIAN CONTROL SIGNALS.

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

- (a) Walk. Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right of way by the drivers of all vehicles.
- (b) Wait. No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his or her crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.
(WVaC 17C-3-6)

313.05 FLASHING TRAFFIC SIGNALS.

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

- (a) Flashing Red (Stop Signal). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or, if none, then before entering the intersection and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.
- (b) Flashing Yellow (Caution Signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.
(WVaC 17C-3-7)

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

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

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

313.07 ALTERATION, INJURY, REMOVAL OF TRAFFIC CONTROL DEVICES.

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

313.08 TRAFFIC VIOLATIONS IN CONSTRUCTION ZONES.

(a) 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. 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

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

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 injury to or death of any person shall immediately stop the vehicle at the scene of the crash or as close thereto as possible but shall then forthwith return to and shall 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 an injured person as required by Section 331.03. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person violating the provisions of subsection (a) of this section after being involved in a crash resulting in the death of any person is guilty of a felony and shall be prosecuted under appropriate State law.

(c) Any person violating the provisions of subsection (a) of this section after being involved in a crash resulting in physical injury to any person is guilty of a misdemeanor, and subject to the penalty provided in this Traffic Code.

(WVaC 17C-4-1)

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.

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 give his or her name, address and the registration number of the vehicle he or she is driving and shall upon request and if available exhibit his or her driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such 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

<p>333.01 Driving under the influence.</p> <p>333.011 Participation in Motor Vehicle Alcohol Test and Lock Program.</p>	<p>333.02 Reckless driving.</p> <p>333.03 Hazardous driving.</p> <p>333.99 Penalty.</p>
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CROSS REFERENCES

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

333.01 DRIVING UNDER THE INFLUENCE.

- (a) Any person who:
- (1) Drives a vehicle in this Municipality while he or she:
 - 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;
 - 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; and
 - (2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure, is guilty of a misdemeanor, and shall be confined in jail for not less than ninety days nor more than one year and shall be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000).
- (b) Any person who:
- (1) Drives a vehicle in this Municipality while he or she:
 - 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;
 - 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; and

- (2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes bodily injury to any person other than himself or herself, is guilty of a misdemeanor, and shall be confined in jail for not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours and shall be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000).
- (c) Any person who:
- (1) Drives a vehicle in this Municipality while he or she:
 - 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;
 - 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, but less than fifteen hundredths of one percent, by weight;
 - (2) Is guilty of a misdemeanor, and, except as provided in West Virginia Code 17C-5-2(b), shall be confined in jail up to six months 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.
- (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 an habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this Municipality, is guilty of a misdemeanor, and shall be confined in jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). 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:
- (1) Knowingly permits his or her vehicle to be driven in this Municipality by any other person who:
 - 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;
 - 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) Is guilty of a misdemeanor and shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

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

(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, shall, for a first offense under this subsection, be guilty of a misdemeanor, and shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00). For a second or subsequent offense under this subsection, such person is guilty of a misdemeanor, and shall be confined in jail for twenty-four hours and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the Motor Vehicle Alcohol Test and Lock Program as provided for in West Virginia Code 17C-5A-3a. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection 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 (a), (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:

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

(j) A person violating any provision of subsection (a), (b), (c), (d), (e), (f) or (h) of this section, for the second offense under this section, is guilty of a misdemeanor and 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 nor more than three thousand dollars.

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

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

- (1) Any conviction under the provisions of subsection (a), (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 (a), (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.
- (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.

(m) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section, if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time periods for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In 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).

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

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

(p) The sentences provided herein upon conviction for a violation of this section are mandatory and may not be subject to suspension or probation; provided, that the court may apply the provisions of West Virginia Code 62-11A-1 et seq. to a person sentenced or committed to a term of one year or less for a first offense under this section: provided further, 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-1 et seq. 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 further, 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)

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

(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); or
 - (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.

- (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 the offense. 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 335
Speed Restrictions

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| <p>335.01 Maximum speed limits.</p> <p>335.02 Slow speed.</p> <p>335.03 Special speed limitations.</p> | <p>335.04 Racing on streets and highways prohibited.</p> <p>335.05 Prima facie evidence of speed by radar.</p> <p>335.99 Penalty.</p> |
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CROSS REFERENCES

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

335.01 MAXIMUM SPEED LIMITS.

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

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

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

- (2) The speed limit in the City shall be fifteen miles per hour with the exception of:
- A. Marshall Street shall be twenty-five miles per hour with the exception of school zones.
 - B. East Baltimore Street shall be twenty-five miles per hour.

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)

335.99 PENALTY.

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

(b) Speeding.

- (1) Unless otherwise provided in this subsection (b) hereof, any person who violates the provisions of Section 335.01 shall be fined not more than one hundred dollars (\$100.00); upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars (\$200.00); and, upon a third or subsequent conviction within two years thereafter, shall be fined not more than five hundred dollars (\$500.00); provided, that if such third or subsequent conviction is based upon a violation of the provisions of Section 335.01 where the offender exceeded the speed limit by fifteen miles per hour or more, then the person shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.
 - (2) Any person who violates the provisions of Section 335.01(b)(1) shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); provided, that if such conviction is based upon a violation of the provisions of Section 335.01(b)(1) where the offender exceeded the speed limit by fifteen miles per hour or more in the presence of one or more children, then the person shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.
- (WVaC 17C-6-1)

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

ARTICLE 337
Driving on Right; Passing

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

CROSS REFERENCES

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

337.01 DRIVING UPON RIGHT SIDE OF ROADWAY; EXCEPTIONS.

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

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

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

337.02 PASSING TO RIGHT WHEN PROCEEDING IN OPPOSITE DIRECTIONS.

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

(WVaC 17C-7-2)

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

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

- (a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall give an audible signal and pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.
- (b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

(WVaC 17C-7-3)

337.04 OVERTAKING AND PASSING UPON RIGHT.

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

- (1) When the vehicle overtaken is making or about to make a left turn;
- (2) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction;
- (3) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

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

(WVaC 17C-7-4)

337.05 OVERTAKING, PASSING TO LEFT OF CENTER.

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

(WVaC 17C-7-5)

337.06 ADDITIONAL RESTRICTIONS ON DRIVING UPON LEFT SIDE OF ROADWAY.

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

- (1) When approaching the crest of a grade or upon a curve in the street or highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;
- (2) When approaching within 100 feet of or traversing any intersection or railroad grade crossing;
- (3) When the view is obstructed upon approaching within 100 feet of any bridge, viaduct or tunnel.

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

337.07 HAZARDOUS OR NO PASSING ZONES.

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

337.08 ONE-WAY ROADWAYS AND ROTARY TRAFFIC ISLANDS.

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

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

337.09 DRIVING IN MARKED LANES OR CONTINUOUS LINES OF TRAFFIC.

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

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

337.10 FOLLOWING TOO CLOSELY.

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

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

- (1) Prevent overtaking and passing;
- (2) Apply upon any lane specially designated for the use of motor trucks or combinations of vehicles, or within any section of a roadway posted or marked as a "no-passing zone";
- (3) Apply to any convoy of vehicles of the military service of the United States or of this State; and
- (4) Apply to funeral processions.

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

- (1) Funeral processions; or
- (2) Any convoy of vehicles of the military service of the United States or of this State.

(WVaC 17C-7-10)

337.11 DRIVING UPON DIVIDED ROADWAYS.

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

(WVaC 17C-7-11)

337.12 ENTERING AND EXITING CONTROLLED-ACCESS HIGHWAY.

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

(WVaC 17C-7-12)

337.99 PENALTY.

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

ARTICLE 339
Turning and Starting; Signals

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

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

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

341.01 RIGHT OF WAY AT INTERSECTIONS.

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

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

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

341.02 RIGHT OF WAY WHEN TURNING LEFT.

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

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

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

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

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

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

341.05 RIGHT OF WAY OF EMERGENCY VEHICLE.

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

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

341.06 TURNING INTO PRIVATE DRIVEWAY, ALLEY OR BUILDING.

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

- (a) Approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.
- (b) Upon a roadway where traffic is proceeding in opposite directions, approach for a left turn and a left turn shall be made from that portion of the right half of the roadway nearest the center line thereof.

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

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

341.99 PENALTY.

Whoever violates any provision of this article shall be fined not more than 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

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

CROSS REFERENCES

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

343.01 DRIVING ACROSS GRADE CROSSING.

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

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

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

343.02 STOPS AT DANGEROUS GRADE CROSSINGS.

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

343.03 STOPPING AT GRADE CROSSING.

(a) 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) 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 one hundred fifty dollars (\$150.00) or more than five hundred dollars (\$500.00), 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 five hundred dollars (\$500.00), 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 five hundred dollars (\$500.00) and confined not less than twenty-four 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

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

CROSS REFERENCES

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

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

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

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

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

345.02 WHEN LIGHTED LIGHTS REQUIRED.

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

345.03 MEASUREMENT OF DISTANCES AND HEIGHTS.

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

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

345.04 HEADLIGHTS ON MOTOR VEHICLES AND MOTORCYCLES.

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

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

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

345.05 TAIL LIGHT; ILLUMINATION OF REAR LICENSE PLATE.

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

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

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

345.06 RED LIGHT OR RED FLAG ON EXTENDED LOADS.

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

345.07 LIGHTS ON PARKED OR STOPPED VEHICLES.

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

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

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

345.08 LIGHTS ON SLOW-MOVING VEHICLES.

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

345.09 SPOTLIGHTS AND AUXILIARY LIGHTS.

(a) Spot Lamps. Any motor vehicle except a public utility company maintenance vehicle may be equipped with not 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 one auxiliary passing lamp mounted on the front at a height not less than twenty-four inches nor more than forty-two inches above the level surface upon which the vehicle stands and every auxiliary passing lamp shall meet the requirements and limitations set forth in this article.

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

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

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

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

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

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

345.12 MULTIPLE-BEAM ROAD-LIGHTING EQUIPMENT REQUIREMENTS.

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

- (a) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least 350 feet ahead for all conditions of loading.
- (b) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

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

345.13 USE OF HEADLIGHT BEAMS.

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

- (a) Whenever a driver of a vehicle approaches an oncoming vehicle within 500 feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam specified in Section 345.12(b) shall be deemed to avoid glare at all times regardless of road contour and loading.
- (b) Whenever the driver of a vehicle follows another vehicle within 200 feet to the rear, except when engaged in the act of overtaking and passing, such driver shall use a distribution of light permissible under this Traffic Code other than the uppermost distribution of light specified in Section 345.12(a). (WVaC 17C-15-21)

345.14 SINGLE-BEAM ROAD-LIGHTING EQUIPMENT.

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

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

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

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

- (a) Every such head lamp or head lamps shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than 100 feet when the motorcycle, motor-driven cycle or moped is operated at any speed less than twenty-five miles per hour and at a distance of not less than 200 feet when it is operated at a speed of twenty-five or more miles per hour.
- (b) In the event the motorcycle, motor-driven cycle or moped is equipped with a multiple-beam type head lamp or head lamps the upper beam shall meet the minimum requirements set forth above and shall not exceed the limitations set forth in Section 345.12(a) and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in Section 345.12(b).

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

345.16 ALTERNATE ROAD-LIGHTING EQUIPMENT.

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

345.17 NUMBER OF DRIVING LIGHTS REQUIRED OR PERMITTED.

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

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

345.18 SPECIAL RESTRICTIONS ON LIGHTS.

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

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

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

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

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

- (2) Except for standard vehicle equipment authorized by Section 345.11, red flashing warning lights are restricted to 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; and
 - 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 shall be authorized as follows:
- A. Authorization for all ambulances shall be designated by the Department of Health and Human Resources and the sheriff of the county of residence.
 - B. Authorization for all fire department vehicles shall be designated by the Fire Chief and the State 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 or 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; and
 - 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) 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:

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

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

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

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

345.21 HORN, SIREN AND THEFT ALARM SIGNAL.

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

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

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

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

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

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

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

345.23 REAR-VIEW MIRROR.

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

345.24 WINDSHIELD TO BE UNOBSTRUCTED; WINDSHIELD WIPER.

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

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

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

345.25 TIRE EQUIPMENT RESTRICTIONS.

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

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

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

- (1) It shall be permissible to use farm machinery with tires having protuberances which will not injure the street or highway;
- (2) It shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice or other conditions tending to cause a vehicle to skid; and
- (3) It shall be permissible to use studded tires during the period from November 1, of each year until April 15 of the following year. Provided that in the interest of highway maintenance, no vehicle moved on a street or highway, other than school buses, shall be equipped with studded tires which are operational with a recommended air pressure greater than forty pounds per square inch.

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

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

345.26 SAFETY GLASS IN MOTOR VEHICLES.

(a) On and after July 1, 1951, no person shall operate any motor vehicle as specified herein, nor shall any motor vehicle as specified herein be registered thereafter unless such vehicle is equipped with safety glass of a type approved by the Commissioner of Highways wherever glass is used in doors, windows and windshields. The foregoing provisions shall apply to all

passenger-type motor vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glass shall apply to all glass used in doors, windows, and windshields in the drivers' compartments of such vehicles.

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

345.27 VEHICLES TRANSPORTING EXPLOSIVES.

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

- (a) Such vehicle shall be marked or placarded on each side and the rear with the word "Explosives" in letters not less than eight inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four inches square marked with the word "Danger" in white letters six inches high.
- (b) Every such vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use and placed at a convenient point on the vehicle so used. (WVaC 17C-15-41)

345.28 TELEVISION RECEIVER IN DRIVER'S VIEW PROHIBITED.

No motor vehicle shall be operated on any street or highway in this Municipality when equipped with a television receiver unless such receiver is so placed that the screen or picture tube of such receiver is visible only in the rear seat of such motor vehicle and not in view of the operator of such motor vehicle. (WVaC 17C-15-42)

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

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

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

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

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

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

345.30 CERTIFICATION LABELS ON MOPEDS.

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

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

345.31 CHILD PASSENGER SAFETY 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, unmarked law enforcement vehicles primarily used for covert or undercover enforcement and automobiles that have sun-screening devices installed at the factory by the manufacturer are exempt from this requirement. No unmarked law enforcement vehicle, herein exempted, may engage in routine traffic stops.

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

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

- (d) Each manufacturer shall:
- (1) Certify to the State Police and Division of Motor Vehicles that a sun screening device used by it is in compliance with the reflectivity and transmittance requirements of this section;
 - (2) Provide a label not to exceed one and one-half square inches in size, with a means for the permanent and legible installations between the sun screening material and each glazing surface to which it is applied that contains the manufacturer's name and its percentage of light transmission; and

- (3) Include instructions with the product or material for proper installation, including the affixing of the label specified in this section. The labeling or marking must be placed in the left lower corner of each glazing surface when facing the vehicle from the outside.
- (e) No person shall:
- (1) Offer for sale or for use any sun screening product or material for motor vehicle use not in compliance with this section; or
 - (2) Install any sun screening product or material on vehicles intended for use on public roads without permanently affixing the label specified in this section.
- (f) The provisions of this section do not apply to a motor vehicle registered in this State in the name of a person, or the person's legal guardian, who has an affidavit signed by a physician or an optometrist licensed to practice in this State that states that the person has a physical condition that makes it necessary to equip the motor vehicle with sun screening material which would be of a light transmittance or luminous reflectance in violation of this section. The affidavit must be in the possession of the person so afflicted, or the person's legal guardian, at all times while being transported in the motor vehicle.
- (g) The light transmittance requirement of this section does not apply to windows behind the driver on trucks, buses, trailers, mobile homes and multipurpose passenger vehicles.
- (h) As used in this section:
- (1) "Bus" means a motor vehicle with motive power, except a trailer, designed for carrying more than ten persons.
 - (2) "Light transmission" means the ratio of the amount of total light to pass through a product or material to the amount of the total light falling on the product or material.
 - (3) "Luminous reflectants" means the ratio of the amount of total light that is reflected outward by the product or material to the amount of the total light falling on the product or materials.
 - (4) "Manufacturer" means any person engaged in the manufacturing or assembling of sun screening products or materials designed to be used in conjunction with vehicle glazing materials for the purpose of reducing the effects of the sun.
 - (5) "Motor homes" means vehicular units designed to provide temporary living quarters built into and an integral part of or permanently attached to a self-propelled motor vehicle chassis.
 - (6) "Multipurpose passenger vehicle" means a motor vehicle with motive power, except a trailer, designed to carry ten persons or less which is constructed either on a truck chassis or with special features for occasional offroad operation.

- (7) "Nonreflective" means a product or material designed to absorb light rather than to reflect it.
- (8) "Passenger car" means a motor vehicle with motive power, except a multipurpose passenger vehicle, motorcycle or trailer, designed for carrying ten persons or less.
- (9) "Sun screening device" means film material or device that is designed to be used in conjunction with motor vehicle safety glazing materials for reducing the effects of the sun.
- (10) "Truck" means a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment.
(WVaC 17C-15-36a)

345.35 OPERATION OF VEHICLES WITH SAFETY BELTS.

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

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

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

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

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

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

345.99 PENALTY.

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

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

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

ARTICLE 347
Commercial and Heavy Vehicles

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| <p>347.01 Oversize or overweight vehicles.</p> <p>347.02 Projecting loads on passenger vehicles.</p> <p>347.03 Maximum width, height and length.</p> | <p>347.04 Loads dropping or leaking.</p> <p>347.05 Towing requirements.</p> <p>347.99 Penalty.</p> |
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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

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| <p>349.01 Unattended motor vehicle.</p> <p>349.02 Backing a vehicle.</p> <p>349.03 Drivers' view and control to be unobstructed by load or persons.</p> <p>349.04 Passengers in seat with operator.</p> <p>349.05 Passengers on running board.</p> <p>349.06 Following authorized emergency vehicles.</p> <p>349.061 Approaching authorized emergency vehicles.</p> <p>349.07 Driving over fire hose.</p> <p>349.08 Funeral processions.</p> <p>349.09 Opening door of vehicle on traffic side.</p> <p>349.10 Boarding or alighting from vehicle.</p> <p>349.11 Unlawful riding.</p> <p>349.12 Squealing tires, crackling exhaust noises.</p> <p>349.13 Taking, injuring or tampering with vehicle.</p> | <p>349.14 Driving upon sidewalk, street lawn or curb.</p> <p>349.15 Shortcutting; avoiding traffic control devices.</p> <p>349.16 Coasting prohibited.</p> <p>349.17 Driving through safety zone.</p> <p>349.18 Driving upon street posted as closed for repair.</p> <p>349.19 Obstruction of traffic.</p> <p>349.20 Vehicle security.</p> <p>349.21 Littering from a motor vehicle.</p> <p>349.22 Prohibited use of an electronic communication device.</p> <p>349.23 Roller skates, roller blades and skateboards.</p> <p>349.24 Motorized scooters.</p> <p>349.99 Penalty.</p> |
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CROSS REFERENCES

See sectional histories for similar State law
Obedience to traffic control devices - see TRAF. 313.01

349.01 UNATTENDED MOTOR VEHICLE.

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key, and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the street or highway.
(WVaC 17C-14-1)

349.02 BACKING A VEHICLE.

The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.
(WVaC 17C-14-2)

349.03 DRIVERS' VIEW AND CONTROL TO BE UNOBSTRUCTED BY LOAD OR PERSONS.

(a) No person shall drive a vehicle when it is so loaded as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his or her control over the driving mechanism of the vehicle. (WVaC 17C-14-4)

349.04 PASSENGERS IN SEAT WITH OPERATOR.

No more than three persons including the operator shall ride or be permitted by such operator to ride in the seat with the operator of any motor vehicle while such motor vehicle is being operated on the streets or highways of this Municipality: provided, however, that the limitation of this section shall not apply to a truck cab or truck crew compartment properly designed for the occupancy of four persons including the operator, and so designated on the registration card by the Division of Motor Vehicles. (WVaC 17C-14-5)

349.05 PASSENGERS ON RUNNING BOARD.

No passenger shall ride nor shall the operator permit any passenger to ride on the running boards of any motor vehicle while such vehicle is being operated on the streets or highways of this Municipality. (WVaC 17C-14-6)

349.06 FOLLOWING AUTHORIZED EMERGENCY VEHICLES.

The driver of any vehicle other than one on official business may not follow any authorized emergency vehicle traveling in response to a fire alarm or other emergency closer than 500 feet or drive into or park such vehicle within the block where such authorized emergency vehicle has stopped in answer to a fire alarm or other emergency. (WVaC 17C-14-9)

349.061 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.
(WVaC 17C-14-15)

349.23 ROLLER SKATES, ROLLER BLADES AND SKATEBOARDS.

(a) No person upon roller skate, roller blades or by means of any skateboard or similar device shall go upon any roadway or sidewalk, except while crossing a sidewalk, or a street on a crosswalk, and except upon streets and sidewalks set aside as play streets when and duly authorized by the Mayor.

(b) Any violation of this section shall constitute the commission of a misdemeanor criminal offense, and any officer of the Police Department of the City or any other officer of any other police agency exercising proper jurisdiction within the corporate limits of the City is hereby authorized and empowered to issue a citation and to charge any such person who commits a violation of subsection (a) hereof. Any person convicted of a first offense established hereunder shall be fined not less than \$25.00 nor more than \$100.00. Any person convicted of a second or subsequent offense established hereunder shall be fined not less than \$250.00.

(c) Nothing contained within this section is intended, nor shall be construed, so as to create or form the basis for any civil or administrative liability whatsoever on the part of the City or any of its officers, officials, employees, or agents for any injury or damage resulting to any person as a consequence of any action or inaction on the part of the City related, in any manner, to the enforcement or non-enforcement of this section by the City's officers, officials, employees, or agents.

(Passed 2-17-05)

349.24 MOTORIZED SCOOTERS.

(a) Definitions. Except as otherwise provided in this section, the following words and phrases shall have the meanings set forth below:

- (1) "Minor" means any person under the age of eighteen.
- (2) "Motorized scooter" means any non-balancing, tandem two-wheeled device, or three or four wheeled, self balancing device, that has handle bars, is designed to be stood upon or ridden by the operator, and is powered by a motor having a maximum piston displacement of less than 50 cubic centimeters or an electric drive motor, that is capable of a maximum speed of not more than 25 miles per hour on a flat surface. "Motorized scooter" does not include a "motorcycle" as defined by W.Va. Code 17C-1-4, a "moped" as defined by W.Va. Code 17C-1-5a, a "motor-driven cycle" as defined by W.Va. Code 17C-1-5, an "electric personal assistive mobility device or "EPAMD" as defined by W.Va. Code 17C-1-66, or a wheelchair as defined within.
- (3) "Wheelchair" means a motorized or non-motorized device having a seat or saddle, and designed for, and used by a person with disabilities.

(b) Prohibition of Operation and Use of Motorized Scooters. The riding, operation, or other use of motorized scooters for transportation or recreational purposes within or upon the streets, alleys, sidewalks, parking lots, and other realty-owned, leased or controlled property by the City or any of its boards, authorities, or commissions is prohibited.

(c) Exceptions. Notwithstanding any other provision of this section, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate, or otherwise use a motorized scooter upon a designated parade route, when such person is a duly registered and recognized participant in any such permitted parade, provided that such motorized scooter riding or operation occurs in conjunction with said parade.

(d) Exemptions. The federal government, the State of West Virginia, and its political subdivisions are exempt from the prohibitions contained herein, when any such motorized scooter is used for government purposes.

(e) Authorizing or Permitting a Minor to Violate this Section. No person shall authorize or knowingly permit a minor to violate any provision within this section. Any such violation or knowingly permitting any such minor to violate the provisions of this section shall constitute a criminal violation hereof and shall subject such person to the criminal penalties set forth in this section. The citing of any person pursuant to this paragraph shall not be reason to prohibit the police officer from also citing the driver of said motorized scooter.

(f) Liability. Nothing contained in this section is intended, nor shall be construed, so as to create or form the basis for any civil or administrative liability whatsoever on the part of the City or any of its officers, officials, employees, or agents for any injury or damage resulting to any person as a consequence of any action or inaction on the part of the City related, in any manner, to the enforcement or non-enforcement of this section by the City's officers, officials, employees, or agents.

(g) Penalties.

- (1) Any person who violates subsection (b) hereof shall constitute the commission of a misdemeanor criminal offense, and any officer of the Police Department of the City or any other officer of any other police agency exercising proper jurisdiction within the corporate limits of the City is hereby authorized and empowered to issue a citation and to charge any such person who commits a violation of subsection (b). Any person convicted of a first offense established hereunder shall be fined not less than \$25.00 nor more than \$100.00. Any person convicted of a second or subsequent offense established hereunder shall be fined not less than \$250.00.
- (2) Any person who violates subsection (e) hereof shall constitute the commission of a misdemeanor criminal offense, and any officer of the Police Department of the City or any other officer of any other police agency exercising proper jurisdiction within the corporate limits of the City is hereby authorized and empowered to issue a citation and to charge any such person who commits a violation of subsection (e). Any person convicted of a first offense established hereunder shall be fined not less than \$25.00 nor more than \$100.00. Any person convicted of a second or subsequent offense established hereunder shall be fined not less than \$250.00.

(Passed 2-17-05)

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 and as a primary offense as of July 1, 2013 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. | 351.07 | Persons exempt from license. |
| 351.02 | Registration card. | 351.08 | Display of license. |
| 351.03 | Display of registration plates. | 351.09 | Certain acts prohibited. |
| 351.04 | Operation of vehicle without evidence of registration; use of temporary facsimile. | 351.10 | Driving under suspension or revocation. |
| 351.05 | Improper use of registration card, plate or permit. | 351.11 | Owner or operator allowing another to drive. |
| 351.06 | Driver or motorcycle license required. | 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.
- (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

<p>353.01 Definitions.</p> <p>353.02 Limitation on number of driver's licenses.</p> <p>353.03 Employer responsibilities.</p> <p>353.04 Commercial driver's license required.</p>	<p>353.05 Exemptions.</p> <p>353.06 Drivers prohibited from operating with any alcohol in system.</p> <p>353.99 Penalty.</p>
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CROSS REFERENCES

Uniform Commercial Driver's License Act - see W.Va. Code
Art. 17E-1
Commercial vehicles - see TRAF. Art. 347
Driver's licensing - see TRAF. Art. 351

353.01 DEFINITIONS.

Notwithstanding any other provision of this Traffic Code, the following definitions apply to this article:

- (a) "Alcohol" means:
- (1) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propanol and isopropanol;
 - (2) Beer, ale, port or stout and other similar fermented beverages (including sake or similar products) of any name or description containing one half of one percent (0.5%) or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;
 - (3) Distilled spirits or that substance known as ethyl alcohol, ethanol or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced); or
 - (4) Wine of not less than one half of one percent (0.5%) of alcohol by volume.
- (b) "Alcohol concentration" means:
- (1) The number of grams of alcohol per 100 milliliters of blood; or
 - (2) The number of grams of alcohol per 210 liters of breath; or
 - (3) The number of grams of alcohol per sixty-seven milliliters of urine; 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.
(WVaC 17E-1-3)

353.02 LIMITATION ON NUMBER OF DRIVER'S LICENSES.

No person who drives a commercial motor vehicle shall have more than one driver license at one time. (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.
(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)

353.99 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 | Definitions. | 355.05 | Authorizing or permitting a minor to violate this article. |
| 355.02 | Prohibition of operation and use. | 355.06 | Liability. |
| 355.03 | Exceptions. | 355.99 | Penalty. |
| 355.04 | Exemptions. | | |

CROSS REFERENCES

State law provisions - see W. Va. Code Art. 17F-1

355.01 DEFINITIONS.

Except as otherwise provided in this article, the following words and phrases shall have the meanings set forth below:

- (a) "All-terrain vehicles (ATV)" means any motor vehicle designed for off-highway use, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control, or as otherwise defined in W.Va. Code §17A-1-1, or any successor substitute thereto.
- (b) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is electric power obtained from overhead trolley wires, but not operated upon rails.
- (c) "Minor" means any person under the age of 18.
(Passed 2-17-05)

355.02 PROHIBITION OF OPERATION AND USE.

The riding, operation, or other use of all-terrain vehicles for transportation or recreational purposes within or upon the streets, alleys, sidewalks, parking lots, and other realty-owned, leased, or controlled property by the City or any of its boards, authorities, or commissions is prohibited.

(Passed 2-17-05)

355.03 EXCEPTIONS.

(a) Notwithstanding any other provision of this article, it shall not be an offense for any person to lawfully ride or operate any such all-terrain vehicle upon any governmentally-owned realty not owned or controlled by the City or any of its boards, authorities, or commissions located within the corporate limits of the City.

(b) Notwithstanding any other provision of this article, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate, or otherwise use an all-terrain vehicle upon a designated parade route, when such person is a duly registered and recognized participant in any such permitted parade, provided that such all-terrain vehicle ride or operation occurs in conjunction with said parade.

(c) Notwithstanding any other provision of this article, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate, or otherwise use an all-terrain vehicle on the streets, alleys, sidewalks, parking lots, and other realty-owned, leased, or controlled property by the City or any of its boards, authorities, or commissions for purpose of snow removal, if such vehicle is affixed or attached with implements or equipment specifically designed for that purpose, and to be used on such vehicles.

(d) Notwithstanding any other provision of this article, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate, or otherwise use an all-terrain vehicle on the streets, alleys, sidewalks, parking lots, and other realty owned, leased or controlled property by the City or any of its boards, authorities, or commissions during a period of emergency when the emergency has been so declared by the Mayor, and when such riding, operating or other use of any such ATV is in conjunction with response to such an emergency. (Passed 2-17-05)

355.04 EXEMPTIONS.

The federal government, the State of West Virginia, and its political subdivisions are exempt from the prohibitions contained herein, when any such all-terrain vehicle is used for government purposes.

(Passed 2-17-05)

355.05 AUTHORIZING OR PERMITTING A MINOR TO VIOLATE THIS ARTICLE.

No person shall authorize or knowingly permit a minor to violate any provision within this article. Any such violation or knowingly permitting any such minor to violate the provisions of this article shall constitute a criminal violation hereof and shall subject such person to the criminal penalties set forth in this section. The citing of any person pursuant to this paragraph shall not be reason to prohibit the police officer from also citing the driver of said all-terrain vehicle.

(Passed 2-17-05)

355.06 LIABILITY.

Nothing contained in this article is intended, nor shall be construed, so as to create or form the basis for any civil or administrative liability whatsoever on the part of the City or any of its officers, officials, employees, or agents for any injury or damage resulting to any person as a consequence of any action or inaction on the part of the City related, in any manner, to the enforcement or non-enforcement of this article by the City's officers, officials, employees, or agents.

(Passed 2-17-05)

355.99 PENALTY.

(a) Any person who violates Section 355.02 shall constitute the commission of a misdemeanor criminal offense, and any officer of the police department of the City or any other officer of any other police agency exercising proper jurisdiction within the corporate limits of the City is hereby authorized and empowered to issue a citation and to charge any such person who commits a violation of Section 355.02. Any person convicted of a first offense established hereunder shall be fined not less than \$25.00 nor more than \$100.00. Any person convicted of a second or subsequent offense established hereunder shall be fined not less than \$250.00.

(b) Any person who violates Section 355.05 shall constitute the commission of a misdemeanor criminal offense, and any officer of the police department of the City or any other officer of any other police agency exercising proper jurisdiction within the corporate limits of the City is hereby authorized and empowered to issue a citation and to charge any such person who commits a violation of Section 355.05. Any person convicted of a first offense established hereunder shall be fined not less than \$25.00 nor more than \$100.00. Any person convicted of a second or subsequent offense established hereunder shall be fined not less than \$250.00.
(Passed 2-17-05.)

CHAPTER SEVEN - Parking
Art. 361. Parking Generally.

ARTICLE 361
Parking Generally

361.01	Prohibition against parking on streets or highways.	361.09	Truck loading zones.
361.02	Police may remove illegally stopped vehicles.	361.10	Bus stops and taxicab stands.
361.03	Prohibited stopping, standing or parking places.	361.11	Parking in alleys and narrow streets; exceptions.
361.04	Vehicles parked on private property.	361.12	Registered owner prima-facie liable for unlawful parking.
361.05	Manner of angle and parallel parking.	361.13	Parking vehicles, commercial vehicles, mobile homes or boats between 6:00 p.m. and 6:00 a.m.
361.06	Accessible parking.	361.14	Parking or storing of motor vehicles.
361.07	Junked and abandoned vehicles.	361.99	Penalty.
361.08	Parking for certain purposes prohibited.		

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 from any other state, United States territory or foreign country displaying an officially issued special registration plate, placard or decal bearing the international symbol of access shall be recognized and accepted as meeting the requirements of this section, regardless of where the plate, placard or decal is mounted or displayed on the vehicle.

(d) 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 at all times.

(e) Any person whose vehicle properly displays a valid, unexpired special registration plate or removable windshield placard may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted: Provided, that this privilege does not mean that the vehicle may park in any zone where stopping, standing or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard. 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).

(f) Any person whose vehicle does not display a valid, special registration plate or removable windshield placard may not stop, stand or park a motor vehicle in an area designated, zoned or marked for 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).

(g) 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".

(h) 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).

(i) 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.

(j) 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.

(k) 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 (j) 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 JUNKED AND ABANDONED VEHICLES.

(a) Definitions. For the purposes of this section, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (1) "City" is the City of McMechen.
- (2) "Chief of Police" is the Chief of Police of the City of McMechen.
- (3) "Motor vehicle" is any vehicle which is self-propelled and designed to travel along the ground and shall include, but not be limited to, automobiles, buses, motorbikes, motorcycles, motorscooters, trucks, tractors, go-carts, golf carts, campers and trailers.
- (4) "Abandoned motor vehicle" means any motor vehicle or major part 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 which has remained illegally on public or private property for any period of time over five days; or any motor vehicle or major part which has remained on private property without consent of the owner or person in control of the property for any period of time over three days; or any motor vehicle or major part which is unattended, discarded, deserted and unlicensed and is not in an enclosed building or a licensed salvage yard or in the actual possession of a demolisher; or does not have lawfully affixed thereto an unexpired license plate.
- (5) "Junked Motor Vehicle" means a motor vehicle, or any part of a motor vehicle (other than an on-premises farm utility vehicle), which is discarded, wrecked, ruined, scrapped or dismantled; cannot pass the state inspection required by W.VA. Code Ch. 17C, Art. 16 (W.Va. Code Section 17C-16-1 et seq.) and is either not serving a functional purpose or use or is not in an enclosed building, a licensed salvage yard or the actual possession of a demolisher; or does not have lawfully affixed thereto a current motor vehicle safety inspection certificate.
- (6) "Person" shall mean any person, firm, partnership, association, company, corporation or organization of any kind.
- (7) "Private property" shall mean any real property within the City which is privately owned and which is not public property as defined in this section.
- (8) "Public property" shall mean any street, highway, alley or other public right-of-way, which shall include the entire width between the boundary lines of every way publicly maintained for the purpose of vehicular travel, and shall also mean any other publicly owned property or facility.

(b) Storing, Parking or Leaving Dismantled Motor Vehicle. No person shall park, store, leave or permit the parking, storing or leaving of any motor vehicle of any kind which is in an abandoned, wrecked, dismantled, inoperative, rusted, junked or partially dismantled condition, whether attended or not, upon any public or private property within the City for a period of time in excess of five (5) days. The presence of an abandoned, wrecked, dismantled, inoperative, rusted, junked or partially dismantled vehicle or parts thereof, on private or public property, is hereby declared a public nuisance which may be abated as such in accordance with the provisions of this article. This section shall not apply to any vehicle enclosed within a building on private property or to any vehicle held in connection with a business enterprise, lawfully licensed by the City and properly operated.

(c) Notice to Remove. Whenever it comes to the attention of the Chief of Police that any nuisance as defined in subsection (b) hereof exists in the City, a notice in writing shall be served upon the occupant of the land where the nuisance exists, or in case there is no such occupant, then upon the owner of the property or his agent, notifying him of the existence of the nuisance and requesting its removal in the time specified in this article, that is, within ten (10) days from and after receipt of such notice.

(d) Responsibility for Removal. Upon proper notice and opportunity to be heard, the owner of the abandoned, wrecked, dismantled or inoperative vehicle and the owner or occupant of the private property on which the same is located, shall be liable for the expenses incurred.

(e) Notice Procedure; Content.

- (1) The Chief of Police of the City shall give notice of removal to the owner or occupant of the private property where the motor vehicle is located, at least ten (10) days before the time of compliance. It shall constitute sufficient notice when a copy of the same is posted in a conspicuous place upon the private property of which the vehicle is located.
- (2) The notice shall contain the request for removal within the time specified in this article and the notice shall advise that upon failure to comply with the notice to remove, the City or its designee shall undertake such removal with the cost of removal to be levied against the owner or the occupant of the property. The notice shall further advise such recipient that a hearing can be requested by such recipient before the Mayor or his designee within the 10 day period of compliance.

(f) Request for Hearing; Procedure.

- (1) The person(s) to whom the notices are directed, or their duly authorized agents, may file a written request for a hearing before the Mayor or his designee within the 10-day period of compliance described in subsection (c) hereof for the purpose of defending the charges by the City.
- (2) The hearing shall be held as soon as practicable after the filing of the request and the person(s) to whom the notices are directed shall be advised of the time and place of such hearing at least five days in advance thereof. At any such hearing, the City and the person(s) to whom the notices have been directed, may introduce such witnesses and evidence as either party deems necessary.

(g) Removal of Motor Vehicle from Property; Notice.

- (1) If the violation described in the notice has not been remedied within the ten (10) day period of compliance, or in the event that a notice requesting a hearing is timely filed, a hearing is had, and the existence of the violation is affirmed by the Mayor or his designee, the Chief of Police or his designee shall have the right to take possession of the junked motor vehicle and remove it from the premises. No person shall interfere with, hinder or refuse to allow such person to enter upon private property for the purpose of removing a vehicle under the provisions of this section.
- (2) Within forty-eight (48) hours of the removal of such vehicle, the Chief of Police shall give notice to the registered owner of the vehicle, if known, and also to the owner or occupant of the private property from which the vehicle was removed, that such vehicle has been impounded and stored for violation of this article. The notice shall give the location of where the vehicle is stored, and the costs incurred by the City for removal.

(h) Disposition of Vehicles; Public Sale Notice. Upon removing a vehicle under the provisions of subsection (g) hereof, the City shall after 10 days, cause notice of public sale of such vehicle by publication of the sale, such notice to be published once in a newspaper of general circulation in the City, not less than twenty (20) days before the date of the proposed sale. The notice of the sale shall state:

- (1) The sale is of abandoned property in the possession of the City;
- (2) A description of the vehicle, including make, model, license number and any other information which will accurately identify the vehicle;
- (3) The terms of the sale;
- (4) The date, time and place of the sale.

(i) Public Sale; Disposition of Unsold Vehicles.

- (1) The vehicle shall be sold to the highest and best bidder. At the time of payment of the purchase price, the Chief of Police shall execute a certificate of sale in duplicate, the original of which is to be given to the purchaser, and the copy thereof to be filed with the City Clerk. Should the sale for any reason be invalid, the City's liability shall be limited to the return of the purchase price.
- (2) In the event such sale is held any such vehicle is unsold, the Chief of Police may dispose of such vehicle in any manner deemed appropriate to him, but not limited to, demolition or sale for discarded value, and any and all proceeds gained from such disposition shall be applied to the removal costs, and any preliminary sale advertising expenses, plus the actual cost per day for storage for such vehicle.

(j) Redemption of Impounded Vehicle(s). The owner of any vehicle seized under the provisions of this article may redeem such vehicle at any time after its removal but prior to the sale or destruction thereof upon proof of ownership and payment to the City of such sum as may be determined and fixed for the actual and reasonable expense of removal, and any preliminary sale advertising expenses, plus the actual cost per day for storage for each vehicle redeemed.

(k) Liability of Owner or Occupant. Upon failure of the owner or occupant of property on which abandoned vehicle(s) have been removed by the City to pay the unrecoverable expenses incurred by the City in such removal, a lien shall be placed upon the property for the amount of such expenses.

(l) Exception for Auto Repair. The owner of any such motor vehicle may keep and maintain one such motor vehicle, which would otherwise be in violation of this article, on the property upon which he maintains his residence, and not upon the street, property upon which he maintains his residence, and not upon the street, alley or other public right-of-way, for the purpose of repairing the same, provided that the motor vehicle complies with the following:

- (1) A permit for such exception for repair proposed is obtained from the City at a cost of twenty dollars (\$20.00);
- (2) Such permit shall be valid for a period of thirty (30) days, but may be renewed for an additional period of fifteen (15) days and an additional fee of twenty dollars (\$20.00) upon application by such motor vehicle owner; but such renewal shall only be granted if, in the opinion of the Chief of Police, evidence exists that substantial repairs have been made to such motor vehicle in the preceding permit period;
- (3) Such permit shall be prominently displayed in the windshield of such motor vehicles at all times;
- (4) Such motor vehicle shall be kept covered with a cloth, canvas or other such type of material at all times when such repairs are not actively being made on the motor vehicle;
- (5) In the event that residentially-owned, or occupied property is so owned or occupied by more than one person, no more than one permit shall be issued for the same 30 day period, it being the intent of this exception to permit only one motor vehicle to qualify for such exception, and thereby be kept and maintained on such property, during the same time period.

(m) Parking for Repair Purposes Prohibited. No person shall park any vehicle upon the street or sidewalk within the Municipality for the principal purpose of major repairs, except repairs made necessary by an emergency.

(n) Penalty. Any person who violated this article shall be fined not more than two hundred dollars (\$200.00). Each act in violation of any of the provisions hereof shall be deemed a separate offense.

(Passed 11-4-10.)

361.08 PARKING FOR CERTAIN PURPOSES PROHIBITED.

No person shall park any vehicle upon any street within the Municipality for the principal purpose of:

- (a) Displaying such vehicle for sale.
- (b) Displaying advertising.
- (c) Washing, greasing or repairing such vehicle, except repairs made necessary by an emergency.
- (d) Relieving the crowded condition of any parking lot, used car lot, automobile sales lot, repair garage, automobile sales agency or used car sales agency.

361.09 TRUCK LOADING ZONES.

No person shall stop, stand or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivering or pickup and loading of materials in any place marked as a truck loading zone during hours when the provisions applicable to such zones are in effect. In no case shall the stop for loading and unloading of materials exceed thirty minutes.

361.10 BUS STOPS AND TAXICAB STANDS.

(a) No person shall stop, stand or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand when any such stop or stand has been officially designated and appropriately posted, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while actually engaged in loading or unloading passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone, and then only for a period not to exceed three minutes, if such stopping is not prohibited therein by posted signs.

(b) The operator of a bus shall not stop, stand or park such vehicle upon any street at any place for the purpose of loading or unloading passengers or their baggage other than at a bus stop so designated and posted as such, except in case of an emergency.

(c) The operator of a bus shall enter a bus stop on a public street in such a manner that the bus when stopped to load or unload passengers or baggage shall be in a position with the right front wheel of such vehicle not further than eighteen inches from the curb and the bus approximately parallel to the curb so as not to unduly impede the movement of other vehicular traffic.

(d) The operator of a taxicab shall not stand or park such vehicle upon any street at any place other than in a taxicab stand so designated and posted as such. This provision shall not prevent the operator of a taxicab from temporarily stopping in accordance with other stopping or parking provisions at any place for the purpose of and while actually engaged in the expeditious loading or unloading of passengers.

**361.11 PARKING IN ALLEYS AND NARROW STREETS;
EXCEPTIONS.**

No person shall stop, stand or park any vehicle upon a street, other than an alley, in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for free movement of vehicular traffic, except that a driver may stop temporarily during the actual loading or unloading of passengers or when directed to by a police officer or traffic control signal.

Except as otherwise provided by law, no person shall stop, stand or park a vehicle within an alley except while actually loading and unloading, and then only for a period not to exceed thirty minutes.

**361.12 REGISTERED OWNER PRIMA-FACIE LIABLE FOR
UNLAWFUL PARKING.**

In any hearing on a charge of illegally parking a motor vehicle, testimony that a vehicle bearing a certain license plate was found unlawfully parked as prohibited by the provisions of this Traffic Code, and further testimony that the records of the Department of Motor Vehicles shows that the license plate was issued to the defendant, shall be prima-facie evidence that the vehicle which was unlawfully parked was so parked by the defendant. A certified copy of registration from the Department of Motor Vehicles shall be proof of such ownership.

361.13 PARKING VEHICLES, COMMERCIAL VEHICLES, MOBILE HOMES OR BOATS BETWEEN 6:00 P.M. AND 6:00 A.M.

No person shall park a vehicle having a gross weight in excess of 6,000 pounds, or a trailer, mobile home or boat, upon any street or alley, or part thereof, within the Residential District of the City, for a period of time longer than one hour, between the hours of 6:00 p.m. and 6:00 a.m. of any day.

361.14 PARKING OR STORING OF MOTOR VEHICLES.

The parking or storing of any motor vehicle between the front building line of any structure and the public sidewalk or the City right of way, shall be limited to surfaces constructed of brick or stone pavers, concrete, asphalt or other approved surface. No motor vehicle may be parked or stored on any landscaped area including grass. The Police Chief may provide notice in person or by certified mail with return receipt requested, to the person having the right to the possession of the property that a violation exists and must cease within five days. Failure to comply with such notice will result in the issuance of a parking citation for any future violation.

361.99 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).

CHAPTER NINE - Pedestrians and Bicycles

Art. 371. Pedestrians.

Art. 373. Bicycles.

ARTICLE 371
Pedestrians

371.01	Compliance with traffic regulations.	371.06	Walking along streets and highways; soliciting rides.
371.02	Right of way in crosswalk.	371.07	Persons working on streets and highways.
371.03	Crossing roadway outside crosswalk.	371.08	Protection of blind pedestrians.
371.04	Drivers to exercise due care.	371.09	Electric personal assistive mobility device.
371.05	Moving upon right half of crosswalk.	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

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|---|--|
| 373.01 Compliance; code appli-
cation to bicycles. | 373.06 Carrying articles. |
| 373.02 Obedience to traffic
rules; exceptions. | 373.07 Lights and reflector on
bicycle; signal device;
brakes. |
| 373.03 Riding upon seats;
number of persons. | 373.08 Reckless operation;
control, course and
speed. |
| 373.04 Attaching bicycle or
sled to vehicle. | 373.09 Bicycle helmets for children. |
| 373.05 Riding on roadways
and bicycle paths. | 373.99 Penalty. |

CROSS REFERENCES

See sectional histories for similar State law
Authority to regulate bicycle operation - see W. Va.
Code 17C-2-8(a)(8)
Bicycle defined - see TRAF. 301.03
Moped equipment and operation - see TRAF. 345.29

373.01 COMPLIANCE; CODE APPLICATION TO BICYCLES.

(a) No person shall do any act forbidden or fail to perform any act required in this article.

(b) The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this Traffic Code.

(c) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any street or highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.
(WVaC 17C-11-1)

373.02 OBEDIENCE TO TRAFFIC RULES; EXCEPTIONS.

Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Traffic Code, except as to special regulations in this article and except as to those provisions of this Traffic Code which by their nature can have no application.
(WVaC 17C-11-2)

373.03 RIDING UPON SEATS; NUMBER OF PERSONS.

(a) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

(b) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.
(WVaC 17C-11-3)

373.04 ATTACHING BICYCLE OR SLED TO VEHICLE.

No person riding upon any bicycle, coaster, skateboard, roller skates, sled or toy vehicle shall attach the same or himself to any vehicle upon a roadway.
(WVaC 17C-11-4)

373.05 RIDING ON ROADWAYS AND BICYCLE PATHS.

(a) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

(b) Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

(c) Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.
(WVaC 17C-11-5)

373.06 CARRYING ARTICLES.

No person operating a bicycle shall carry any package, bundle or article which prevents the driver from keeping at least one hand upon the handlebars.
(WVaC 17C-11-6)

**373.07 LIGHTS AND REFLECTOR ON BICYCLE; SIGNAL DEVICE;
BRAKES.**

(a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least 500 feet to the front and with a red reflector on the rear of a type approved by the Department of Motor Vehicles which shall be visible from all distances from fifty feet to 300 feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to the red reflector.

(b) No person shall operate a bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least 100 feet, except that a bicycle shall not be equipped with nor shall any person use upon a bicycle any siren or whistle.

(c) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.
(WVaC 17C-11-7)

373.08 RECKLESS OPERATION; CONTROL, COURSE AND SPEED.

No person shall operate a bicycle:

- (a) Without due regard for the safety and rights of pedestrians and drivers and occupants of all other vehicles, and so as to endanger the life, limb or property of any person while in the lawful use of the streets or sidewalks or any other public or private property;
- (b) Without exercising reasonable and ordinary control over such bicycle;
- (c) In a weaving or zigzag course unless such irregular course is necessary for safe operation in compliance with law;
- (d) Without both hands upon the handle grips except when necessary to give the required hand and arm signals, or as provided in Section 373.06;
- (e) At a speed greater than is reasonable and prudent under the conditions then existing.

373.09 BICYCLE HELMETS FOR CHILDREN.

(a) Definitions. As used in this section:

- (1) "Bicycle" means a human-powered vehicle with wheels designed to transport, by the action of pedaling, one or more persons seated on one or more saddle seats on its frame. Such term also includes a human-powered vehicle, and any attachment to such vehicle designed to transport by pedaling when the vehicle is used on a public roadway, public bicycle path or other public right-of-way, but does not include a tricycle.
- (2) "Tricycle" means a three-wheeled human-powered vehicle designed for use as a toy by a single child under the age of six years, the seat of which is no more than two feet from ground level.
- (3) "Public roadway" means a right of way under the jurisdiction and control of this State or the Municipality for use primarily by motor vehicles.
- (4) "Public bicycle path" means a right of way under the jurisdiction and control of this State or the Municipality for use primarily by bicycles and pedestrians.
- (5) "Other public right-of-way" means any right of way other than a public roadway or public bicycle path that is under the jurisdiction and control of this State or the Municipality and is designed for use and used by vehicular or pedestrian traffic.
- (6) "Protective bicycle helmet" means a piece of headgear which meets or exceeds the impact standards for protective bicycle helmets set by the American National Standards Institute (ANSI) or the Snell Memorial Foundation's standards for protective headgear or American Society for Testing and Materials (ASTM) for use in bicycling.
- (7) "Passenger" means any person who travels on a bicycle in any manner except as an operator.
- (8) "Operator" means a person who travels on a bicycle seated on a saddle seat from which that person is intended to and can pedal the bicycle.
(WVaC 17-11A-3)

(b) Requirements for Helmet Use.

- (1) It is unlawful for any person under fifteen years of age to operate or be a passenger on a bicycle or any attachment to a bicycle used on a public roadway, public bicycle path or other public right of way unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet.
- (2) It is unlawful for any parent or legal guardian of a person under fifteen years of age to knowingly permit such person to operate or be a passenger on a bicycle or on any attachment to a bicycle used on a public roadway, public bicycle path or other public right of way unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet.
(WVaC 17C-11A-4)

(c) Sale of Bicycle Helmets. Any helmet sold or offered for sale for use by operators and passengers of bicycles shall be conspicuously labeled in accordance with the standard described in subsection (a)(6) hereof, which shall constitute the manufacturer's certification that the helmet conforms to the applicable safety standards. (WVaC 17C-11A-5)

(d) Civil Actions. A violation of subsection (b) hereof is not admissible as evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages, and shall not be admissible in mitigation of damages.
(WVaC 17C-11A-6)

373.99 PENALTY.

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

- (a) Notwithstanding the provisions of Section 303.99, any parent or legal guardian violating any requirement set forth in Section 373.09(b) shall be fined ten dollars (\$10.00) or be required to perform two hours in community service related to a child injury prevention program which includes injury prevention education or both fined and required to perform such community service. Notwithstanding the provisions of West Virginia Code 8-11-1, no court costs may be assessed to any person violating the requirements of Section 373.09(b).
- (b) In the case of a first violation of Section 373.09(b), the court may waive the fine upon receipt of satisfactory proof that the person has a helmet or within a reasonable time from the date of the violation, purchased or otherwise obtained, a protective bicycle helmet.
- (c) It is an absolute defense to a charge for a violation of Section 373.09 that a parent or legal guardian is unable to pay for the protective bicycle helmet. Inability to pay may be demonstrated by the filing of a financial affidavit in accordance with the provisions of West Virginia Code 59-2-1(c). Any person who demonstrates inability to pay shall be referred to the Governor's highway safety program for assistance in obtaining the appropriate helmet or helmets.
(WVaC 17C-11A-7)

CODIFIED ORDINANCES OF McMECHEN
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 McMECHEN
PART FIVE - GENERAL OFFENSES CODE

ARTICLE 501
Administration and Law Enforcement

- | | |
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| 501.01 Refusal to aid officer. | 501.06 Attempts. |
| 501.02 Obstructing or giving false information to an officer; fleeing. | 501.07 Citation in lieu of arrest; failure to appear. |
| 501.03 False fire alarm. | 501.08 Falsely reporting an emergency incident. |
| 501.04 False reports concerning bombs or other explosive devices. | 501.09 False report. |
| 501.05 Impersonating an official or law enforcement officer. | 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, or parole officer acting in his or her official capacity.

(b) No person shall, with intent to impede or obstruct a law enforcement officer in the conduct of an investigation of a 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, or parole officer 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 him or her.

(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" and "fleeing" do not include any person's reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer, probation officer, or parole officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction to stop. (WVaC 61-5-17)

(h) 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. (WVaC 61-5-17)

- (f) (1) Except as provided by the provisions of subsection (f)(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.
- (g) 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)
- (h) 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

<p>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 Ground feeding of pigeons prohibited.</p>	<p>505.07 Livestock prohibited. 505.08 Disposal of animal feces. 505.09 Leash law. 505.10 Dangerous or vicious dogs. 505.11 Dogs running at large. 505.99 Penalty.</p>
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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.

Any person who keeps or harbors a barking or howling dog or dogs within the City is hereby declared to be maintaining a nuisance and is prohibited from the maintenance of such public nuisance for the general welfare of the residents.
(Passed 9-6-12)

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 GROUND FEEDING OF PIGEONS PROHIBITED.

(a) No person shall intentionally scatter, distribute or otherwise place any corn, bread, seed or other food upon the ground of any premises, public or private, for the purpose of feeding any pigeons.

(b) Whoever violates this section shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned not more than thirty days or both.
(Passed 7-3-91)

505.07 LIVESTOCK PROHIBITED.

(a) No horse, pony, mule, goat, hog of any description, cattle, or any kind of poultry or domesticated fowl, or any other animal of livestock, shall be permitted, kept or harbored by any person within the City limits, except upon permit from the City Clerk, who shall prescribe and inspect the conditions upon which such animals, livestock, reptiles or fowl may be kept within the City limits.

(b) No horse, pony, mule, goat, hog of any description, cattle, or any kind of poultry or domesticated fowl, or any other animal of livestock, shall run at large, upon any street, lanes, open lots, commons or other unenclosed places within the City unless there is with such animal some person within ten feet and having the animal in charge. All such animals found running at large shall be taken up by the Humane Officer or Animal Control Officer and placed in a designated pound. The owner or person having charge of such animal shall be responsible for such violation.

(c) This section shall not apply to domesticated dogs, cats, birds or rodents.
(Passed 3-18-10)

505.08 DISPOSAL OF ANIMAL FECES.

(a) No owner or other person in possession of a dog or other animal shall permit said dog or other animal to deposit animal feces or waste within the City, unless said owner or other person in possession immediately removes said feces or waste and disposes of same in a proper container.

- (b) (1) Any person, upon conviction for the first offense under subsection (a) hereof shall be punished by a fine of one hundred twenty-five dollars (\$125.00).
(2) Any person, upon conviction for the second or subsequent offense under subsection (a) hereof shall be punished by a fine of not less than two hundred twenty-five dollars (\$225.00) nor more than four hundred dollars (\$400.00).
(Passed 11-5-09)

505.09 LEASH LAW.

(a) Any dog or cat found running at large within the City limits in violation of this section shall be impounded in the Marshall County Animal Shelter.

(b) Any person who shall allow any dog or cat to run at large or any person who shall turn loose or free any dog or cat in said City to run at large, shall be guilty of a misdemeanor and upon conviction thereof shall be fined one hundred fifty dollars (\$150.00) plus Court Costs in the highest amount permitted by law and all fines shall be paid into and shall become a part of the General Fund of the City.
(Passed 7-15-10)

505.10 DANGEROUS OR VICIOUS DOGS.(a) Definitions.

- (1) A dangerous or vicious dog shall be defined to mean:
 - A. A dog that:
 1. Without provocation has killed or inflicted injury on a person; or
 2. Killed or inflicted severe injury upon a domestic animal, horse or livestock, when not on the offending dog owner's real property; or
 3. Approached a person when not on the offending dog owner's property in a vicious or terrorizing manner, in an apparent attitude of attack, as determined by a Humane Officer or his or her designee, upon the sworn affidavit of at least two eye witnesses.
 - B. Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.
- (2) Owner shall mean any person or legal entity that has a possessory property right in a dog.
- (3) Owners' real property shall mean any real property owned or leased by the owner or owners of the dog, but does not include any public right-of-way or a common area of a condominium, apartment complex, town-house or subdivision development.
- (4) Severe injury shall mean any physical injury that results in broken bones or disfiguring lacerations or which required surgery or hospitalization.
- (5) Injury shall mean any breaking of the skin, which results in bleeding, caused by bite.
- (6) Business days for purposes of calculating time periods pursuant to this section shall be Monday through and including Friday, NOT including any day which the Marshall County Magistrate Court is closed for any reason.
- (7) The term "humanely destroyed" as used in this section means humane euthanasia of an animal by hypodermic injection by a licensed veterinarian or by an animal euthanasia technician certified in accordance with provisions of the West Virginia Code; or any other humane euthanasia procedure approved by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association.

(b) Enforcement. Any duly designated Humane Officer of Marshall County, West Virginia, or their designee, is hereby designated as the person responsible for determining when a dog is a dangerous or vicious dog. At the time such determination is made, such dog shall be seized by officers of the Animal Control Office or any appropriate law enforcement agency. If, in the discretion of the Humane Officer, or his or her designee, a dog cannot safely be captured and detained, pursuant to this paragraph, and the same has been determined to be vicious or dangerous, the Humane Officer, or his or her designee, is authorized to take immediate and, if necessary, lethal action, against such dog notwithstanding the fact that no written notice has been communicated to the owner of the dog and that no hearing into said determination has been requested or held.

(c) Notice. The owner or persons in possession, if his or her identity and residence are known, of any animal seized pursuant to subsection (b) hereof shall be provided written notice of the seizure, his or her liability for the cost and care of the animal seized as provided in this section and the right to request a hearing in writing before a magistrate in the county where the animal was seized. Any such notice shall include information that a preliminary determination has been made that a dog is vicious or dangerous and shall give a brief narrative providing the owner with the reasons for such determination.

(d) Temporary Possession of Vicious Dog. Upon a determination that a dog has injured a person or other animal by biting or otherwise and therefore may be a vicious or dangerous dog, a Marshall County Humane Officer, Animal Control Officer, or their designee, shall seize and impound said dog in the Marshall County Animal Shelter or with a veterinarian and there confine in a humane manner. Such dogs may be apprehended and impounded without court action or warrant until such time as notice is provided as set forth in this section and a hearing properly requested is held.

(e) Hearing Procedure. The magistrate court shall schedule any hearing requested by the owner in accordance with this section within ten business days of the receipt of the request.

The failure of an owner or person in possession to request a hearing within five business days of the seizure shall be prima facie evidence of an admission by the owner or person in possession that the animal(s) are indeed "vicious" as defined by this section; that said owner does not contest the preliminary finding by the humane officer that the animal is "vicious" and further action shall be taken pursuant to this section as if said animal had been determined "vicious" by the Magistrate Court. If said hearing is requested and held, the magistrate shall determine by a preponderance of the evidence if the animal is "vicious" as defined by this section.

If a hearing is requested and the magistrate finds by a preponderance of the evidence that the animal is "vicious" as defined by this section, or if no hearing is requested and the magistrate finds by a preponderance of the evidence, based upon the affidavit of the humane officer, that the animal is "vicious", the magistrate shall enter an order awarding custody of the animal to any humane officer for further disposition in accordance with reasonable practices for the humane treatment of animals. After hearing the evidence, if the magistrate is not convinced the animal is "vicious" as defined by this section, the Magistrate may dismiss the action and order the animal be returned to the owner.

Notwithstanding any other provision of any county ordinance or state statute to the contrary, the detention of any dog designated, pursuant to the provisions of this section, as vicious or dangerous, shall include all time necessary for the conclusion of all appeals, both by the County or the animal owner, to be finalized.

(f) Appeal Bond. If the magistrate finds in favor of the humane officer and the owner of said animal desires to appeal the Magistrate's finding to the Circuit Court of Marshall County, the owner of the animal shall post a cash bond with the Court in an amount sufficient to provide for the reasonable costs of care, medical treatment and provisions for the animal for at least thirty days. The said cash bond shall be filed with the court within five days following the court's finding against the owner and prior to said appeal being filed.

At the end of the time for which expenses are covered by the original cash bond, if the animal remains in the care of the humane officer and the owner desires to prevent disposition of the animal by the humane officer, the owner shall post an additional cash bond with the court within five days of the expiration of the original cash bond in the same amount as set forth above to cover a period of thirty days.

During this period the humane officer shall retain the said animal in an animal shelter. If said appeal is not successful and the Magistrate's determination is not reversed, the person whose animal is seized is liable for all costs of the care of the seized animal.

If a cash bond has been posted in accordance with this subsection, the custodial animal care agency may draw from the bond the actual reasonable costs incurred by the agency in providing care, medical treatment and provisions to the impounded animal from the date of the initial impoundment to the date of the final disposition of the animal.

Any person whose animal is seized and against whom the magistrate enters a finding pursuant to this section is liable during any period it remains in the possession of the humane officer for the reasonable costs of care, medical treatment and provisions for the animal not covered by the posting of the cash bond as provided herein.

The magistrate shall require the person liable for these costs to post a cash bond to provide for the maintenance of the seized animal. Upon dismissal or withdrawal of the complaint, any unused portion of posted bonds shall be returned to the owner. Upon a final finding in favor of the humane officer, all interest in the impounded animal shall transfer to the humane officer for disposition in accordance with reasonable practices for the humane treatment of animals.

Marshall County shall have the right to appeal any adverse ruling by the Magistrate Court without posting a bond. Any costs incurred for care, medical treatment and provisions for the animal during an appeal by Marshall County shall be borne by Marshall County.

(g) Disposition. Any dog finally determined to be vicious or dangerous shall be disposed of by the Marshall County Animal Shelter in the same manner as they dispose of other dogs, including but not limited to the humane destruction of said animal, except that dogs determined vicious or dangerous pursuant to this section or West Virginia Code may not be made available to the public.

(h) Law Enforcement Dog Exception. No police dog, which was engaged in the performance of its duties at the time of the acts complained of, shall be found to be a dangerous or vicious dog. No dog shall be found to be a dangerous or vicious dog if the bite, attack or injury was sustained by a person who was (i) committing at the time a crime upon the premises occupied by the dog's owner, (ii) committing, at the time, a willful trespass or other tort upon the premises occupied by the dog's owner, or (iii) provoking, tormenting, or physically abusing the dog.

(i) Section Not Breed Specific. No dog shall be found to be a dangerous or vicious dog solely because of its breed, nor is a particular breed of dog prohibited pursuant to this section.

(j) Criminal Acts. West Virginia Code 19-20-20 is hereby adopted and incorporated herein this Omnibus Ordinance and shall control any and all Criminal prosecutions for keeping or harboring a vicious dog.

(Passed 12-1-11.)

505.11 DOGS RUNNING AT LARGE.

(a) Dogs Running at Large.

- (1) No person being the owner of or having charge of any dog shall permit it to run at large upon any public place or upon the premises of another. Dogs not confined on the owner's property shall be maintained on a leash.
- (2) The name and address of the owner as well as County License and rabies vaccination tags shall be attached to the collars of all dogs.
- (3) The running at large of any such animal in or upon any of the places mentioned in this section is prima-facie evidence that it is running at large in violation of this section.

- (4) This section shall not be applicable to the following:
- A. Any vaccinated dog running at large while engaged in any lawful hunting activity.
 - B. Any vaccinated dog running at large while engaged in any lawful training activity; or,
 - C. Any vaccinated dog running at large while engaged in any lawful herding or other farm related activity.

(b) Trespassing Upon or Damaging Property of Another. No person having the possession of a dog shall lead or take such dog upon any property, public or private, without permission, or knowingly permit any such dog to soil on, damage or destroy yards, flowers or shrubbery of another person, or otherwise trespass upon the property of another without permission.

(c) Impoundment. The County has established a dog pound and may keep therein dogs seized under any of the provisions of this section. Any dog found running at large in the County may be seized. The owner or keeper of any dog may retrieve such dog upon paying the fine imposed for the violation of this section, or by posting proper bond pending the trial for the violation of this section, and the impounding fees. If not paid, such dog may be sold and there shall be deducted from the proceeds of such sale the fine imposed, if any, and the impounding fees, and the residue, if any, shall be paid over to the owner of such dog. If such dog is not sold, it may be properly euthanized and its body disposed of by the County without liability to the owner.

(d) Enforcement.

- (1) This section shall be enforceable by the County Dog Warden, or assistant(s), or the County Humane Officer(s), whichever the case may be.
- (2) The County Dog warden, or assistant(s), or the County Humane Officer (s), whichever the case may be, shall patrol the County and enforce all ordinances related to dogs, and shall seize on sight and impound any dog found running at large.
- (3) When any dog has been seized and impounded, the County Dog Warden, or assistant(s), or the County Humane Officer(s), whichever the case may be, shall forthwith give notice to the owner of such dog, if such owner is known, that such dog has been impounded and that it will be sold or destroyed if not redeemed with five (5) days. If the owner of the dog is not known to the County Dog Warden, or assistant(s); or the County Humane Officer(s), whichever the case may be, shall post a notice at the front door of the Marshall County Animal Shelter, which, for the purpose of this section, shall be deemed an extension of the Marshall County Courthouse. The notice shall describe the dog, and the place where seized, and shall advise the unknown owner that such dog will be sold or destroyed if not redeemed within five (5) days.
- (4) Reasonable costs and fees, in such amount as may be determined from time to time by the Marshall County Commission shall be assessed against every dog seized and impounded under the provisions hereof, and in particular, there shall be assessed against every dog seized and impounded an administrative fee of twenty dollars (\$20.00), plus a fee of five dollars (\$5.00) for every day of impoundment.

- (5) The owner, keeper or harbinger of any dog seized and impounded under the provisions hereof may, at any time prior to the expiration of five (5) days from the time that notice of the seizure and impounding of the dog shall have been given or posted as required by this section, redeem the same by paying to the Marshall County Animal Shelter all of the costs assessed against such dog.
- (6) The County Dog Warden, or assistant(s), or the County Humane Officer(s), whichever the case may be, is hereby authorized to issue citations including warnings, if warranted in their discretions, for the violation of any County ordinance pertaining hereto.
- (7) Nothing herein shall constitute a waiver of any ordinances that provide for the arrest and fine for any other violation of County ordinances, or state laws, related to dogs.
- (8) This section will not pertain to barking dogs, the number of dogs per household or any other aspect of pet ownership save that of dogs running at large and other provisions contained in the law.
(Passed 12-1-11.)

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. (A.O.)

- (d) (1) Whoever violates the provisions of Sections 505.10 or 505.11, and is found guilty of violating the same, except as wherein otherwise set forth, shall be guilty of a misdemeanor, and upon conviction thereof, in addition to any penalties or imprisonment set forth within said sections, fined a maximum of one hundred dollars (\$100.00), for the first offense; for subsequent offenses, such fine shall be a minimum of three hundred dollars (\$300.00), not to exceed one thousand dollars (\$1,000).
- (2) Notwithstanding any other provision of any county ordinance or state statute to the contrary, the detention of any dog designated, pursuant to the provisions of Section 505.10, as vicious or dangerous, shall include all time necessary for the conclusion of all appeals to be finalized.
- (3) The Magistrate Court of Marshall County, West Virginia, and the Circuit County of Marshall County, West Virginia, shall have concurrent jurisdiction with respect to such misdemeanors; unless citation is issued by a municipal officer inside his/her jurisdiction, then the municipal court within that city shall have concurrent jurisdiction with respect to such misdemeanors.
(Passed 12-1-11.)

ARTICLE 509
Disorderly Conduct and Peace Disturbance

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| <p>509.01 Disorderly conduct.</p> <p>509.02 Loitering on school property.</p> <p>509.03 Wearing masks, hoods or face coverings.</p> | <p>509.04 Disturbing the peace.</p> <p>509.05 Obedience to orders at fires.</p> <p>509.99 Penalty.</p> |
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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 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 DISTURBING THE PEACE.

No person shall:

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

- (c) Engage in fighting, or threaten to harm persons or property unlawfully.
- (d) Make offensively coarse utterance, gesture or display, or communicate unwarranted and grossly abusive language to any person, which by its very utterance or usage inflicts injury or tends to incite an immediate breach of the peace.
- (e) Insult, taunt or challenge another under circumstances in which such conduct is likely to provoke a violent response.
- (f) Hinder or prevent the movement of persons or vehicles on a public street, road, highway right of way or to, from, within or upon public or private property, so as to interfere with the rights of others, by any act which serves no lawful and reasonable purpose.
- (g) Create a condition which presents a risk of physical harm to persons or property.
- (h) Urinate or defecate in any public place or upon the property of any other person, except this section shall not apply to the use of restrooms and/or bathrooms.

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

509.05 OBEDIENCE TO ORDERS AT FIRES.

Whoever shall be present at a fire shall be subject and obedient to the orders of the Chief of the Fire Department, or to the orders of any fireman or police officer in any matter relating to the extinguishing of fire and the removal and protection of property. Whoever neglects or refuses to obey such orders shall be guilty of a violation of this section. All officers shall have the power to arrest any person so neglecting or refusing to obey any such lawful orders, to hold him in custody until after the fire shall have been extinguished and then any such person guilty of such violation shall be taken before the Municipal Court Judge of the City to be dealt with according to law.

509.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

- (a) Whoever violates Section 509.01 shall be fined not more than one hundred dollars (\$100.00).
(WVaC 61-6-16)
- (b) Whoever violates Section 509.02 shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both, for a first offense. For a second or subsequent offense such person shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.
(WVaC 61-6-14a)

**ARTICLE 513
Gambling**

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| <p>513.01 Keeping or exhibiting gambling apparatus.</p> <p>513.02 Permitting gambling apparatus on premises.</p> <p>513.03 Acting as lookout or guard for keeper of gambling apparatus.</p> <p>513.04 Playing on gambling apparatus; hotels, public places.</p> <p>513.05 Making wager for value or furnishing money to another for wager.</p> | <p>513.06 Permitting gambling at public places.</p> <p>513.07 Cheating or fraudulent actions while gambling or making a wager.</p> <p>513.08 Poolrooms and pool tickets.</p> <p>513.09 Lotteries and raffles.</p> <p>513.99 Penalty.</p> |
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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

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| 517.01 | Operating a place for or permitting or engaging in prostitution, lewdness or assignation. | 517.06 | Obscene or harassing telephone calls. |
| 517.02 | Detention of person in place of prostitution. | 517.07 | Indecent exposure. |
| 517.03 | Pandering. | 517.08 | Invasion of privacy by looking. |
| 517.04 | Pimping. | 517.09 | Preparation, distribution or exhibition of obscene matter to minors. |
| 517.05 | Profane swearing and drunkenness. | 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. | 521.07 | Acts prohibited by non-intoxicating beer licensee. |
| 521.02 | Article not applicable to certain uses by physicians, druggists and others. | 521.08 | Unlawful purchase of non-intoxicating beer. |
| 521.03 | Prohibited acts generally. | 521.09 | Acts prohibited by private club licensee. |
| 521.04 | Unlawful sale or possession by alcoholic liquor licensee. | 521.10 | Unlawful purchase from private club. |
| 521.05 | Unlawful purchase of alcoholic liquors from State agency. | 521.11 | Acts prohibited by wine dealers. |
| 521.06 | Intoxication or drinking in public places; illegal possession. | 521.12 | Unlawful purchase of wine. |
| | | 521.13 | Unlawful purchase from retail liquor licensee. |
| | | 521.14 | Possession of beer or intoxicating beverages upon the sidewalks, streets and playgrounds. |
| | | 521.99 | Penalty. |

CROSS REFERENCES

See sectional histories for similar State law
 Authority to regulate liquor sales - see W. Va. Code 8-12-5(20)
 Nonintoxicating beer - see W. Va. Code Art. 11-16
 Local option - see W. Va. Code Art. 60-5
 Search warrants - see W. Va. Code 60-6-18
 Public drunkenness - see GEN. OFF. 517.05

521.01 DEFINITIONS.

For the purposes of this article, unless the context clearly indicates otherwise, the following definitions shall apply:

- (a) "Alcoholic liquor" includes alcohol, beer, wine and spirits, and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer.
- (b) "Beer" means any beverage obtained by the fermentation of barley, malt, hops or any other similar product or substitute, and containing more alcohol than that of nonintoxicating beer.
- (c) "Intoxicated" means having one's faculties impaired by alcohol or other drugs to the point where physical or mental control or both are markedly diminished.
- (d) "Manufacturer" means any person engaged in the manufacture of any alcoholic liquor, including, among others, a distiller, rectifier, wine maker and brewer.
(WVaC 60-1-5)

- (e) (1) "Nonintoxicating beer" means all cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers containing at least one-half of one percent alcohol by volume, but not more than nine and six-tenths of alcohol by weight, or twelve percent by volume, whichever is greater, all of which are hereby declared to be nonintoxicating and the word "liquor" as used in this article shall not be construed to include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.
- (2) "Nonintoxicating craft beer" means any beverage obtained by the 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 twelve percent alcohol by volume or nine and six-tenths percent alcohol by weight. (WVaC 11-16-3)
- (f) "Person" means an individual, firm, partnership, limited partnership, corporation or voluntary association.
- (g) "Public place" means any place, building or conveyance to which the public has or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies and corridors of hotels, and any highway, street, lane, park or place of public resort or amusement. "Public place" does not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of West Virginia Code Chapter 60 or the Codified Ordinances to sell alcoholic liquors for consumption on the premises.
- (h) "Sale" means any transfer, exchange or barter in any manner or by any means, for a consideration, and includes all sales made by any principal, proprietor, agent or employee.
- (i) "Selling" includes the solicitation or receipt of orders, possession for sale, and possession with intent to sell.
- (j) "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of fruits or other agricultural products, containing sugar. (WVaC 60-1-5)

**521.02 ARTICLE NOT APPLICABLE TO CERTAIN USES BY
PHYSICIANS, DRUGGISTS AND OTHERS.**

The provisions of this article shall not prevent:

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

521.03 PROHIBITED ACTS GENERALLY.

No person shall:

- (a) Manufacture or sell in this City, without a license, any alcoholic liquor except as permitted by West Virginia Code Chapter 60;
- (b) Aid or abet in the manufacture or sale of alcoholic liquor without a license, except as permitted by West Virginia Code Chapter 60;
- (c) Sell without a license any alcoholic liquor other than provided by West Virginia Code Article 60-6;
- (d) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude, unrectified or impure form of ethyl alcohol, or any other foreign or deleterious substance or liquid;
- (e) Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has been sold at retail in this State;
- (f) Advertise any alcoholic liquor in this State except in accordance with the rules and regulations of the West Virginia Alcohol Beverage Control Commissioner;
- (g) Distribute, deal in, process or use crowns, stamps or seals required under the authority of West Virginia Code Chapter 60, except in accordance with the rules and regulations prescribed by the West Virginia Alcohol Beverage Control Commissioner.
(WVaC 60-6-7)
- (h) Manufacture, sell, give or offer to make a sale or gift of, transport or otherwise possess any alcoholic liquor or nonintoxicating beer except as permitted by West Virginia Code Chapters 11 and 60.
- (i) Whoever violates subsection (a) to (g) hereof is guilty of a misdemeanor for a first offense.

521.04 UNLAWFUL SALE OR POSSESSION BY ALCOHOLIC LIQUOR LICENSEE.

No person licensed under West Virginia Code Chapter 60 shall:

- (a) Sell alcoholic liquors of a kind other than that which is permissible under West Virginia Code Chapter 60;
- (b) Sell beer to which wine, spirits or alcohol has been added;
- (c) Sell wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture thereof under regulations of the West Virginia Alcohol Beverage Control Commissioner;
(WVaC 60-6-8)
- (d) (1) Sell alcoholic liquors or nonintoxicating beer to a person who is:
 - A. Less than twenty-one years of age;
 - B. An habitual drunkard;
 - C. Intoxicated;
 - D. Addicted to the use of any controlled substance as defined by West Virginia Code Chapter 60A;
 - E. Mentally incompetent.
- (2) It shall be a defense to a violation of subsection (d)(1)A. hereof if the seller shows that the purchaser:
 - A. Produced written evidence which showed his or her age to be at least the required age for purchase and which bore a physical description of the person named on the writing which reasonably described the purchaser; or
 - B. Produced evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.
(WVaC 60-3-22)

- (e) Keep on the premises covered by his license any alcoholic liquor other than that which is authorized by West Virginia Code Chapter 60.
(WVaC 60-6-8)

521.05 UNLAWFUL PURCHASE OF ALCOHOLIC LIQUORS FROM STATE AGENCY.

No person shall:

- (a) Being under the age of twenty-one years, for the purpose of purchasing alcoholic liquors from a State liquor store or an agency, misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or illegally attempt to purchase alcoholic liquors from a State liquor store or an agency.
- (b) Knowingly buy for, give to or furnish to anyone under the age of twenty-one years to whom they are not related by blood or marriage, any alcoholic liquors from whatever source.
(WVaC 60-3-22a)

521.06 INTOXICATION OR DRINKING IN PUBLIC PLACES; ILLEGAL POSSESSION.

No person shall:

- (a) Appear in a public place in an intoxicated condition;
- (b) Drink alcoholic liquor or nonintoxicating beer or have an open container of alcoholic liquor or nonintoxicating beer in or on any public sidewalk, walkway, entranceway, street, lane or other public place;
- (c) Drink alcoholic liquor or nonintoxicating beer in a motor vehicle on any highway, street, alley or in a public garage. No person shall possess an open container of nonintoxicating beer or alcoholic liquor in a motor vehicle except in a place which can be reached only by leaving the vehicle;
- (d) Tender a drink of alcoholic liquor to another person in a public place;
- (e) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing stamps or seals of the West Virginia Alcohol Beverage Control Commissioner, without having first obtained written authority from the Commissioner therefor;
- (f) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of West Virginia Code Chapter 60.

Whoever violates subsection (e) or (f) hereof is guilty of a misdemeanor for a first offense.
(WVaC 60-6-9)

521.07 ACTS PROHIBITED BY NONINTOXICATING BEER LICENSEE.

- (a) No licensee under West Virginia Code Article 11-16, his, her, its or their servants, agents or employees shall sell, give or dispense, and no individual shall drink or consume, in or on any licensed premises or in any rooms directly connected therewith, nonintoxicating beer or cooler on weekdays between the hours of 2:00 a.m. and 7:00 a.m., or between the hours of 2:00 a.m. and 1:00 p.m. on any Sunday, except in private clubs licensed under the provisions of West Virginia Code Article 60-7, where the hours shall conform with the hours of sale of alcoholic liquors;

(b) No licensee, his, her, its or their servants, agents or employees shall sell, furnish or give any nonintoxicating beer as defined in this article to any person visibly or noticeably intoxicated, or to any person known to be insane or known to be a habitual drunkard;

(c) No licensee, his, her, its or their servants, agents or employees, shall sell, furnish or give any nonintoxicating beer as defined in this article to any person who is less than twenty-one years of age;

(d) No distributor shall sell or offer to sell, and no retailer shall purchase or receive, any nonintoxicating beer as defined in this article, except for cash; and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subsection. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for such containers when title is retained by the vendor;

(e) No brewer or distributor or brewpub or his, her, its or their agents, shall transport or deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

(f) No brewer or distributor shall give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail, or offer any prize, premium, gift or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: provided that a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained shall prohibit a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any such events: provided however that no such event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the nonintoxicating Beer Commissioner.

(g) No licensee shall permit in his premises any lewd, immoral or improper entertainment, conduct or practice;

(h) No licensee except the holder of a license to operate a private club issued under the provisions of West Virginia Code Article 60-7, or a holder of a license for a private wine restaurant issued under the provisions of West Virginia Code Article 60-8, shall possess a Federal license, tax receipt or other permit entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

(i) No licensee shall obstruct the view of the interior of his premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying such premises. The interior of all licensed premises shall be adequately lighted at all times: provided, that provisions of this subsection shall not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of West Virginia Code Article 60-7, or the premises of a private wine restaurant licensed under the provisions of West Virginia Code Article 60-8;

(j) No licensee shall manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith: provided, that the prohibition contained in this subsection with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a license to operate a private club issued under the provisions of West Virginia Code Article 60-7, nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of West Virginia Code Article 60-8, insofar as such private wine restaurant is authorized to serve wine;

(k) No retail licensee shall sell or dispense nonintoxicating beer as defined in this article, purchased or acquired from any source other than a distributor, brewer or manufacturer licensed under the laws of this State;

(l) No licensee shall permit loud, boisterous or disorderly conduct of any kind upon his or her premises or permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community wherein such business is located: provided, that no licensee shall have in connection with his or her place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind;

(m) No person whose license has been revoked, shall obtain employment with any retailer within the period of one year from the date of such revocation, and no retailer shall employ knowingly any such person within such time;

(n) No distributor shall sell, possess for sale, transport or distribute nonintoxicating beer except in the original container;

(o) No licensee shall knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this State or Municipality;

(p) No Class B retailer shall permit the consumption of nonintoxicating beer upon his licensed premises;

(q) No Class A licensee, his, her, its or their servants, agents or employees, or any licensee by or through such servants, agents or employees, shall allow or permit any person less than eighteen years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subsection shall not apply where such person under the age of eighteen years is in or upon such premises in the immediate company of his or her parent or parents, or where and while such person under the age of eighteen years is in or upon such premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on such premises;

(r) No distributor shall sell, offer for sale, distribute or deliver any nonintoxicating beer outside the territory assigned to such distributor by the brewer or manufacturer of such nonintoxicating beer or sell, offer for sale, distribute or deliver any such nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such nonintoxicating beer: provided, that nothing herein shall be deemed to prohibit sales of convenience between distributors licensed in this State wherein one such distributor sells, transfers or delivers to another such distributor a particular brand or brands for sale at wholesale; and

(s) No licensee or any agent, servant or employee of any such licensee shall knowingly violate any rule or regulation lawfully promulgated by the Commissioner.

(t) Any person who violates any provision of this section, or any rule, regulation or order lawfully promulgated by the Commissioner, or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful, shall be punished as provided in Section 521.99.

(u) Nothing in this section nor any rule or regulation of the Commissioner shall prevent or be deemed to prohibit any licensee from employing any person who is at least eighteen years of age to serve in such licensee's lawful employ, including the sale or delivery of nonintoxicating beer as defined in this article. With the prior approval of the Commissioner, a licensee whose principal business is the sale of food or consumer goods or the providing of recreation activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: provided, that such person's duties shall not include the sale or delivery of nonintoxicating beer or alcoholic liquors: provided, however, that the authorization to employ such persons under the age of eighteen years shall be clearly indicated on the licensee's license.
(WVaC 11-16-18)

521.08 UNLAWFUL PURCHASE OF NONINTOXICATING BEER.

(a) No person under the age of twenty-one years shall purchase, consume, sell, possess or serve nonintoxicating beer.

Nothing in this section, nor any rule or regulation of the Alcohol Beverage Control Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of nonintoxicating beer. Further, nothing in this section, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores: provided, that such person shall not sell or deliver nonintoxicating beer.

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

(b) No person under the age of twenty-one years for the purpose of purchasing nonintoxicating beer, shall misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or shall illegally attempt to purchase nonintoxicating beer.

(c) No person shall knowingly buy for, give to or furnish nonintoxicating beer to anyone under the age of twenty-one years to whom they are not related by blood or marriage. (WVaC 11-16-19)

521.09 ACTS PROHIBITED BY PRIVATE CLUB LICENSEE.

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

- (1) Sell or offer for sale any alcoholic liquors other than from the original package or container;
- (2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice; gambling or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine;
- (3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine or alcoholic liquors on the licensee's premises, by any person less than twenty-one years of age;
- (4) Sell, give away, or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;
- (5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of 3:00 a.m. and 1:00 p.m. on Sunday;
- (6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine or alcoholic liquors, covered by this article, to any person who is less than twenty-one years of age;
- (7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;
- (8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues paying member in good standing of the private club or a guest of such member;
- (9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium or nitrous oxide for purposes of human consumption except as authorized by the Commissioner;

- (10) A. Employ any person who is less than eighteen years of age in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person;
- B. Employ any person who is between the ages of eighteen and twenty-one who is not directly supervised by a person aged twenty-one or over in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person; or
- (11) Violate any reasonable rule or regulation of the Alcohol Beverage Control Commissioner.

(b) No licensee shall advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased thereat.
(WVaC 60-7-12)

521.10 UNLAWFUL PURCHASE FROM PRIVATE CLUB.

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

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

(c) No person shall knowingly buy for, give to or furnish to anyone under the age of twenty-one years any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee.
(WVaC 60-7-12a)

521.11 ACTS PROHIBITED BY WINE DEALERS.

It shall be unlawful:

- (a) For a 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)

521.14 POSSESSION OF BEER OR INTOXICATING BEVERAGES UPON THE SIDEWALKS, STREETS AND PLAYGROUNDS.

(a) No person shall carry or possess any unsealed container or partially filled container of non-intoxicating beer or intoxicating beverage upon any sidewalk, street or playground within the City except when specifically permitted by the City during an organized activity.

(b) Such permission shall be requested of Council by the organizer of any such activity and must be approved by Council by a majority vote.

(c) Any person, upon conviction for an offense under subsection (a) hereof shall be punished by a fine of one hundred fifty dollars (\$150.00).
(Passed 9-20-84)

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 Section 521.06(a) shall be sentenced in accordance with the following options:

(1) Upon first offense, a fine of not more than one hundred dollars (\$100.00). If the individual, prior to conviction, agrees to voluntarily attend the alcohol education program, the judge may delay sentencing until the program is completed and upon completion may dismiss the charges;

(2) Upon conviction for a second offense, a fine of not more than one hundred dollars (\$100.00) and not more than thirty days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health-mental retardation center;

- (3) Upon third and subsequent convictions, a fine of not more than one hundred dollars (\$100.00) and not less than five nor more than thirty days in jail or a fine of not more than one hundred dollars (\$100.00) and completion of not less than five hours of alcoholism counseling at the nearest community mental health-mental retardation center: provided that three convictions for public intoxication within the preceding six months shall be considered evidence of alcoholism: provided, however that for the educational counseling programs described in this subsection the community mental health-mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual. A person charged with a violation of Section 521.06(a) who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to West Virginia Code Articles 27-5 and 27-6A.
- (d) Whoever violates Section 521.06(b) shall be fined not more than one hundred dollars (\$100.00); upon a second or subsequent violation shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than 30 days or both.
- (e) Whoever violates Section 521.06(c) shall be fined not more than one hundred dollars (\$100.00), or confined in jail not more than thirty days, or both.
(WVaC 60-6-9)
- (f) Whoever violates Section 521.06(d) or (e) is guilty of a misdemeanor for a first offense and shall be fined not more than five hundred dollars (\$500.00).
(WVaC 60-6-9)
- (g) (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

<p>525.01 Contributing to delinquency or neglect of minor.</p> <p>525.02 Cruelty to children.</p> <p>525.03 Parental liability for acts of children.</p>	<p>525.04 Abandoned airtight containers.</p> <p>525.05 Tobacco usage restrictions.</p> <p>525.06 Conduct of minors on streets and public places.</p> <p>525.99 Penalty.</p>
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CROSS REFERENCES

See sectional histories for similar State law
 Delinquent child defined - see W. Va. Code 49-1-4
 Jurisdiction of municipal court - see W. Va. Code
 49-5-1(b)
 Contributing to delinquency of minor - see W. Va. Code
 49-7-7 et seq.

525.01 CONTRIBUTING TO DELINQUENCY OR NEGLECT OF MINOR.

No person shall by any act or omission contribute to, encourage or tend to cause the delinquency or neglect of any child, including, but not limited to, aiding or encouraging any such child to habitually or continually refuse to respond, without just cause, to the lawful supervision of such child's parent, guardian or custodian or to be habitually absent from school without just cause.
 (WVaC 49-7-7)

525.02 CRUELTY TO CHILDREN.

No person shall cruelly ill treat, abuse or inflict unnecessary cruel punishment upon, any infant or minor child, and no person, having the care, custody or control of any minor child, shall willfully abandon or neglect the minor child.

In addition to any penalty provided under this section and any restitution which may be ordered by the court, the court may order any person convicted under the provisions of this section to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the victim, the need for which results from the act or acts for which the person is convicted, whether or not the victim is considered to have sustained bodily injury.
 (WVaC 61-8-24)

525.03 PARENTAL LIABILITY FOR ACTS OF CHILDREN.

The custodial parent or parents of any minor child shall be personally liable in an amount not to exceed that specified in West Virginia Code 55-7A-2 for damages which are the proximate result of any one or a combination of the following acts of the minor child:

- (a) The malicious and willful injury to the person of another; or
- (b) The malicious and willful injury or damage to the property of another, whether the property be real, personal, or mixed; or
- (c) The malicious and willful setting fire to a forest or wooded area belonging to another; or
- (d) The willful taking, stealing and carrying away of the property of another, with the intent to permanently deprive the owner of possession.

For purposes of this section, "custodial parent or parents" means the parent or parents with whom the minor child is living, or a divorced or separated parent who does not have legal custody but who is exercising supervisory control over the minor child at the time of the minor child's act.

Persons entitled to recover damages under this section shall include, but are not limited to, the State, any municipal corporation, county commission and board of education, or other political subdivision of this State or any person or organization of any kind or character. The action may be brought in magistrate or another court of competent jurisdiction. Recovery hereunder shall be limited to the actual damages, based upon direct out-of-pocket loss, taxable court costs, and interest from date of judgment. The right of action and remedy granted herein shall be in addition to and not exclusive of any rights of action and remedies therefor against a parent or parents for the tortious acts of his or their children heretofore existing under the provisions of any law, statutory or otherwise, or now so existing independently of the provisions of this section.

(WVaC 55-7A-2)

525.04 ABANDONED AIRTIGHT CONTAINERS.

No person shall abandon any refrigerator or food freezer appliance or other airtight appliance having a height or length of greater 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; or
- (2) Any cigar, cigarette, snuff, chewing tobacco or tobacco product, in any form.

(b) Any firm or corporation that violates any provision of subsection (a)(1) or (2) hereof and any individual who violates any provision of subsection (a)(1) hereof shall be fined 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 or tobacco product, in any form, for the first offense shall be fined not more than one hundred dollars (\$100.00); upon conviction thereof for a second or subsequent offense shall be fined not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00).

(d) Any employer who discovers that his or her employee has sold or furnished tobacco 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 by Persons Under the Age of Eighteen Years. No person under the age of eighteen years shall have on or about his or her person or premises or use any cigarette, or cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; or, any pipe, snuff, chewing tobacco or tobacco product; provided, that minors participating in the inspection of locations where tobacco products are sold or distributed pursuant to West Virginia Code 16-9A-7 shall not be deemed to violate the provisions of this subsection (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.
(WVaC 16-9A-3)

525.06 CONDUCT OF MINORS ON STREETS AND PUBLIC PLACES.

(a) Definitions. For the purpose of this section, 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.

- (1) "City" means the City of McMechen.
- (2) "Minor" means any person under the age of 18 years; "Category I Minor" means any person under the age of 16 years; "Category II Minor" means any person having attained the age of 16 years but not yet having attained the age of 18 years.
- (3) "School Week" means Sunday night through Friday morning during the 180-day calendar designated by the Marshall County Board of Education for school attendance, exclusive of school vacation days, but including days during which school is canceled due to inclement weather or other unforeseen circumstances.
- (4) "School Vacation" means weekdays when the 180-day school calendar is not in effect, including, including, but not limited to, summer vacation, several breaks, and state or federal holidays, or other days designated by the Board of Education, but not including days during school is canceled due to inclement weather or other unforeseen circumstances.
- (5) "Weekend" means Friday night through Sunday morning.

- (6) "Parent" means the natural or adoptive parent of a minor.
- (7) "Guardian" means any person other than a parent, who has legal guardianship of a minor.
- (8) "Custodian" means any person over the age of eighteen years who is in loco parentis to a juvenile.
- (9) "Public Place" means any street, alley, highway, sidewalk, park, playground or place to which the general public has access and right to resort for business, entertainment or other lawful purpose. A public place shall include but not be limited to any store, shop, restaurant, tavern, bowling alley, café, theater, drug store, pool room, shopping center and any other place devoted to amusement or entertainment of the general public. It shall also include the front or immediate area of the above.

(b) Curfew. No minor shall, during the hours listed in subsections (1), (2), (3) and (4) below, remain, idle, wander, stroll or play in any public place either on foot or cruise about without a set destination in any vehicle in, about or upon any place in the City, unless accompanied by a parent, guardian, custodian or other adult person having custody or control of such minor or unless the minor is on an emergency errand or specific business or activity directed or permitted by his parent, guardian or other adult person having the care and custody of the minor, or where the presence of such minor is connected with or required by some legitimate employment, trade, profession or occupation.

- (1) Category I Minor. Between the hours of 9:30 p.m. and 6:00 a.m. during the school week and on the weekends while the school week is in effect.
- (2) Category I Minor. Between the hours of 10:00 p.m. and 6:00 a.m. during school vacation, and on the weekends while the school vacation is in effect.
- (3) Category II Minor. Between the hours of 10:00 p.m. and 6:00 a.m. during the school week and during school vacations.
- (4) Category II Minor. Between the hours of 11:00 p.m. and 6:00 a.m. on the weekends.

(c) Responsibility of Owners of Public Places. No person, firm or corporation operating or having charge of any public place shall knowingly permit the presence of minors during the hours as specified in subsection (b)(1), (b)(2), (b)(3) and (b) (4) hereof.

(d) Parents' Responsibility. No parent, guardian or other adult person having custody or control of any minor under the age of eighteen shall permit, or by inefficient control shall allow such person to be on the streets or sidewalks or on or in any public property or public place within the City during the hours as specified in subsections (b)(1), (b)(2), (b)(3) and (b)(4) hereof. However, the provisions of this subsection (d) do not apply to a minor accompanied by his parent, guardian, custodian or other adult person having the care, custody or control of the minor, or if the minor is on an emergency errand or specific business or activity directed by his parent, guardian, custodian or other adult having the care and custody of their minor or if the parent, guardian or other adult person herein has made a missing person notification to the Police Department.

(e) Special Functions. Any minor attending a special function or entertainment of any church, school, club or other organization that requires such minor to be out at a later hour than that called for in subsection (b) hereof shall be exempt from the provisions of subsection (b) provided the church, school, club or other organization shall register in advance with the Chief of Police or his designate to have the minor stay out to this late hour. The registrant shall state the time the function or entertainment shall end, and the minors who attend the function shall be required to be in their homes or usual places of abode within one-half hour after the function is ended.

(f) Procedures.

- (1) Any police officer upon finding a minor in violation of subsection (b) hereof shall ascertain the name and address of such minor and warn the minor to proceed at once to his or her home or usual place of abode. The police officer shall report such action to the Chief of the Police Department who in turn shall notify the parents, guardian or person having custody or control of such minor.
- (2) If such minor refuses to heed such warning or direction by any police officer or refuses to give such police officer his correct name and address, or if the minor has been warned on a previous occasion that he or she is in violation of curfew, he or she shall be taken to the Police Department and the parent, guardian or other adult person having the care and custody of such minor shall be notified to come and take charge of the minor. If the parent, guardian or other person above cannot be located or fails to come and take charge of the minor, the minor shall be released to the juvenile authorities.

(g) Penalties. Penalties for violation of this section are as follows:

- (1) Any minor found to be in violation of subsection (b) hereof shall be fined fifty dollars (\$50.00) for the first violation, one hundred dollars (\$100.00) for the second violation and two hundred dollars (\$200.00) for the third violation; however, subject to the discretion of the Municipal Court Judge, a minor found to have committed a first, second or third violation of subsection (b) hereof may have his or her fine reduced by no more than half on submission of satisfactory evidence of the completion of an appropriate number of hours of volunteer work for an approved organization in the City of McMechen. A minor who commits more than three violations of subsection (b) hereof shall be fined two hundred dollars (\$200.00) for the fourth violation and each subsequent violation thereof, and there shall be no reduction of that fine.
- (2) Any person found to be in violation of subsections (c) or (d) hereof shall be fined one hundred dollars (\$100.00) for the first violation, two hundred dollars (\$200.00) for the second violation, and three hundred dollars (\$300.00) for the third violation. Any person who commits more than three violations of subsection (c) or subsection (d), or any combination thereof, shall be fined two hundred dollars (\$200.00) for the fourth violation and each subsequent violation thereof.
(Passed 3-18-99)

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

<p>529.01 Assault and battery.</p> <p>529.02 Assault and battery on school employees.</p> <p>529.021 Assault and battery on governmental representatives, health care providers, and emergency medical service personnel.</p>	<p>529.03 Controlled substances.</p> <p>529.04 Breathing, inhaling or drinking certain intoxicating compounds.</p> <p>529.99 Penalty.</p>
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CROSS REFERENCES

Uniform Controlled Substances Act - see W. Va. Code
Ch. 60A
State law provisions - see W. Va. Code Art. 61-2
Harassing telephone calls - see GEN. OFF. 517.06
Intoxication or drinking in public places - see GEN.
OFF. 521.06

529.01 ASSAULT AND BATTERY.

(a) Assault. No person shall unlawfully attempt to commit a violent injury to the person of another or unlawfully commit an act which places another in reasonable apprehension of immediately receiving a violent injury.

(b) Battery. No person shall unlawfully and intentionally make physical contact of an insulting or provoking nature with the person of another or unlawfully and intentionally cause physical harm to another person. (WVaC 61-2-9)

529.02 ASSAULT AND BATTERY ON SCHOOL EMPLOYEES.

(a) No person shall commit an assault:

- (1) By unlawfully attempting to commit a violent injury to the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a; or
- (2) By unlawfully committing an act which places a school employee in reasonable apprehension of immediately receiving a violent injury while the employee is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a.

- (b) No person shall commit a battery:
- (1) By unlawfully and intentionally making physical contact of an insulting or provoking nature with the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a; or
 - (2) By unlawfully and intentionally causing physical harm to a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a.

(c) For the purposes of this section, "school employee" means a person employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. For the purposes of this section, a "school employee" includes a student teacher. (WVaC 61-2-15)

529.021 ASSAULT AND BATTERY ON GOVERNMENTAL REPRESENTATIVES, HEALTH CARE PROVIDERS, 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.

(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 or emergency service personnel acting in his or her official capacity, or unlawfully and intentionally causes physical harm to that person acting in such 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 or emergency service personnel acting in his or her official capacity, or unlawfully commit an act which places that person acting in his or her official capacity in reasonable apprehension of immediately receiving a violent injury. (WVaC 61-10-2(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

<p>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.</p>	<p>533.08 Barricades and warning lights; abandoned excavations. 533.09 Unauthorized use of dumpsters. 533.10 Fraudulently obtaining food or lodging. 533.11 Cleaning sidewalks. 533.12 Deposit of leaves, grass, etc. on public streets or tree lawns. 533.99 Penalty.</p>
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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" means that land upon which reasonably maintained signs are placed not more than 500 feet apart along and at each corner of the boundaries of the land upon which signs there appears prominently in letters of not less than two inches in height the words "no trespassing" and in addition thereto the name of the owner, lessee or occupant of the land. The signs shall be placed along the boundary line of posted land in a manner and in a position as to be clearly noticeable from outside of the boundary line. It shall not be necessary to give notice by posting on any enclosed land or place not exceeding five acres in area on which there is a dwelling house or property that by its nature and use is obviously private in order to obtain the benefits of this section pertaining to trespass on enclosed lands.

- (5) "Cultivated land" means that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture or trees or is fallow land as part of a crop rotation.
- (6) "Fenced land" means that land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire or other material, which stands at least three feet in height. For the purpose of this section it shall not be necessary to fence any boundary or part of a boundary of any land which is formed by water and is posted with signs pursuant to the provisions of this section.
- (7) Where lands are posted, cultivated or fenced as described herein, then such lands, for the purpose of this section, shall be considered as enclosed and posted.
- (8) "Trespass" means the willful unauthorized entry upon, in or under the property of another, but shall not include the following:
 - A. Entry by the State, its political subdivisions or by the officers, agencies or instrumentalities thereof as authorized and provided by law.
 - B. The exercise of rights in, under or upon property by virtue of rights of way or easements by a public utility or other person owning such right of way or easement whether by written or prescriptive right.
 - C. Permissive entry, whether written or oral, and entry from a public road by the established private ways to reach a residence for the purpose of seeking permission shall not be trespass unless signs are posted prohibiting such entry.
 - D. Entry performed in the exercise of a property right under ownership of an interest in, under or upon such property.
 - E. Entry where no physical damage is done to property in the performance of surveying to ascertain property boundaries, and in the performance of necessary work of construction, maintenance and repair of a common property line fence, or buildings or appurtenances which are immediately adjacent to the property line and maintenance of which necessitates entry upon the adjoining owner's property.
(WVaC 61-3B-1)

(b) Trespass in Structure or Conveyance. Any person who knowingly enters in, upon or under a structure or conveyance without being authorized, licensed or invited, or having been authorized, licensed or invited is requested to depart by the owner, tenant or the agent of such owner or tenant, and refuses to do so, shall be fined not more than one hundred dollars (\$100.00). If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the unlawful and felonious intent to do bodily injury to a human being in such structure or conveyance at the time the offender knowingly trespasses, such offender shall, notwithstanding the provisions of West Virginia Code 61-7-1, be subject to the penalty provided in Section 501.99(a).
(WVaC 61-3B-2)

- (c) Trespass on Property Other than Structure or Conveyance.
- (1) Whoever knowingly and without being authorized, licensed or invited, enters or remains on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing or cultivation, shall be fined as follows:
 - A. First Offense Conviction. Upon a first trespassing conviction pursuant to subsection (a), 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), 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), 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.

(a) No person shall commit petit larceny of goods or chattel of the value of less than one thousand dollars (\$1,000).

(b) Whoever violates subsection (a) here shall be confined in jail for a term not to exceed one year or fined not to exceed two thousand five hundred dollars (\$2,500), or both, in the discretion of the court.
(WvaC 61-3-13)

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)

533.11 CLEANING SIDEWALKS.

(a) It shall be the duty of all persons occupying stores or other premises abutting on any street to keep the sidewalk immediately abutting thereon clean and clear of rubbish, trash, leaves, wastepaper, filth and debris, and they shall not sweep any such matter into the street, but shall take it up and put it into proper receptacles to be removed as other refuse is lawfully removed. In case of buildings of more than one story it shall be the duty of the occupant or occupants of the first story to keep the sidewalk clean and clear.

(b) Construction. The provisions of this section shall be liberally construed to accomplish the objectives and purposes hereof.

(Passed 12-19-85)

533.12 DEPOSIT OF LEAVES, GRASS, ETC. ON PUBLIC STREETS OR TREE LAWNS.

(a) No owner or occupant of abutting lands shall deposit, or allow to be deposited, in the public streets, any leaves, grass, weeds, limbs, shrubbery or other trimmings.

(b) No owner or occupant of abutting lands shall deposit, or allow to be deposited, any leaves, grass, weeds, limbs, shrubbery or other trimmings on the tree lawn unless placed in a suitable container which will prevent the contents from falling or blowing into the City streets.

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.	545.06	Possession of machine guns.
545.02	Carrying concealed deadly weapons without license.	545.07	Display or sale of deadly weapons.
545.03	Exceptions as to prohibitions against carrying concealed deadly weapons.	545.08	Brandishing deadly weapons.
545.04	Persons prohibited from possession of firearms.	545.09	Possessing deadly weapons on premises of educational facilities.
545.05	Possession of deadly weapons by minors prohibited.	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 CONCEALED DEADLY WEAPONS WITHOUT LICENSE.

(a) No person shall carry a concealed deadly weapon, without a State license or other lawful authorization established under the provisions of West Virginia Code 61-7-4 et seq.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor. (WVaC 61-7-3)

545.03 EXCEPTIONS AS TO PROHIBITIONS AGAINST CARRYING CONCEALED DEADLY WEAPONS.

The licensure provisions set forth in West Virginia Code Article 61-7 shall not apply to:

- (a) Any person carrying a deadly weapon upon his own premises; nor shall anything herein prevent a person from carrying any firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business, nor shall anything herein prohibit a person from possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site, and returning to his or her home, residence or place of business;
- (b) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from the State, or from the United States for the purpose of target practice, from carrying any pistol, as defined in Section 545.01(g), unloaded, from his home, residence or place of business to a place of target practice, and from any such place of target practice back to his home, residence or place of business, for using any such weapon at such place of target practice in training and improving his skill in the use of such weapons;
- (c) Any law-enforcement officer or law-enforcement official as such are defined in West Virginia Code 30-29-1;
- (d) Any employee of the West Virginia Department of Corrections duly appointed pursuant to the provisions of West Virginia Code 28-5-5 while such employee is on duty;
- (e) Any member of the armed forces of the United States or the militia of the State while such member is on duty;
- (f) Any circuit judge, including any retired circuit judge designated senior status by the supreme court of appeals of West Virginia, prosecuting attorney, assistant prosecuting attorney or a duly appointed investigator employed by a prosecuting attorney;
- (g) Any resident of another state who holds a valid license to carry a concealed weapon by a state or a political subdivision which has entered into a reciprocity agreement with this State, subject to the provisions and limitations set forth in West Virginia Code 61-7-6a.
- (h) Any federal law-enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer's duty. (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 as a mental defective or who has been involuntarily committed to a mental institution pursuant to the provisions of West Virginia Code 27-1-1 et seq. 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 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 the provisions of West Virginia Code 61-7A-5.
(WVAC 61-7-7)

545.05 POSSESSION OF DEADLY WEAPONS BY MINORS PROHIBITED.

(a) Notwithstanding any other provision of this article to the contrary, a person under the age of eighteen years who is not married or otherwise emancipated shall not possess or carry concealed or openly any deadly weapon: provided, that a minor may possess a firearm upon premises owned by such minor or his family or on the premises of another with the permission of his or her parent or guardian and in the case of property other than his or her own or that of his family, with the permission of the owner or lessee of such property. Nothing in this section shall prohibit a minor from possessing a firearm while hunting in a lawful manner or while traveling from a place where he or she may lawfully possess a deadly weapon, to a hunting site, and returning to a place where he or she may lawfully possess such weapon.

(b) A violation of this section by a person under the age of eighteen years shall subject the child to the jurisdiction of the circuit court under the provisions of West Virginia Code 49-5-1 et seq., and such minor may be proceeded against in the same manner as if he or she had committed an act which if committed by an adult would be a crime, and may be adjudicated delinquent. (WVaC 61-7-8)

545.06 POSSESSION OF MACHINE GUNS.

No person shall carry, transport or have in his possession, any machine gun, submachine gun or any other fully automatic weapon unless he or she has fully complied with applicable Federal statutes and all applicable rules and regulations of the Secretary of the Treasury of the United States relating to such firearms. (WVaC 61-7-9)

545.07 DISPLAY OR SALE OF DEADLY WEAPONS.

No person shall publicly display and offer for rent or sale, or, where the person is other than a natural person, knowingly permit an employee thereof to publicly display and offer for rent or sale, to any passersby on any street, road or alley, any deadly weapon, machine gun, submachine gun or other fully automatic weapon, any rifle, shotgun or ammunition for same. (WVaC 61-7-10)

545.08 BRANDISHING DEADLY WEAPONS.

No person armed with a firearm or other deadly weapon, whether licensed to carry the same or not, shall carry, brandish or use such weapon in a way or manner to cause, or threaten, a breach of the peace. (WVaC 61-7-11)

545.09 POSSESSING DEADLY WEAPONS ON PREMISES OF EDUCATIONAL FACILITIES.

(EDITOR'S NOTE: Former Section 545.09 which was derived from West Virginia Code 61-7-11a is no longer included in the Codified Ordinances. By Acts 1995 Chapter 90, the West Virginia Legislature reclassified such offense as a felony. Charges for possessing deadly weapons on premises of educational facilities should now be filed under state law.)

545.10 FIREWORKS SALE, POSSESSION AND DISCHARGE.

(a) "Fireworks" means any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, the type of unmanned balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs, or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance, except that the term "fireworks" shall not include:

Model rockets and model rocket engines, designed, sold and used for the purpose of propelling recoverable acro models and shall not include toy pistols, toy canes, toy guns or other devices in which paper or plastic caps manufactured in accordance with the United States Department of Transportation regulations for packing and shipping of toy paper or plastic caps are used and toy paper or plastic caps manufactured as provided therein, the sale and use of which shall be permitted at all times. Each package containing toy paper or plastic caps offered for retail sale shall be labeled to indicate the maximum explosive content per cap.

The following sparklers and novelties shall not be considered fireworks and require a business registration fee be paid to be authorized to sell, as provided in West Virginia Code 11-12-86:

- (1) Explosive caps designed to be fired in toy pistols, provided that the explosive mixture of the caps shall not exceed twenty-five hundredths of a grain for each cap.
- (2) Snake and glow worms composed of pressed pellets of a pyrotechnic mixture that produce a large snake-like ash when burning.
- (3) Smoke devices consisting of a tube or sphere containing a pyrotechnic mixture that produces white or colored smoke.
- (4) Trick noisemakers which produce a small report designed to surprise the user and which include:
 - A. A party popper, which is a small plastic or paper item containing not in excess of twenty-five hundredths of a grain of explosive mixture. A string protruding from the device is pulled to activate the device, expelling paper streamers and producing a small report.
 - B. A string popper which is a small tube containing not in excess of twenty-five hundredths of a grain of explosive mixture with string protruding from both ends. The strings are pulled to activate the friction-sensitive mixture, producing a small report.
 - C. A snapper or drop pop, which is a small paper wrapped item containing no more than twenty-five hundredths of a grain of explosive mixture coated on small bits of sand. When dropped, the device produces a small report.
- (5) Wire sparklers consisting of wire or stick coated with nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition. These items must not exceed one hundred grams of mixture per item.
- (6) Other sparkling devices which emit showers of sparks and sometimes a whistling or crackling effect when burning, do not detonate or explode, are hand-held or ground-based, cannot propel themselves through the air and contain not more than seventy-five grams of chemical compound per tube or not more than a total of two hundred grams if multiple tubes are used: Provided, that sparklers and sparkler devices as provided for herein shall not be sold to anyone below the age of sixteen years old.
(WVaC 29-3-23)

(b) Except as hereinafter provided, no person, firm, copartnership or corporation shall offer for sale, possess, expose for sale, sell at retail, keep with intent to sell at retail, or use or explode any fireworks, provided, permits for the supervised display of fireworks may be granted upon application to the State Fire Marshal and after approval of the Police and Fire Chiefs, and the filing of a bond by the applicant as provided hereinafter. Every such display shall be handled by a competent operator licensed or certified as to competency by the State Fire Marshal and shall be of such composition, character, and so located, discharged or fired as in the opinion of the Fire Chief, after proper inspection, and of the Police Chief shall not be hazardous to property or endanger any person or persons. After such privilege shall have been granted, the sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

The Mayor shall require a bond from the licensee in a sum not less than one thousand dollars (\$1,000) conditioned on compliance with the provisions of this section and West Virginia Code Article 29-3 and the regulations of the State Fire Commission, provided, that the Municipality shall not be required to file such bond.

Before any permit for a pyrotechnic display shall be issued, the person, firm or corporation making application therefor shall furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of such person, firm or corporation or any agent or employee thereof, in such amount, character and form as the State Fire Marshal determines to be necessary for the protection of the public.
(WVaC 29-3-24)

545.11 DISCHARGING FIREARMS.

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

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

545.12 THROWING OR SHOOTING MISSILES.

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

545.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99(a) for general Code penalty if no specific penalty is provided.)

(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 MCMECHEN
PART SEVEN - BUSINESS AND TAXATION CODE

CHAPTER ONE - Taxation

- Art. 705. License Taxes.
- Art. 713. Business and Occupation Tax.
- Art. 719. Alcoholic Beverages.
- Art. 725. Municipal Service Fee.
- Art. 731. Fire Protection Fee.
- Art. 735. Fees for the Deployment of Public Safety Services.

CHAPTER THREE - Business Regulation

- Art. 749. Junk Yards.

CODIFIED ORDINANCES OF MCMECHEN
PART SEVEN - BUSINESS AND TAXATION CODE

CHAPTER ONE - Taxation

- Art. 705. License Taxes.
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 - Art. 735. Fees for the Deployment of Public Safety Services.
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ARTICLE 705
License Taxes

705.01 Municipal license tax rates.

CROSS REFERENCES

License taxes generally - see W.Va. Code 8-13-4; 11-12-4

705.01 MUNICIPAL LICENSE TAX RATES.

(a) There is hereby adopted and incorporated by reference as if set out at length herein that part of the "Administration and Collection of Municipal Taxes, Licenses and Fees" published by the Chief Inspector Division of the West Virginia Department of Tax and Revenue, for the purpose of establishing the municipal license tax rates for any business, trade, activity, or employment operating within the corporation limits of the City of McMechen.

(b) The municipal license tax rates for any business, trade, activity, or employment operating within the corporation limits of the City of McMechen shall be set at the maximum amount allowed according to the "Administration and Collection of Municipal Taxes, Licenses and Fees" published by the Chief Inspector Division of the West Virginia Department of Tax and Revenue.

(c) The municipal license tax rates for any business, trade, activity, or employment operating within the corporation limits of the City of McMechen shall remain at, and be construed to be adjusted to, the maximum amount allowed according to the "Administration and Collection of Municipal Taxes, Licenses and Fees" published by the Chief Inspector Division of the West Virginia Department of Tax and Revenue, as the "Administration and Collection of Municipal Taxes, Licenses and Fees" published by the Chief Inspector Division of the West Virginia Department of Tax and Revenue may be amended from time to time in accordance with West Virginia Law.

(Passed 3-21-96.)

(d) In addition to businesses licensed under old WV Code 11-12 and 11-13A, the following activities may be licensed in accordance with the WV Code section shown. These rates may increase as the state rates increase, but cannot exceed the state rates.

ACTIVITY	RATE	AUTHORIZING WV CODE
Alcoholic Liquors		
Retail Liquor Sales	\$1,000.00 - Class A \$1,000.00 - Class B	60-3A-12 (a) 60-3A-12 (a)
Fraternal or veterans organizations or nonprofit social club	\$375.00	60-7-6
Private Club Less than 1,000 members More than 1,000 members	\$500.00 \$1,250.00	60-7-6 60-7-6
Non-intoxicating Beer		
Retail Dealer - Class A (Restaurants, bars, and fraternal organizations)	\$150.00	11-16-9
Class B (Grocery Store, Chilled and Unchilled)	\$150.00	11-16-9
Distributor	\$1,000.00	11-16-9
Brewer	\$1,500.00	11-16-9
Wine		
Retailers (Grocer)	\$150.00	60-8-3
Distributors (Wholesale)	\$2,500.00	60-8-3
Wine Tasting	\$50.00	60-8-3
Wine Sales Representative	\$50.00	60-8-3

ACTIVITY	RATE	AUTHORIZING WV CODE
Architects	\$25.00	30-12-8
Attorney	\$5.00	30-1-7
Auctioneer	\$15.00	19-2C-6
Barber, Beautician, Manicurist	\$25.00	30-27-4
Barber, Beautician School	\$250.00	30-27-8
Chiropractors	\$100.00	30-16-7
Dental Corporation	\$50.00 Annually	30-4-4c
Dentists	\$20.00	30-4-17b
Embalmer and Funeral Director	\$15.00	30-6-6
Engineers	\$30.00	30-13-7
Foresters	\$5.00	30-19-7
Funeral Establishments	\$75.00	30-6-13
Hearing Aid Fitters/Dealers	\$40.00	30-26-9
Hospitals		16-5B-4
5-49 Beds	\$20.00	
50-99 Beds	\$30.00	
100-199 Beds	\$40.00	
200 or more Beds	\$50.00	
Hotels, Motels, Boarding Houses Each bedroom in excess of 7	\$2.00 \$.25 each up to \$10.00	16-6-4
Insurance Broker	\$25.00	32-12-6
Insurance Company	\$50.00	33-3-13
Landscape Architects	\$50.00	30-22-7
Land Surveyor	\$20.00	30-13A-6

ACTIVITY	RATE	AUTHORIZING WV CODE
Medical Corporations	\$300.00 Annually	30-3-15
Midwives	\$10.00	30-15-5
Nursing Home Administrator	\$50.00	30-25-5
Nursing Homes	\$8.00/bed	16-5C-6
Occupational Therapist	\$5.00	30-28-15
Osteopathic Physician/Surgeon	\$10.00	30-14-10
Personal Care Homes	\$4.00/bed	16-5C-6
Physical Therapist	\$35.00	30-20-8
Physicians, Surgeons, Podiatrists	\$50.00 every 2 years	30-3-12
Practical Nurses	\$5.00	30-7A-7
Private Detective/Investigator	\$50.00	30-18-4
Psychologists	\$30.00 every 2 years	30-21-8
Radiological Technologist	\$20.00 every 2 years	30-23-7
Real Estate Broker	\$50.00	47-12-9
Real Estate Salesman	\$25.00	47-12-9
Registered Professional Nurse	\$5.00	30-7-6
Restaurants Each 5 chairs or spaces where persons are fed in excess of 10	\$2.00 \$.25/section up to \$10.00	16-6-4
Social Worker	\$5.00	30-30-10
Veterinarians	\$5.00	30-10-10

The following business classifications were taxed under Chapter 11, Article 12 and the tax was repealed and replaced by a State Business Franchise Regulation Tax effective July 1, 1970. Municipalities may still impose a license tax, but it cannot be greater than that which the state imposed on January 1, 1970. Those maximum rates are as follows:

ACTIVITY	RATE	AUTHORIZING WV CODE
Amusement or Music Device		11-12-3
Less than 20:		
.01 Device	\$2.00 Each Device	
.05 Device	\$5.00 Each Device	
.10 Device	\$10.00 Each Device	
.10 Plus Device	\$12.50 Each Device	
More than 20:		
.01 Device	\$50.00	
.05 Device	\$150.00	
.10 Device	\$225.00	
.10 Plus Device	\$300.00	
Baggage or parcel checking devices, vibrator machines and toilet lockers, sanitary napkins	\$.50	11-12-3
Bagatelle table, first Each additional table	\$25.00 \$15.00	11-12-14
Billiard or pool, first table Each additional table	\$25.00 \$15.00	11-12-14
Bowling Alley, first alley Each additional alley	\$25.00 \$15.00	11-12-14
Carnival (street or other)		11-12-14
For each performance, exhibit or entertainment	\$5.00 per week	
Riding Devices	\$10.00 per week	
Concession selling services, goods, wares, merchandise and food	\$5.00 per week per concession	

ACTIVITY	RATE	AUTHORIZING WV CODE
Carnival (street or other) (Cont.)		11-12-4
Games of skill	\$10.00 per week per concession	
Candy or merchandise wheels	\$25.00 per day	
NOTE: Each performance shall or may be required to have a separate license.		
Circuses or other shows:		11-12-4
For each railroad car used to transport property or equipment	\$4.00 per day each performance is given	
For each truck used to transport property or equipment	\$3.00 per day each day performance is given	
Collection Agency	\$100.00	11-12-12
Employment Agency	\$200.00	11-12-13
Fortune Telling, Palmist, Phrenologist, Spiritualist, Clairvoyant, Mind Reader, Medium	\$200.00	11-12-6
Hawker and Peddler		11-12-8
On Foot	\$10.00	
Vehicle not exceeding ½ ton	\$15.00	
Vehicle not exceeding 1 ton	\$50.00	
Vehicle not exceeding 2 tons	\$100.00	
More than 2 tons	\$150.00 plus \$100 for each additional ton or fraction thereof	
Itinerant Vendors	\$500.00	11-12-10

ACTIVITY	RATE	AUTHORIZING WV CODE
Junk Dealers		11-12-7
Resident junk dealer within City limits	\$25.00	
Resident junk dealer, no yard storing	\$25.00	
Resident junk dealer's agent	\$10.00	
Itinerant junk collector	\$2.00	
Non-resident junk dealer	\$150.00	
Non-resident junk dealer's agent	\$150.00	
Laundromats - Car Wash		11-12-3a 11-13a-2
1-5 Devices	\$15.00	
6-9 Devices	\$3.00 each	
10 or more Devices	\$30.00	
Pawnbroker	\$100.00	11-12-9
Theaters and Public Shows		11-12-11
Over 30,000 population	\$160.00	
Over 20,000 but less than 30,000	\$125.00	
Over 10,000 but less than 20,000	\$100.00	
Over 5,000 but less than 10,000	\$40.00	
Over 2,000 but less than 5,000	\$20.00	
Less than 2,000	\$10.00	
Trading Stamps (each county)	\$175.00	11-12-5

ACTIVITY	RATE	AUTHORIZING WV CODE
Vending Machines, Merchandise or Service Devices		11-12-3
Less than 20:		
.01 Device	\$2.00 Each Device	
.05 Device	\$5.00 Each Device	
.10 Device	\$10.00 Each Device	
.10 Plus Device	\$12.50 Each Device	
More than 20:		
.01 Device	\$50.00	
.05 Device	\$100.00	
.10 Device	\$150.00	
.10 Plus Device	\$250.00	
NOTE: If the license granted is for a period less than the fiscal year, the fee shall be computed quarterly in proportion to the remainder of the fiscal year.		

The following store classifications were taxed under Chapter 11, Article 13A and the tax was repealed by a State Business Franchise Registration Tax effective July 1, 1970. Municipalities may still impose a license tax, but the rates cannot be greater than the following:

General Stores:

The term "General Store" shall be construed to mean and include any store or stores or any mercantile establishment or establishments, in which goods, wares or merchandise of any kind are purchased, ordered, sold or offered for sale either at retail or wholesale.

1 to 5 stores	\$15.00 each
6 to 10 stores	\$40.00 each additional store
11 to 15 stores	\$80.00 each additional store
16 to 20 stores	\$120.00 each additional store
21 to 30 stores	\$160.00 each additional store
31 to 50 stores	\$400.00 each additional store
51 to 75 stores	\$800.00 each additional store
Over 75 stores	\$1,000.00 each additional store

Special Stores:

The term "Special Store" shall be construed to mean and include any store or stores or any mercantile establishment or establishments, in which goods, wares or merchandise of any kind except cigarettes, tobacco products and soft drinks are purchased, ordered, sold or offered for sale, either at retail or wholesale, and which contains no coin operated device, or devices, owned or operated by the store proprietor.

1 to 5 stores	\$5.00 each
6 to 10 stores	\$20.00 each additional store
11 to 15 stores	\$40.00 each additional store
16 to 20 stores	\$60.00 each additional store
21 to 30 stores	\$80.00 each additional store
31 to 50 stores	\$200.00 each additional store
51 to 75 stores	\$400.00 each additional store
Over 75 stores	\$500.00 each additional store

ARTICLE 713
Business and Occupation Tax

- | | | | |
|--------|--|--------|--|
| 713.01 | Short title. | 713.16 | Hearing procedure; decision; review. |
| 713.02 | Purpose and intent. | 713.17 | Injunction. |
| 713.03 | Definitions. | 713.18 | Unpaid tax a lien; delinquency notice filing and release. |
| 713.04 | Imposition of tax. | 713.19 | Successor liability. |
| 713.05 | Person taxable on multiple activities; credits. | 713.20 | Revocation, nonrenewal of licenses and permits. |
| 713.06 | Exempt activities. | 713.21 | Settlement agreements and compromises. |
| 713.07 | Tax cumulative. | 713.22 | Additional administrative provisions concerning contracting. |
| 713.08 | Administration generally. | 713.23 | Claims for refunds or credit. |
| 713.09 | Returns; computation and payment of tax. | 713.24 | Interest and penalty; criminal liability. |
| 713.10 | Taxpayer records. | 713.25 | Severability. |
| 713.11 | Tax return information confidentiality. | | |
| 713.12 | Erroneous computation of tax. | | |
| 713.13 | Investigations. | | |
| 713.14 | Assessments. | | |
| 713.15 | Notice of assessment; petition for reassessment. | | |

CROSS REFERENCES

- Authority to tax - see W. Va. Code 8-13-5
Business and occupation tax - see W. Va. Code Art. 11-13
Collection of taxes - see W. Va. Code 8-13-15 et seq.

713.01 SHORT TITLE.

This article shall be known as the "City of McMechen Town Municipal Business and Occupation Tax Ordinance."

713.02 PURPOSE AND INTENT.

The purpose of this article is to impose a municipal business and occupation tax pursuant to West Virginia Code § 8-13-5 to the fullest extent allowable under the operative laws of the State of West Virginia and the United States unless a more restrictive application is required by an express limitation set forth in this article.

713.03 DEFINITIONS.

For purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section unless a different meaning is clearly required by the context in which the term is used:

- (a) Banking business. The term "banking business or financial organization" means any bank, banking association, trust company, industrial loan company, small loan company, or licensee, building and loan association, savings and loan association, credit union, finance company, investment company, investment broker or dealer, and any other similar business organization at least ninety percent (90%) of the assets of which consists of intangible personal property and at least ninety percent (90%) of the gross receipts of which consists of dividends, interest and other charges derived from the use of money or credit.
- (b) Business. The term "business" means all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. The production of raw materials or manufactured products which are used or consumed in the main business shall be deemed a business engaged in taxable in the class for which it falls.
- (c) Contracting. The term "contracting" means the furnishing of work, or both materials and work, in the fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property.
- (d) Gross Income. The term "gross income" generally means the gross receipts of the taxpayer, other than a banking or financial business, 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, reimbursed costs or expenses 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 and discount paid, or sums paid to independent contractors, subcontractors or persons furnishing services or property used in the operation of any business to produce gross income, or any other expense whatsoever. "Gross income" of a banking or financial business is specified in Section 713.13 of this article.
- (e) Gross proceeds of sales. The term "gross proceeds of sales" means 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 of sales" shall not be construed to include cash discounts allowed and taken on sales; the proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit; or the sale price of any article accepted as part payment on any new article sold, if the full sale price of the new article is included in the "gross income" or "gross proceeds of sales"; excise taxes imposed by the State; money or other property received or held by a professional person for the sole use and benefit of a client or another person or money received by the taxpayer on behalf of a bank or other financial institution for repayment of a debt of another; and excise taxes imposed by the federal government upon the consumer, not manufacturer, and which are held in trust by the vendor as agent for the federal government.

- (f) Municipality. The term "municipality" means the City of McMechen.
- (g) Person. The terms "person" and "company" are used interchangeably in this article and mean and include any individual, firm, copartnership, joint adventure, association, corporation, limited liability company, trust, estate or any other group or combination acting as a unit, and the plural as well as the singular number. The word "it" shall also include the pronouns "he" and "she".
- (h) Retail sales. The terms "retail sales" and "selling at retail" mean all sales other than wholesale sales, including but not limited to sales to persons for use in any activity not subject to the tax imposed by this article, all sales of real property, and sales to consumers.
- (i) Sale. The terms "sale" and "sales" mean any transfer of the ownership of or title to property, whether for money or in exchange for other property.
- (j) Services. The term "service business or calling" includes 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.
- (k) Tax year. The terms "tax year" and "taxable year" mean as the period commencing July 1 and ending June 30. For the purpose of this article the taxable year shall be divided into two semi-annual periods. The first period shall be from July 1st through December 31st. The second period shall be from January 1st through June 30th.
- (l) Taxpayer. The term "taxpayer" means any person liable for any tax hereunder.
- (m) Treasurer. The term "treasurer" means the municipality's treasurer and his or her agents, delegates or representatives.
- (n) Wholesale sales. The terms "selling at wholesale" and "wholesale sales" mean only:
 - (1) Sales of tangible personal property for the purpose of resale in the form of tangible personal property,
 - (2) Sales of machinery, supplies or materials which are to be directly consumed by the purchaser in the conduct of any business or activity which is subject to the tax imposed by this article, or
 - (3) Sales of tangible personal property to the United States of America, its agencies and instrumentalities, or to the State of West Virginia, its institutions and political subdivisions.

713.04 IMPOSITION OF TAX.

- (a) There are hereby levied and imposed and shall be collected annual privilege taxes, against the persons, on account of the business and other activities and in the amounts to be determined by the application of rates against values or gross income or gross proceeds as set forth in subsection (d) hereof.

(b) If any person liable for any tax involving natural resource production or manufacturing shall ship or transport its products, or any part thereof, out of the municipality 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 municipality shall be the basis for the assessment of the tax imposed in those sections. Gross income included in the measure of the tax involving natural resource production or manufacturing, shall neither be added nor deducted in computing the tax levied under the other sections of this article. 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 the seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the value upon which such privilege tax shall be levied shall correspond 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 the seller but where the circumstances or conditions are otherwise similar.

(c) The municipal business and occupation tax is imposed on each person engaged in privileges taxable under this article if such person is engaged in purposive revenue generating activities within the municipality's limits and such person has sufficient contacts to sustain the municipality's taxing jurisdiction. By way of example (but not limitation), if a person's activities within the municipality contributes to the establishment and maintenance of a market, such contacts are considered to be sufficient to sustain the municipality's taxing jurisdiction assuming federal constitutional nexus standards are satisfied.

(d) Rates.

	Rate/\$100
Production (11-13-2a)	
Coal	\$1.00
Sand and gravel (not mined or quarried)	3.00
Oil, blast furnace slag	3.00
Natural gas in excess of \$5,000	6.00
Limestone or sandstone quarried or mined	1.50
Timber	1.50
Other natural resource products	2.00
Manufacturing (11-13-2b)	.30
Business of selling tangible property (11-13-2c)	
Retailers	.50
Wholesalers	.15

	Rate/\$100
Public service or utility business (11-13-2c)	
Electric light and power companies (sales and demand charges, domestic purposes and commercial lighting)	\$4.00
Water companies	4.00
Electric light and power companies (all other sales and demand charges)	3.00
Natural gas companies, Toll bridges	3.00
All other public service or utility business	2.00
Electric railway	1.00
Contracting (11-13-2e)	2.00
Amusements (11-13-2g)	.50
Service business or calling (11-13-2h)	1.00
Rentals, royalties, fees or otherwise (11-13-2i)	1.00
Small loan and industrial loan businesses (11-13-2j)	1.00
Banking and other financial business (11-13-2k)	1.00
Generating or producing electrical power (11-13-2m)	.30

713.05 PERSONS TAXABLE ON MULTIPLE ACTIVITIES; CREDITS.

(a) A person taxable under this article with respect to selling products at wholesale in this municipality shall be allowed a non-refundable credit against the tax imposed on such wholesale sales for any manufacturing taxes paid by such person with respect to the manufacturing of products so sold at wholesale in this municipality, and/or extracting taxes paid by such person with respect to the extracting of products so sold in this municipality or ingredients of products so sold at wholesale in this municipality.

(b) For purposes of this section:

- (1) "Manufacturing tax" means a gross receipts tax imposed by a municipality or other local government unit on the act or privilege of engaging in the business as a manufacturer and includes the tax imposed in this article and similar gross receipts taxes paid to other municipalities or other local government units (other than State governments) within the United States.

- (2) "Extracting tax" means a gross receipts tax imposed by a municipality or other local government unit on the act or privilege of engaging in the business as a producer of natural resource products and includes the tax imposed in this article and similar gross receipts taxes paid to other municipalities or other local government units within the United States (other than State governments) within the United States.
- (3) "Gross receipts tax" means a tax which is imposed on or measured by the gross volume of business in terms of gross receipts or in other terms and in the determination of which deductions allowed would not constitute the tax an income tax or value added tax and which is not, pursuant to law or custom, separately stated from the sales price.

(c) If imposition of the municipality's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the tax under this article, and still apply the tax to as much of the taxpayer's activities as may be subject to the municipality's taxing authority.

713.06 EXEMPT ACTIVITIES.

The provisions of this article shall not apply to:

- (a) Insurance companies which pay the State of West Virginia a tax upon premiums; provided, that such exemption shall not extend to that part of 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 the municipality, whether such income is in the form of rentals or royalties;
- (b) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members;
- (c) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit; provided, that this exemption shall not extend to that part of 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 West Virginia Code §§ 60-7-1 et seq.;
- (d) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes;
- (e) Production credit associations, organized under the provisions of the federal Farm Credit Act of 1933; provided, that the exemption of this section shall not apply to corporations or cooperative associations organized under the provisions of West Virginia Code §§ 19-4-1 et seq.;
- (f) Any credit union organized under the West Virginia Code; provided, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of West Virginia Code §§ 19-4-1 et seq.; and
- (g) Gross income derived from advertising service rendered in the business of radio and television broadcasting.

713.07 TAX CUMULATIVE.

The tax, interest and penalty imposed by this article shall be in addition to all other licenses, taxes and other revenue measures levied or collected by the municipality as a condition precedent to the right of any person to engage or continue in any business, profession, trade, calling or other activity within this municipality. A person exercising a privilege taxable under this article, subject to the payment of all licenses and charges which are conditions precedent to exercising the privileges taxed, may exercise the privilege in this municipality for the tax year upon the condition that he shall pay the tax, interest and penalty imposed by this article.

713.08 ADMINISTRATION GENERALLY.

The administration of this article is vested in and shall be exercised by the treasurer who shall prescribe forms and may promulgate from time to time reasonable rules, publications and instructions for the making of returns, and for ascertaining, assessment, collection and administration of tax, interest and penalty imposed hereunder.

713.09 RETURNS; COMPUTATION AND PAYMENT OF TAX.

(a) The tax levied by this article shall be due and payable in quarterly installments on or before the expiration of one month from the end of each quarterly period in which they accrue. The taxpayer shall, within one month from the expiration of each quarterly period, make a return reporting the computation of tax for which it is liable for each quarterly period; sign and mail the completed return, together with any remittance due, to the location specified by the treasurer. The treasurer may allow return and payment under this section for periods other than quarterly periods.

(b) On or before thirty-one (31) days after the end of the tax year, each person liable for the payment of tax under this article shall make a quarterly return, showing the gross proceeds of sale or gross income of business, trade, calling or activity, computing the amount of tax, interest and penalty chargeable against the person in accordance with the provisions of this article and transmit with the return a remittance in the sum required by this article, covering the remainder of the tax, interest and penalty chargeable against the person for the tax year, to such location or locations specified by the treasurer. Such returns shall be verified by the oath of the taxpayer, if made by an individual, or by the individual designated by a taxpayer that is an entity to take the oath on behalf of the taxpayer.

(c) All remittances and payments of tax, interest and penalty imposed by this article shall be made to the treasurer, in lawful money of the United States or by bank draft, certified check, cashier's check, or other commercially acceptable means specified by the treasurer, to be kept, deposited and accounted for as provided by law.

713.10 TAXPAYER RECORDS.

Each person subject to this article shall maintain sufficient records for review by the treasurer as long as the contents of such records may be material in the administration of tax imposed by this article.

713.11 TAX RETURN INFORMATION CONFIDENTIALITY.

(a) Except when required in an investigation or proceeding to ascertain or collect amount of tax, interest, penalty, refund or credit due, or pursuant to an exemption in W. Va. Code § 11-10-5d, it shall be unlawful for any officer, employee or agent of the municipality to divulge or make known in any manner the tax return, or any part thereof, of any person, or disclose information concerning the personal affairs of any individual or the business of any person, or disclose the amount of income or any particulars set forth or disclosed in any report, declaration or return required to be filed with the treasurer or otherwise obtained by the municipality in an investigation undertaken by the treasurer concerning the tax imposed by this article. Any person protected by the provisions of this article may, in writing, waive the confidentiality provisions of this section for such purpose and such period as he shall therein state. This section shall not be construed to prohibit the publication or release of statistics so classified as to prevent the identification of particular reports and the items thereof. Notwithstanding the foregoing, the treasurer may permit the proper officer, or his authorized representative or agent, of the United States or the State, or any political subdivision of the State, to inspect return information to or may furnish to such officer or representative a copy of any such return or any other tax return information, provided, that such other jurisdiction grants similar privileges to this municipality or if the other jurisdiction is a party of an intergovernmental agreement authorizing the exchange of such information.

(b) Any officer, employee or agent of the municipality or any former officer, employee or agent of the municipality who shall divulge facts or information obtained from returns or tax statements other than for the purpose of administering such tax shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than one year, or both, together with costs of prosecution.

(c) Any officer, employee or agent of the municipality or any former officer, employee or agent of the municipality who shall make unauthorized disclosure of information received from the State Tax Commissioner under authority of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than one year, or both, together with costs of prosecution.

(d) For purposes of this article, "unauthorized disclosure" means the release to any person of any tax information obtained by the municipality from the State Tax Commissioner unless the person receiving the information is the authorized counsel of the municipality and shall be using the information only for the purpose of administering the tax imposed by this article, Sales Tax from single location businesses, or Liquor Sales Tax; or the person who filed the return has authorized, in writing, its release, thereby waiving his right to secrecy.

713.12 ERRONEOUS COMPUTATION OF TAX.

If any taxpayer shall make any error in computing the tax, interest and penalty under this article, the treasurer shall correct such error or reassess the proper amount of tax, interest and penalty, and notify the taxpayer of his or her action by mailing the taxpayer promptly a copy of the corrected assessment, and any additional tax, interest and penalty for which such taxpayer may be liable shall be paid within fifteen (15) days after the receipt of such statement. If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be immediately refunded to the taxpayer upon the request of the treasurer and shall be payable out of any funds available for the purpose. The taxpayer may, at its election, apply an overpayment as credit upon tax subsequently accruing hereunder.

713.13 INVESTIGATIONS.

(a) For the purpose of ascertaining the correctness of a tax return, claim or assessment or for the purpose of making an estimate of any taxpayer's liability for the tax administered under this article, the treasurer shall have the power to examine or cause to be examined any books, papers, records, memoranda and other documents or data bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or the attendance of any other person having knowledge of relevant matters. In connection therewith, the treasurer may take testimony and shall have the power to administer oaths.

(b) The treasurer has the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and production of documents for the purpose of ascertaining the correctness of a return or claim or for performing an assessment or for any hearing held by the treasurer. In case of the failure or refusal of a witness to appear and testify or to produce evidence, the treasurer may invoke the aid of the circuit court of Marshall County. Upon proper showing, the treasurer may apply for an order requiring the witness to appear and give testimony and produce evidence concerning the matter in question.

713.14 ASSESSMENTS.

(a) If any person who is required by this article to do so shall fail or refuse to make a return, either in whole or part, or if the treasurer believes the tax imposed by this article has been insufficiently returned by any taxpayer, the treasurer may proceed to assess the tax and shall notify the person assessed of the amount of the tax, additional tax, interest and penalties so assessed.

(b) The treasurer may, at any time before the assessment becomes final, amend, in whole or in part, any assessment whenever the treasurer ascertains that such assessment is improper or incomplete in any material respect. The treasurer may, at any time within the period prescribed for assessment, make a supplemental assessment whenever the treasurer ascertains that any assessment is incorrect in any material respect.

(c) The amount of tax, interest and penalties imposed by this article shall be assessed within three (3) years after the date the second semi-annual return for the year in which such tax arose is filed by the taxpayer; provided, that in the case of a false or fraudulent return filed with the intent to evade the tax or in case no return is filed, an assessment may be made at any time.

713.15 NOTICE OF ASSESSMENT; PETITION FOR REASSESSMENT.

The treasurer shall give the taxpayer written notice of any assessment made pursuant to this article. Unless the taxpayer to whom the notice of assessment is given shall within thirty (30) days after service thereof file with the treasurer a petition for reassessment, the assessment shall become final and not subject to administrative or judicial review. A petition for reassessment must be in writing verified under oath by the taxpayer or his duly authorized agent having knowledge of the facts, setting forth with particularity the items of the assessment objected to, together with the reasons for the objections. The total amount of an assessment shall be due and payable on the day following the date upon which the assessment becomes final.

713.16 HEARING PROCEDURE; DECISION; REVIEW.

(a) When a petition for reassessment or a petition for refund or credit is properly filed pursuant to this article within the time prescribed for such filing, the treasurer shall assign a time and a place for a hearing thereon and shall notify the petitioner of such hearing by written notice at least twenty (20) days in advance thereof. Such hearing shall be held within ninety (90) days from the date of filing the petition, unless continued by agreement of the parties or by the treasurer for sufficient cause.

(b) The hearing shall be informal and shall be conducted in an impartial manner by the Finance Committee of the municipality. The burden of proof shall be upon the taxpayer to show that the assessment or denial refund or credit is incorrect and contrary to law, in whole or in part.

(c) After such hearing, the Finance Committee of the municipality shall, within a reasonable time, give notice in writing to the taxpayer of their decision. An appeal may be taken by the taxpayer of the Finance Committee's decision to the council of the municipality.

(d) An appeal may be taken by the taxpayer to the Circuit Court of Marshall County within thirty (30) days after service of the council's administrative decision issued pursuant to this section.

713.17 INJUNCTION.

After any delinquency shall have continued sixty (60) days, the treasurer may proceed in the Circuit Court of Marshall County to obtain an injunction restraining the further exercise of the privilege until full payment shall have been made of all tax, interest and penalty due under this article. In any proceeding under this section, upon judgment or decree for the municipality, the municipality shall be awarded its costs.

713.18 UNPAID TAX A LIEN; DELINQUENCY NOTICE FILING AND RELEASE.

Any tax, interest and penalties due and payable under this article shall be a debt due the municipality and shall constitute a lien on the real and personal property of the taxpayer. The treasurer, for the more effective collection of the tax, interest and penalty imposed by this article, may file with the Clerk of the Marshall County Commission a certified notice of lien for delinquent taxes, interest and penalty under this article for recordation. If a lien has been recorded respecting a delinquency, upon full payment of all delinquent tax, interest and penalty, the treasurer shall attest to the fact and amount of payment, and shall forward a certificate of release to the taxpayer. Upon presentment and payment of the recording fee by the taxpayer, the Clerk of the Marshall County Commission shall record such certificate in the book in which releases are recorded.

713.19 SUCCESSOR LIABILITY.

The tax, interest and penalty imposed by this article shall be a continuing lien upon the property of any person subject to the provisions hereof who shall sell out its business or stock of goods, or shall quit business, and such person shall be required to make the return provided for in this article within thirty (30) days after the date it sold out its business or stock of goods, or quit business, and its successor in business shall be required to withhold a sufficient amount of the purchase money to cover the amount of such tax, interest and penalty due and unpaid until such time as the former owner shall produce a receipt from the treasurer showing that all tax, interest and penalty has been paid. If the purchaser of a business or stock of goods fails to withhold purchase money as hereby provided, and the tax, interest and penalty shall be due and unpaid after the thirty-day period allowed, the successor shall be personally liable for the payment of the tax, interest and penalty accrued and unpaid on account of the operation of the business by the former owner.

713.20 REVOCATION, NON-RENEWAL OF LICENSES AND PERMITS.

(a) The treasurer has the authority to revoke, deny and prevent any and all licenses and permits issued by the municipality in the event a licensee or permittee fails or refuses to file any return required hereby or fails or refuses to pay any delinquent tax, interest or penalty due and owing to the municipality.

(b) In the event of such a revocation or denial, the treasurer will provide written notice to the affected person at least five (5) days prior to the contemplated revocation or denial and such notice shall be served by certified mail. The notice shall indicate the time and the place of a revocation/denial review meeting, the general grounds of said contemplated action, and shall advise the affected person of its rights to appear at said hearing in person and represented by legal counsel, and to be heard orally upon the merits of the person's defense. The treasurer may request legal advice from the City Attorney, and adopt such procedures for its decorum and the dispatch of business at such hearings as the treasurer may regard advisable. The revocation decision of the treasurer will be final.

(c) Each license or permit that has been revoked or denied pursuant to this section may be issued or re-issued upon payment of all delinquent tax, interest or penalty due and owing to the municipality and satisfaction of all relevant licensing conditions otherwise imposed by the municipality.

713.21 SETTLEMENT AGREEMENTS AND COMPROMISES.

The treasurer, with approval of the Mayor, is authorized to enter into an agreement in writing with any person relating to the liability of such person in respect of the tax, interest and penalty imposed by this article for any taxable period. If such a closing agreement is duly made and entered into, such agreement shall be final and conclusive for the periods covered except upon a showing of fraud, malfeasance or misrepresentation of a material fact. The treasurer, with approval of the Mayor, may compromise all or part of any administrative determination or civil case concerning tax, interest and penalty or otherwise arising under the provisions of this article.

713.22 ADDITIONAL ADMINISTRATIVE PROVISIONS CONCERNING CONTRACTING.

(a) Without limiting the generality of the administrative and collection powers granted to the treasurer in this article, the treasurer is also empowered to require any person engaging or continuing within the municipality in the business of contracting to furnish a list of the names, addresses and amounts paid by them to any subcontractors employed and suppliers of materials used upon any job or to do any work within the municipality. The treasurer may also require every person engaging or continuing within the municipality in the business of contracting who is a nonresident of the State to pay or guarantee the payment of the amount of the tax imposed by this article for the privilege of engaging in the business of contracting within the municipality, such payment of such tax to be based upon the amount of the building permit issued by the municipality for the work to be performed by such person, as a condition precedent to the issuance of such building permit. In lieu of such prior payment in cash of such tax any such nonresident may guarantee the payment of such privilege tax provided for herein by delivering to the municipality a bond, with good and adequate surety, payable to the municipality, and conditioned to pay such tax on or before the estimated date of the completion of the work to be performed by such person within the municipality.

(b) Any person engaging a contractor or subcontractor within this municipality shall withhold payment in sufficient amount to cover taxes assessed by this article in the final settlement of such contracts until the receipt of a certificate from the treasurer to the effect that all taxes levied and accrued under this article against the contractor have been paid. If any person fails to withhold as provided herein and the contractor or subcontractor fails to timely pay such tax, such person shall be personally liable for the payment of such taxes, and the same shall be recoverable by the treasurer by appropriate legal proceedings.

713.23 CLAIMS FOR REFUND OR CREDIT.

(a) Any taxpayer claiming to have overpaid any tax, interest or penalty imposed by this article shall file its claim with the treasurer within three (3) years after the due date of the return in respect of which the tax was imposed, and not thereafter.

(b) If, as a result of the claim, the treasurer shall be of the opinion that the tax, interest or penalty, or any part thereof, was overpaid, the treasurer shall refund the same to the taxpayer. If the treasurer denies the claim, the taxpayer may within thirty (30) days after notice of denial file with the treasurer a petition for refund or credit, which shall be heard in accordance with Section 713.27 of this article. A taxpayer's failure to abide by express procedures contained in this section precludes taxpayer's right to any refund or credit of tax, interest and penalties paid or collected under this article.

713.24 INTEREST AND PENALTY; CRIMINAL LIABILITY.

(a) If any person fails to make the return or any semi-annual installment required by this article, or makes its return but fails to remit, in whole or in part, the proper amount of tax, there shall be added to the amount of tax unpaid, from the date such tax should have been paid, a penalty in the amount of twenty-five (25.00%) percent of the tax due for the period of such failure or delinquency. Such tax and penalty shall bear interest at the rate of twelve percent (12.00%) per annum from the due date of the payment until paid. Additionally, whoever engages in any activity contrary to the provisions of this article shall, in addition to paying the tax imposed by this article, penalty and interest, be subject to an additional penalty of fifty dollars (\$50.00) for each month or fraction thereof during which he has been in default of said tax. It shall be the duty of the treasurer to collect the full amount of the tax, penalty and interest imposed. Upon the recommendation of the municipality's Finance Committee, for good cause shown, and upon the request by the person, the municipality may abate and forgive the penalty and interest, or both, in whole or in part.

(b) Interest and penalties may be collected in the same manner as the tax imposed by this article.

(c) Any person who shall willfully, and with intent to evade, refuse to pay all or any part of the tax imposed by this article shall be guilty of a misdemeanor. If the amount of the unpaid tax shall be less than one thousand dollars (\$1,000), such person shall, in addition to such tax, penalties and interest as is owed, be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and if the amount of the unpaid tax shall be one thousand dollars (\$1,000) or more, such person shall, in addition to such tax, penalties and interest as is owed, be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000), or imprisoned not more than thirty days, or be both fined and imprisoned as herein provided. Each day or part thereof that any violation continues shall be deemed to constitute a distinct and separate offense and be punishable accordingly.

(d) Whoever knowingly makes a false statement in any tax form or application shall be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000). Each false statement, whether made with or without other false statements on any one or more applications shall constitute a separate offense. And, whoever shall knowingly make a false statement in two separate "tax filings", whether or not said applications shall have been filed consecutively, and whether or not said person shall have been previously convicted thereof, shall be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000) and imprisoned not more than six months, or both.

713.25 SEVERABILITY.

If any provision of this article is held unconstitutional or invalid, on its face or as applied, the remaining provisions of this article shall remain in full force and effect; and to this end, the provisions of this article are declared to be severable.

ARTICLE 719
Alcoholic Beverages

**719.01 Tax levied on retail purchase
price of intoxicating liquors.**

CROSS REFERENCES

Authority to levy - see W.Va. Code 8-13-7; 60-7-7
Liquor control - see GEN. OFF. Art. 521

**719.01 TAX LEVIED ON RETAIL PURCHASE PRICE OF INTOXICATING
LIQUORS.**

There is hereby imposed a tax of five percent (5%) of the retail purchase price of any and all intoxicating liquors purchased from the Alcohol Beverage Control Commission or from any person licensed to sell wine at retail to the public under the provision of Chapter 60, Article 8 of the Code of West Virginia, within the corporate boundaries of the Municipality. Such tax shall be levied upon the purchaser of said intoxicating liquor or wine, and shall be added to any collected with the retail purchase price of such intoxicating liquor or wine. Such tax shall be received by the Municipality from the State Treasury pursuant to the rules and regulations adopted by the Alcohol Beverage Control Commissioner. Provided, however, that such tax shall not be collected on intoxicating liquors sold by or purchased from holders of a license issued under the provisions of Chapter 60, Article 7 of said Code of West Virginia.
(Passed 6-18-81.)

ARTICLE 725
Municipal Service Fee

725.01 Imposition and rate; collection directed.

725.02 Report by City Clerk to Council.
725.03 Hardship Waiver Board.

725.01 IMPOSITION AND RATE; COLLECTION DIRECTED.

(a) There is hereby levied and shall be collected a charge of four dollars (\$4.00) per month against residential users of Municipal services and business establishments which use Municipal services situate within the City of McMechen for essential Municipal services, including street improvements, street cleaning, street lighting and street maintenance. The charge for such service shall be at the following rates for each single family unit residence, per unit, and for each multiple-family dwelling or apartment house, per each residential unit or apartment, whether or not occupied, and for each business establishment.
(Passed 11-1-12.)

(b) The City Clerk shall be charged with the duty of mailing a statement on a monthly basis to each person or business establishment to be charged with the Municipal fee hereby imposed for the fee due for the preceding month, but failure to mail any statement for monthly charges shall not be grounds for avoiding payment. A statement shall be mailed by the Clerk at least as frequently as once each month and any such statement may be consolidated by the Clerk with statements for other Municipal fees or services due from such person or business establishment. The said monthly statement shall be mailed by the Clerk on a date selected by the Clerk, but the Clerk shall render the monthly billing to such person or business establishment in a uniform manner so that each monthly billing is mailed at intervals of approximately thirty (30) days.
(Passed 6-1-00.)

(c) The City Clerk is hereby directed to collect from any person or business establishment failing or refusing or neglecting to pay the fees herein imposed for a period of twenty (20) days after the date of a statement, a penalty of ten percent (10%) of the amount of the fee shown upon the statement. Any fee paid to the City pursuant to the terms of this section of the City Code shall be deemed paid upon the date payment was mailed to the City Clerk in a properly addressed and stamped envelope. The postmark appearing on the envelope containing any such fee shall be deemed conclusive evidence of the date such payment is mailed.
(Passed 6-23-03.)

(d) Subject to such reasonable regulations as may be promulgated by the City Clerk, the record owner of the property upon which a single family is situate shall be presumed to be the user of Municipal services rendered for the benefit of said property and the record owner shall be liable to the City for said charges; the tenants or occupants of the residential units of a multi-family dwelling or apartment house shall be presumed to be the users of such Municipal services and shall be liable to the City for said charges; and the owner or owners of a business establishment or a corporation owning or occupying a business establishment within the City shall be presumed to be the users of such Municipal services and shall be liable to the City for said charges. Persons doing business as partners in a business establishment within the City shall be jointly and severally liable for said charges. However, in the event that a residential unit of a multi-family dwelling or apartment house is temporarily unoccupied then and in the event the record owner of the property upon which said multi-family dwelling or apartment house is situate shall be presumed to be the user of the residential services provided to each such unoccupied unit and shall be liable to the City for said charges. Subject to such reasonable regulations as may be promulgated by the City Clerk, the record owner of the property upon which such multi-family dwelling or apartment house is situate shall be charged with the responsibility of collecting, in advance, charges imposed by this section from tenants or occupants of such dwelling units or apartments and properly remitting same to the City Clerk and shall be liable to the City in the amount said charges for failure to do so or for failure to maintain adequate records from which such liability may be ascertained.

(Passed 6-1-00.)

725.02 REPORT BY CITY CLERK TO COUNCIL.

The City Clerk shall within thirty (30) days after the end of each fiscal quarter report to the City Council a list of all persons and business establishments who are delinquent in the payment of the municipal service fee or any portion thereof for the preceding fiscal quarter and the City Council shall by resolution direct the City Clerk and other Municipal employees to take such action as the Council deems advisable and necessary in regard to the payment of such delinquent fees.

(Passed 6-1-00.)

725.03 HARDSHIP WAIVER BOARD.

There shall be created by this article a Hardship Waiver Board (HWB). The board shall consist of three (3) citizens of the City of McMechen. The purpose of the HWB shall be to review requests by citizen/payees of the City that the City of McMechen waive the collection of the municipal fee set forth hereinabove and decide upon the reasonableness and necessity of the same. The members of the HWB shall be nominated by Councilpersons and appointed by majority vote of the Council. The HWB shall have the authority to enact any and all necessary administrative forms, rules and/or regulations to carry out the said purpose.

(Passed 6-1-00.)

ARTICLE 731
Fire Protection Fee

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| <p>731.01 Imposition and rate; collection directed.</p> <p>731.02 Report by City Clerk to Council.</p> | <p>731.03 Hardship Waiver Board.</p> <p>731.04 Use of Fire Protection Service Fee.</p> |
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CROSS REFERENCES

Authority to impose service charges - see W.Va. Code §8-13-13

731.01 IMPOSITION AND RATE; COLLECTION DIRECTED.

(a) There is hereby levied and shall be collected a charge against residential users of Municipal Fire Protection services and business establishments which use Municipal Fire Protection services situate within the City of McMechen for Fire Service Protection services and maintenance. The charge for such service shall be at the following rates for each single family unit residence, per unit, and for each multiple-family dwelling or apartment house, per each residential unit or apartment, whether or not occupied, and for each business establishment.

1 year	\$60.00
¾ year	\$45.00
½ year	\$30.00
¼ year	\$15.00
1 month	\$5.00

(b) The City Clerk shall be charged with the duty of mailing a statement on a monthly or quarterly basis to each person or business establishment to be charged with the Municipal Fire Service Protection fee hereby imposed for the fee due for the preceding month or quarter, as the case may be, but failure to mail any statement for monthly or quarterly charges shall not be grounds for avoiding payment. A statement shall be mailed by the Clerk at least as frequently as once each quarter but, at the discretion of the Clerk, a statement may be mailed each month and any such statement may be consolidated by the Clerk with statements for other Municipal fees or services due from such person or business establishment. If a monthly statement is mailed by the Clerk it may be mailed each month on a date selected by the Clerk but the Clerk shall render the monthly billing to such person or business establishment in a uniform manner so that each monthly bill is mailed at intervals of approximately thirty (30) days. If a quarterly statement is mailed by the Clerk it shall be mailed within thirty (30) days after the end of the quarter.

(c) The City is further hereby directed to collect from any person or business establishment failing or refusing or neglecting to pay the fees herein imposed for a period of thirty (30) days after the date of a statement, whether it be a monthly or quarterly statement as herein provided, a penalty of ten percent (10%) of the amount of the fee shown upon the statement. Any fee paid to the City pursuant to the terms of this section of the City Code shall be deemed paid upon the date payment was mailed to the City Clerk in a properly addressed and stamped envelope. The postmark appearing on the envelope containing any such fee shall be deemed conclusive evidence of the date such payment is mailed.

(d) Subject to reasonable regulations as may be promulgated by the City Council, the record owner of the property upon which a single family residence is situate shall be presumed to be the user of Municipal Fire Protection services rendered for the benefit of said property and the record owner shall be liable to the City for said charges; the tenants or occupants of the residential units of a multi-family dwelling or apartment house shall be presumed to be the users of such Municipal Fire Protection services and shall be liable to the City for said charges; and the owner or owners of a business establishment or a corporation owning or occupying a business establishment within the City shall be presumed to be the users of such Municipal Fire Protection services and shall be liable to the City for said charges. Persons doing business as partners in a business establishment within the City shall be jointly and severally liable for said charges. However, in the event that a residential unit of a multi-family dwelling or apartment house is temporarily unoccupied then and in the event the record owner of the property upon which said multi-family dwelling or apartment house is situate shall be presumed to be the user of the residential services provided to each such unoccupied unit and shall be liable to the City for said charges. Subject to such reasonable regulations as may be promulgated by Council, the record owner of the property upon which such multi-family dwelling or apartment house is situate shall be charged with the responsibility of collecting, in advance, charges imposed by this section from tenants or occupants of such dwelling units or apartments and properly remitting same to the City Clerk and shall be liable to the City in the amount of said charges for failure to do so or for failure to maintain adequate records from which such liability may be ascertained.

(Passed 5-1-03.)

731.02 REPORT BY CITY CLERK TO COUNCIL.

The City Clerk shall within thirty (30) days after the end of each fiscal quarter report to the City Council a list of all persons and business establishments who are delinquent in the payment of the municipal service fee or any portion thereof for the preceding fiscal quarter and the City Council shall by resolution direct the City Clerk and other Municipal employees to take such action as the Council deems advisable and necessary in regard to the payment of such delinquent fees.

(Passed 5-1-03.)

731.03 HARDSHIP WAIVER BOARD.

There shall be created by this article a Hardship Waiver Board (HWB). The said board shall consist of the Chief of the McMechen Volunteer Fire Department or his designee, one City Council member, and one citizen of the City. The purpose of the HWB shall be to review the requests by citizen/payeys of the City that the City waive the collection of the municipal fee set forth hereinabove and decided upon the reasonableness and necessity of the same. The citizen and Council member shall be nominated by the Mayor and appointed by majority vote of the Council. The HWB shall have the authority to enact any and all necessary administrative forms, rules and/or regulations to carry out said purpose.

(Passed 5-1-03.)

731.04 USE OF FIRE PROTECTION SERVICE FEE.

(a) The Fire Protection Service Fee imposed herein shall be placed into an account separate from the general revenue accounts of the City and further shall be utilized for the following purposes, to wit:

- (1) The purchase of equipment and/or supplies to further the continued Fire protection and emergency medical services provided by the McMechen Volunteer Fire Department;
- (2) The maintenance of Fire Protection and Emergency Medical Service equipment and/or supplies of the McMechen Volunteer Fire Department.
- (3) The payment of the utilities associated with buildings of the McMechen Volunteer Fire Department.

(b) The disbursement and/or use of any fees collected pursuant to this article shall be made at the discretion and approval of the City Council of the City of McMechen.
(Ord. 5-1-03.)

ARTICLE 735
Fees for the Deployment of Public Safety Services

735.01 User fees established.
735.02 Insurance coverage.

735.03 Rules and regulations.
735.04 Use of funds.

735.01 USER FEES ESTABLISHED.

The City Fire Department shall initiate user fees for the delivery of Fire Department services, personnel, supplies and equipment to the scene of motor vehicle accidents and structure fires. The rate of the user fees shall be that which is the usual, customary and reasonable costs (UCR), which includes any services, personnel, supplies and equipment and may fluctuate based on the needs of the accident or fire.
(Passed 1-21-10.)

735.02 INSURANCE COVERAGE.

The user fees shall be filed to the motor vehicle insurance, commercial or homeowner's insurance representing an add-on-cost of the claim for damages of the vehicles, property and/or injuries. The claim shall be filed to the insurance coverage of the owner of a vehicle, owner of property, or responsible party.
(Passed 1-21-10.)

735.03 RULES AND REGULATIONS.

Council may make rules and regulations, and from time to time may amend, revoke or add rules and regulations, not consistent with this article as they may deem necessary or expedient in respect to billing for these fees or the collection thereof.
(Passed 1-21-10.)

735.04 USE OF FUNDS.

All amounts collected as a result of this article shall be placed into the General Fund of the Fire Department to be used exclusively for personnel, supplies, and equipment for the Fire Department of the City.
(Passed 1-21-10.)

ARTICLE 749
Junk Yards

749.01	Definitions.	749.03	Issuance of license; fee therefor.
749.02	License required; restrictions as to location.	749.04	Fences.
		749.99	Penalties; injunction.

749.01 DEFINITIONS.

As used in this article:

- (a) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, rubber, automobiles or parts thereof, iron, steel and other old or scrap ferrous or nonferrous materials.
- (b) "Junk yard" means an establishment or place of business which is maintained or operated for the purpose of buying or selling such junk.
- (c) "Person" includes an individual, partnership, association or corporation.
- (d) "Fence" means an enclosure so constructed and maintained so as to screen entirely the junk in said enclosure from ordinary view to those persons passing upon the streets and alleys within the boundaries of the City of McMechen.
(Passed 5-18-59.)

749.02 LICENSE REQUIRED; RESTRICTIONS AS TO LOCATION.

No junk yard shall be operated or maintained within the City of McMechen without a license and no license shall be granted a dealer who maintains a junk yard within three hundred feet of any street within the City, unless the view thereof from the street is obscured by natural objects or a fence as herein defined.
(Passed 5-18-59.)

749.03 ISSUANCE OF LICENSE; FEE THEREFOR.

The Clerk of the City shall have authority to issue licenses for the establishment, maintenance and operation of junk yards within the City limits upon approval of Council and shall charge therefor a fee of one hundred fifty dollars (\$150.00) payable annually in advance. All licenses issued under this section shall expire on the first day of January following the date of issue. A license may be renewed from year to year upon paying to the Clerk of the City the sum of one hundred fifty dollars (\$150.00) for each such renewal.
(Passed 5-18-59.)

749.04 FENCES.

A fence constructed under this article shall be kept in good order and repair and at all times painted and no advertisement shall be permitted thereon other than the name of the person in whose name the license has been issued and the nature of the business conducted therein.

(Passed 5-18-59.)

749.99 PENALTIES; INJUNCTION.

The person violating any provision of this article, whether as principal or employee, shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be penalized by a fine of not less than twenty-five dollars (\$25.00) or more than one hundred dollars (\$100.00); and such person shall be guilty of a separate offense for each month during a portion of which any violation of this article is committed, continued or permitted, and in addition to other remedies provided in this article, the City may apply to the Circuit Court, or other court of competent jurisdiction of the County in which said junk yard may be, for an injunction to abate such nuisance.

(Passed 5-18-59.)

CODIFIED ORDINANCES OF McMECHEN
PART NINE - STREETS, UTILITIES AND PUBLIC SERVICES CODE

CHAPTER ONE - Street and Sidewalk Areas

- Art. 905. Sidewalks.
- Art. 909. Excavations.

CHAPTER THREE - Utilities

- Art. 935. Water Regulations.
- Art. 941. Sewer Regulations.

CHAPTER FIVE - Other Public Services

- Art. 955. Garbage and Refuse Collection.

CODIFIED ORDINANCES OF McMECHEN
PART NINE - STREETS, UTILITIES AND PUBLIC SERVICES CODE

CHAPTER ONE - Street and Sidewalk Areas
Art. 905. Sidewalks.
Art. 909. Excavations.

ARTICLE 905
Sidewalks

905.01 Construction; repair and maintenance.

CROSS REFERENCES
General power to regulate - see W.Va. Code 8-12-5(1)

905.01 CONSTRUCTION; REPAIR AND MAINTENANCE.

(a) Council may require sidewalks or footways on streets, avenues, alleys of the City to be paved with concrete, brick, stone or other suitable materials as Council may determine, under the direction of the Street Commissioner, by the owners respectively of the lots, or the fractional parts of lots, facing or abutting on such sidewalk or footway.

(b) If the owner of any such sidewalk or footway of the real property next adjacent thereto, shall fail or refuse to pave the same in the manner or within the time required by Council, the Council may cause the same to be done at the expense of the City, and to assess the amount of such expense upon such owner, and the Clerk shall notify the owner of said lot the amount of such assessment, giving said owner notice of the time the Council will hear and determine any objection which may be made to such assessment. Council shall proceed to hear such objections, if any, and if in the opinion of Council such assessment should be made, such fact, with the amount of the same shall be recorded in the "minute books" of Council, and if said assessment is not paid within thirty days from the date of such hearing the Clerk shall cause a memorandum showing the same

of the owner of said lot, a description of the lot, and the amount of such assessment, to be filed in the office of the Clerk of the County Court of Marshall County, which shall be entered of record in the judgment lien docket in his office, and the same shall constitute a lien on such property, which may be enforced by a suit in equity in the name of the City, in the Circuit Court of Marshall County, as other liens against real estate are enforced. Upon the payment of said assessment the Clerk shall issue to the person entitled thereto a release of said lien; provided, however, that reasonable notice shall first be given to said owners that they are required to construct such sidewalks or footways.

(c) In case the owner is a non-resident of the State, the notice aforesaid may be given by publication for four successive weeks in a newspaper published in Marshall County, West Virginia. The provisions of this section shall also be applicable to needed repairs to any of the pavements of the City, and to the substitution of new pavements for any which may have been heretofore, or which may be hereafter laid and completed, and which may be deemed insufficient.

(d) No provisions within this section shall be construed as to create any duty on behalf of the City of McMechen to ensure the condition of any sidewalk or walkway, nor to create any liability on behalf of the City for any person falling or being injured as a result of the condition of any such sidewalk or walkway.
(Passed 4-3-03.)

ARTICLE 909
Excavations

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|--------|--|--------|--|
| 909.01 | Permits required. | 909.08 | Bridges over excavations in roadways. |
| 909.02 | Application for permit. | 909.09 | Safeguards regarding sidewalk excavations. |
| 909.03 | Prerequisite to granting of permit; cash deposit or bond. | 909.10 | Handling, conveyance and disposition of dirt, etc. |
| 909.04 | Manner of work; restoration of surface. | 909.11 | Public utilities. |
| 909.05 | Traffic and pedestrian control. | 909.12 | State permit. |
| 909.06 | Permit by the City for openings in or structures on City streets or rights of way. | 909.13 | Non-liability of City. |
| 909.07 | Required safeguards; footbridges. | | |

CROSS REFERENCES

Power to regulate street excavations - see W. Va. Code 8-12-5(2)
Street obstructions - see TRAF. 311.01

909.01 PERMITS REQUIRED.

No person shall cut into, abut, or otherwise damage or excavate any road, street, sidewalk or public place within the City, nor shall any structure or driveway which has been so placed, be changed or removed, except pursuant to a permit(s) as provided in this article. No road, street, sidewalk, drainage component or public place shall be abutted, dug up or excavated for placing driveways, pipes, sewers, poles or for other purposes, and no trees shall be planted or removed or obstructions placed thereon without the written permit of the City, and then only in accordance with regulations and specification of the City.

909.02 APPLICATION FOR PERMIT.

Any person, contractor or utility desiring to cut, open or otherwise excavate any street, sidewalk, drainage component or public place, whether paved or unpaved, in the City, for any purpose, shall apply to the Street Commissioner for a permit to do so. City permits covered under this section include abutment, street cut and excavation on City rights of way or properties. The application shall be accompanied with a fee of fifty cents (\$.50) per linear foot, for excavations involving utility street cuts and abutments. Permitting forms as prescribed by the Street

Commissioner, shall contain such pertinent information as may be required by him, including but not limited to the following, the purpose of the proposed excavation; the site at which the work is to be done; the date work is to begin and the expected duration of the work; and the name and address of the person for whose benefit the proposed work is to be done and who shall be responsible for all required safeguards, the diligent prosecution of the work, the restoration of the surface, the payment of all expenses incurred and compliance with all requirements of this article, and the application shall be signed by such person or by someone authorized by the owner, utility company, or the contractor employed to do the work.

909.03 PREREQUISITE TO GRANTING OF PERMIT; CASH DEPOSIT OR BOND.

(a) No excavation permit shall be granted unless it appears to the satisfaction of the Street Commissioner, that the excavation is necessary for the health, safety or welfare of the person upon whose behalf the excavation is to be made, and the connection of property to a public utility, City street or drainage components shall be deemed sufficient under this subsection.

(b) No excavation, abutment or street cut permit shall be granted until the applicant has paid the full amount of fifty cents per linear foot, for utility excavations, street cuts and abutments. Major excavation projects will be required to be bonded as deemed necessary by the Mayor, or the Street Commissioner. The bond amount will be determined by the Mayor, or the Street Commissioner sufficient to cover the cost of safeguards, disposal of excavated dirt, etc., and restoration of the surface of the place of excavation to as good condition as it was prior to making the excavation. Each such bond shall be payable to the City, shall have corporate surety, shall be approved by the City Attorney, and shall be conditioned that the work be diligently and skillfully prosecuted (subject to foreseeable circumstances beyond control of the person doing the work), that all necessary safeguards be maintained, that all excavated materials not required for refill be disposed of as provided in this article, that the surface of the place of excavation and not less than ten feet in all directions from the outer perimeter thereof be placed in as good condition as it was immediately prior to the commencement of the work and to the reasonable satisfaction of the Mayor, or the Street Commissioner that all requirements of this article be complied with, and that any defective work which appears within five years from the day of acceptance of restoration by the Mayor shall be subject to repair by the City at the expense of the permit holder.

909.04 MANNER OF WORK; RESTORATION OF SURFACE.

Any person making an excavation shall do the work in a careful, workmanlike manner, and shall diligently prosecute such work to completion without undue delay. Materials used and methods employed in filling, tamping and closing excavations and in restoring the surface shall comply with all requirements of the City.

909.05 TRAFFIC AND PEDESTRIAN CONTROL.

Anyone working on City streets, sidewalks or rights of way must submit to the Director of Public Works for approval a traffic control or pedestrian control plan. Plans must show traffic patterns, flag men and signage. A pedestrian traffic plan must address alternate walking routes, signage, flag men and alternate crosswalks. Projects that require disruption of normal vehicular travel flows, must advertise possible delays or road closure with the local media prior to construction.

909.06 PERMIT BY THE CITY FOR OPENINGS IN OR STRUCTURES ON CITY STREETS OR RIGHTS OF WAY.

(a) No opening shall be made in any City street or right of way, nor shall any structure be placed therein or there over, nor shall any structure, which has been so placed, be changed or removed, except in accordance with a permit from the City. No street or right of way shall be dug up for laying or placing pipes, sewers, poles or wires, or for other purpose, and no trees shall be planted or removed or obstructions placed thereon, without the written permit of the City or its duly authorized agent, and only in accordance with the regulations of the City. The work shall be done under the supervision and to the satisfaction of the City; and the entire expense of replacing the street or right of way in as good condition as before shall be paid by the persons to whom the permit was given, or by whom the work was done.

(b) A violation of any provision of this section shall be a misdemeanor, and the person or corporation violating the same shall, upon conviction thereof, be fined not less than twenty-five nor more than one hundred dollars for each offense.

909.07 REQUIRED SAFEGUARDS; FOOTBRIDGES.

All excavation sites shall be provided with all necessary safety devices to protect persons and animals from falling into ditches or pits. Such devices shall include, but not exclusively, warning signs, lamps and barricades; and, where practicable, secure planking for pedestrians to cross upon, which shall be well lighted the entire way between the period from sunset to sunrise.

909.08 BRIDGES OVER EXCAVATIONS IN ROADWAYS.

Between the hours of sunset and sunrise, upon bridges for maintaining traffic over excavations, the roadway shall be indicated by a sufficient number of green lights so regarding clearly identify the course of the roadway and the edges thereof; and the edges of the bridge itself shall be indicated by red lights.

909.09 SAFEGUARDS REGARDING SIDEWALK EXCAVATIONS.

All persons causing any excavations to be made for sidewalks shall have the place of excavation properly graded and protected, and shall properly barricade such place for the protection of the public. Whenever necessary, they shall, at their own expense, properly erect masonry or steel construction or a sufficient retaining wall to properly support the adjoining earth. Such retaining wall shall be properly coped or provided with an iron railing to guarantee safety to the public.

909.10 HANDLING, CONVEYANCE AND DISPOSITION OF DIRT, ETC.

(a) Each person engaged in excavating or having charge or control of excavation, or who may be engaged in or may have charge or control of conveying material from excavations, shall exercise reasonable care to prevent the deposit, in any manner, upon the surface of a sidewalk or any paved street or other public place, either by placing, spilling, dropping or tracking from wheels of vehicles or from the feet of animals, any earth, clay, mud, sand, gravel or other excavated material; and all such excavated materials spilled or dropped upon any street, sidewalk or other such place from any such vehicle or tracked thereon from wheels of vehicles or the feet of animals shall be removed without delay by the driver of the vehicle or animal involved.

(b) The excavations referred to in this section include those made in private property as well as in public property.

909.11 PUBLIC UTILITIES.

Nothing contained in this article shall be construed to prevent the City Council from entering into agreements with public utility companies which may exclude therefrom, or grant them deviations from, the provisions of this article when, in the judgment of the Council, it is in the public interest so to do and the health, safety and welfare of the inhabitants of the City will be adequately safeguarded.

909.12 STATE PERMIT.

No permit shall be granted under this article to excavate within any street or right of way which is a part of the State highway system except upon display to the Mayor of a permit so to do issued by competent authority of the State.

909.13 NON-LIABILITY OF CITY.

No permit issued, inspection made or approval given by the Mayor, his agents or employees pursuant to this article shall be construed as imposing any liability whatever upon the City for injury to any person or damages to any property which may occur by reason of any wrongful or negligent act or omission during the progress of any work under this article.

CHAPTER THREE - Utilities

Art. 935. Water Regulations.
Art. 941. Sewer Regulations.

**ARTICLE 935
Water Regulations**

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| <p>935.01 Rules and regulations.</p> <p>935.02 Right to restrict use of City water.</p> <p>935.03 Water rates, billings and enforcement.</p> | <p>935.04 Construction of new lines.</p> <p>935.05 Cross connection control system.</p> <p>935.06 Service disconnection and reconnection.</p> |
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CROSS REFERENCES

Power to regulate - see W. Va. Code 8-12-5(32)
Power to collect rates - see W. Va. Code 8-12-5(32); Art. 8-19
Discontinuance for nonpayment - see W. Va. Code 8-19-13
Review by Public Service Commission - see W. Va. Code 24-2-4(b)
Deposit limitations - see W. Va. Code 2-3-8

935.01 RULES AND REGULATIONS.

EDITOR'S NOTE: The City provides water service according to its rules and regulations on file with the Public Service Commission and according to the rules and regulations of the Public Service Commission for the government of water and sewer utilities.

935.02 RIGHT TO RESTRICT USE OF CITY WATER.

(a) The City Council reserves the right to limit and curtail the use of water from the City water system when, in its discretion, it deems that such limitation and curtailment is in the best interests of those persons who are dependent upon water from the City water system for their water needs. The Council may, by legal notice in newspapers of general circulation, supplemented by media announcements and such individual mailings of notice or Council shall elect, to prohibit the use of water from the City water system for all purposes other than ordinary domestic and business use for consumption, sanitation and hygienic purposes.

(b) No person shall use water from the City water system for any purpose prohibited by the City Council as provided in this section.

935.03 WATER RATES, BILLINGS AND ENFORCEMENT.

EDITOR'S NOTE - The current schedule of rates is on file in the office of the City Clerk and a true copy thereof is on file in the office of the State Public Service Commission.

- (a) Rates. All persons using or consuming water taken from City mains shall pay for such service in accordance with the tariff from time to time fixed by the Council and filed with the Public Service Commission of West Virginia.
- (b) Discontinuance of Service upon Nonpayment of Water Bill. The City is hereby authorized to discontinue the supply of water to any consumer who fails to pay water bills as required; provided, that the City shall not discontinue the water supply of any consumer for failure to pay bills without the City Clerk first having diligently tried to induce the consumer to pay such bills and until after at least twenty-four hours written notice to the consumer.
- (c) Liability of Landlord for Delinquency of Tenant. The City is hereby authorized to collect from any person owning property on which water taken from City mains is used or consumed the cost of water furnished to any occupant or tenant of such property and not paid for by the tenant or occupant; provided, that the owner shall not become liable for the cost of water to any tenant or occupant until the City Clerk shall have diligently tried to induce such tenant or occupant to pay for same and until after at least sixty days from the date of billing.
- (d) Refusal of Service to Property When Bill Unpaid for Other Property under Same Ownership. Any person owning or occupying property in the City on which water taken from City mains is used or consumed for which there are unpaid water bills outstanding may, within the discretion of the Mayor or the City Council, be refused future water service at any other location served by City water until such bills are paid.

935.04 CONSTRUCTION OF NEW LINES.

(a) Permit Required; Specific Requirements. Any person desiring to construct a water line beyond the then existing City lines, and connect it to the City water system, shall first make application to the City Council for its approval of such construction and connection, and he shall not proceed with any such construction or make any such connection to the City water system until such approval has been obtained. This application shall be made in the form of a letter outlining the proposed project and accompanied by detailed plans and specifications which shall contain all information pertinent to the design and construction of the proposed water system. Two copies of the plans and specifications must be submitted. Both copies thereof, if approved by the City Council, shall be signed by the Mayor and one copy thereof shall be returned to the applicant and the other copy thereof shall be filed in the office of the City Clerk. In general, the design and construction of all water lines shall comply with sound recognized engineering practices and water line construction standards. The City Council reserves the right to invoke any requirements which are deemed necessary for the protection of the property owners served and the satisfactory operation, and future maintenance, of the City water system.

- (b) Diameter, Composition and Quality of Pipe.
 - (1) All water lines shall have an inside diameter of at least four inches. Larger sizes may be required where possible future development indicates they are needed. The water line pipe shall be asbestos cement pipe or such other material as the City Council may accept and approve.

- (2) No old or used water line pipe shall be used for water lines unless passed upon and accepted by an authorized representative of the City Council.

(c) Inspections. The City Council reserves the right to inspect all materials and work at any time during the progress of any project. No water line or fire hydrant excavations shall be back filled without the prior inspection and approval of the City Council or its authorized representative.

(d) Rights of Way and Easements.

- (1) All water line extensions shall be made in recognized street or alley rights of way or under rights of way or easements especially dedicated for water line construction. Where water lines are constructed in rights of way other than streets or alleys, the builder thereof shall furnish the City Council with legal rights of way agreements conveying these rights of way, to the City of McMechen, as hereinafter provided. The width of such rights of way shall be at least five feet on either side of the centerline of the water main.
- (2) After satisfactory completion of the construction of each water line extension, if then within the City corporate limits, or upon the subdivision or development in which such water line extension has been constructed being taken into the City, the builder or owner, either or both as may be required by the City, of such water extension shall, by appropriate instrument, convey the ownership of the water line and the necessary rights of way therefore, to the City of McMechen, for future maintenance and operation. All such water lines shall be subject to all rules and regulations applicable to the McMechen water system, including the obligation to pay the prevailing rates for water used, from the time the water line extensions are placed in service.

935.05 CROSS CONNECTION CONTROL SYSTEM.

(a) Purpose.

- (1) To protect the public potable water supply served by the McMechen Water Works from the possibility of contamination or pollution by isolating, within its customer's internal distribution system, such contaminants or pollutants which could backflow or back-siphon into the public water system.
- (2) To promote the elimination or control of existing cross-connection, actual or potential, between its customer's in-plant potable water system, and non-potable water systems.
- (3) To provide for the maintenance of a continuing program of cross-connection control that will effectively prevent the contamination or pollution of all potable water systems by cross-connection.

(b) Authority.

- (1) By the Federal Safe Drinking Water Act of 1974, and the Code of West Virginia Chapter 16, Article 1 and Public Health Laws, WV Bureau for Public Health Chapter 1, Article 5B, the water purveyor has the primary responsibility for preventing water from unapproved sources, or any other substances, from entering the public potable water system.
- (2) The McMechen municipal water works, Rules and Regulations, adopted.

(c) Responsibility. The City of McMechen shall be responsible for the protection of its public potable water distribution system from contamination or pollution due to the backflow or back-siphonage of contaminants or pollutants through the water service connection. If, in judgment of the City Water Department, an approved backflow device is required at the water service connection to any customer's premise, the City, shall give notice in writing to said Customer to install an approved backflow device at each service connection to his premises. The customer shall, within ninety (90) days, install such approved device, or devices, at his 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.

(d) Definitions.

- (1) "Approved" means accepted by the Water Purveyor as meeting an applicable specification stated or cited in this regulation, or as suitable for the proposed purpose.
- (2) "Auxiliary Water Supply" means any water supply on or available to the premises other than the purveyor's approved public potable water supply.
- (3) "Backflow" means the flow of water or 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" means a device or means designed to prevent backflow or back-siphonage. Most commonly categorized as air gap, reduced pressure principle device, double check valve assembly, pressure vacuum breaker, atmospheric vacuum breaker, hose bib vacuum breaker, residential dual check, double check with intermediate atmospheric vent and barometric loop.
 - A. "Air Gap" means 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.
 - B. "Atmospheric Vacuum Breaker" means a device, which prevents back-siphonage by creating an atmospheric vent where there is either a negative pressure or sub-atmospheric pressure in a water system.
 - C. "Barometric Loop" means 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.
 - D. "Double Check" means an assembly of two (2) independently operating spring loaded check valves with tightly closing shut-off valves on each side of the check valves, and properly located test cocks for the testing of check valve assembly.
 - E. "Double Check Valve with Intermediate Atmospheric Vent" means a device having two (2) spring loaded check valves separated by an atmospheric vent chamber.
 - F. "Hose Bib Vacuum" means a breaker device, which is permanently attached to a hose bib and which acts as an atmospheric vacuum breaker.

- G. "Pressure Vacuum Breaker" means 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).
- H. "Reduced Pressure Principle Backflow Preventor" means 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.
- I. "Residential Dual Check" means 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.
- (5) "Back Pressure" means a condition in which the owner's system pressure is greater than the supplier's system pressure.
- (6) "Back-Siphonage" means the flow of water or other liquids, mixtures, or substances into the distribution pipes of a potable water system from any source other than its intended source caused by the sudden reduction of pressure in the potable water supply system.
- (7) "Containment" means 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.
- (8) "Cross-connection" means any actual or potential connection between the public water supply and a source of contamination or pollution.
- (9) "Fixture Isolation" means a method of backflow prevention, which requires a backflow prevention device at the water service entrance.
- (10) "Owner" means any person who has legal title to, or license to operate or reside in, a property upon which a cross-connection inspection is to be made or upon which a cross-connection is present.
- (11) "Person" means any individual, partnership, company, public or private corporation, political subdivision or agency of the State Department, agency or instrumentality or the United States or any other legal entity.
- (12) "Pollutant" means 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 affect such water for domestic use.
- (13) "Water Purveyor" means the Municipal Water Department, Water Board, Public Service District or other administrative authority invested with the authority and responsibility for the implementation of a cross-connection control program and for the enforcement of the provisions of this article.

- (14) "Water Service Entrance" means that point in the owner's water system beyond the sanitary control of the Water Purveyor, generally considered being the outlet end of the water meter and always before any unprotected branch.
 - (15) "West Virginia Bureau for Public Health (WVBPH)" means the State of West Virginia Bureau for Public Health.
- (e) Administration.
- (1) The Water Purveyor will 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. He may utilize local public health officials, or personnel from the Water Purveyor, or their designated representatives, to assist him in the survey of his facilities and to assist him 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 will 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 start of this program, the Water Purveyor will perform evaluations and inspections of plans and/or premises and inform the owner by letter of any correction 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 shortened depending upon the degree of hazard involved and the history of the device(s) in question.
 - C. The Water Purveyor will not allow any cross-connection to remain unless it is protected by an approved backflow prevention, 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 Purveyor will 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 will 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 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 will 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 will be terminated immediately.
- F. The Purveyor will begin initial premise inspections to determine the nature of existing or potential hazards. An 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 his premises.
- B. The Owner, after having been informed by a letter from the Water Purveyor, shall at his expense, install, maintain, and test, or have tested, any and all backflow preventers on his premises.
- C. The Owner shall correct any malfunction of the backflow preventer, which is revealed by periodic testing.
- D. The Owner shall inform the 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 or the WVBPH.
- G. The Owner shall install only backflow preventers approved by the Water Purveyor or 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 semi-annual device testing, retesting in the case that the device fails to operate correctly, and second re-inspection for non-compliance with the 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 devices.

(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, will be repaired 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 there is 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 subsection (i)(1) hereof, in cases where there is a history of test failures and the Water Purveyor feels that due to the degree of hazard involved, additional testing is warranted. Cost of the additional tests will be borne by the owner.

(j) Records. 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. 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 for Public Health.
(Passed 3-15-12.)

935.06 SERVICE DISCONNECTION AND RECONNECTION.

(a) Water Disconnect-Reconnect Administration. Whenever water service has been disconnected for any reason, a disconnection fee of fifty dollars (\$50.00) shall be charged; or in the event the delinquent water bill is collected in the field, an administrative fee of fifty dollars (\$50.00) shall be charged. Whenever water service which has been previously disconnected for any reason is reconnected, a reconnection fee of fifty dollars (\$50.00) shall be charged.

(b) Security Deposit for Utility Service. A deposit of fifty dollars (\$50.00) will be required for a new water utility service and fifty dollars (\$50.00) deposit will be required for a new sewage utility service prior to these utilities services being connected.
(Passed 6-7-07.)

CHAPTER 941
Sewer Regulations

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| <p>941.01 Certain fluids prohibited.</p> <p>941.02 Right to inspect private premises.</p> <p>941.03 Required toilet facilities and sewer connections.</p> | <p>941.04 Prohibited discharges.</p> <p>941.05 Sewer connection and service required.</p> |
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CROSS REFERENCES

- Power to regulate utility systems - see W. Va. Code 8-12-5(32)
 Sewer connections - see W. Va. Code 8-18-22
 Authority to establish and maintain a sewage system - see W. Va. Code Art. 16-13A
 Power to collect charges - see W. Va. Code 8-12-5(32), 16-13-16
 Review by Public Service Commission - see W. Va. Code 24-2-4(b)
 Deposit limitations - see W. Va. Code 24-3-8

941.01 CERTAIN FLUIDS PROHIBITED.

(a) No person shall discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water or unpolluted industrial or commercial process waters to the sanitary sewer system serving this City.

(b) The owner of each house, building or premises used for human occupancy, employment, recreation or any other purpose, situate within the City or utilizing any portion of the sanitary sewer system, is hereby required, at his own expense, to eliminate from such sanitary sewer system all storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water or unpolluted industrial or commercial process waters entering the sanitary sewer system from his property, within one hundred twenty days after date of notice by certified mail from the City to do so.

941.02 RIGHT TO INSPECT PRIVATE PREMISES.

City employees designated by Council may, in their discretion, enter upon private property which is served by the sanitary system of the City and, at reasonable times and upon reasonable notice to such property owners that such entry is to be made, and in a reasonable manner, physically inspect such property and conduct tests including but not limited to smoke and dye tests for the purpose of enforcing and carrying out the prohibitions and requirements specified in this article.

941.03 REQUIRED TOILET FACILITIES AND SEWER CONNECTIONS.

(a) Every building or other structure used as a dwelling or within which persons are employed or congregate shall be equipped with rest room or toilet facilities. Every such structure situate within two hundred feet of a public sanitary sewer and water main shall be connected with the public sewer and all sewage from such structure shall empty into the sewer. It shall be unlawful for any property owner to construct or to maintain a building or other structure in which rest rooms or toilet facilities are required as herein set forth without such rest rooms or toilet facilities and it shall also be unlawful for any such property owner to maintain a building in which rest rooms or toilets are available without connecting the sewers from such building to the public sewer as herein required.

(b) Within ninety days after a public sanitary sewer and water main are constructed to a point within two hundred feet of any such building or structure, the owner thereof shall cause it to be connected to the public sanitary sewer and his failure so to do shall constitute a violation of this section.

(c) No person shall construct, use or maintain a private sanitary sewer disposal system within this City without first securing a permit from the City for the construction, use or maintenance thereof. The City shall not grant such permit unless the property to be served is situate more than two hundred feet from the nearest public sanitary sewer and water main and unless the private sanitary sewer disposal system has been approved by the proper official of the County Department of Health.

(d) No property owner shall permit the escape of sewage from his property onto adjoining public or private property. Every such property owner shall be responsible for maintaining the sewer line or lines running from his property to the public sanitary sewer and shall promptly cause any such line or lines to be replaced or repaired, should the same be broken or leaking.

(e) No person shall empty or to cause to be emptied or to permit to flow upon the surface of the ground any sewage or other fluids or liquids containing human excrement or any other household slops or other putrescible fluids or liquids.

(f) No property owner shall maintain the rest room or toilet facilities within the building or structure owned by him in good working order and, in the event the rest room or toilet facilities become damaged, obstructed or useless, to immediately repair them.

941.04 PROHIBITED DISCHARGES.

(a) The discharge of waters not containing sewage is prohibited except with the approval of the Council, or as otherwise provided in the Wastewater System Regulations. No storm water connections from any building or yard (including down spouts, roof leaders, gutters, area drains, french drains and sump pumps); nor any drain from any catch basin, lake, pond, or swimming pool; nor any outlet for surface water, storm water or groundwater of any kind, nor channels which may at anytime carry surface drainage from hydraulic pressure or well points; shall be connected to the collection system or any such public sewer tributary. Such discharges described above may only be connected to a storm sewer or natural outlet.

(b) No person or persons shall discharge or cause to be discharged any of the following described waters or wastes to the collection system.

- (1) Any gasoline, benzene, naphtha, fuel oil, motor oil, or other flammable or explosive liquid, solid or gas.
- (2) Pollutants which result in the presence of toxic gases, vapors or fumes within the wastewater treatment facilities in a quantity that may cause acute worker health and safety problems.
- (3) Any water or wastes having a pH lower than 6.0, having greater than 10.0 or having any other corrosive property capable of causing damage to structures, equipment of the collection system, or harm to personnel employed by the City of McMechen. No solid or viscous substances in quantities or of such size as to be capable of causing obstructions to the flow of the collection system, or otherwise interfering with the proper operation of the wastewater works such as, but not limited to, ashes, cinders, sand, mud, straw, metal shavings, glass, rags, feathers, tar, plastics, wood, un-ground garbage, whole blood, paunch manure, hair and fleshing, entrails, paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
- (4) No wastes, other than domestic sewage, from any hospital, mercantile, manufacturing or industrial establishment, or any steam, hot gases or vapors, grease, fats, oils, acids, carbon, iron or mineral wastes, or any other wastes which would tend to obstruct the collection system, or be injurious to the public health, be detrimental to the wastewater collection system and the wastewater treatment facilities.
- (5) No trucked or hauled wastewater is permitted to be discharged into the collection system. This wastewater shall be disposed at the designated discharge point at the wastewater treatment facility.
- (6) Questions regarding prohibited discharges to the wastewater collection system and the combined sewer system may be addressed to the City of McMechen Municipal Water Office at 232-3140.

(c) Failure to comply with this section can result in a fine up to \$1,500 dollars, or a fee placed on to the monthly utility bill for treatment of any unauthorized discharge into the treatment system. This fee for Storm Water will be based on square footage of the residence times 1.5 per every one-tenth of an inch of rain equaling the estimated waster collected into the sewage system from the above mentioned definitions. (Passed 6-21-07.)

941.05 SEWER CONNECTION AND SERVICE REQUIRED.

(a) The use of the sewer system of the City of McMechen 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, and of the area served by the City sewer system.

(b) 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 sanitary board of the City is located within such a distance that sewer service is readily 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 readily available, and shall thereafter refrain from using or cease to use any other method in place of the sewer services available, and shall thereafter pay all the charges, rates or fees as may 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 Sanitary Board or the City Council; and such rules and regulations may provide for reasonable charges, fees or deposits required for making such connections.

(Passed 9-17-09.)

CHAPTER FIVE - Other Public Services

Art. 955. Garbage and Refuse Collection.

ARTICLE 955
Garbage and Refuse Collection

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| <p>955.01 Collection, transportation and disposal by City only; exceptions.</p> <p>955.02 Supervision of City collection service; regulations.</p> <p>955.03 Precollection practices and requirements.</p> | <p>955.04 Collection practices and requirements.</p> <p>955.05 Fees, rates and charges.</p> |
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CROSS REFERENCES

Power to regulate - see W. Va. Code 8-12-5(10) et seq.
Loads dropping or leaking - see TRAF. 347.04

955.01 COLLECTION, TRANSPORTATION AND DISPOSAL BY CITY ONLY; EXCEPTIONS.

(a) Except as provided otherwise in this article, all refuse accumulated in the City shall be collected, conveyed and disposed of by the City; and no other person shall collect, convey over any of the streets or alleys of the City, or dispose of, any refuse accumulated in the City.

(b) This article shall not prohibit the actual producers of refuse, or the owners of premises upon which refuse has accumulated, from personally collecting, conveying and disposing of such refuse; provided, that such producers or owners comply with the provisions of this article, and that the manner of collection, conveyance and disposal meets with any other governing law or ordinance and the approval of the Superintendent of Sanitation and the County Health Officer.

(c) This article shall not prohibit collectors of refuse from outside the City from hauling such refuse over City streets; provided, that such collectors comply with the provisions of this article and meet the approval of the Superintendent of Sanitation and the County Health Officer and meet the requirements of any other governing law or ordinance.

(Passed 12-15-88.)

955.02 SUPERVISION OF CITY COLLECTION SERVICE; REGULATIONS.

The collection, conveyance and disposal of refuse within the City shall be done under the supervision of the Superintendent of Sanitation and the County Health Officer. The Superintendent of Sanitation, with the approval of the Mayor, shall make regulations concerning the days of collection, type and location of waste containers and such other matters pertaining to the collection, conveyance and disposal of refuse as he shall find necessary, and he may change and modify such regulations, with the Mayor's approval, after notice to the public; provided, that such regulations are not contrary to the provisions of this article.

(Passed 12-15-88.)

955.03 PRECOLLECTION PRACTICES AND REQUIREMENTS.

(a) Separation of Refuse. Garbage, ashes and rubbish shall each be placed and maintained in separate containers.

(b) Preparation of Refuse.

- (1) Garbage. All garbage before being placed in garbage cans for collection shall have drained from it all free liquids and shall be wrapped in paper.
- (2) Rubbish. All rubbish shall be drained of liquid before being deposited for collection.
 - A. Cans and bottles. All cans and bottles which have contained food shall be thoroughly rinsed and drained before being deposited for collection.
 - B. Trimming and clippings. Tree trimmings, hedge clippings and similar material shall be cut to length not to exceed four feet and securely tied in bundles for collection.
 - C. Glass, cans, etc. Glass, cans, bottles and other noncombustible material shall not be placed in any receptacle for the storing of garbage.

(c) Refuse Containers.

- (1) Duty to provide and maintain in sanitary condition. Refuse containers shall be provided by the owner, tenant, lessee or occupant of the premises. Refuse containers shall be maintained in good condition. Any container that does not conform to the provisions of this article or that may have ragged or sharp edges or any other defect liable to hamper or injure the person collecting the contents thereof shall be promptly replaced upon notice. The Superintendent of Sanitation shall have the authority to refuse collection services for failure to comply herewith.
- (2) Garbage. Garbage containers shall have a capacity of not more than thirty gallons, and shall be made of metal, equipped with suitable handles and tight fitting covers, and shall be watertight. Garbage containers shall be of a type approved by the County Health Officer and shall be kept in a clean, neat and sanitary condition at all times.
- (3) Ashes. Ash containers shall be made of metal and have a capacity of not more than thirty gallons.
- (4) Rubbish. Rubbish containers shall be of metal material fitted with a tight cover, suitable for collection purposes, and shall be of such weight that they can be handled by one man.

(d) Points of Collection. Refuse containers shall be placed for collection at ground level on the property, not within the right of way of a street or alley, and accessible to the side of the street or alley from which collection is made; provided, that containers may be placed for collection at other than ground level when approved by the Superintendent of Sanitation.
(Passed 12-15-88.)

955.04 COLLECTION PRACTICES AND REQUIREMENTS.

(a) Frequency of Collection.

- (1) Residential. Refuse accumulated by residences shall be collected at least once each week.
- (2) Commercial. Restaurants and other businesses and institutions as deem it necessary may enter into an agreement for a greater frequency of collection. Where necessary to protect the public health, the Superintendent of Sanitation shall have the authority to require that more frequent collections be made.

(b) Limitation on Quantity.

- (1) Residential. The Superintendent of Sanitation shall collect a reasonable accumulation of refuse of each family during a collection period for the standard charge.
- (2) Commercial. The Superintendent of Sanitation shall collect a reasonable accumulation of refuse of restaurants and other businesses and institutions during the collection period at a fair charge based upon the average weight or volume; and he shall have authority to refuse to collect unreasonable amounts or to make an additional charge for such amounts.

(c) Special Refuse Problems.

- (1) Contagious disease refuse. The removal of wearing apparel, bedding or other refuse from homes or other places where highly infectious or contagious diseases.
(Passed 12-15-88.)

955.05 FEES, RATES AND CHARGES.

(a) All fees, rates and charges for any of the services authorized by this article may be recovered by the City by any appropriate legal action, if not paid within ten days after the same are due.
(Passed 12-15-88.)

(b) Residential garbage rates will be seventeen dollars (\$17.00) per month for weekly collections.

(c) Commercial garbage rates will be:

- (1) One pick-up per week: \$21.75
- (2) Two pick-ups per week: \$24.75
- (3) Three pick-ups per week: \$29.75

(d) There shall be a maximum pick-up of 10 containers per week.

CODIFIED ORDINANCES OF McMECHEN
PART ELEVEN - HEALTH AND SANITATION CODE

Art. 1119. Discharges of Animal Fats, Oils and Grease,
Food Waste, Soil, Sand and Lint.

CODIFIED ORDINANCES OF McMECHEN
PART ELEVEN - HEALTH AND SANITATION CODE

ARTICLE 1119

Discharges of Animal Fats, Oils and Grease, Food Waste, Soil, Sand and Lint

<p>1119.01 Purpose. 1119.02 Definitions. 1119.03 Control plan for (FOG) and food waste. 1119.04 General criteria. 1119.05 Design criteria. 1119.06 Grease trap maintenance. 1119.07 Additives.</p>	<p>1119.08 Chemical treatment. 1119.09 Sand, soil and oil interceptors. 1119.10 Laundries. 1119.11 Control equipment. 1119.12 Alteration of control methods. 1119.13 Enforcement and penalties.</p>
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1119.01 PURPOSE.

The purpose of this article is to control discharges into the public sewerage collection system and wastewater treatment plant that interfere with the operations of the system, cause blockage and plugging of pipelines, interfere with normal operation of pumps and their controls, and contribute waste of a strength or form that either causes treatment difficulties or is beyond the treatment capability of the wastewater treatment plant.

(Passed 6-21-07.)

1119.02 DEFINITIONS.

(a) Grease. Material composed primarily of fats, oil and grease (FOG) from animal or vegetable sources. The terms fats, oil and grease shall be deemed as Grease by definition. Grease does not include petroleum based products.

(b) Grease Trap. A device for separating and retaining waterborne greases and grease complexes prior to the wastewater exiting the trap and entering the sanitary sewer collection and treatment system. These devices also serve to collect settleable solids, generated by and from food preparation activities, prior to the water exiting the trap and entering the sanitary sewer collection and treatment system.

(c) Food Service Facilities. Those establishments primarily engaged in activities of preparing, serving or otherwise making available for consumption foodstuffs and that use one more of the following preparation activities: cooking by frying (all methods), baking (all methods), grilling, sauteing, rotisserie cooking, broiling (all methods), boiling, blanching, roasting, toasting or poaching. Also included are infrared heating, searing, barbecuing and any other food preparation activity that produces a hot, non-drinkable food product in or on a receptacle that requires washing. These facilities include restaurants, cafeterias, hotels, motels, hospitals, nursing homes, schools, grocery stores, prisons, jails, churches, camps, caterers, manufacturing plants, or any other sewer users as determined by the City's Wastewater Collection System Superintendent (WCSS) who discharge applicable waste.

(d) User. Any person or establishment including those located outside the jurisdictional limits of the City who contributes, causes or permits the contribution or discharge of wastewater into the City's wastewater collection or treatment system, including persons who contribute such wastewater from mobile sources, such as those who discharge hauled wastewater.

(e) Oil/Water Separator. An approved and industry standard system that is specifically designed and manufactured to separate oil from water. The system shall allow the oil to be collected and removed on a regular basis to prevent it from being discharged into the wastewater collection system. Only oil/water separators manufactured for that specific operation will be approved. Adequate support literature from the manufacturer will be required so as to allow a proper review by the WCSS.

(Passed 6-21-07.)

1119.03 CONTROL PLAN FOR (FOG) AND FOOD WASTE.

(a) Any new construction, renovation or expansion of Food Service Facilities shall be required to submit to the City a FOG and food waste control plan that will effectively control the discharge of undesirable materials into the wastewater collection system.

(b) Any existing Food Service facilities shall also be required to submit a FOG and food waste control plan that will effectively control the discharge of undesirable materials into the wastewater collection system. Existing facilities shall not be exempt from the requirements of this article. There will be no "Grandfathering".

(Passed 6-21-07.)

1119.04 GENERAL CRITERIA.

(a) Installation Requirements. All existing, proposed, or newly remodeled Food Service Facilities inside the City of McMechen wastewater service area shall be required to install, at the user's expense an approved, properly operated and maintained grease trap.

(b) Sanitary Sewer Flows. Sanitary sewer flows from toilets, urinals, lavatories, etc, shall not be discharged into the grease trap. These flows shall be conveyed separately to the sanitary sewer service lateral.

(c) Floor Drains. Only floor drains which discharge or have the potential to discharge grease shall be connected to a grease trap.

(d) Garbage Grinders/Disposals. It is recommended that solid food waste products be disposed of through normal solid waste/garbage disposal means. If a grinder/disposal is used it must be connected to the grease trap. The use of grinders is discouraged since it decreases the operational capacity of the grease trap and will require an increased pumping frequency to ensure continuous and effective operation.

(e) Dishwashers. Commercial dishwashers must be connected to the grease trap. Dishwashers discharge soap and hot water, which can melt grease and allow it to pass through an undersized grease trap. Traps must be sized accordingly to allow enough detention time to allow water to cool and grease to solidify and float to the top of the trap.

(f) Location. Grease trap shall be installed outside the building upstream from the sanitary sewer service lateral connection. This will allow easy access for inspection, cleaning and removal of the intercepted grease at any time. A grease trap may not be installed inside any part of a building without written approval by the WCSS.

(g) Pass Through Limits. No user shall allow wastewater discharge concentration from grease trap to exceed 100 MgPL (milligrams per liter) as identified by EPA method 413. (Passed 6-21-07.)

1119.05 DESIGN CRITERIA.

(a) Construction. Grease traps shall be constructed in accordance with the City of McMechen's standards and shall have a minimum of two compartments with fittings designed for grease retention. All grease removal devices or technologies shall be subject to the written approval of the WCSS. Such approval shall be based on demonstrated removal efficiencies of the proposed technology.

(b) Access. Access to grease traps shall be available at all times, to allow for their maintenance and inspection. Access to trap shall be provided by two manholes (one on each compartment) terminating at finished grade with cast iron frame and cover.

(c) Load-Bearing Capacity. In areas where additional weight loads may exist, the grease trap shall be designed to have adequate load-bearing capacity. (Example: vehicular traffic in driving or parking areas).

(d) Inlet and Outlet Piping. Wastewater discharging to a grease trap shall enter only through the inlet pipe of the trap. Each grease trap shall have only one inlet and one outlet pipe.

(e) Grease Trap Sizing. The required size of the grease trap shall be calculated using EPA-2 model. All grease traps shall have a capacity of not less than 1,000 gal. nor exceed a capacity of 3,000 gal. If the calculated capacity exceeds 3,000 gal., multiple units plumbed in series shall be installed.

(Passed 6-21-07.)

1119.06 GREASE TRAP MAINTENANCE.**(a) Cleaning/Pumping.**

- (1) The user at the user's expense shall maintain all grease traps to assure proper operation efficiency and maintain compliance with the City's Pass Through Limits. Maintenance of grease traps shall include the complete removal of all contents, including floating materials, wastewater and bottom sludge solids. This work shall be performed by a qualified and licensed hauler.
- (2) Decanting or discharging of removed waste back into the trap from which it was removed or any other grease trap, for the purpose of reducing the volume to be disposed, is prohibited. This service shall also include a thorough inspection of the trap and its components. Any needed repairs shall be noted. Repairs shall be made at user's expense.

(b) Cleaning/Pumping Frequency. The grease trap must be pumped out completely a minimum of once every four months, or more frequently, as determined by the WCSS as needed to prevent carry over of grease into the sanitary sewer system.

(c) Disposal. All waste removed from each grease trap must be disposed of at a facility approved to receive such waste in accordance with the provisions of this program. In no way shall the pumpage be returned to any private or public portion of the City's sanitary sewer collection system. All pumpage from grease traps must be tracked by a manifest, which confirms pumping, hauling and disposal of waste. The customer must obtain and retain a copy of the original manifest from the hauler.

(d) Maintenance Log. A grease trap cleaning/maintenance log indicating each pumping for the previous 24 months shall be maintained by each Food Service Facility. This log shall include the date, time, amount pumped, hauler and disposal site and shall be kept in a conspicuous location for inspection. Said log shall be made available to the WCSS or his representative upon request.

(e) Submittal of Records. Each user shall submit all cleaning and maintenance records to the WCSS. The maintenance records shall include the following information:

- (1) Facility name, address, contact person and phone number.
- (2) Company name, address, phone number and contact name of person responsible for performing the maintenance, cleaning, pumping or repair of grease trap.
- (3) Types of maintenance performed.
- (4) Dates that maintenance was performed.
- (5) Date of next scheduled maintenance.
- (6) Copies of manifests.

The user shall be required to submit maintenance records to the WCSS on a biannual basis (twice per year). Records shall be submitted by March 1st and September 1st of each year. The records shall be submitted to:

Attn Wastewater Collection System Superintendent
47 Ninth Street
McMechen, WV 26040

The WCSS will perform periodic inspections of these facilities and shall notify the user of any additional required maintenance or repairs. Upon written notification by the WCSS, the user shall be required to perform the maintenance and records of said maintenance within 14 calendar days. Upon inspection by the WCSS the user may be required to install, at his expense, additional controls to provide a complete system which prevents discharges of undesirable materials into the wastewater collection system.

(Passed 6-21-07.)

1119.07 ADDITIVES.

Any biological additive(s) placed into the grease trap or building discharge line including, but not limited to, enzymes, commercially available bacteria or other additives designed to absorb, purge, consume, treat or otherwise eliminate fats, oils and grease shall require written approval by the WCSS prior to use. The use of such additives shall in no way be considered as a substitution to the maintenance procedures required herein.

(Passed 6-21-07.)

1119.08 CHEMICAL TREATMENT.

Chemical treatments such drain cleaners, acid or other chemical solvents designed to dissolve or remove grease shall not be allowed to enter the grease trap.

(Passed 6-21-07.)

1119.09 SAND, SOIL AND OIL INTERCEPTORS.

All car washes, truck washes, garages, service stations, car and truck maintenance facilities, fabricators, utility equipment shops and other facilities (as determined by the WCSS) that have sources of sand, soil and oil shall install effective sand, soil and oil traps, interceptors and/or oil/water separators. These systems shall be sized to effectively remove sand, soil and oil at the expected flow rates. These systems shall be, at the user's expense, cleaned or pumped on a regular basis to prevent impact upon the wastewater collection and treatment systems. Users whose systems are deemed to be ineffective by the WCSS shall be asked to change the cleaning frequency or to increase the size of the system. Owners or operators of washing facilities will be required to prevent the inflow of detergents and rainwater into the wastewater collection system. Oil/water separator installations shall be required at facilities that accumulate petroleum oils and greases and at facilities deemed necessary by the WCSS.

(Passed 6-21-07.)

1119.10 LAUNDRIES.

Commercial laundries shall be equipped with an interceptor with a wire basket or similar device, removable for cleaning, that prevents passage (into the wastewater collection system) of solids ½" or larger in size such as rags, strings, buttons or other solids detrimental to the system.

(Passed 6-21-07.)

1119.11 CONTROL EQUIPMENT.

(a) The equipment or facilities installed to control FOG, food waste, sand, soil, oil and lint must be designed in accordance with the Southern Plumbing Code, the West Virginia Department of Environmental and Conservation guidelines, most current engineering standards or other applicable guidelines approved by the WCSS. Underground equipment shall be tightly sealed to prevent inflow of rainwater and shall be easily accessible to allow regular maintenance and inspection.

(b) Control equipment shall be maintained by the owner and/or operator of the facility as to prevent a stoppage of the wastewater collection system and the accumulation of FOG, food waste, sand, soil and lint in the collection's lines, pump stations and wastewater treatment plant.

(c) If the City of McMechen is required to clean out the wastewater collection lines, as a result of a stoppage resulting from poorly maintained control equipment (or lack thereof) the owner or operator shall be required to refund the labor, equipment, materials and any overhead costs to the City including any fines incurred due to any sanitary sewer overflow due directly to the stoppage.

The City retains the right to inspect and approve any and all installations of control equipment. (Passed 6-21-07.)

1119.12 ALTERATION OF CONTROL METHODS.

The City McMechen, through the WCSS, reserves the right to request additional control measures if existing control equipment is shown to be insufficient to protect the wastewater collection system and wastewater treatment plant from interference due to the discharge of FOG, sand, soil, lint or any other undesirable materials.

(Passed 6-21-07.)

1119.13 ENFORCEMENT AND PENALTIES.

(a) Any person, who violates this article, in part or whole, shall be guilty of a Civil Violation that will result in a fine up to \$1,500.00.

(b) Each day in violation of this article shall be considered a separate offense, punishable by a fine of \$500.00 per day until corrected.

(Passed 6-21-07.)



CODIFIED ORDINANCES OF McMECHEN
PART THIRTEEN - PLANNING AND ZONING CODE

The City is currently in the process of reviewing the current Zoning Ordinance. This Part Thirteen is reserved for future legislation.

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CODIFIED ORDINANCES OF McMECHEN
PART FIFTEEN - FIRE PREVENTION CODE

Art. 1501. General Fire Protection Regulations.

Art. 1511. West Virginia State Fire Code.

Art. 1521. Open Burning.

CODIFIED ORDINANCES OF McMECHEN
PART FIFTEEN - FIRE PREVENTION CODE

ARTICLE 1501
General Fire Protection Regulations

<p>1501.01 Attacking, hindering or obstructing firefighter.</p> <p>1501.02 Obstruction of fire hydrants.</p> <p>1501.03 Unauthorized use of or tampering with Fire Department equipment.</p> <p>1501.04 Unauthorized riding upon Fire Department apparatus prohibited.</p> <p>1501.05 Duty of spectators and authority of firemen and police.</p> <p>1501.06 Bonfires and other outdoor fires restricted.</p> <p>1501.07 Burning of waste materials.</p> <p>1501.08 Fires on property of others.</p> <p>1501.09 Maliciously setting fires.</p> <p>1501.10 Smoking restrictions.</p> <p>1501.11 Use of torches for removing paint and sweating pipe joints.</p> <p>1501.12 Hot ashes and other dangerous materials.</p>	<p>1501.13 Accumulations of waste materials.</p> <p>1501.14 Handling readily combustible materials.</p> <p>1501.15 Storage of readily combustible materials.</p> <p>1501.16 Flammable decorative materials.</p> <p>1501.17 Open flames or lights restricted.</p> <p>1501.18 Maintenance of chimneys, vents, heat producing appliances and exhaust systems.</p> <p>1501.19 Fireworks.</p> <p>1501.20 Administration and enforcement.</p> <p>1501.21 Conflict.</p> <p>1501.99 Penalty.</p>
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CROSS REFERENCES

Municipal inspections - see W. Va. Code 8-12-15

Authority of local fire departments - see W. Va. Code 8-15-1 et seq., Art. 29-3A

1501.01 ATTACKING, HINDERING OR OBSTRUCTING FIREFIGHTER.

(a) No person shall intentionally obstruct, oppose or hinder, or attempt to obstruct, oppose or hinder, or counsel, advise or invite others to obstruct, oppose or to hinder the operation of any apparatus of the Fire Department firefighter.

(b) Any person willfully violating any provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

(c) Nothing in this subsection shall be construed to prevent law-enforcement officials from controlling traffic and other wise maintaining order at the scene of a fire.

1501.02 OBSTRUCTION OF FIRE HYDRANTS.

No person shall obstruct, stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the law or the directions of a police officer or traffic-control device or prevent or delay access in any of the following places:

- (a) Within fifteen feet of or otherwise obstruct a fire hydrant shall be prohibited at all times; or
- (b) Within fifteen feet of or otherwise obstruct a fire department connection(s) (FDC) shall be prohibited at all times; or
- (c) Parking of motor vehicles or otherwise obstruct any fire lanes shall be prohibited at all times; or
- (d) 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 the entrance when properly sign-posted.

1501.03 UNAUTHORIZED USE OF OR TAMPERING WITH FIRE DEPARTMENT EQUIPMENT.

(a) No person shall use any fire apparatus or equipment of the City for any private purpose, nor shall any person unlawfully or willfully and without proper authority remove, take away, tamper with, keep or conceal any tool, equipment, appliance or other article used in any way by the Fire Department.

(b) No unauthorized person at the fire scene shall use, handle, move or otherwise disturb any Fire Department equipment unless his or her assistance is specifically requested by a fireman.

1501.04 UNAUTHORIZED RIDING UPON FIRE DEPARTMENT APPARATUS PROHIBITED.

(a) No unauthorized person shall ride upon any fire apparatus of the City at any time; and no person other than those assigned to such apparatus shall be authorized to ride thereon while such apparatus is responding to a fire alarm except by authority of the Fire Chief.

(b) While engaging in fire prevention and public relations work it shall be acceptable to allow groups of children to ride upon the apparatus when properly attended by adults, or firemen.

1501.05 DUTY OF SPECTATORS AND AUTHORITY OF FIREMEN AND POLICE.

(a) Every person present at the scene of a fire shall be subject and obedient to the orders of any police officer or member of the Fire Department there present regarding any matter regarding extinguishing of the fire, the removal and protection of property or the maintenance of order; and no person present at the scene of any fire shall disobey any such lawful order of any police officer or member of the Fire Department there present.

(b) Firemen and police officers present at the scene of any fire shall have power to arrest any person for disobedience of the lawful order of a police officer or fireman given pursuant to this section and to hold the offender in custody until the fire has been extinguished, at which time he shall be taken before an appropriate judicial officer to be dealt with according to law.

1501.06 BONFIRES AND OTHER OUTDOOR FIRES RESTRICTED.

(a) No person shall openly burn or to cause or permit to be openly burned upon any property within the City any tires, tar paper, solid waste, garbage, paper, leaves, limbs, branches, brush or any other substance whatsoever; provided, that it shall not be unlawful to burn charcoal for the purpose of outdoor cooking; provided further, that it shall not be unlawful to burn a small open attended fire for protection during an emergency situation; and provided further, open burning shall not be used for waste disposal purposes; There shall be no burning of tree trunks, limbs, stumps, etc. over eight (8) inches in diameter and the volume shall be of the minimum size for the intended purpose; Vegetation to be burned shall be well dried for a minimum of ten (10) days, be piled so as to promote combustion, and have a ten (10) foot safety strip around the fire; The fuel chosen to minimize the generation and emission of air contaminants; No open burning shall be conducted on Sunday or in windy or extremely dry conditions; Open burning shall be confined to the period from 7:00 am to 4:00 pm, except during the periods between March 1 - May 31 and October 1 - December 31 when "open burning" shall be confined to the period from 4:00 pm to 7:00 am; and the City Council may delegate to the Fire Chief authority to issue such permits in the name of the City Council; and it shall be unlawful for any person to violate or fail to comply with any permit issued hereunder by the City Council or by the Fire Chief in the name of the City Council. Applications for open burning shall be submitted in writing at least ten (10) days before the fire is set.

(b) Location Restricted. No person shall kindle or maintain any bonfire or rubbish fire or authorize any such fire to be kindled or maintained unless

- (1) The location shall not be less than fifty (50) feet from any structure and adequate provision is made to prevent fire from spreading to within fifty (50) feet of any structure, or
- (2) The fire is contained in a waste burner, of a type approved by the Fire Chief, located safely not less than fifteen feet from any structure; provided, that no bonfire or rubbish fire shall be kindled or maintained on any part of the streets, sidewalks, public squares or other public places in the City.

(c) Attendance of Open Fires. Any open burning shall be constantly attended by a competent person until such fire is extinguished. Fire extinguishing tools and materials shall be available for immediate use.

(d) Fire Chief May Prohibit. The Fire Chief shall prohibit burning which will be offensive or objectionable due to smoke or odor emissions when atmospheric conditions or local circumstances make such fires hazardous. The Fire Chief shall order the extinguishment, by the permit holder or the fire department, of any open burning which creates or adds to a hazardous or objectionable situation.

(e) A written Open Burning Permit effective for two (2) weeks shall be obtained at City Hall for ten (10) dollars and must be in the possession of those performing the open burning. It shall be unlawful for any person within the City to burn without a permit or to violate or fail to comply with the rules and regulations of the Permit.

1501.07 BURNING OF WASTE MATERIALS.

No person during construction or demolition of buildings or structures, shall dispose of any waste materials or rubbish by burning on the premises or in the immediate vicinity without having obtained a permit or other proper authorization from the Fire Chief and the safety provisions of Section 1501.06 shall be applicable to any fire authorized by the Fire Chief.

1501.08 FIRES ON PROPERTY OF OTHERS.

No person shall kindle or maintain any fire upon the property of another without authority of the owner of such property, nor shall any person willfully or through neglect permit any fire on his own property to spread to the property of another.

1501.09 MALICIOUSLY SETTING FIRES.

No person shall maliciously set fire to any woods, fence, grass, straw or other substance or liquid capable of spreading fire on lands within the City.

1501.10 SMOKING RESTRICTIONS.

(a) "Smoking" shall mean and include the carrying of a lighted pipe, cigar, cigarette, tobacco, marijuana or other substance in any form.

(b) Where conditions are such regarding make smoking a hazard in any areas of warehouses, stores, industrial plants, institutions, places of assembly, and in open spaces where combustible materials are stored or handled, the Fire Chief is empowered and authorized to order the owner or occupant in writing to post "No Smoking" signs in each building, structure, room or place in which smoking shall be prohibited. The Fire Chief shall designate specific safe locations, if necessary, in any building, structure or place in which smoking may be permitted.

(c) "No Smoking" signs of approved sized lettering and location required in accordance with subsection (b) of this section shall read. " By Order of the Fire Chief."

(d) No person shall remove any legally required "No Smoking" sign or to smoke in any place where such signs are posted.

1501.11 USE OF TORCHES FOR REMOVING PAINT AND SWEATING PIPE JOINTS.

(a) Any person using a torch or other flame producing device for removing paint from any building or structure shall provide one fire extinguisher, of a type approved by the Fire Chief, or water hose connected to a water supply in the area where such burning is done. In all cases, a fire watcher shall remain on the premises for one hour after the torch or flame producing device has been used.

(b) Any person using a torch or other flame producing device for sweating pipe joints in any building or structure shall have available in the immediate vicinity where the sweating is done one such approved fire extinguisher or water hose connected to a water supply. Combustible material in the close proximity of flame shall be protected against ignition by shielding, wetting or other approved means. In all cases, a fire watcher shall remain in the vicinity of the sweating operation for one-half hour after the torch or flame producing device has been used.

1501.12 HOT ASHES AND OTHER DANGEROUS MATERIALS.

No person shall deposit hot ashes or cinders, or smoldering coals, or greasy or oily substances liable to spontaneous ignition, into any combustible receptacle, or place the same within ten feet of any combustible materials, except in metal or other noncombustible receptacles. Such receptacles, unless resting on a noncombustible floor or on the ground outside the building, shall be placed on noncombustible stands, and in every case shall be kept at least two feet away from any combustible wall or partition or exterior window opening.

1501.13 ACCUMULATIONS OF WASTE MATERIALS.

No person shall fail to keep roofs, courts, yards, sidewalks, alleys, vacant lots and open spaces free and clear of deposits or accumulations of waste paper, hay, grass, straw, weeds, litter or combustible waste or rubbish of any kind. All weeds, grass, vines or other growth, when same endangers property, or is liable to be fired, shall be cut down and removed by the owner or occupant of the property.

1501.14 HANDLING READILY COMBUSTIBLE MATERIALS.

No person making, using, storing or having in charge or under his control any shavings, excelsior, rubbish, sacks, bags, litter, hay, straw, or combustible waste materials shall fail or neglect at the close of each day to cause all such material which is not compactly baled and stacked in an orderly manner to be removed from the building or stored in suitable vaults or in metal or metal lined, covered receptacles or bins. The Fire Chief shall require suitable baling presses to be installed in stores, apartment buildings, factories and similar places where accumulations of paper and waste materials are not removed at least every second day.

1501.15 STORAGE OF READILY COMBUSTIBLE MATERIALS.

(a) Generally. No person shall keep or permit to be kept on any premises owned or occupied by him any oily waste and oily rags, unless at all times, when not actually in use, such oily waste and oily rags be kept in a metal can with self-closing cover and riveted joints.

(b) When Permit Required. No person shall store in any building or upon any premises in excess of two thousand five hundred cubic feet gross volume of combustible empty packing cases, boxes, barrels or similar containers, or rubber tires, or baled cotton, rubber or cork, or other similarly combustible material without a written permit from the Fire Chief.

(c) Storage Requirements.

- (1) Aisles with a minimum width of 24 inches shall be provided every 15 feet for indoor storage. They shall not be dead end, and they shall line up with exits where possible.

- (2) The storage of readily combustible items shall not be stored within a closet or room housing an open flame heater, or open flame water heater unless the materials are contained in a metal riveted joint container with tight fitting lid.
- (3) No flammable liquids or equipment and machinery containing flammable liquids, shall be stored in any path of egress including aisles, stairways, hallways, and vestibules.
- (4) Storage in buildings shall be orderly, shall not be within two feet of the ceiling, shall be separated from heaters or heating devices by distance or shielding so that ignition cannot occur, and not so located regarding endanger exit from the building. Storage in the open shall not be more than twenty feet in height, shall be so located, with respect to adjacent buildings, as not to constitute a hazard, and shall be compact and orderly.

1501.16 FLAMMABLE DECORATIVE MATERIALS.

Highly flammable materials such as cotton batting, straw, dry vines, leaves, trees, artificial flowers or shrubbery and foam plastic materials shall not be used for decorative purposes in show windows or other parts of mercantile and institutional occupancies unless first rendered flameproof. Electric light bulbs in mercantile and institutional occupancies shall not be decorated with paper or other combustible materials unless such materials shall first have been rendered flameproof.

1501.17 OPEN FLAMES OR LIGHTS RESTRICTED.

(a) No person shall take an open flame or light into any building, barn or any other place where highly flammable, combustible or explosive material is kept, unless such light or flame shall be well secured in a glass globe, wire mesh cage or similar approved device.

(b) No heating or lighting apparatus or equipment capable of igniting flammable material of the type stored or handled shall be used in the storage area of any warehouse storing rags, excelsior, hair or other highly flammable or combustible material; nor in the work area of any shop or factory used for the manufacture, repair or renovating of mattresses or bedding; nor in the work areas of any establishment used for the upholstering of furniture.

1501.18 MAINTENANCE OF CHIMNEYS, VENTS, HEAT PRODUCING APPLIANCES AND EXHAUST SYSTEMS.

(a) Chimneys, flues or similar devices for conveying products of combustion or hot gases to the exterior of the building shall be maintained in a manner as not to create a hazardous condition.

- (1) Existing masonry chimneys which, upon inspection, are found to be without flue liner and with open mortar joints which will permit smoke or gases to be discharged into the building, or which are cracked regarding be dangerous shall be made safe by means of a fire clay liner, fire brick, a corrosion resistant metal pipe and otherwise repaired if necessary, or the chimney shall be removed. Metal pipe liners shall be one inch less in diameter than the least dimension of the flue and entire space between the metal liner and the walls of the chimney filled with cement mortar. Lining with an approved triple wall metal pipe shall waive the need to fill all voids between pipe and flue with cement mortar provided that the pipe is properly installed and sealed at the bottom to prevent gases from rising up the flue on the outside of the flue pipe.

- (2) Existing chimneys and vents of metal which are corroded or improperly supported shall be replaced, unless suitable repairs are made.
 - (3) Existing chimney and vent connectors of metal which are corroded or improperly supported shall be replaced.
- (b) All heat producing appliances, including boilers, furnaces, incinerators, ovens and restaurant type cooking appliances shall be installed and maintained in an approved manner.
- (c) Exhaust systems provided for restaurant cooking equipment shall be maintained in a manner such as not to create a hazardous condition:
- (1) Hoods, grease removal devices, fans, ducts and other devices shall be inspected periodically and cleaned as needed to remove grease and deposits of residues.
 - (2) Fire extinguishing systems shall be inspected periodically and checked for proper operation. These inspections shall include a check that the supply of extinguishing agent in the system is adequate, and all actuation components are operating satisfactorily. Fusible links, if employed, shall be replaced or properly cleaned. Instructions for manually operating the system shall be posted conspicuously in the kitchen and employees checked for their knowledge of procedures.
 - (3) Any fire dampers shall be tested periodically to insure proper functioning of all parts.
- (d) Commercial, industrial and flue-fed incinerators shall be provided with approved spark arrestors or other effective means for arresting sparks and fly ash.

1501.19 FIREWORKS.

(a) The term "fireworks," as used in this section, shall mean and include 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. "Fireworks" 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, sky rockets, roman candles, dago 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; provided, that the term "fireworks," as used herein, shall not be construed to mean and include fixed ammunition for firearms, and the primers therefore. The term "fireworks," as herein used, shall not include sparklers and novelty items as specified in West Virginia Code, §29-3-23, 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 United States Department of Transportation regulations for packaging 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.

(b) Except as provided in this subsection, no person, firm, co-partnership 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. The granting of permits for supervised displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals shall be in accordance with the National Fire Codes as adopted in Section 1511.03 the Fire Marshal may charge a fee of ten dollars to each applicant requesting a license to be a pyrotechnic operator as set forth in this rule. The State Fire Marshal shall charge a scaled fee for all applications requesting permits to establish a pyrotechnics display as provided in this section. All fees required to be paid by the provisions of this section as set forth in the rule of the Fire Commission; Fee for Services Rendered, 103CSR2 shall be paid to the State Fire Marshal and thereafter deposited by him or her into a special account for the operation of the State Fire Commission. The permits may be granted upon application to State Fire Marshal and after approval of the City of McMechen police and fire authorities and the filing of a bond by the applicant as required by law. Every display shall be handled by a competent operator licensed or certified as to competency by the State Fire Marshal and shall be of composition, and character, and located, discharged or fired in a manner that in the opinion of the chief of the fire department, after proper inspection, and of the chief of police as to not be hazardous to property or endanger any person or persons. After the privilege has been granted, sales, possessions, use and distribution of fireworks for the display are lawful for that purpose only. No permit granted under this subsection is transferable.

(c) The governing body or chief executive authority of the City of McMechen shall require a bond from the licensee in a sum not less than one thousand dollars conditioned on compliance with the provisions of this section and the rules of the State Fire Commission.

(d) Before any permit is issued for a pyrotechnic display, the person, firm or corporation making application for the permit 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 that person, firm or corporation or any agent or employee thereof, in an amount, character and form the State Fire Marshal determined as necessary for the protection of the public.

1501.20 ADMINISTRATION AND ENFORCEMENT.

The provisions of this article shall be administered and enforced by the Fire Chief and any other person authorized to enforce the provisions of this article by and under the supervision and direction of the this City's Fire Chief has the authority to enforce all ordinances of the City having to do with:

- (a) Prevention of fire;
- (b) The storage, sale and use of any explosive, combustible or other dangerous article or articles in solid, flammable liquid or gas form;
- (c) The installation and maintenance of equipment of all sorts intended to extinguish, detect and control fires;
- (d) The means and adequacy of exit, in case of fire, from buildings and all other places in which persons work, live or congregate, from time to time, for any purpose, except buildings used wholly as dwelling houses for no more than two families;
- (e) The suppression of arson; and
- (f) Any other thing necessary to carry into effect the provisions of this article including, but not limited to, confiscating any materials, chemicals, items, or personal property owned, possessed or used in direct violation of the City's Fire Prevention Code.

- (1) Enforcement of rules and ordinances - The Fire Chief and any other person authorized to enforce the provisions of this article by and under the supervision and direction of the this City's Fire Chief shall enforce the rules and ordinances as authorized by this article.
- (2) Inspections generally - The Fire Chief and any other person authorized to enforce the provisions of this article under the supervision and direction of the this City's Fire Chief shall inspect all structures and facilities, other than one and two family dwelling houses, subject to this article, including, but not limited to, state, county and municipally owned institutions, all public and private schools, health care facilities, theaters, churches and other places of public assembly to determine whether the structures or facilities are in compliance with the City's Fire Prevention Code.
- (3) Right of entry - The Fire Chief and any other person authorized to enforce the provisions of this article under the supervision and direction of the this City's Fire Chief may, at all reasonable hours, enter any building or premises, other than one and two family dwelling houses, for the purpose of making an inspection which he or she may consider necessary under the provisions of this article. The Fire Chief may enter upon any property, or enter any building, structure or premises, including one and two family dwelling houses during construction and prior to occupancy, for the purpose of ascertaining compliance with the conditions set forth in any permit or license issued by the office of the state fire marshal pursuant to subdivision (1), subsection (a), section twelve-b [§ 29-3-12b] or article three-b [§§ 29-3B-1 et seq.] of the West Virginia State Code.
- (4) Violations for which citations may be issued include but are not limited to:
 - A. Overcrowding places of public assembly;
 - B. Locked or blocked exits in public areas;
 - C. Failure to abate a fire hazard;
 - D. Blocking of fire lanes or fire department connections (FDC)
 - E. Tampering with, or rendering inoperable, except during necessary maintenance or repairs, on-premise firefighting equipment, fire detection equipment or fire alarms systems.
- (5) Issuance of citations for fire and life safety violations - The Fire Chief and any other person authorized to enforce the provisions of this article under the supervision and direction of the this City's Fire Chief are hereby authorized to issue citations, within the corporate limits of the City of McMechen, for fire and life safety violations of the City of McMechen Fire Prevention Code. Provided, that a summary report of all citations issued pursuant to this section by persons authorized under this section shall be forwarded monthly to the City's Fire Chief in such form and containing information including but not limited to the violation for which the citation was issued, the citation number, the date of issuance, the name of the person issuing the citation and the name of the person to whom the citation was issued, The City's Fire Chief may at anytime revoke the authorization of a person authorized by this subsection (e) of this section to issue citations.

- (6) Required liability coverage - No person authorized pursuant to subsection (f)(1) hereof may be authorized to issue a citation until evidence of liability coverage of such person has been provided by the City of McMechen.

1501.21 CONFLICT.

In the event of a conflict between any provision of this article with any statute of the State or any rule, regulation or order of the State Fire Commission promulgated or given pursuant to statute, the statute, rule, regulation or order shall prevail.

1501.99 PENALTY.

(a) Any person who is violates any of the provisions of this article for which another penalty is not provided shall be guilty of a misdemeanor and, upon a first conviction thereof, be punished by a fine of one hundred dollars; upon a second conviction within one year thereafter such person shall be guilty of a misdemeanor and shall be punished by a fine of two hundred fifty dollars; upon a third or subsequent conviction within one year thereafter such person shall be guilty of a misdemeanor and shall be punished by a fine of five hundred dollars.

(b) Each and every day during which any violation of the provisions of this article continues after knowledge or official notice that same is illegal is a separate offense.

ARTICLE 1511
West Virginia State Fire Code

<p>1511.01 Adoption of Code. 1511.02 Modifications. 1511.03 Appeals from actions of Chief of Fire Department.</p>	<p>1511.04 New materials, processes or occupancies which may require permits. 1511.99 Penalty.</p>
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CROSS REFERENCES

Adoption by reference - see W. Va. Code 8-11-4
Promulgation of State Fire Code - see W. Va. Code 29-3-5

1511.01 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.

1511.02 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.

1511.03 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.

1511.04 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.

1511.99 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 1521
Open Burning**

1521.01 Outdoor and open fires.

1521.01 OUTDOOR AND OPEN FIRES.

(a) No person shall burn or cause to be burned any papers, leaves, shavings, rubbish or other combustible matter on any street, alley, lot or piece of land in the City, without notice to and a permit from the Chief of the Fire Department or his designate. In no event shall such burning be done or permitted within twenty feet of any wooden building, fence or structure, or without the superintendence of a person over twenty-one years of age.

(b) However, permits shall not be required for cooking and recreational fires. Recreational fires shall not be located within 20 feet of a structure or combustible material unless contained in a manner approved by the Chief of the Fire Department.

(c) Recreational Fire means the non-commercial burning of materials other than rubbish for pleasure, religious, ceremonial, cooking or similar purposes in which the fuel burned is not contained in an incinerator, a barbecue grill, or a barbecue pit and the total fuel area is not exceeding three (3) feet in diameter and two (2) feet in height.

(d) Cooking Fire means the non-commercial, residential burning of materials not exceeding three (3) feet in diameter and two (2) feet in height, other than rubbish in which the fuel burned is contained in an outdoor fireplace, a barbecue grill or a barbecue pit for the purpose of preparing food.
(Passed 4-3-08.)

CODIFIED ORDINANCES OF McMECHEN
PART SEVENTEEN - BUILDING AND HOUSING CODE

- Art. 1701. West Virginia State Building Code.
- Art. 1705. International Property Maintenance Code.
- Art. 1709. Building Nuisance Abatement and Demolition.
- Art. 1713. Signs.
- Art. 1717. Flood Control Regulations.
- Art. 1721. Swimming Pools.
- Art. 1725. Fair Housing Practices.
- Art. 1729. Fees.

CODIFIED ORDINANCES OF McMECHEN
PART SEVENTEEN - BUILDING AND HOUSING CODE

ARTICLE 1701
West Virginia State Building Code

1701.01 Adoption.
1701.02 Definitions.

1701.03 Conflict.

CROSS REFERENCES

Adoption by reference - see W.Va. Code 8-11-4
Building regulation - see W.Va. Code 8-12-13
State Building Code - see W.Va. Code 29-3-5b

1701.01 ADOPTION.

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

1701.02 DEFINITIONS.

(a) "Building Code" includes all aspects of safe building construction and mechanical operations and all safety aspects related thereto.

(b) "Fire Marshal" means the West Virginia State Fire Marshal and/or his designated representatives.

(c) "State Building Code" means the entire contents of this article and the referenced national codes.

1701.03 CONFLICT.

(a) Whenever there arises a conflict between the currently adopted State Fire Code and the State Building Code, the State Fire Code shall take precedence.

(b) Whenever there arises a conflict between the Plumbing Code portion of the currently adopted State Building Code and the rules of the State Board of Health, the rules of the State Board of Health shall take precedence.

(c) Whenever there arises a conflict between the currently adopted State Building Code and statutory laws of the State of West Virginia, the West Virginia State Code shall take precedence.

ARTICLE 1705
International Property Maintenance Code

1705.01 Adoption.

CROSS REFERENCES

Repair and closing of unfit dwellings - see W.Va. Code 8-12-16
Adoption of technical codes - see W.Va. Code 8-11-4

1705.01 ADOPTION.

There is hereby adopted and incorporated by reference as if set out at length herein that part of the State Building Code entitled the 2009 edition, International Property Maintenance Code, Second printing, as published by the International Code Council, to be known as the Building Code of the City of McMechen, West Virginia, for the purpose of establishing minimum maintenance standards for all property, building and structures, and by providing the standards for supplied utilities and facilities and other physical things and conditions essential to assure that structures are safe, sanitary and fit for occupation and use, subject to the amendments hereinafter.

ARTICLE 1709
Building Nuisance Abatement and Demolition

<p>1709.01 Building nuisances prohibited; definitions.</p> <p>1709.02 Emergency or summary abatement.</p> <p>1709.03 Abatement in other cases; notice, etc.</p> <p>1709.04 Abatement by owner.</p> <p>1709.05 Appeal procedures; hearing.</p> <p>1709.06 Abatement by City.</p>	<p>1709.07 Notice of assessment; appeal of charges.</p> <p>1709.08 Personal liability of owner.</p> <p>1709.09 Cost of abatement; low income, elderly persons.</p> <p>1709.10 Overhead charge; civil penalties.</p> <p>1709.99 Criminal penalties.</p>
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CROSS REFERENCES

Power to regulate - see W. Va. Code 8-12-5(13, 23)
Building Enforcement Agency - see ADM. Art. 137

1709.01 BUILDING NUISANCES PROHIBITED; DEFINITIONS.

(a) No person shall erect, contrive, cause, continue, maintain or permit to exist any building or structure nuisance within the City, or within the police jurisdiction of the City. The following definitions shall apply with respect hereto:

(b) "Abatement" means the repair, removal, stoppage, prostration, or destruction of that which causes or constitutes a nuisance, whether by repairing, breaking or pulling it down, or otherwise fixing, destroying, or effacing it. Abatement shall include the right of the City to declare such building to be unfit for human occupancy and cause it to be vacated and closed.

(c) "Building Enforcement Agency" means the agency created by Article 137 of this City Code, or any amendment or replacement thereof.

(d) "Owner" means the owner of record based on land records at the Office of the Clerk of the County Commission, or any person with legal, financial or equitable interest in the property on which the alleged building nuisance exists at the time of the violation.

(e) "Property" means any real property, premises, structure or location on which a building nuisance is alleged to exist.

(f) "Building Nuisance" means any fence, wall, shed, deck, house, garage, building, structure or any part of any of the aforesaid; or any tree, pole, smokestack; or any excavation, hole, pit, basement, cellar, sidewalk subspace, dock, wharf or landing dock; or any lot, land, yard, premises, property, or location which in its entirety, or in any part thereof, by reason of the condition in which the same is found or permitted to be or remain, shall or may endanger the health, safety, life, limb or property, or cause any hurt, harm, inconvenience, discomfort, damage or injury to any one or more individuals in the City, in any one or more of the following particulars:

- (1) By reason of being a menace, threat and/or hazard to the general health and safety of the community.
- (2) By reason of being a fire hazard.
- (3) By reason of being unsafe for occupancy, or use on, in, upon, about or around the aforesaid property, whether in violation of the City Building Code or otherwise.
- (4) By reason of lack of sufficient or adequate maintenance of the property, and/or being vacant, any of which depreciates the enjoyment and use of the property in the immediate vicinity to such an extent that it is harmful to the community in which such property is situated or such condition exists.

(g) "Summary abatement" means abatement of the nuisance by the City, or a contractor employed by the City, by removal, repair, or other acts without notice to the owner, agent, or occupant of the property except for the notice required by this article. Summary abatement shall include the right of the City to declare such building to be unfit for human occupancy and cause it to be vacated and closed.

1709.02 EMERGENCY OR SUMMARY ABATEMENT.

(a) Whenever a complaint is made to the City of the existence of a building nuisance, as defined herein, the Building Enforcement Agency shall promptly cause to be inspected the property on which it is alleged that such building nuisance exists. The Building Enforcement Agency shall have the right and authority, through any of its members or agents duly authorized by the said Building Enforcement Agency (including, but not limited to the Building Inspector and the Fire Chief), to enter any dwelling or building for the purpose of making any inspection or examination. The City may seek consent from the owner for inspection or seek an administrative search warrant from a court of competent jurisdiction, which shall include the municipal court, which is hereby conferred such authority hereunder. Should the Building Enforcement Agency find that a building nuisance exists, and that the public health, safety or welfare may be in immediate danger, then summary abatement procedures shall be implemented and the City may cause the nuisance to be removed or abated.

The Building Enforcement Agency may notify the Building Inspector if the building nuisance involves a building that appears structurally or otherwise unsafe. The Building Inspector, upon being notified by the Building Enforcement Agency shall cause the building on which it is alleged such building nuisance exists to be inspected and submit a written report of such inspection and the findings to the Building Enforcement Agency.

(b) When summary abatement is authorized, notice to the owner, agent, or occupant of the property is not required. Following summary abatement, the Building Enforcement Agency shall cause to be posted on the property liable for the abatement a notice describing the action taken to abate the nuisance, and attempt to deliver the notice in person or by mail if feasible to the owner, agent, or occupant.

1709.03 ABATEMENT IN OTHER CASES; NOTICE, ETC.

(a) If the owner fails or refuses to consent to and arrange for an inspection, the City may seek an administrative search warrant from a court of competent jurisdiction, which shall include the municipal court, which is hereby conferred such authority hereunder. If, after inspecting the property on which the nuisance is reported, the Building Enforcement Agency or Building Inspector declares the existence of a building nuisance, but the nature thereof is not such that the public health, safety or welfare is in immediate danger so as to require the summary abatement of such nuisance, then, regular abatement procedures shall be followed. Photographs and reports of the findings and inspections shall be made and filed with the Mayor.

(b) The Building Enforcement Agency shall determine the individual, firm or corporation who, from the records in the Office of the Clerk of the County Commission, appears to be the titled owner of the aforesaid property and immediately cause a written notice to be served on such individual, firm or corporation by personal service or by leaving a copy of the notice at the usual place of residence or business of such owner, or address of such owner shown in the County Clerk's records, or by copy mailed to such owner at such place or address by United States certified mail return receipt. If service of such written notice is unable to be perfected by any of the methods described above, the Building Enforcement Agency shall cause a copy of the aforesaid notice to be published in a newspaper of general circulation in the City, once a week for two consecutive weeks, and shall further cause a copy of the aforesaid notice to be left with the individual, if any, in possession of such property on which it is alleged such building nuisance exists, and any person known to be in charge of the property, or if there is no such individual in possession or in charge thereof, the Building Enforcement Agency shall cause a copy of the notice to be posted at such structure, location or premises. The Building Enforcement Agency shall also determine from the Office of the Clerk of the County Commission, who the lienholder of the property, if any, as documented therein, is and cause a written notice to be served on such lienholder by United States mail return receipt.

(c) The aforesaid notice to the owner, and lienholder, if any, of the property shall state clearly and concisely the findings of the Building Enforcement Agency with respect to the existence of a building nuisance. The notice shall further state that unless the owner thereof shall cause the abatement of the building nuisance, pursuant to the orders contained in the Building Enforcement Agency's notice, the building nuisance may, at the City's discretion, be abated by the City at the expense of the owner.

(d) Any person who is the record owner of the premises, location or structure at the time an order pursuant to this article is issued and served upon him, shall be responsible for complying with that order, and liable for any costs incurred by the City therewith, notwithstanding the fact that he conveys his interests in the property to another after such order was issued and served.

(e) It shall not be a defense to the determination that a building nuisance exists that the property is boarded up or otherwise enclosed.

1709.04 ABATEMENT BY OWNER.

(a) Within thirty (30) days after the service or posting of a notice to abate a nuisance, the owner, agent of the owner, or individual in possession of the affected property shall repair, demolish, or otherwise remove and abate such nuisance or show that no nuisance in fact exists. Such showing shall be made by filing a written statement that no nuisance exists. The statement shall be filed with the Building Enforcement Agency or Building Inspector, which shall inspect the property in order to verify the same.

Notwithstanding any other provision of this Code to the contrary, the application for, or receipt of a building permit or permit to demolish or raze, shall not be deemed to extend the thirty (30) day time period to repair, demolish, remove, and abate, unless extended, in writing, pursuant to the terms of paragraph (b) below.

(b) The Building Enforcement Agency or Building Inspector, upon written application by the owner within the thirty (30) day period after the notice has been served, may grant additional time for the owner to effect the abatement of the building nuisance, provided that such extension is limited to a specific time period, to be issued in writing and receipt thereof acknowledged by the owner's signature.

(c) In the alternative, the City may institute a civil action in a court of competent jurisdiction against the property owner or other responsible party for an injunction or order to abate the nuisance and for all costs as provided in Section 1709.07. In addition, the City may institute misdemeanor criminal charges pursuant to Section 1709.99.

1709.05 APPEAL PROCEDURES; HEARING.

(a) The owner or occupant of the property who has been served with a notice pursuant to this article that a building nuisance exists and that it must be abated within thirty (30) days, may, within seven (7) calendar days after receipt of such notice, make a written demand to the City for a hearing on the question of whether a building nuisance in fact exists. The hearing shall be held within fifteen (15) calendar days following receipt by the City of the written demand and at least two (2) days' notice of the hearing shall be given to the individual who made the written demand for the hearing.

(b) The hearing shall be conducted by the City Council. The City Council may amend or modify the notice and/or order, or extend the time for compliance with the Building Enforcement Agency's order by the owner by such date as the majority of City Council may determine.

(c) The owner, agent of the owner, occupant and lienholder, if any, of the subject property shall be given the opportunity to present evidence to the City Council in the course of the hearing.

(d) In those instances where the nuisance has been abated by the City, the City Council shall have discretion to waive the cost of abating a nuisance, in whole or in part, if, in the course of the hearing reviewing the decision, the City Council finds that any of the following did not conform to the provisions of this article:

- (1) The notice to remove the nuisance;
- (2) The work performed in abating the nuisance; or
- (3) The computation of charges.

1709.06 ABATEMENT BY CITY.

(a) Should any building nuisance not be abated at the expiration of the time stated in the notice/order or within such additional time as the Building Enforcement Agency, Building Inspector, or City Council may grant, the City shall have the authority, at its sole discretion, to enter upon the property and abate the building nuisance found thereon. In abating such nuisance, the City may go to whatever extent may be necessary to complete the abatement of the building nuisance and should it be practicable to salvage any material derived in the aforesaid abatement, the City may sell the salvaged material at private or public sale at the best price obtainable and shall keep an accounting of the proceeds thereof.

(b) The proceeds, if any, obtained from the sale of any material salvaged as a result of an abatement of a building nuisance by the City shall be deposited to the General Fund of the City and any deficit between the amount so received and the cost of the abatement may be levied as an assessment against the property in question by the City and collected as any other assessment by the City; however, any other alternative collection method may be utilized by the City to recoup the deficit. Should the proceeds of the sale of such salvaged material exceed the cost of abatement, the surplus, if any, shall be paid to the owner of the property from which the building nuisance was abated when a proper claim to the excess is made by the owner and established.

(c) In abating a building nuisance, the Building Enforcement Agency may call upon any of the City departments or divisions for whatever assistance shall be deemed necessary or may by private contract cause the abatement of the building nuisance.

(d) The Building Enforcement Agency shall, after completing the removal and abatement, file a statement of costs with the Mayor.

1709.07 NOTICE OF ASSESSMENT; APPEAL OF CHARGES.

(a) Upon receipt of the statement of costs from the Building Enforcement Agency, the City shall mail to the owner of the property upon which the building nuisance has been abated notice requesting payment and of the amounts set forth in the statement plus an additional amount sufficient to defray the costs of the notice and the charges and penalties provided by Section 1709.10 stating that the City proposes to assess against the property the amount set forth in the notice and that payment or objections to the proposed assessment must be made in writing and received by the City within twenty (20) days from the date of mailing such notice. Upon the expiration of the twenty (20) day period, if no objections have been received by the City, the City shall enter that amount in the County liens docket which shall therefore constitute a lien against the property.

(b) If objections of either the property owner or their representative are received by the City prior to the expiration of the twenty (20) day period, the matter shall be referred to the Building Enforcement Agency for administrative review.

(c) Upon conclusion of administrative review, the Building Enforcement Agency shall make a written determination within seven (7) calendar days of the objection filed, as to whether the amount of the charges shall be canceled, reduced, or remain the same. A copy of this determination shall be furnished to the person making the objections together with a notice of such person's right to appeal to City Council. Such appeal must be by written demand within seven (7) calendar days after receipt of the determination of the Building Enforcement Agency. The hearing shall be on the question of whether the proposed assessment should be canceled, reduced, or remain the same. The hearing shall be held within fifteen (15) calendar days following receipt by the City of the written demand and at least two (2) days' notice of the hearing shall be given to the individual who made the written demand for the hearing.

(d) If no appeal of a determination by the Building Enforcement Agency is filed within the time period allowed, a copy of the determination will be furnished to the City Clerk who shall then enter a lien in the amount determined by the Building Enforcement Agency in the County liens docket as provided in subsection (a).

(e) If, after the hearing, it is determined that the proposed assessment or any part of it is proper and authorized, the City Council shall so certify to the City Clerk who shall enter a lien in such amount as determined appropriate by the City Council, in the lien docket as provided in subsection (a).

(f) With respect to assessments, the determination of the City Council upon appeal is a final administrative decision and is not further appealable.

(g) (1) The Building Enforcement Agency, in administrative review, or the City Council, on appeal, may reduce or cancel a proposed assessment if it is determined that:

A. The owner of the property was eligible for a waiver of costs under Section 1709.09; or

B. Any of the following did not conform to the provisions of this article:


1. The notice to remove the nuisance; or
2. The work performed in abating the nuisance; or
3. The computation of charges; or

(2) The Building Enforcement Agency, in administrative review, or the City Council, on appeal, may reduce a proposed assessment by eliminating the civil penalty portion of the invoice if it is determined that:

A. The current owner was not in possession of the property at the time the notice required in Section 1709.03 was served or posted; or

B. The owner did not receive the notice to remove the nuisance, did not have knowledge of the nuisance and could not, with the exercise of reasonable diligence, have had such knowledge.

(h) If, after a lien has been entered in the docket of County liens, there is a written request of an owner who alleges that the owner did not receive notice of the proposed assessment, the City Clerk shall refer the matter for review pursuant to subsection (b) and (c), notwithstanding the time period therein was not met. The following may occur upon such review:

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- (1) The lien may be canceled or reduced by the Building Enforcement Agency, in administrative review, or the City Council on appeal, if it is determined that the owner did not receive notice of the proposed assessment, did not previously have knowledge of the lien or of the nuisance abatement work constituting the basis of the lien, could not, in the exercise of reasonable care or diligence, have had such knowledge, and in addition, that the circumstances are such that a reduction or cancellation of the charges would have been appropriate had the matter been reviewed pursuant to this Section prior to assessment. Upon receipt of a certification from the Building Enforcement Agency (or City Council if there is an appeal), the City Clerk shall cancel or reduce the lien if required by the determination of the Building Enforcement Agency or City Council.

(i) In the alternative, the City may institute a civil action in a court of competent jurisdiction against the property owner or other responsible party for all costs incurred by the City with respect to the abatement and reasonable attorney fees and court costs incurred in the prosecution of the action.

1709.08 PERSONAL LIABILITY OF OWNER.

The person who is the owner of the property at the time at which the notice required under Section 1709.03 is served or posted shall be personally liable for the amount of the assessment including all interest, civil penalties, and other charges.

1709.09 COST OF ABATEMENT; LOW INCOME, ELDERLY PERSONS.

(a) Notwithstanding the other provisions of this article, the cost of abating a nuisance shall be waived for low income and elderly persons, if upon application it appears to the Building Enforcement Agency that the conditions set forth in subsection (b) are met.

(b) To be eligible for waiver of nuisance abatement costs a person must be classified as "low income," as defined by the Building Enforcement Agency, or

(c) Be more than 65 years of age and:

- (1) A person living alone, whose total income for the preceding calendar year did not exceed one and one-half (1-1/2) times the maximum amount a Social Security recipient at age 65 may have earned in that year without having any benefits withheld; or
- (2) The head of a household which household received a total income for the preceding calendar year that did not exceed two and one-quarter (2-1/4) times the maximum amount a Social Security recipient at age 65 may have earned in that year without having any benefits withheld.

(d) Additionally, all persons wishing to qualify for waiver of nuisance abatement costs must:

- (1) Furnish proof of the age and/or income requirements as set forth above in the manner and form designated by the Building Enforcement Agency;
- (2) Must own, or be in the process of purchasing the property from which the nuisance is abated; and
- (3) Be living on the property from which the nuisance is abated.

(e) The removal of the nuisance in question must have been required by the Building Enforcement Agency and the person requesting the waiver of costs must have been officially notified by the Building Enforcement Agency to remove the nuisance.

(f) Applications for waiver of nuisance abatement costs shall be filed with the Building Enforcement Agency, within ten (10) days after receipt of a notice to remove a nuisance or a work order notice unless the Building Enforcement Agency extends the time for good cause shown. The City may require the applicant to fill out a form provided by the City. All information required to be given on such form shall be supplied and verified by the applicant.

(g) The maximum amount that may be waived under this section for any one parcel of real property or any one person shall be five hundred dollars (\$500.00) per calendar year.

(h) No overhead charge or civil penalty shall be imposed for any real property for which a waiver, pursuant to this Section, shall have been approved.

1709.10 OVERHEAD CHARGE; CIVIL PENALTIES.

(a) Whenever a nuisance is abated by the City, the Building Enforcement Agency shall keep an accurate account of all expenses incurred, including an overhead charge of twenty-five percent (25%) for administration and a civil penalty of two hundred dollars (\$200.00) for each nuisance abated.

(b) When the City has abated a nuisance maintained by any owner of real property, for each subsequent nuisance that is abated by the City within two (2) consecutive calendar years concerning real property, owned by the same person, an additional civil penalty of fifty percent (50%), minimum of fifty dollars (\$50.00), of the cost of abatement shall be added to the costs, charges and civil penalties provided for in subsection (a). The civil penalty shall be imposed without regard to whether the nuisances abated by the City involve the same real property or are of the same character.

1709.99 CRIMINAL PENALTIES.

Whoever violates any provision of this article by knowingly and intentionally failing to comply with any notice or order issued hereunder to abate a nuisance, is guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) for each offense. Each day such violation continues may constitute a separate offense. After the expiration of the initial thirty (30) day period to abate the nuisance, multiple separate offenses may be charged without requiring another notice or new thirty (30) day period to expire.

ARTICLE 1713
Signs

<p>1713.01 Purpose. 1713.02 Applicability. 1713.03 Effect. 1713.04 Rules of interpretation. 1713.05 Signs exempt from regulations. 1713.06 Permitted signs; location, size, number. 1713.07 Conditions for permitted signs. 1713.08 Lighting and design standards. 1713.09 Size restrictions on permitted signs.</p>	<p>1713.10 Prohibited signs and devices. 1713.11 Design and construction standards. 1713.12 Signs not to create traffic hazard. 1713.13 Lighting. 1713.14 Signs in a public right-of-way. 1713.15 Sign permits.</p>
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CROSS REFERENCES

Unauthorized traffic signs - see TRAF. 313.06

1713.01 PURPOSE.

- (a) The purposes of these sign regulations are:
- (1) To encourage the effective use of signs as a means of communication in the City; to maintain and enhance the pleasing look of the City, which attracts to the City continued economic investment; to preserve McMechen as a community that is attractive to business, to residents and to visitors;
 - (2) To improve pedestrian and traffic safety;
 - (3) To minimize the possible adverse effects of signs on nearby public and private property;
 - (4) And to implement relevant provisions of the comprehensive plan, as updated periodically.

(b) In that context, the City continuously invests in parks, trails, landscaping, quality public facilities and other features and amenities that enhance the attractiveness of the community; a major purpose of this ordinance is to ensure that signs in the community are compatible with the high quality image that the City seeks and in which the City continuously invests.

1713.02 APPLICABILITY.

A sign may be erected, placed, established, painted, created or maintained in the City only in conformance with the standards, procedures, exemptions and other requirements of this ordinance and other applicable City codes. Signs exempt from regulation under Section 1713.05, Signs Exempt from Regulations, shall not otherwise be subject to this article.

1713.03 EFFECT.

The effect of this article, as more specifically set forth herein, is:

- (a) To establish a permit system to allow a variety of types of signs in commercial and industrial zones, and a limited variety of signs in other zones, subject to the standards and the permit procedures of this article;

- (b) To allow certain signs that are small, unobtrusive and incidental to the principal use of the respective lots on which they are located, subject to the substantive requirements of this article, but without a requirement for permits;
- (c) To provide for temporary signs in limited circumstances;
- (d) To prohibit all signs not expressly permitted by this article; and
- (e) To provide for the enforcement of the provisions of this article.

1713.04 RULES OF INTERPRETATION.

(a) Area Computation of Individual Signs. The area of a sign face (which is also the sign area of a wall sign or other sign with only one face) shall be computed by means of the smallest rectangle that will encompass the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, base, bracing or decorative fence or wall when such fence or wall otherwise meets the regulations of this article and is clearly incidental to the display itself.

(b) Area Computation of Multi-faced Signs. Where the sign faces of a double-faced sign are parallel or the interior angle formed by the faces is 60 degrees or less, only one display face shall be measured in computing sign area. If the two faces of a double-faced sign are of unequal area, the area of the sign shall be the area of the larger face. In all other cases, the areas of all faces of a multifaced sign shall be added together to compute the area of the sign. Sign area of multifaced signs is calculated based on the principle that all sign elements that can be seen at one time or from one vantage point should be considered in measuring that side of the sign.

(c) Sign Height Computation. The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the newly established grade after construction, exclusive of any filling, berming, mounding or excavating solely for the purpose of locating the sign. In cases where the normal grade is below grade at street level, sign height shall be computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the elevation of the nearest point of the crown of a public or private street.

1713.05 SIGNS EXEMPT FROM REGULATIONS.

The following signs shall be exempt from regulation under this article:

- (a) Any official or public notice or warning required by a valid and applicable federal, state or local law, regulation or ordinance, by a public utility company or by order of a court of competent jurisdiction; or signs erected by any public entity that is statutorily exempt from local zoning.
- (b) Traffic signs on private property, such as Stop, Yield and similar signs, which meet the standards contained within the federal Manual on Uniform Traffic Control Devices and contain no commercial message;
- (c) Signs hanging or standing inside a building, not attached to a window or door, visible from a public street.
- (d) Any sign inside an athletic field or other enclosed outdoor space;
- (e) Works of art with no commercial message;
- (f) Holiday decorations with no commercial message displayed between November 15 and January 15.
- (g) On-premise real estate signs indicating for sale, for lease, etc.
- (h) Lettering attached to the window or door of a business that only describes hours of operation, street address, or other non-commercial copy/logos.
- (i) Yard sale signs.
- (j) Signs attached to or painted onto service vehicles.

- (k) Signs on fuel pumps that cannot generally be read from off the premises.
- (l) Political signs.
- (m) Signs erected by any entity legally exempt from municipal zoning.

1713.06 PERMITTED SIGNS; LOCATION, SIZE, NUMBER.

Signs shall be permitted in accordance with Table 1713.06.01 and the supplemental regulations following Table 1713.06.01 and subject to the height limits shown in Table 1713.09.01. The character "√" in the row for a sign and in the column for a particular group of zoning districts shall indicate that the sign type is permitted in that district in accordance with the provisions of this section. The symbol "--" in any cell indicates that the sign type listed is not allowed in that district under any circumstances. The references in the "Supplemental Regulations" column refer to permit requirements, which shall apply to that sign in accordance with its terms.

Table 1713.06.01: Permitted Signs

SIGN TYPE	R-1, R-1A, R-2, R-3	B-1, B-2, B-5, PUD	I-1	B-4	OI, PRO	ISOD	Required Permits
Ground							
Directory	√	√	√	√	√	--	BP, FP, SP
Directional	√	√	√	√	√	--	BP, FP, SP
Menu Board	--	√	--	√	--	--	BP, FP, SP
Monument	√	√	√	√	√	--	BP, FP, SP
Post and Panel	--	√	√	√	√	--	BP, FP, SP
Pole or Pylon Sign	--	--	--	--	--	√	BP, FP, SP
Sandwich Board	√	√	--	√	√	--	BP, FP, SP
Building							
Construction	√	√	√	√	√	--	SP, FP
Directory	√	√	√	√	√	--	BP, FP, SP
Electronic, scrolling message	--	√	√	--	---	--	BP, FP, SP
Marquee	--	√	--	√	--	--	BP, SP
Suspended	--	√	--	√	√	--	BP, SP
Temporary	√	√	√	√	√	--	FP, SP
Wall	√	√	√	√	√	--	BP, SP
Other							
Off Premise Sign	--	--	--	--	--	√	BP, FP, SP
Public Event Banner	√	√	√	√	√	--	BP, SP*

BP - building permit; required for signs costing more than \$250 which includes labor and materials

FP - floodplain permit

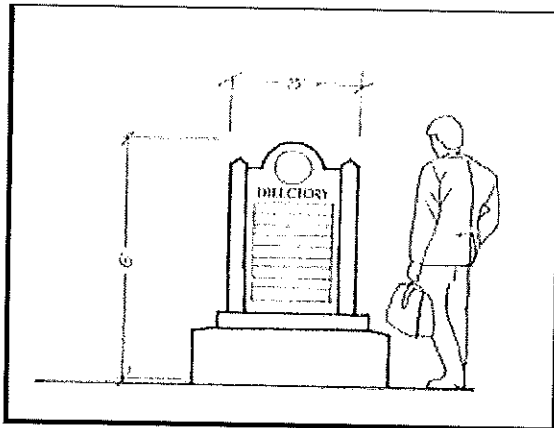
SP - sign permit

* The manner of attachment may determine whether or not a BP is required.

1713.07 CONDITIONS FOR PERMITTED SIGNS.

- (a) Construction Sign. Construction signs shall be allowed, provided that:
- (1) Only one construction sign is permitted per acre of development.
 - (2) Construction signs shall be removed prior to receiving a certificate of occupancy for the building.
 - (3) Construction signs shall be allowed for nonresidential, institutional or multi-family residential buildings, provided that:
 - A. Such signs shall not exceed 48 inches in height;
 - B. Such signs shall not exceed 12 square feet in area per side;
 - C. Setbacks shall be adequate to protect the clear sight triangle, in accordance with the zoning ordinance.
- (b) Directory Sign. Directory signs shall be allowed where a particular site includes more than one tenant, provided that:
- (1) Logo/name directory signs in shopping centers may be located near entrances to parking areas, but not less than 20 feet from any public right-of-way, and at principal intersections within the site, where such intersections are not less than 20 feet from any public right-of-way. There may be one directory sign per entrance, which shall be in accordance with (B) (3) below if more than one tenant. Such signs shall not exceed 18 square feet in area and 6 feet in height. Such signs may contain logos or business names with arrows or other directional information but shall not contain any commercial message. Such sign shall not be illuminated. In addition to such directory signs, any shopping center may have one detailed directory sign as described below.
 - (2) All other signs for individual tenants must be wall signs, suspended signs, or sandwich board signs.
 - (3) All directory signs shall be of the monument style.

Graphic 1713.07.01: Directory Sign



(c) Marquee Sign. In addition to permitted wall signs, marquee signs with changeable copy shall be allowed at movie or performance theaters. Such changeable copy signs may cover no more than one square foot of sign area for each linear foot of theater building frontage. Like poster boxes, such signs shall be subject to total wall sign area limits. Other non-changeable copy signs may be attached to or mounted on top of a marquee.

(d) Menu Board Sign. Menu boards shall be allowed only as an accessory use to a restaurant permitted to have a drive-thru window, provided that:

- (1) Such signs shall not exceed 32 square feet in area and six feet in height;
- (2) Such signs shall not be legible from a public right-of-way or adjacent property;
- (3) There shall be no more than one such sign per property;
- (4) The color of such signs shall be neutral or earth tone or have architectural ties to the main building;
- (5) Such signs may have changeable copy; and
- (6) Such signs may be internally or directly illuminated.

(e) Monument Sign.

- (1) Monument signs shall be allowed, provided that:
 - A. Such signs shall not exceed 72 inches in height;
 - B. Such signs shall not exceed 32 square feet in area per side;
 - C. Setbacks shall be adequate to protect the clear sight triangle, in accordance with the zoning ordinance.
- (2) Both sides of a two-sided monument sign shall be identical in design and content;
- (3) For a single-occupant property, there shall be only one monument sign per principal entrance to the project, provided that no two ground signs on the same parcel shall be within 100 feet of each other;
- (4) For multi-tenant buildings, the only monument sign allowed on the property shall be a directory sign. All other signs for tenants shall be wall signs or sandwich board signs; and
- (5) Outparcels in shopping centers shall not be allowed principal ground signs.

(f) Post and Panel Sign.

- (1) Post and panel signs shall be allowed, provided that:
 - A. Such signs shall not exceed 6 feet in height;
 - B. Such signs shall not exceed 32 square feet in area per side; and,
 - C. Setbacks shall be adequate to protect the clear sight triangle.
- (2) Both sides of a two-sided post and panel sign shall be identical in design and content;
- (3) For a single-occupant property, there shall be only one post and panel sign per principal entrance to the project, provided that no two ground signs on the same parcel shall be within 100 feet of each other;
- (4) For multi-tenant buildings the only post and panel sign allowed on the property shall be a directory sign. All other signs for tenants shall be wall signs or sandwich board signs; and
- (5) Outparcels in shopping centers shall not be allowed post and panel signs.

(g) Suspended Sign.

- (1) Such signs may be allowed in addition to wall signs provided that such signs may not exceed 6 square feet of total area which shall not count toward the total maximum sign area allowed;
- (2) Such signs shall not be separately illuminated;
- (3) Such signs shall contain only the address, suite number, logo or name of the occupant or business served by the entrance;
- (4) Only one such sign may be erected by any one tenant;
- (5) Such sign may protrude into the right of way only if the building is within two (2) feet of the sidewalk;
- (6) A suspended sign can be located under a canopy, provided that such sign shall not exceed two square feet in area;
- (7) Such sign must maintain a clearance of 9 feet above the sidewalk; and,
- (8) Such signs must comply with all applicable local and state regulations.

(h) Temporary Sign. Signs for temporary uses, special events or the opening of businesses, provided that:

- (1) Such signs shall be located only on private property;
- (2) Sign permits shall be limited to a duration of 30 days or, for a temporary use, for the period of time stated on the temporary use permit;
- (3) No more than three temporary sign permits shall be issued within any 12-month period for the same business in the same location and only one sign may be included on each permit;
- (4) Except as permitted by a temporary use permit, temporary signs shall be attached to and parallel with a wall of the building on which wall signs are permitted and shall not exceed 32 square feet in surface area;
- (5) Such signs must be made of cloth or vinyl;
- (6) Where a temporary use permit specifically authorizes the use of a temporary ground sign, such sign shall not exceed 42 inches in height and 16 square feet in area per side; and
- (7) Special events, such as those associated with civic, philanthropic, educational purposes, rodeos, and carnivals shall be allowed a temporary sign, regardless of whether a temporary use permit is required and whether the use is specifically permitted under the Zoning Ordinance, provided that:
 - A. Up to two ground signs shall be allowed per property per event;
 - B. Such sign shall be located only on private property;
 - C. Such sign, if a monument sign, shall be limited to 20 square feet each; and,
 - D. Such sign shall be erected no sooner than ten days preceding the event and shall be removed no later than one day following the event.

(i) Wall Sign, Nonresidential.

- (1) The total area of all wall signs on a building shall not exceed 0.6 square feet of wall sign area per linear foot of tenant building frontage in the B-5, B-2 and I-1 districts, and 0.4 feet in area in the B-1 and B-4 districts, for each linear foot of building frontage, and the fact that signs may be permitted on more than one wall of the building shall not increase this maximum. All wall signs shall be in accordance with the provisions in Section 1713.09.
- (2) Signs on awnings attached to buildings shall be considered wall signs for the purpose of this Zoning Ordinance.

- (3) No wall sign shall project above the highest point of the building wall on the same side of the building as the sign; this shall include marquee signs and any other signs not affixed directly to such wall.
 - (4) On a multi-occupancy building, each occupant with an outside entrance serving the general public may have a separate wall sign. Corner tenants with a door or window on their side walls and tenants with a separate outside entrance serving the general public where such entrance is in a different exterior wall from any other entrance for which such tenant shall be allowed one additional wall sign;
 - (5) Conditions above shall not apply to changeable copy signs for a theater, which shall be subject to the requirements for marquee signs; and,
 - (6) In addition to other permitted signs, a theater may install one back-lighted or internally illuminated "poster box," provided that:
 - A. Such boxes shall not exceed 36 by 54 inches each in area;
 - B. The top of such boxes shall not be more than ten feet above ground;
 - C. Such boxes shall be permanently mounted to a wall; and,
 - D. The number of boxes shall not exceed 1 per screen in the theater.
- (j) Sandwich Board Sign.
- (1) A single sandwich board sign shall be permitted to be placed on a private sidewalk or on a public sidewalk, for each business that is adjacent to such a sidewalk;
 - (2) Such sign shall not be higher than 4 feet and 2 feet wide;
 - (3) Artwork, lettering and color of such sign should be consistent with the shopfront's architectural character; and,
 - (4) Such sign must not present a risk to public safety; must be removed from the street outside trading hours; and, must be removed in adverse weather conditions.
- (k) Directional Sign.
- (1) Such sign may contain only instructions guiding traffic and excludes logos and commercial copy;
 - (2) Such sign must be made of wood or masonry with painted or vinyl appliqued letters;
 - (3) Such sign may not be internally illuminated;
 - (4) Such sign may be painted in color, but not exceeding one primary and one trim color; and,
 - (5) The maximum area of any directional sign shall be four (4) square feet.
- (l) Electronic, Scrolling Message Sign.
- (1) Such signs are permitted only in the B-5 and I-1 districts, and only if designed as a wall or monument sign.
 - (2) If such sign is a monument sign, tenants may not have any other monument signs on the property.
 - (3) If such sign is a wall sign, the sign shall count toward the area allotment.
 - (4) The advertisement of off-premise businesses or services shall not be allowed.
 - (5) Such signs must comply with all other applicable local and state regulations.

- (m) Off-premise Sign.
- (1) Such sign advertising the location of a church or other religious institution may be allowed in any zoning district provided it is 10 square feet in size or less, and
 - (2) Located on private property with the written consent of the property owner.
 - (3) Such signs may be permitted in the sign overlay district.

1713.08 LIGHTING AND DESIGN STANDARDS.

- (a) Permitted signs in the B-2, I-1 and B-5 districts may be:
- (1) Internally illuminated
 - (2) Sign faces may be vinyl, plastic or other semi-translucent material or any material listed below in subsection (B) (3).
- (b) Permitted signs in the B-1, B-4, PRO, OI and residential districts shall comply with the following:
- (1) Sign faces shall be opaque;
 - (2) Signs may not be internally illuminated, except for neon signs; and,
 - (3) Signs shall be made of wood; sculpted "sign foam"; ornamental metals such as bronze, brass, copper, etc.; painted aluminum panels, stone or masonry (with concrete blocks being covered with stucco); and have painted or vinyl letters attached to windows and doors.
- (c) Permitted signs in the B-1 and B-4 districts shall be restricted to the name and logo of the business establishment. No other copy shall be permitted.

1713.09 SIZE RESTRICTIONS ON PERMITTED SIGNS.

- (a) Signs for business uses in residentially zoned districts, including bed and breakfast establishments:
- (1) Shall have 0.15 square feet of sign area per linear foot of lot frontage on the primary street,
 - (2) Home occupations may not have any signs.
- (b) Signs for multifamily residential uses in all districts:
- (1) Shall only advertise project names,
 - (2) Shall be permitted 6 square feet of sign area, plus 0.1 square feet per dwelling unit, up to a maximum of 24 square feet,
- (c) Signs for business uses in the O-I and B-1 districts:
- (1) Shall have 0.4 square feet of wall sign area per linear foot of building frontage for single tenant buildings.
 - (2) Shall have 0.5 square feet of wall sign area per lineal foot of building frontage for multiple tenant buildings.
 - (3) For all other permitted signs (monument, directory, sandwich board, etc.) there may be an additional 0.3 square feet of sign area for each linear foot of building frontage. This may be divided up among other types of permissible signs, within the limits on the number of such signs set forth.
- (d) Signs for businesses in the B-5 and I-1 districts.
- (1) In the B-5 district signs shall have 0.6 square feet of wall sign area per linear foot of tenant building frontage.
 - (2) In the I-1 district signs shall have 0.6 square feet of wall sign area per linear foot of tenant building frontage.

- (e) Signs for businesses in the PRO district.
 (1) Shall not exceed 20 square feet.

Table 1713.09.01: Freestanding Sign Height Limits (inches)

Sign Type	Residential Districts	Commercial Districts	Industrial Districts	OI & PRO District
Construction	48	48	48	48
Directory, Logo/Name	48	48	48	48
Directory, Detailed	60	60	60	60
Menu Board	--	60	--	--
Political	48	48	48	48
Principal Ground	48	48	48	48
Pole				
Monument	72	72	72	72

1713.10 PROHIBITED SIGNS AND DEVICES.

All signs not expressly permitted under this article or exempt from regulation hereunder in accordance with the previous section are prohibited. Such signs include, but are not limited to:

- (a) Any sign that copies or imitates an official sign or purports to have official status;
- (g) Beacons;
- (c) Windblown devices;
- (d) Pennants, streamers, strings of light bulbs except for holiday decorations;
- (e) Animated signs;
- (f) Signs with moving or flashing lights, except as noted in the electronic scrolling message sign section. Neon signs may be used anywhere signs are permitted, except in residential districts, and provided they are one of the permitted types (wall, monument, etc.);
- (g) Any sign attached to an accessory structure if such sign is legible from the public right-of-way or from other property;
- (h) Any other attention-attracting device, except for those conforming to the dimensional, design, lighting and other standards applicable to a sign in the same location;
- (i) Any sign that obstructs or substantially interferes with any window, door, fire escape, stairway, ladder, or opening intended to provide light, air, ingress, or egress to any building;
- (j) Any sign attached to gas pumps or gas pump islands that can be read or understood from a public street by most persons of normal vision;
- (k) Off-premise signs of any kind except those allowed under this section;
- (l) Pylon signs, except those allowed under this section;

- (m) Signs mounted on or above the roofline of any building, except in the B-4 districts, where they may be permitted as a conditional use and shall count towards the total sign allotment of the site; and
- (n) Portable signs; and,
- (o) Any sign located in a public right-of-way except as provided for in Section 1713.14.

1713.11 DESIGN AND CONSTRUCTION STANDARDS.

(a) Construction Standards. All signs shall be designed, constructed and maintained in accordance with the following standards:

- (1) All signs shall comply with applicable provisions of the West Virginia State Building Code and local floodplain management ordinance.
- (2) Electric signs that have internal wiring or lighting equipment, and external lighting equipment that directs light on signs, shall not be erected or installed until an electrical permit has been obtained from the Code Enforcement Department. All such signs and equipment shall bear the seal of approval of an electrical testing laboratory that is nationally recognized as having the facilities for testing and requires proper installation in accordance with the National Electrical Code. All wiring to electric signs or to freestanding equipment that lights a sign shall be installed underground.
- (3) Except for permitted banners, flags, temporary signs and window signs conforming in all respects with the requirements of this article, all signs shall be constructed of permanent materials and shall be attached to the ground, a building or another structure by direct attachment to a wall, frame or structure.

(b) Maintenance Standards. All signs shall be maintained in good structural condition, in compliance with all building and electrical codes, and in conformance with this article. Specifically:

A sign shall not stand with bent or broken sign facing, with broken supports, with loose appendages or struts, or more than 15 degrees from vertical for a period of more than ten days.

1713.12 SIGNS NOT TO CREATE TRAFFIC HAZARD.

Clear Vision Triangle. No sign shall be erected in the clear vision triangle as defined by this article. Any such signs shall be removed at the direction of the Building Inspector. If not removed by owners or occupants of the property within ten days of notice, the Building Inspector may cause the property owner to be cited for a violation of the this article.

1713.13 LIGHTING.

In/Near Residential Areas. Unless otherwise expressly prohibited by this article or other ordinances of the City, any sign may be externally illuminated, provided that any lighting directed toward the sign is shielded so as to illuminate only the face of the sign.

1713.14 SIGNS IN A PUBLIC RIGHT-OF-WAY.

- (a) Permanent Signs. Permanent signs shall be limited to:
- (1) Signs erected by a public agency or utility; and
 - (2) Awning signs or suspended signs projecting over a public right-of-way in the B-4 districts; provided, however, that no awning shall extend out 3 feet from the building or extend closer than 12 inches to the curb, whichever is less.

(b) Other Signs in Public Right-of-Way. Any other sign placed in the public right-of-way in violation of this Ordinance shall be deemed a public nuisance and may be seized by the enforcement official or other representative of the City.

(c) Signs in the B-4 districts.

- (1) Signs may not be placed upon the ground within, attached to any object within, or projected into the airspace of a public right-of-way except in the B-4 districts, where sandwich board signs and suspended signs may be used.
- (2) In such cases, it is the responsibility of the property owner to insure that the signs are properly maintained and that they do not present a risk to the public safety.

1713.15 SIGN PERMITS.

(a) Permits Required for Sign. Sign permits are required prior to the erection of any sign, as provided in Table 1713.06.01. In addition to sign permits, building permits and floodplain permits may also be required prior to issuance of a sign permit.

(b) Application Requirements.

- (1) An application for a sign permit may be filed only by the owner of the property on which the sign is to be erected, or by an agent, lessee, or contract purchaser specifically authorized by the owner to file such application. In addition, a Building Permit shall be required prior to the erection of any sign.
- (2) An application for a sign permit shall be filed with the Building Department on a form prescribed by the Department, along with the fee as prescribed by the City Council.
- (3) The Building Department shall determine whether the application is complete. If the Department determines that the application is not complete, then it shall notify the applicant of any deficiencies and shall take no further steps to process the application until the applicant remedies the deficiencies.

(c) Approval Procedure.

- (1) For all signs in the B-4 districts requiring a permit and that are larger than 6 square feet, approval from Council shall be necessary. All smaller signs shall be approved following the procedure set forth below, in subsection (c)(2).
- (2) Signs identified on Table 1713.06.01 as requiring a permit shall be erected, installed or created only in accordance with a duly issued and valid sign permit from the Building Inspector. Such permit shall be issued only in accordance with the following requirements and procedures:
 - A. An application for construction, creation or installation of a new sign or for modification of an existing sign shall be accompanied by detailed drawing to show the dimensions, design, structure, and location of each particular sign. One application and permit may include multiple signs on the same site.
 - B. No permit shall be issued for any new sign on any parcel of land upon which is situated an illegal sign. Examples of illegal signs include those that were erected or modified without a sign permit, or those that were not removed from the premises upon cessation of the business or enterprise that the sign is related to.

- C. Within five working days of receiving an application for a sign permit, the Building Inspector shall review it for completeness. If the Building Inspector finds that it is complete, the application shall then be processed. If the Building Inspector finds that it is incomplete, the Building Inspector shall inform the applicant of the specific ways in which the application is deficient.
1. Within 20 working days of submission of a complete application for a sign permit, the Building Inspector shall either:
 2. Issue the sign permit, if the sign conforms in every respect with the requirements of this article; or
 3. Deny the sign permit if the sign fails in any respect to conform with the requirements of this article. In case of a rejection, the Building Inspector shall specify the sections of this article with which the sign is inconsistent.

(d) Lapse of Sign Permit. A sign permit shall lapse automatically if the business license for the premises lapses, is revoked or not renewed. A sign permit shall also lapse if the business is discontinued for a period of 90 days or more.

(e) Permits for Temporary Signs. Temporary signs on private property shall be allowed only in accordance with the provisions of Section 1713.07 and only upon the issuance of a Temporary Sign Permit, which shall be subject to the following terms:

- (1) A temporary sign permit shall allow the use of a temporary sign for a specified 30-day period.
- (2) Only one temporary sign permit shall be issued to the same business license holder on the same site for the same business.

(f) Removal of Signs upon Discontinuation of Use. Whenever the use of a building or premises by a specified business or other establishment is discontinued by the owner or occupant for a period of 90 days, the sign permits for all signs pertaining to that business or establishment that were installed by the occupant or owner shall be deemed to have lapsed, and the signs shall be removed, as well as all signs which do not conform to the standards of this article.

ARTICLE 1717
Flood Control Regulations

1717.01	General provisions.	1717.06	Specific requirements.
1717.02	Interpretations and definitions.	1717.07	Administration.
1717.03	Establishment of the floodplain area.	1717.08	Appeals and penalties.
1717.04	Utilization of the floodplain area.	1717.09	Government actions.
1717.05	Criteria for building and site plan approval.	1717.10	Severability and municipal liability.

CROSS REFERENCES

Treatment of streams to prevent floods - see W. Va. Code 7-1-3(u)
 Flood plain area management - see W. Va. Code 7-1-3(v)
 Flood control projects - see W. Va. Code 8-30-1

1717.01 GENERAL PROVISIONS.

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

- (1) Promote the general health, welfare, and safety of the community.
- (2) Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- (3) Minimize danger to public health and safety by protecting water supply and sanitary sewage disposal in cooperation with the County Sanitarian, and to protect natural drainage.
- (4) Assure the County Assessor obtains information concerning improvement of real property as required by WV State Code 11-3-3A.
- (5) Assure County E-911 addresses are obtained to maintain the currency of established emergency response dispatch systems.
- (6) Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing the unwise design and construction of development in areas subject to flooding.

(b) Abrogation and Greater Restrictions. This article supersedes any ordinance currently in effect in flood prone areas. Any ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.

(c) Applicability.

- (1) It shall be unlawful for any 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 the City of McMechen 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 partially or fully in the floodplain is to be developed, subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a site plan with elevation data must 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.

(d) 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 article in accordance with its intent, and shall require the applicant to take appropriate measures pursuant to such determination. (Passed 9-17-09)

1717.02 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 Term "shall" or "will" is always mandatory.
- (5) The word "building" or "structure" shall be construed as if followed by the phrase "or part thereof".
- (6) The word "Ordinance" shall refer to the Floodplain Ordinance.

(b) Definitions.

- (1) General. Unless specifically defined below, words and phrases used in this article shall be interpreted so as to give this article it's most reasonable application.
- (2) 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.
- (3) Base Flood: The flood, which has been selected to serve as the basis upon which the floodplain management provisions of this and other ordinances have been prepared; for purposes of this article, the one-hundred (100) year flood.
- (4) Base Flood Elevation: The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. For the purposes of this article, the one hundred (100) year flood or 1% annual chance flood.
- (5) Basement: Any area of the building having its floor sub grade (below ground level) on all sides.

- (6) Certificate of Compliance: A certification that the entire development, including the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this article.
- (6.5) 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 floodplain.
- (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 the 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.

- (7.5) 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 floodplain if at all possible. If a critical facility must be located in a floodplain it should be provided a higher level of protection so that it can continue to function and provide services during a flood.
- (8) 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.
- (9) Flood: A general and temporary inundation of normally dry land areas.
- (10) Flood Insurance Rate Map (FIRM): The official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazard areas and the risk premium zones applicable to the community.
- (11) Flood Insurance Study: The official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and water surface elevations.
- (12) 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.
- (13) Floodplain Administrator: The Building Enforcement Officer shall be the floodplain Administrator. The Floodplain Administrator may also be identified as the Floodplain Manager.
- (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.
- (16.5) Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed foundation of a structure.
- (17) Historic Structure: Any structure that is:
- A. 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 on the National Register;
 - B. Certified or preliminarily determined by the Secretary of the 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

- C. 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,
 - D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - 1. By an approved state program as determined by the Secretary of the Interior; or,
 - 2. Directly by the Secretary of Interior in states without approved programs.
- (18) Licensed Manufactured Home Dealer: A business licensed to sell Manufactured Homes in the state of WV as set forth in the WV state code.
- (19) Licensed Manufactured Home Installer: A contractor licensed to install Manufactured Homes in WV as set forth in the WV State Code.
- (20) 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 WV state code.
- (21) Lowest Floor: The lowest floor of the lowest enclosed area (including basement). An unfinished enclosure constructed with flood resistant materials as defined in the FEMA Technical Bulletin 2-93 (FIA-TB-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 is not built so as to render the structure in violation of the applicable non-elevation design requirements of this article.
- (22) 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".
- (23) New Construction: Structures for which the Start of Construction as herein defined commenced on or after April 15, 1980, and including any subsequent improvements to such structures.
- (24) One-Hundred (100) Year Flood: A flood that has one chance in one-hundred or a one percent chance of being equaled or exceeded in any given year.
- (25) Person: Any individual or group of individuals, corporation, partnership, association or other entity, including State and local governments and agencies.
- (26) Practice of Engineering:
 - A. 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.

- B. 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 or herself 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.
- (27) Principally Above Ground: Where at least 51 percent of the actual cash value of a structure, less land value, is above ground.
- (28) Recreational Vehicle: A vehicle which is built on a single chassis; 400 square feet or less when measured at the largest horizontal projection; designed 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.
- (28.5) 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.
- (28.6) 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 impacts of non-compliance to the greatest extent feasible.
- (29) 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
- (30) 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.
- (31) 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 impacts of the non-compliance to the greatest extent feasible.
- (32) 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. The term includes areas shown on other flood hazard maps that are specifically listed or otherwise described in this article.

- (33) Start of Construction: (The definition for start of construction is to be used only when calculating the starting time for expiration of a permit.)
The date the permit was issued, including permits for substantial improvement or repair of substantial damage, 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.
- (34) State Coordinating Office: The West Virginia Division of Homeland Security and Emergency Management
- (35) 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.
- (36) Structure: A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.
- (37) 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 equals or exceeds 25 percent of the market value of the structure before the damage occurred. See "Substantial Improvement."
- (38) 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 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 that alteration affects the external dimensions of the structure.
- (39) Top of Bank: The lines depicted on the FIRM maps delineating each side of a stream indicate the top of bank. In the field a professional familiar with fluvial geomorphology should document the top of bank. When a professional is not employed the top of the bank will be considered to be the top of the first significant slope landward of the waters edge when it is followed by at least 50 feet of relatively flat land.
- (40) Violation: The failure of any structure or development to be fully compliant with all requirements of this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.
(Passed 9-17-09.)

1717.03 ESTABLISHMENT OF THE FLOODPLAIN AREA.

(a) Identification.

- (1) The identified floodplain area shall be those areas of the City of McMechen which are subject to the one hundred (100) year flood, as shown on the Flood Insurance Rate Map (FIRM) and described in the most recent Flood Insurance Study (FIS) prepared for the City of McMechen by the Federal Emergency Management Agency (FEMA), dated September 25, 2009, or the most recent revision thereof.
- (2) The identified floodplain area shall also be those areas of the City of McMechen which have been identified as flood hazard areas by the City of McMechen by use of historic or other technical data and shown on the City of McMechen "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 Floodplain Areas. The identified floodplain shall consist of the following four specific areas:

- (1) The Floodway area (F1) shall be those areas identified as such in the FIS and as shown on the floodway map or FIRM. The term shall also include floodway areas identified in other studies for the approximated area discussed in subsection (d) below.
In floodplain 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 community, be considered to be the channel of the stream and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the top of the bank nearest the site to the upland limit of the 100 year floodplain boundary.
- (2) The Floodway Fringe area (F2) shall be those areas for which specific one hundred (100) year flood elevations have been provided in the FIS but which lie beyond the floodway area.
- (3) The AE Area without Floodway (F3) 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 area (F4) shall be those areas identified as an A Zone on the FIRM or floodway map included in the FIS prepared by FEMA and for which no one hundred (100) year flood elevations have been provided. For these areas, elevation and floodway information from other Federal, State, or other acceptable source shall be used when available. Where other acceptable information is not available the Floodplain Administrator shall require the applicant to determine the elevation with hydrologic and hydraulic engineering 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) Changes in Designation of Area.

- (1) The delineation of the identified floodplain area may be revised by the City of McMechen where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, a River Basin Commission or other qualified agency or individual document the necessity for such changes. However, prior to any such change, approval must be obtained from the Federal Insurance Administration (FIA).
- (2) A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable but, not later than six months after the date such information becomes available, the community shall notify the NFIP Administrator of the changes by submitting technical or scientific data.
- (3) The City of McMechen may identify and regulate new flood hazard or ponding areas. These areas may be delineated using locally derived technical information such as flood of record, historic high water marks and/or topographic data.

- (d) Elevations Prevail.
- (1) If the lowest natural grade adjacent to proposed development within an identified flood hazard area is at or above the Base Flood Elevation specified in the Flood Insurance Study, the structure shall not be required to conform to the flood prevention design and construction standards or flood-related development codes in Section 1717.06 Topographic data certified by a registered professional engineer or licensed professional surveyor shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator. The applicant is advised to apply for a Letter of Map Amendment (LOMA) from FEMA to have the Special Flood Hazard Area designation removed from the parcel or structure.
 - (2) If the lowest natural grade adjacent to proposed development is below the Base Flood Elevation specified in the Flood Insurance Study, the site shall be considered to be within the floodplain area and the proposed structure shall be required to conform to all appropriate provisions of this article.
- (e) Boundary Disputes. Should a dispute concerning any district boundary arise, an initial determination shall be made by the Floodplain Administrator and any party aggrieved by this decision may appeal to the City of McMechen. The burden of proof shall be on the appellant/applicant. (Passed 9-17-09.)

1717.04 UTILIZATION OF THE FLOODPLAIN AREA.

- (a) Floodway (F1).
- (1) Within any floodway area (F1), 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 will not result in any increase in the Base Flood Elevation.
 - (2) Because floodways present increased risk to human life and property due to their relatively faster and deeper flowing waters the Floodway 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.

- (b) Floodway Fringe (F2) and Approximated Floodplain (F4).
- (1) In the Floodway Fringe (F2) and Approximated Floodplain (F4), 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.
- A. In the Approximated Floodplain (F4) the Floodplain Manager shall review, or shall cause to be reviewed, all proposed development not covered by subsection B below to determine.
1. The amount being invested and
 2. The specific flood risk at the building site and assign a "minimal, moderate or significant" risk level. This information shall then be used together with the Town of McMechen Approximate A zone administrative procedures to determine the level of technical data required to establish a height above which the development will be "reasonably safe from flooding".
- (2) All subdivision proposals and other proposed new developments which are proposed to take place either fully or partially within the Approximated Floodplain area (F4) and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include base flood elevation data.
- A. This 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.
- B. 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.
- (c) AE area without floodway (F3). Within any AE area without floodway, 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 area where determined.
- (d) Alteration or Relocation of a Stream.
- (1) Whenever a developer intends to alter or relocate a stream within the Floodplain Area the developer shall notify in writing, by certified mail, the City of McMechen Floodplain Administrator, The State Coordinating Office, and any adjacent communities and 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 Insurance Administration. In addition prior to issuing the local permit the Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval. Contact information for State and Federal permitting authorities as well as addresses for required notification of appropriate County, State & Federal government agencies are contained in the City of McMechen Stream Alteration administrative procedures.

- (2) The developer shall also assure the City of McMechen in writing that the 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 professional engineers, 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 article.
- (5) The developer is required to provide the community 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 1717.08(c).
- (6) The applicant must 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 must pay any fees or other costs assessed by FEMA for this purpose. (Passed 9-17-09.)

1717.05 CRITERIA FOR BUILDING AND SITE PLAN APPROVAL.

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

- (1) Located in an identified Floodplain or Floodway.
- (2) 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.

- (3) Constructed with material and utility equipment resistant to flood damage as outlined in FEMA Technical Bulletin 2-93 (FIA-TB-2) or the most recent revision thereof.
 - (4) Constructed by methods and practices that minimize flood damage.
 - (5) Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
 - (6) Approved by County Health Department for Well, Septic and other permits.
- (b) Basic Format. The basic format of the permit shall include the following:
- (1) Name and address of applicant
 - (2) Name and address of owner of land on which proposed development is to occur.
 - (3) 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.
 - (4) A description of Site location sufficient to locate the project including tax map and parcel number and most recent deed book and page number.
 - (5) 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.
 - (6) An acknowledgment that the applicant agrees to pay any and all fees associated with the permitting process as set forth in Section 1717.07(i).
 - (7) An acknowledgment that the applicant agrees to allow authorized representatives of floodplain management programs access to the development to inspect for compliance.
 - (8) 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 community 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 materials and labor, a brief written description of proposed work and the estimated value will suffice.
- (c) Elevation and Flood Proofing Information. 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 article. Depending on the type of structure involved, the following information shall also be included in the application for work within the Floodplain Area:
- (1) For structures to be elevated eighteen inches above the Base Flood Elevation:
 - A. A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
 - B. A determination of elevations of the Base Flood, existing ground, proposed finished ground and lowest floor, certified by a registered professional engineer or licensed professional surveyor.

- C. Plans showing the method 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.
 - D. Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to eighteen inches above the Base Flood Elevation at the building site.
 - E. 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.
 - F. A finished construction elevation certificate 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 elevated in compliance with permit conditions.
 - G. A Nonconversion Agreement shall be signed by the applicant whenever the community 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:
 - 1. 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 article.
 - 2. 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 1717.08(c).
- (2) For 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.
- A. 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.
 - B. 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.

- C. A Flood proofing Certificate, FEMA 81-65, as revised by FEMA, shall be prepared by the registered professional engineer who prepared the plans in (1) above, stating the structure in question, together with attendant utility and sanitary facilities is designed so that:
1. The structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to eighteen inches above the Base Flood Elevation.
 2. The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact, and other forces resulting from the flood depths, velocities, pressures, and other factors associated with the Base Flood.
- (3) For structures constructed of flood resistant materials – used solely for parking of vehicles, or storage, (Appurtenant Structures only)
- A. 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.
- B. An elevation report or certificate, based on finished construction, must be prepared by a licensed professional surveyor or others of demonstrated qualifications. This certificate or report must confirm that the structure in question, together with attendant utilities is designed so that:
1. Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2) are used in the construction of the structure from the lowest structural element to eighteen inches above the Base Flood Elevation and that all utilities are located at least eighteen inches above the Base Flood Elevation.
 2. Hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a Registered Professional Engineer or Architect or meet or exceed the following minimum criteria:
 - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b. The bottom of all openings shall be no higher than one foot above grade.
 - c. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

C. 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 1717.08(c).

(d) Site Plan Criteria. The owner or developer of any proposed development, including Subdivisions Commercial development and Manufactured Home Parks, shall submit a preliminary site plan to the Floodplain Administrator that includes the following information:

- (1) Name of registered professional engineer, licensed professional surveyor or other qualified person responsible for providing the information required in this section.
- (2) A map showing the location of the proposed subdivision and/or development with respect to floodplain areas, proposed lot sites, and fills. In addition, it is required that all subdivision proposals and other proposed new developments which are proposed to take place either fully or partially within the approximated floodplain (F4) 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. If FEMA has completed a Flood Insurance Study (FIS), that data must be used to substantiate the base flood. Otherwise, the developer may submit data provided by an authoritative source, such as U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, state and local water resource departments, or technical data developed 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 technical methods used correctly reflect currently accepted technical concepts.
- (3) Where the subdivision and/or development lies partially or completely in the floodplain areas, the plan map shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of two (2) or five (5) feet depending upon the slope of the land and identify accurately the boundaries of the floodplain areas.
- (4) Where the subdivision lies partially in the floodplain area and all proposed development will take place on natural grade a significant vertical distance above the floodplain 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 and clearly delineate the area to be developed and the location of the floodplain areas as depicted on the FEMA map. A registered professional engineer, licensed professional surveyor or others of demonstrated qualifications must certify the site plan.

(e) Restrictions to Subdivision of Land in Floodplain Areas.

- (1) Subdivision of land in the floodplain area must result in lots that include a buildable portion outside of the identified 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 floodplain limits. All new structures must be sited on the portion of the subdivided lot that is located outside of the identified flood hazard area.
- (2) All lots shown on the plat must have 3,000 square feet of buildable area outside the identified 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 floodplain limits. All new structures must be sited on the portion of the subdivided lot that is located outside of the identified flood hazard area. (Passed 9-17-09.)

1717.06 SPECIFIC REQUIREMENTS.

(a) 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 Floodplain Area.

(1) Basements and Lowest Floors.

- A. Residential Structures - All new construction, relocation, substantial improvements, including repair of substantial damage, of residential structures must have the lowest floor, including basement, ductwork and utilities, elevated to eighteen inches above the Base Flood Elevation.
- B. Non-residential Structures - All new construction, relocation, substantial improvements, including repair of substantial damage, of nonresidential structures must have the lowest floor, including basement, ductwork and utilities, elevated to eighteen inches 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 eighteen inches above the Base Flood Elevation.
- C. 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 must either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:
 1. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 2. The bottom of all openings shall be no higher than one foot above grade.
 3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

- D. A Non-conversion Agreement shall be signed by the applicant on all floodproofed structures and any elevated structures when the community determines that the area below the first floor could be converted to a nonconforming use (generally applies to enclosed areas below base flood elevation that are 5 ft. high or more). This agreement shall state:
1. 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.
 2. 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 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 1717.08(c).
- (2) Manufactured Home Placement. Certain unique characteristics of manufactured homes installed in flood hazard areas pose an elevated risk of substantial damage to property. Thus:
- A. All manufactured homes to be sited within the identified flood hazard areas of the City of McMechen shall be installed by a contractor possessing a valid WV Manufactured Home Installer's license. The 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 flood hazard areas shall be installed in accordance with the following standards:
1. The lowest floor, ductwork and utilities including HVAC/heat pump shall be elevated eighteen inches above the Base Flood Elevation
 2. Elevation shall be on reinforced piers on a permanent foundation or other 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 flood hazard areas.
 3. 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. 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.

4. Permanently attached rigid skirts and perimeter wall skirts of brick or block must have openings; this type of skirting can collapse during floods and compromise supporting piers. The openings must be designed to automatically equalize hydrostatic flood forces by allowing for entry and exit of floodwaters. Designs for meeting this requirement must 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.
 5. Any additions to a manufactured home shall be similarly anchored and vented.
- B. 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 article.

(3) Appurtenant Structures.

- A. Except as provided in subsection B. below, appurtenant structures shall be located out of the floodplain area or elevated to eighteen inches above the Base Flood Elevation.
- B. 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:
 1. Structures shall be no more than 600 square feet in size and valued at less than \$10,000.00.
 2. Floors shall be at or above grade on at least one side.
 3. Structures shall be located, oriented and constructed to minimize flood damage.
 4. 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.
 5. Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2) shall be used in the construction of the structure from the lowest structural element to eighteen inches above the Base Flood Elevation.
 6. Machinery, electric devices or appliances, and all utilities shall be located at least eighteen inches above the Base Flood Elevation.
 7. The venting requirements contained in Section 1717.06(a)(1) are applicable and shall be strictly adhered to.

- C. A Nonconversion 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 1717.08(c).
- (4) Recreational Vehicle Placement. Recreational vehicles to be placed within any floodplain area shall either:
- A. Be on site for fewer than 180 consecutive days, or,
 - B. 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 disconnect utilities and security devices, and has no permanently attached additions, or,
 - C. Be installed in accordance with the Manufactured Home Placement requirements and all other flood reduction requirements contained in this article.
- (5) Fill. The City of McMechen officially recognizes the beneficial functions the floodplain serves in storage and transportation of water during floods. Placement of fill in the floodplain area is discouraged and should be minimized. No fill shall be permitted in the floodway. Placement of fill in the floodplain is 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 spoil 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. No fill shall be permitted unless it meets the requirements of Section 1717.04(a). All fill placed in the floodplain 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 McMechen 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 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. During permit review the community shall consider the following issues that have the potential to cause adverse impact to adjacent properties:
 1. Unacceptable increases in flood heights.
 2. Blocking drainage from adjacent property.

3. Deflection of floodwaters onto adjacent existing structures.
 4. Increases to stream velocity initiating or exacerbating erosion problems.
 5. 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. Filled site must 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 nonresidential 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 nonresidential 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 must 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.
1. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of five feet per second or less must be protected from erosion by covering them with grass, vines, weeds, or similar vegetative undergrowth.
 2. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of greater than five feet per second must be protected from erosion by armoring them with stone or rock slope protection.
- I. All applicants placing fill in a mapped flood hazard area must 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 must 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 must 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 must pay any fees or other costs assessed by FEMA for this purpose.

- (6) Placement of Structures and Other Development. All buildings and structures shall be constructed and placed on the lot so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of floodwater.
- A. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow and,
 - B. So far as practicable, structures shall be placed approximately on the same flood-flow lines as those of adjoining structures.
- (7) Anchoring.
- A. All buildings and structures 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.
 - B. All air ducts, large pipes, and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.
- (8) 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.
- A. Necessary public works and temporary construction may be exempted from this subsection.
 - B. 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 appeal 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.
- (9) Storage.
- A. 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.
 - B. 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.
 - C. Due to the potential of masking the natural elevation and making it more difficult to enforce this article, material that resembles "fill" material shall not be considered "storage" material for purposes of this subsection.
- (10) Utility and Facility Requirements.
- A. All new or replacement water systems whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems.

- B. All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
 - C. All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.
 - D. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (11) Drainage.
- A. Adequate drainage shall be provided to reduce exposure to flood hazard.
 - B. Adequate drainage paths are required around structures on slopes within zones AH and AO to guide floodwaters around and away from proposed structures.
- (12) Backflow Preventers. Back flow prevention valves should be used for all enclosed structures with sewage or drainage facilities located in the floodplain. (Passed 9-17-09.)

1717.07 ADMINISTRATION.

The Building Enforcement Officer is hereby appointed as Floodplain administrator to administer and implement this local law by granting or denying floodplain development permits in accordance with its provisions.

- (a) 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 the City of McMechen, 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 regulatory floodplain 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.
- (b) 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 the permit file.

- (5) The Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law 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 McMechen 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 article.
- (c) Application Procedures. Application for a permit and/or site plan approvals shall be made, in writing, on the forms supplied by the City and shall include all information stipulated under Section 1717.05.
- (d) 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 or approval of the Floodplain Administrator.
- (e) Permit Placards.
- (1) 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.
 - (2) In areas of flood hazard it shall be unlawful to inspect and approve or install a temporary electrical utility connection to any building or premises, or both, or part thereof hereafter created, erected or rebuilt until a placard has been issued by the Local Floodplain Administrator indicating that the development has applied for a permit and agreed to the requirements of this local law or, in the case of development occurring outside of the identified flood hazard area, a Certificate of Compliance has been issued.
- (f) 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 must 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 developer 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?
- (g) Stop Work Orders, Inspections and Revocations.
- (1) Stop-Work Orders.
 - A. The Floodplain Administrator shall issue, or cause to be issued, a "Stop Work Order Notice" for any development found ongoing without having obtained a permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 1717.08(c) of this local law.

- 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 law and/or the conditions of the permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 1717.08(c).
- (2) Inspections and Revocations.
- A. 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.
- B. If the Floodplain Administrator discovers that the work does not comply with the permit application or any applicable laws and ordinances or that there has been false statement or misrepresentation by any applicant, the Floodplain Administrator shall issue a "Stop Work Order Notice" revoke the permit and request a temporary injunction.
- C. The Floodplain Administrator or other authorized official may inspect any development covered by this or previous ordinance to determine whether any portion of the development has been altered to be in non-compliance with the requirements of this article.
- (h) Certificate of Compliance.
- (1) In areas of flood hazard it shall be unlawful to occupy, or to permit the use or 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 local law. Occupying or using a building or premises in violation of this section shall subject the violator to the penalties described in Section 1717.08(c).
- (2) In areas of flood hazard 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 inspector is in possession of a copy of the certificate of compliance issued by the Local Floodplain Administrator stating that the particular development being inspected conforms to the requirements of this local law. Inspection and approval of utilities in violation of this section shall subject the violator to the penalties described in Section 1717.08(c).
- (3) In areas of flood hazard 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 Local Floodplain Administrator stating that the development conforms to the requirements of this local law. Installation of utilities in violation of this section shall subject the violator to the penalties described in Section 1717.08(c).
- (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 article 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 permit approval.

- (i) Fees.
- (1) A Floodplain Determination fee of \$20.00 payable to the City shall be assessed on all proposed development.
- (2) Application for a permit for proposed development determined to be occurring in a flood hazard area regulated by this article shall be accompanied by an additional fee, payable to the City based upon the estimated value of the proposed construction as determined by the Floodplain Administrator at the following rates:

<u>Type of Development</u>	<u>Fee</u>
1 & 2 Family Dwelling	\$5.00/per thousand
Accessory Structures	\$5.00/per thousand
Any Other Structures	\$5.00/per thousand
Site Plans, Grading & Filling (additional fee)	\$5.00/acre or part thereof
Floodway Development Reviews (additional fee)	\$20.00/per thousand

- (3) In addition, the applicant shall be responsible for reimbursing the City 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.
- (5) There is created in the City a special revenue fund, administered by the Mayor, designated the "floodplain development fund". This fund is not part of the general revenue fund of the City. All fees collected pursuant to this article shall be deposited into the floodplain development fund. The floodplain development fund shall contain all fees or penalties collected pursuant to this ordinance, any appropriations to the fund; and any gifts, grants or contributions received.
- (6) The City is restricted to, and shall distribute funds from, the floodplain development fund only for administrative costs associated with management of floodplain development, the maintenance or creation of maps and studies used to administer floodplain development and other activities which will promote and enhance flood plain management issues generally.
(Passed 9-17-09.)

1717.08 APPEALS AND PENALTIES.

(a) Appeals. Whenever any person is aggrieved by a decision of the Floodplain Administrator with respect to the provision of this ordinance, it is the right of that person to appeal to the City Council which shall be known as the Appeals Board. Such appeal must be filed with the City in writing, within thirty (30) days after notification of the decision. Upon receipt of such appeal, the Appeals Board shall set a time 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 (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and (iii) a determination that the granting of an appeal will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinance.
 - 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 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 Appeals Board shall notify the applicant in writing over the signature of a community official that (i) the issuance of a decision to allow construction of a structure below the Base Flood Elevation will result in increased premium rates for flood insurance, (ii) such construction below the Base Flood Elevation increases risk to life and property. Such notifications shall be maintained with a record of all decisions as required in paragraph D. of this section; and
 - E. The Appeals Board shall (i) maintain a record of all decisions including justification for their issuance, and (ii) report such decisions issued in its biannual report to the Federal Insurance Administration.
 - 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 article or direction of the Floodplain Administrator, or any other authorized employee of the community, shall be unlawful and shall be referred to the city attorney for prosecution in municipal court. A violator shall, upon conviction, pay a fine to the City of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) plus cost of prosecution. 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 article. 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 City to be a public nuisance and abatable as such. (Passed 9-17-09.)

1717.09 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 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 floodplain 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 must notify the Federal Insurance Administration in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. In order that all Flood Insurance Rate Maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority must be included with the notification.
- (5) NFIP participating communities must notify the State Coordinating Office in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. A copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority must be included with the notification.

(b) Permits for Government 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 must 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 9-17-09.)

1717.10 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 or development plan in an identified flood-prone area, shall not constitute a representation, guarantee, or warranty of any kind by the City, or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the City. All applicants proposing development in or near a flood hazard area are urged to locate development as far away from, and as high above, all flooding sources as possible.
(Passed 9-17-09.)

**ARTICLE 1721
Swimming Pools**

<p>1721.01 General applicability; conformance.</p> <p>1721.02 Pool classification.</p> <p>1721.03 Permits.</p> <p>1721.04 Plans.</p> <p>1721.05 Locations.</p> <p>1721.06 Structural design.</p> <p>1721.07 Wall slopes.</p> <p>1721.08 Floor slopes.</p> <p>1721.09 Surface cleaning.</p> <p>1721.10 Walkways.</p>	<p>1721.11 Steps and ladders.</p> <p>1721.12 Water supply.</p> <p>1721.13 Water treatment.</p> <p>1721.14 Drainage systems.</p> <p>1721.15 Appurtenant structures.</p> <p>1721.16 Accessories.</p> <p>1721.17 Electrical safety.</p> <p>1721.18 Equipment installations.</p> <p>1721.19 Pool safety devices.</p> <p>1721.99 Penalty.</p>
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1721.01 GENERAL APPLICABILITY; CONFORMANCE.

Pools used for swimming or bathing shall be in conformity with the requirements of this article, provided, however, these provisions shall not be applicable to any such pool less than twenty-four inches deep or having a surface area less than 250 square feet, except when such pools are permanently equipped with a water recirculating system or involve structural materials. For purposes of this Code, pools are classified as private swimming pools or public and semi-public swimming pools as defined in Section 1721.02.
(Passed 8-16-90.)

1721.02 POOL CLASSIFICATION.

(a) Any constructed pool which is used or intended to be used as a swimming pool in connection with a single-family residence and available only to the family of the household and his private guests shall be classified as a private swimming pool.

(b) Any swimming pool other than a private swimming pool shall be classified as a public or semi-public swimming pool.
(Passed 8-16-90.)

1721.03 PERMITS.

No swimming pool or appurtenances thereto shall be constructed, installed, enlarged or altered until a permit has been obtained from the Building Inspector. The approval of all City, County and State authorities having jurisdiction over swimming pools shall be obtained before applying to the Building Inspector for a permit.

(Passed 8-16-90.)

1721.04 PLANS.

Plans shall accurately show dimensions and construction of pool and appurtenances and properly established distances to lot lines, buildings, walks and fences; details of water supply system, drainage and water disposal systems and all appurtenances pertaining to the swimming pool. Detail plans of structures, vertical elevations and sections through the pool showing depth shall be included.

(Passed 8-16-90.)

1721.05 LOCATIONS.

Private swimming pools shall not encroach on any front or side yard required by the governing zoning law, except by specific rules of the community in which it may be located. No wall of a swimming pool shall be located less than six feet from any rear or side property line or ten feet from any street property line, except by specific rules of the community in which it may be located.

(Passed 8-16-90.)

1721.06 STRUCTURAL DESIGN.

The pool structure shall be engineered and designed to withstand the expected forces to which it will be subjected.

(Passed 8-16-90.)

1721.07 WALL SLOPES.

To a depth up to five feet from the top, the wall slope shall not be more than two feet horizontal in five feet vertical.

(Passed 8-16-90.)

1721.08 FLOOR SLOPES.

The slope of the floor on the shallow side of transition point shall not exceed one foot vertical to seven feet horizontal. The transition point between shallow and deep water shall not be more than five feet deep.

(Passed 8-16-90.)

1721.09 SURFACE CLEANING.

All swimming pools shall be provided with a recirculating skimming device or overflow gutters to remove scum and foreign matter from the surface of the water. Where skimmers are used there shall be at least one skimming device for each 1,000 square feet of surface area or fraction thereof. Where overflow gutters are used they shall be not less than three inches deep, pitched one-quarter inch per foot to drains, and constructed so they are safe, cleanable and that matter entering the gutters will not be washed out by a sudden surge of entering water.

(Passed 8-16-90.)

1721.10 WALKWAYS.

All public or semi-public swimming pools shall have walkways not less than four feet in width extending entirely around the pool. Where curbs or sidewalks are used around any swimming pool they shall have a nonslip surface for a width of not less than one foot at the edge of the pool and shall be so arranged to prevent return of surface water to the pool.

(Passed 8-16-90.)

1721.11 STEPS AND LADDERS.

One or more means of egress shall be provided from the pool. Treads of steps or ladders shall have nonslip surfaces and handrails on both sides, except that handrails may be omitted when there are not more than four steps or when they extend the full width of the side or end of the pool.

(Passed 8-16-90.)

1721.12 WATER SUPPLY.

All swimming pools shall be provided with a potable water supply, free of cross-connections with the pool or its equipment.

(Passed 8-16-90.)

1721.13 WATER TREATMENT.

(a) Public and semi-public swimming pools shall be designed and installed so that there is a pool water turnover at least once every eight hours. Filters shall not filter water at a rate in excess of three gallons per minute per square foot of surface area. The treatment system shall be so designed and installed to provide in the water, at all times when the pool is in use, excess chlorine of not less than 0.4 p.p.m. or more than 0.6 p.p.m. or excess chloramine between 0.7 and 1.0 p.p.m., or disinfection may be provided by other approved means. Acidity-alkalinity of the pool water shall not be below 7.0 or more than 7.5. All recirculation systems shall be provided with an approved hair and lint strainer installed in the system ahead of the pump.

(b) Private swimming pools shall be designed and installed so that there is a pool water turnover at least once every eighteen hours. Filters shall not filter water at a rate in excess of five gallons per minute per square foot of surface area. The pool owner shall be instructed in proper care and maintenance of the pool by the supplier or builder, including the use of high test calcium hypochlorite (dry chlorine) or sodium hypochlorite (liquid chlorine) or equally effective germicide and algaecide and the importance of proper pH (alkalinity and acidity) control.

(Passed 8-16-90.)

1721.14 DRAINAGE SYSTEMS.

The swimming pool and equipment shall be equipped to be completely emptied of water and the water discharged shall be disposed of in an approved manner that shall not create a nuisance to adjoining property.

(Passed 8-16-90.)

1721.15 APPURTENANT STRUCTURES.

All appurtenant structures, installations and equipment such as showers, dressing rooms, equipment houses or other buildings and structures, including plumbing, heating and air conditioning, amongst others appurtenant to a swimming pool, shall comply with all applicable requirements of this Code and the zoning law.

(Passed 8-16-90.)

1721.16 ACCESSORIES.

All swimming pool accessories shall be designed, constructed and installed so as not to be a safety hazard. Installations or structures for diving purposes shall be properly anchored to insure stability, and properly designed and located for maximum safety.
(Passed 8-16-90.)

1721.17 ELECTRICAL SAFETY.

The construction and installation of electrical wiring for equipment in or adjacent to swimming pools, to metallic appurtenances in or within five feet of the pool, and to auxiliary equipment such as pumps, filters and similar equipment shall conform to the National Electrical Code.
(Passed 8-16-90.)

1721.18 EQUIPMENT INSTALLATIONS.

Pumps, filters and other mechanical and electrical equipment for public and semi-public swimming pools shall be enclosed in such a manner as to be accessible only to authorized persons and not to bathers. Construction and drainage shall be such as to avoid the entrance and accumulation of water in the vicinity of electrical equipment.
(Passed 8-16-90.)

1721.19 POOL SAFETY DEVICES.

(a) Every person owning land on which there is situated a swimming pool, fish pond or other body of water which constitutes an obvious hazard and contains twenty-four inches or more of water in depth at any point, shall erect and maintain thereon an adequate enclosure either surrounding the property or pool area, sufficient to make the body of water inaccessible to small children. Such enclosure, including gates, therein, shall be not less than four feet above the underlying ground; all gates shall be self-latching with latches placed four feet above the underlying ground or otherwise made inaccessible from the outside to small children.

(b) A natural barrier, hedge, pool cover or other protective device approved by the governing body, may be used so long as the degree of protection afforded by the substituted devices or structures is not less than the protection afforded by the enclosure, gate and latch described herein.
(Passed 8-16-90.)

1721.99 PENALTY.

Whoever violates this section shall be fined not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00).
(Passed 8-16-90.)

ARTICLE 1725
Fair Housing Practices

1725.01	Designation of policy.	1725.05	Procedures and enforcement.
1725.02	Definitions.	1725.06	Scope.
1725.03	Unlawful housing practices.	1725.07	Other legal action.
1725.04	Fair Housing Board.	1725.99	Penalty.

CROSS REFERENCES

Human Rights Act - see W. Va. Code Art. 5-11
Authority to prohibit housing discrimination - see
W. Va. Code 8-12-10

1725.01 DESIGNATION OF POLICY.

It is hereby designated to be the continuing policy of the City to do all things necessary and proper to secure for all its citizens their right to equal housing opportunities regardless of their race, religion, color, national origin, ancestry, sex, marital status or handicap.

1725.02 DEFINITIONS.

As used in this article, the following terms shall have these meanings:

- (a) "Real estate agent" includes any real estate broker, real estate salesman or an agent thereof, or any other person, partnership, association or corporation who for consideration sells, purchases, exchanges, rents, negotiates, offers or attempts to negotiate the sale, purchase, exchange or rental of real property or holds himself out as engaged in the business of selling, purchasing, exchanging, renting or otherwise transferring any interest in real property.
- (b) "Board" means the Fair Housing Board created by this article.
- (c) "Discrimination", "discriminating" or "discriminate" means to exclude from or fail or refuse to extend to a person equal opportunities because of race, religion, color, national origin, ancestry, sex, marital status or handicap, and includes to separate or segregate.

- (d) "Housing" includes any building, facility, structure or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied as the home, residence or sleeping place of one or more persons, groups or families and any vacant land offered for sale or lease for the construction or location thereof of such building, facility or structure. Nothing contained in this definition or this article shall apply to the renter of a room or rooms in a rooming house occupied by the owner as a place of residence and containing no more than four rented rooms, or rooms to be rented.
- (e) "Lending institution" means any bank, building and loan association, savings and loan association, insurance company or other persons whose business consists in whole or in part in the lending of money or guaranteeing loans.
- (f) "Person" means one or more individuals, corporations, partnerships, associations, firms or enterprises, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

1725.03 UNLAWFUL HOUSING PRACTICES.

It shall be an unlawful housing practice and a violation of this article:

- (a) For any person or real estate agent:
 - (1) To discriminate against any person in the selling, leasing, subleasing, renting, assigning or otherwise transferring of any interest in housing.
 - (2) To discriminate against any person by refusing to negotiate, refusing to transmit a bona fide offer, making false representations on the availability of the housing unit for inspection, sale or rental, or withdrawing from the market a housing unit which is for sale, lease, sublease, or rental.
 - (3) To include in the terms, conditions or privileges of any sale, lease, sublease, rental, assignment or other transfer of any housing, any clause, condition or restriction discriminating against any person in the use or occupancy of such housing.
 - (4) To discriminate in the furnishing of any facilities, repairs, improvements or services, or in the terms, conditions, privileges or tenure of occupancy of any person.
- (b) For any lending institution:
 - (1) To discriminate in lending money, guaranteeing loans, accepting a deed of trust or mortgage or otherwise making available funds for purchasing, constructing, improving, altering, repairing, rehabilitating or maintaining any housing or to discriminate in the fixing of the amount, interest rate, duration, or other terms, conditions or provisions of any such financial assistance.
 - (2) To discriminate in the lending of money, guaranteeing loans, accepting a deed of trust or mortgage or otherwise making funds available on the basis of the geographic location when done so for the intended purpose of discriminating as defined in this article.

- (c) For any person, real estate agent or lending institution with respect to any prohibited act specified in this article to publish, to circulate or cause to be published or circulated, any notice, statement, listing or advertisement, or to announce a policy or to make any record in connection with the prospective sale, lease, sublease, rental or financing of any housing which indicates reliance, determination or decision based on race, religion, color, national origin, ancestry, sex, marital status or handicap.
- (d) For any person or real estate agent to assist in, compel or coerce the doing of any act declared to be an unlawful housing practice under this article, or to obstruct or prevent endorsement or compliance with provisions of this article, or to attempt directly or indirectly to commit any act declared by this article to be an unlawful housing practice.
- (e) For any person, real estate agent or lending institution:
 - (1) To induce or attempt to induce the sale, transfer of interest, or listing for sale of any housing by making representations regarding the existing or potential proximity of real property owned, used, or occupied by any person of any particular race, religion, color, national origin, ancestry, sex, marital status or handicap.
 - (2) To make any representation to a prospective purchaser or lessee that any housing in a particular block, neighborhood or area may undergo, is undergoing or has undergone a change with respect to race, religion, color, national origin, ancestry, sex, marital status or handicap.
 - (3) To induce or attempt to induce the sale or listing for sale of any housing by representing that the presence or anticipated presence of persons of any particular race, religion, color, national origin, ancestry, sex, marital status or handicap will result in:
 - A. The lowering of property values.
 - B. A change in the racial, color, religious, nationality or other ethnic composition of the area in which the property is located.
 - C. An increase in criminal or antisocial behavior in the area.
 - D. A decline in the quality of the schools serving the area.
- (f) For any person or real estate agent to cause or coerce or attempt to cause or coerce retaliation against any person because such person has lawfully opposed any act or failure to act that is a violation of this article or has, in good faith, filed a complaint, testified, participated or assisted in any way in any proceeding under this article, or to prevent any person from complying with this article.
- (g) To deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting housing or to discriminate against a person in the terms or conditions of such access, membership or participation.
- (h) To do any other thing or engage in conduct which would otherwise make unavailable equal housing opportunities.

1725.04 FAIR HOUSING BOARD.

(a) There is hereby created the Fair Housing Board to consist of three members who shall be qualified electors of the City and shall not hold any elected public office at the Municipal, County, State, or Federal level at any time while a member of the Board and shall not be employed by the City, but may be employed by the County, State or Federal government. Any duly appointed Board member who is a candidate for any public office shall be automatically disqualified from further membership on the Board.

(b) The Board members shall be appointed by Council. Of the members first appointed, one shall hold office for a term of one year; one for a term of two years; and the other for a term of three years; and their successors shall be appointed for terms of three years. Council shall fill all vacancies by appointment for the remainder of the unexpired term. After being duly constituted, a Chairman and Vice-Chairman shall be chosen by a majority vote of the Board.

(c) The secretary of the Board shall be appointed by the Mayor and may be an employee of the City.

(d) Any member of Council may recommend the removal of any member of the Board for neglect of duty or malfeasance in office to Council. Council may remove a member of the Board from office by an affirmative vote of at least three-quarters of Council only after having first given to such member a written copy of the charges against him and an opportunity to be publicly heard in person or by counsel in his own defense; and any such removal shall be final.

(e) Two members of the Board shall constitute a quorum for the purpose of conducting the business thereof. A vacancy on the Board shall not impair the right of the other members to exercise all the power of the Board.

(f) Each member of the Board shall serve without salary.

(g) The Board is charged with the following duties to implement the stated policy of this article:

- (1) To investigate all complaints of unlawful housing practices which are filed with it.
- (2) To initiate complaints of unlawful housing practices.
- (3) To endeavor, by conciliation, to resolve such complaints.
- (4) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the Board.
- (5) To render at least once a year to Council a full written report of all its activities and recommendations.
- (6) To recommend to Council, when it deems necessary, educational and other programs designed to promote the purpose stated in this article.
- (7) To adopt rules and procedures for the conduct of its business.
- (8) To do such other acts that are necessary and proper in order to perform those duties with which it is charged under the terms of this article.

1725.05 PROCEDURES AND ENFORCEMENT.

(a) Any person subjected to any unlawful housing practice may file within one hundred eighty days of the alleged violation with the Board a complaint in writing, sworn to or affirmed, which shall state the name and address of the person aggrieved; the name and address of the person against whom the complaint is filed; a description and the address of the dwelling which involves the alleged discriminatory housing practice, if applicable; a concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice, and such other information as may be required by the Board. The complaint may be reasonably and fairly amended. The Board may also corroborate or initiate complaints.

(b) Upon the filing of a complaint, the chairman of the Board shall make such investigation as he deems appropriate to ascertain facts and issues. Such investigation shall be conducted within fourteen business days after the filing of the complaint. The investigation may be extended when deemed necessary by the Fair Housing Board. If the chairman determines that there are reasonable grounds to believe a violation has occurred, the chairman shall attempt to conciliate the matter by methods of initial conference and persuasion with all interested parties and such representatives as the parties may choose to assist them. Conciliation conferences shall be informal and nothing said or done during such initial conferences shall be made public by any member of the Board unless the parties agree thereto in writing.

(c) The terms of conciliation agreed to by the parties shall be reduced to writing and incorporated into a consent agreement to be signed by the parties, which agreement is for conciliation purposes only and does not constitute an admission by any part that the law has been violated. Consent agreements shall be signed on behalf of the Board by its chairman.

(d) The Board is authorized to seek the cooperation and aid of the West Virginia Real Estate Commission, West Virginia Human Rights Commission or the U.S. Department of Housing and Urban Development and any other person or group regarding any matter before the Board.

(e) If the chairman determines that the complaint lacks reasonable grounds upon which to base a violation of this article, he shall so inform the Board and the Board may in its discretion dismiss such complaint or order such further investigation as may be necessary; provided, that the Board shall not dismiss such complaint without first affording either party an opportunity to appear before the Board.

(f) If the chairman, with respect to a matter which involves a violation of this article, fails to conciliate a complaint after the parties have in good faith attempted such conciliation, fails to effect an informal conciliation agreement or a formal consent agreement or determines that a complaint is not susceptible to conciliation, he shall so notify the Board and the Board shall thereafter schedule a public hearing to determine whether a violation of this article has been committed.

The Board shall serve upon the respondent a written statement of charges and a summons and shall serve upon all interested parties a notice of the time and place of the hearing. The respondent or authorized counsel may file and amend such statements with the Board prior to the hearing date as it deems necessary in support of its position. The hearing shall be open to the public. The hearing shall be held not less than fifteen calendar days nor more than thirty calendar days after service of the statement of charges and summons, except that such hearings may be continued upon the finding of just cause therefor by the Board. The summons so issued shall be signed by two members of the Board and the issuance of such summons shall require the attendance of named persons and the production of relevant documents and records. The failure to comply with a summons shall constitute a violation of this article. The interested parties may, at their option, appear before the Board in person or by a duly authorized representative and may have the assistance of an attorney. The parties may present testimony and evidence, and the right to cross examine witnesses shall be preserved. All testimony and evidence shall be given under oath or by affirmation. The secretary shall keep a full record of the hearing, which record shall be public and open to inspection by any person, and upon request by any principal party to the proceeding, the Board shall furnish such party a copy of the hearing record for the cost of transcription or reproduction.

(g) If, at the conclusion of the hearing, the Board shall determine upon the preponderance of the evidence that the person complained against has violated this article, the Board shall, after consultation with the City Attorney in executive session, state its findings to and cause the City Attorney to prepare and issue an order under Board directive requiring the person complained against to cease and desist from such unlawful conduct and to take such affirmative action as will effectuate the purpose of this article, with notice that if the Board, upon investigation by the chairman, determines that the person complained against has not after fifteen calendar days following service of the Board's order, complied with the order, the Board will recertify the matter to the City Attorney for enforcement. The City Attorney shall seek compliance by appropriate civil action brought in the name of the Fair Housing Board of the City before the Municipal Court of the City.

(h) If, at the conclusion of the hearing, the Board shall determine upon the preponderance of the evidence of the record that the person complained against has not violated this article, the Board shall so state and publish its findings and issue its order dismissing the complaint.

1725.06 SCOPE.

The provision of this article shall apply to all housing located within territorial limits of the City.

1725.07 OTHER LEGAL ACTION.

Nothing contained in this section shall prevent any person from exercising any right or seeking any remedy to which he might otherwise be entitled or from filing any complaint with any other agency or court of law or equity.

1725.99 PENALTY.

In any proceeding, where the court determines that there has been a violation of this article, the Court shall award compensatory damages and, where appropriate, punitive damages of not more than one thousand dollars (\$1,000) along with attorney fees and Court costs. The Court may also order such other relief as it deems necessary or appropriate which may include, but is not limited to, issuance of any permanent or temporary injunction, temporary restraining order or other order.

ARTICLE 1729
Fees

1729.01 Building permits.

1729.02 Fee for the inspection of construction, remodeling and repairs.

CROSS REFERENCES

Permits for construction and alteration - see W.Va. Code 8-12-14

1729.01 BUILDING PERMITS.

Cost of Project	Amount of Permit
\$200-\$500	\$5.00
\$501-\$1,000	\$15.00
\$1,001-\$2,000	\$20.00
\$2,001-\$3,500	\$25.00
\$3,501-\$5,000	\$30.00
> \$5,000	\$30.00 + \$3.00 for each additional \$1,000
Demolition Permit	\$100.00

1729.02 FEE FOR THE INSPECTION OF NEW CONSTRUCTION, REMODELING AND REPAIRS.

(a) Council establishes a ten percent (10%) fee to residents, businesses, and industries within the City whose premises are inspected by the Building Inspector or their agents in connection with such construction, repair or remodeling of said premises within the City.

(b) The fee to the residents, businesses and industries within the City shall be ten percent (10%) of the cost charged to the City, by the Building Inspector or their agents for the inspection of the premises where construction, repair or remodeling is being undertaken.
(Passed 3-18-10.)

