

ADOPTING ORDINANCE

AN ORDINANCE ADOPTING AND ENACTING A CODIFICATION AND REVISION OF THE ORDINANCES OF THE TOWN OF SUTTON, WEST VIRGINIA.

WHEREAS many of the ordinances of the Town of Sutton are obsolete, and

WHEREAS many of the other ordinances of the municipality are inconsistent with each other or are otherwise inadequate, and

WHEREAS the Common Council of the Town of Sutton has caused its ordinances of a general and permanent nature to be codified and revised and the same are embodied in a codification and revision known as "The Sutton Municipal Code, 2022",

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE TOWN OF SUTTON, WEST VIRGINIA, THAT:

Section 1. The Common Council of the Town of Sutton may exercise all powers conferred by Chapter 8 of the official code of West Virginia for the year 1931, and all other powers conferred by later acts of the regular and extra sessions of the West Virginia Legislature or by any other laws of said state, upon cities, towns, and villages incorporated without special charter.

Section 2. The ordinances of the municipality of a general and permanent nature as codified and revised in the following "chapters", namely "chapters" 1 to 11, both inclusive, are ordained as general ordinances and adopted as "The Sutton Municipal Code, 2022", hereinafter referred to as the "Town Ordinances".

Section 3. All ordinances of a general and permanent nature hereby except contained in the Town Ordinances as were amended in 2022 are hereby repealed from and after the effective date of said code, as hereinafter provided.

Section 4. The repeal provided for in the preceding section of this ordinance shall not affect any offense or act committed or done prior to the date of enactment hereof and any such offense or act may be prosecuted under the terms of such repealed ordinance as the said terms may have provided prior to the enactment hereof, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of the Town Ordinances; nor shall such repeal affect any ordinance or resolution promising or guaranteeing the payment of money for the municipality or authorizing the

issuance of any bonds of said municipality or any evidence of said municipality's indebtedness, or any contract or obligation assumed by said municipality; nor shall it affect any right or franchise conferred by any ordinance or resolution of the municipality on any person, firm, or corporation; nor shall it affect any prosecution, suit or other proceeding pending or any judgment rendered on or prior to the effective date of said code; nor shall it affect any ordinance annexing territory to the municipality; nor shall such repeal affect any ordinance not specifically repealed by these Town Ordinances.

Section 5. Insofar as the provisions of the Town Ordinances are the same as those of ordinances existing and in force at its effective date, said provisions shall be considered to be continuations thereof and not as new ordinances.

Section 6. Wherever in the Town Ordinances, including the codes and ordinances adopted by reference, any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in the Town Ordinances the doing of any act is required or the failure to do any act is declared to be unlawful, the violation of any such provision of the Town Ordinances shall, unless otherwise provided, be punishable by a fine of not more than five hundred dollars for each separate violation; provided, however, that the infliction of a fine under the provisions of this section shall not prevent the revocation of any permit or license or the taking of other punitive or remedial action where called for or permitted under the provisions of the Town Ordinances or other applicable law.

Section 7. Any printed copy of the Town Ordinances certified under the actual or facsimile signature of the Town Recorder shall be held to be a true and correct copy of such codification and may be read in evidence in the municipal court without further proof of the provisions contained therein.

Section 8. Each section of the Town Ordinances, including the codes and ordinances adopted by reference, is hereby declared to be separable and severable and the invalidity of any section, part, paragraph, sentence, phrase, or word in the Town Ordinances shall not affect the validity of any other part of said Ordinances, and only any part declared to be invalid by a court of competent jurisdiction shall be deleted therefrom.

Section 9. Immediately upon adoption of the Town Ordinances they shall be reproduced in loose-leaf form as provided in Chapter 1, Section 311 of said code, and shall be

made available to town officers and to other persons who shall request and pay for said ordinance book. One copy of the Town Ordinances as originally adopted and one copy of each amending ordinance adopted thereafter shall be mailed to the West Virginia Municipal League immediately after adoption.

Section 10. At least one copy of the Town Ordinances, maintained currently up to date, shall be kept available in the Recorder's Office for public use and inspection at all reasonable times.

Section 11. This ordinance shall take effect at 00:01 a.m. JANUARY 3, 2023, the public welfare requiring it, and the Town Ordinances, including all the codes and ordinances therein adopted by reference, shall be effective on and after that date.

ORDAINED AND ENACTED INTO AN ORDINANCE THIS 29th DAY OF DECEMBER, 2022.



Mayor

Recorder



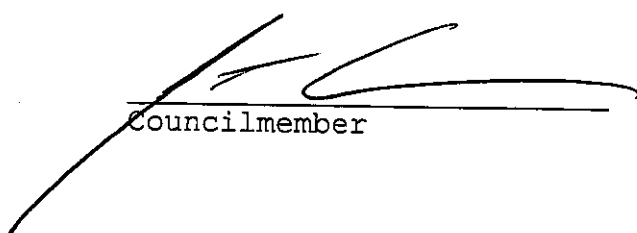
Councilmember



Councilmember



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Councilmember



Councilmember

CHAPTER ONE

ELECTIONS, ADMINISTRATION AND PERSONNEL POLICIES

ARTICLE ONE

ELECTIONS, OFFICERS AND THEIR QUALIFICATIONS

1-101. General Provisions. The regular election for town offices shall be held biennially on the second (2nd) Tuesday in June, at the Community Building in the Town of Sutton, Braxton County, West Virginia, or at such other place in said town as the Common Council may by order appoint; said election shall be held and conducted under the provisions of the general election laws of this state, in force at the date of such election, and governed by the said general election laws of this state in every respect, insofar as the same are applicable to city elections, with the exception that the duties to be performed by the County Commission shall be performed by the Common Council of said town, and duties to be performed by the clerks of the County Commission and Circuit Court shall be performed by the Recorder of said town, and with the further exception that the ballots shall list all candidates for each office under separate headings, using ballot position drawing, without reference to party affiliation, and that there shall be no separate registration required of the voters for such election, and that the election boards shall be composed as hereinafter specified.

(See West Virginia Code §8-5-5, Section amended 2022)

1-102. Officers to be elected. At the said biennial election for town officers, there shall be elected a mayor, recorder, and five councilmen, whose terms of office shall commence on the first day of July following such election and shall be for two years and until their successors are elected and qualified, unless sooner removed in the manner hereinafter specified.

(See West Virginia Code §8-5-11)

1-103. Eligibility of candidates. No person shall be eligible to the office of Mayor, Recorder, or Councilman of said town unless at the time of his election he is a resident of said town and entitled to vote in the town election for members of the Common Council.

(See West Virginia Code §8-5-7, Section amended 1986)

1-104. Filing of candidacy. Any person who is eligible to hold the office of Mayor, Recorder, or Councilman of said town may file with the Town Recorder or Clerk a certificate of announcement declaring himself a candidate for such office. Such certificate shall be signed and acknowledged by the candidate before a notary and shall be filed with the Town Recorder between the second Monday of January and the last Saturday of January before the election at least forty-two days (six weeks) before the date of such election, as provided by the statutes of the State of West Virginia. The filing may be made by mail, but must be postmarked by the U.S. Postal Service no later than midnight of the last day of filing. A certificate of announcement that lacks essential information may be rejected. (West Virginia Code §3-5-7, Section amended 2022)

1-105. Vacancies. When a vacancy shall occur from any cause in the office of Mayor, Recorder, or in the council, the vacancy shall be filled by appointment upon such appointment being approved by a majority vote of those council members present at the time the vote is taken, and such person appointed shall serve until the next succeeding regular election; any such appointment by the Common Council shall be from among the citizens of said town eligible to hold said office under these ordinances. No member of council appointed or nominated to any such office shall be allowed to vote on such appointment. (See west Virginia Code §8-5-10, Section amended 1989)

1-106. Election Boards. The council shall, before the biennial election for town officers, appoint four voters (Early voting requires only two officials) to act as commissioners of election and poll clerks as hereinafter specified, and it shall be the duty of the persons so appointed to attend at the place of voting and to superintend the election to be held in said town and return the results thereof as required by this chapter.

The Receiving Board shall be composed of two commissioners, of opposite politics to each other, and two poll clerks, of opposite politics to each other. The Receiving Board shall attend at the opening of the polls, shall open the polls, and shall proceed with the election.

When the polls close at 7:30pm, the Receiving Board may then become the Counting Board and shall be composed of two commissioners, of opposite politics to each other, and two poll clerks. The Counting Board shall take charge of the ballot box containing the ballots theretofore cast in said election. They shall proceed to count and tabulate the ballots as they shall

find them deposited in the ballot box, in the manner as hereinafter specified.

The Receiving Board shall continue to receive the votes of electors in another box, until such time as the Counting Board shall have finished counting and tabulating the ballots cast in the first box. The Counting Board shall, before exchanging the ballot boxes as hereinafter provided, deposit the ballots counted in a third secured ballot box provided for this purpose, which shall be delivered unopened to the Board of Canvassers under the procedure hereinafter stated. The two boards shall then exchange the first box for the second box, and so continue until the hour of closing the polls arrives. After the polls have been closed, the two boards shall together proceed with counting, tabulating and summarizing the votes as by this article provided.

(Section amended 2022)

1-107. Hours. At every election held in said town, the polls shall be opened on the day of such election at 6:30 o'clock in the morning and be closed at 7:30 o'clock in the evening, Eastern Standard Time or Daylight saving Time, whichever shall prevail in the community at the time.

(See West Virginia Code §3-1-31)

1-108. Oath of Election Board. Every commissioner and clerk so appointed as aforesaid shall, before entering upon the discharge of his duties as such, take and subscribe the oath prescribed by law for election commissioners and clerks, respectively. Said oaths may be taken before any person authorized by law to administer oaths, but if no such person be present at the place of holding such election, it may be taken before and administered by one of the commissioners so appointed, who in turn may take the same before another of said commissioners; the said oath shall appear properly certified on the poll books of every election, and in no case shall the votes taken be counted unless said oaths so appear, or unless it be proved to the satisfaction of the council, convened as hereinafter required, that such oath was taken before said commissioners and clerks entered upon the discharge of the duties of their appointment.

1-109. Residency. All persons who are bona fide residents of the territory included in said town and who are qualified voters under the constitution and laws of the State of West Virginia, and no others, shall be entitled to vote at any election held in said town, but no person shall be deemed a resident of said town by reason of being stationed therein for any temporary purpose.

(Section amended 2022)

1-110. Mode of voting. In all elections by the people of said town, the mode of voting shall be by ballot; but the voter shall be left free to vote by either open, sealed, or secret ballot, as he may elect.

(See West Virginia Code §3-1-4)

1-111. Absentee voters. Any person who is duly registered and otherwise qualified to vote, but who is unable to vote in person at the polls in said election by reason of illness, injury, physical disability, or who is required to be absent from the corporation during the entire time the polls are open in said election, may apply to the Recorder's office for an absent voter's ballot.

1-112. Registration records. The Recorder, not less than three days prior to every election held within the town, other than primary elections, shall procure from the Clerk of the County Commission of Braxton County the registration records, from the municipal precinct file in said Clerk's office, necessary for the conducting of the municipal election. Within ten days after the date of such municipal election, the Recorder shall return said records to the office of the Clerk of said Commission.
(See West Virginia Code §3-5-13)

1-113. Poll Books. Every poll book shall bear the names of all persons voting in the municipal corporation of the Town of Sutton, and the County of Braxton, at the election held. Such poll book with the names of all persons voting shall be kept at every election held in said town.
(Section amended 2022)

1-114. Voting Procedure. Any person offering to vote in an election shall, upon entering the election room, clearly state his name and residence to the poll clerk. If such person is found to be duly registered and qualified to vote, one of the Receiving Clerks shall proceed to have the voter sign the poll book. When the voter's signature is properly recorded, the poll clerks shall each sign their own names in the places indicated on the official ballot and it shall be delivered to the voter to be voted by him then without leaving the election room and in no case shall either of said officials sign the name of the other. After preparing the ballot the voter shall fold the same so that the face shall not be exposed and so that the names of the election officials thereon shall be seen. The voter shall then

announce his name and present his ballot to one of the commissioners who shall hand the same to the other commissioner, who shall deposit it in the ballot box, if such ballot is the official one and properly signed. The commissioners of election may inspect every ballot before it is deposited in the ballot box, to ascertain whether it is single, but without unfolding it or unrolling it so as to disclose its content. When the voter has voted, he shall retire immediately from the election room, and beyond the 100 foot limit thereof, and shall not return except by permission of the commissioners.
(Section amended 2022)

1-115. Absentee ballots. A person desiring to vote an absent voter's ballot by personal appearance may appear during regular business hours at the office of the Town Recorder not more than fifteen days before the election and on any day thereafter up to and including the Saturday next preceding the date of the election, and shall make application to vote by absent voter's ballot. Said application shall be in writing and shall contain the voter's sworn statement that he is a duly registered and qualified voter and giving the specific reason for his required absence. Upon determination by the Town Recorder that the applicant is entitled to vote an absent voter's ballot by personal appearance, the Recorder shall hand to him one absent voter's ballot, one absent voter's ballot envelope No. 1, unsealed, and one absent voter's ballot envelope No. 2, unsealed. The voter shall then retire to the place provided in said Recorder's office and there mark his ballot. The voter shall then enclose the same in envelope No. 1 and seal it; enclose envelope No. 1 in envelope No. 2 and seal it; and transmit possession of the sealed envelope to the Town Recorder. Upon receipt of such sealed envelope, the Recorder shall enter the required information into a record of persons applying for and voting by an absent voter's ballot and shall place such sealed envelope in a secure location in his office, there to remain until delivered to the polling place in accordance with the provisions of the Election Laws of West Virginia.

A person desiring to vote an absent voter's ballot by mail may, not more than sixty days prior to the date of the election and on any day thereafter up to and including the fourth day next preceding the election, make application by mail to the Town Recorder for an absent voter's ballot to be voted at such election. Upon determination by the Town Recorder that the applicant is entitled to vote an absent voter's ballot by mail, the Recorder shall between the twentieth day and the fourth day next prior to the election mail the applicant one absent voter's

ballot, one absent voter's ballot envelope No. 1, and one absent voter's ballot envelope No. 2. After the voter has voted his absent voter's ballot, he shall enclose the same in absent voter's ballot envelope No. 1 and seal it; enclose envelope No. 1 in envelope No. 2 and seal that envelope; and mail, postage prepaid, sealed envelope No. 2 to the Town Recorder. Upon receipt of such sealed envelope, the Recorder shall enter the required information into a record of persons applying for and voting by an absent voter's ballot and shall place such sealed envelope in a secure location in his office, there to remain until delivered to the polling place in accordance with the provisions of the Election Laws of West Virginia.

1-116. Opening and closing polls. Before any voter is permitted to vote, at 6:30am, a Receiving Commissioner of election shall cause to be proclaimed that such election is opened. When the polls are closed, at 7:30pm, proclamation must be made of the fact by one of the Receiving Commissioners of election to the people outside in a loud and audible tone of voice, and after such proclamation is made, no more votes shall be received.

(See West Virginia Code §3-1-32, Section amended 2022)

1-117. Ballot boxes. At the time of opening the polls, the Receiving Commissioners shall examine the ballot boxes and ascertain that there are no ballots in the same, and they shall thereupon securely lock the boxes and give one key to each of the commissioners who shall hold the same, and such boxes shall not be again opened until the time to begin counting the votes arrives, and for that purpose. When the time to be in counting arrives, each Receiving Commissioner shall deliver his key(s) to a separate Counting commissioner who shall be in charge of the same during the counting procedure. The ballot box shall have an aperture in the lid or top thereof to receive the ballots of the voters. While the polls are opened it shall be kept where it may be seen by the voters except as otherwise provided in the counting procedures, and after the polls are closed and until the votes are counted and the certificates of the results are signed, it shall remain in the immediate custody of the commissioners, or any one of them with the consent of the others, shall not be removed from the place of voting, and shall not be opened except in the manner and for the purposes specified in this article.

1-118. Order at the polls. The commissioners of election shall preserve order at and in the vicinity of the polls, and keep the way to the polls open and free from obstruction, and may direct

disorderly persons to be removed therefrom, and if necessary and proper, to be taken and held in custody until sunrise of the next day or for any shorter time, which may be done by the Chief or any police officer or other person or persons designated by the commissioners of election, and no warrant or authority in writing shall be necessary. The jail of the county or town may be used as the place of custody. But any person so arrested shall have an opportunity to vote, if he be entitled to do so, before he shall be committed to jail, if he so desires and shall be prepared to do so promptly.

(See West Virginia Code §3-1-38, Section amended 2022)

1-119. Penalties for disorder. Any person offending against the provisions of the next preceding section shall, notwithstanding his having been in custody as aforesaid, be liable to any penalty or punishment for his offense prescribed by law; and any person who, being thereto commanded by the commissioners either verbally or in writing, shall fail or refuse to assist to the utmost of his power in whatever may be necessary or proper to prevent intimidation, disorder, or violence at the polls, shall forfeit not less than five nor more than fifty dollars.

1-120. Challenges. The commissioners holding the election at the place of voting shall permit all persons to vote entitled to do so, and reject the votes of all persons not entitled to vote at said election, and shall, in all respects, have the poll taken fairly according to law. They shall swear and examine any person (or the person examined may affirm) touching his right to vote at said election, whenever such right to vote is questioned by any person. If the vote of any person offering to vote be rejected, his name, if required by him or by any candidate at said election, shall be entered on a separate list to be kept for the purpose; and if any person be permitted to vote whose vote is challenged, the word "challenged" shall be written on the poll book opposite his name.

1-121. Voting only once. No person shall vote more than once in the same election, although he may not have voted the first time for as many persons as he might have lawfully voted for.

1-122. Counting of votes. When the time to begin counting the votes arrives, the counting Board shall take charge of the first ballot box as heretofore provided and shall proceed to ascertain the result of the election in the manner hereinafter specified, and shall not adjourn nor delay until the votes are all counted,

and the result ascertained, the memorandum made, and copies thereof delivered and posted as hereinafter required.

1-123. Counting Procedures. (a) When the Counting Board has retired to the place provided for the counting of the votes, the ballot box shall be opened and one of the Counting Commissioners taking therefrom one ballot at a time, in the presence of the other officers, shall read therefrom the designation of the office to be filled and the names of the persons voted for, for each office, and hand the ballot to the other Counting Commissioner who, if satisfied that it was correctly read, shall deposit it in the locked ballot box provided for this purpose. The contents of the ballots, as they are read, shall be entered by the Counting Clerks, separately, under the supervision of the counting Commissioners, on tally papers for the purpose, by suitable marks in ink made, opposite to or under the name of each person voted for, so as to show the number of votes received by every person for any offices to be filled. The ballots shall be counted as they are deposited in the locked ballot box and said number shall be recorded for comparison with the poll slips.

(b) If two or more ballots be found folded or rolled together and the names thereon be the same, one of them only shall be counted, but if the names thereon be different in any particular, neither of them shall be counted except if it be manifest what was intended by the voter, and in either case the commissioners shall, in writing in ink, place a common number on said ballots and state thereon that they were folded or rolled together when voted. If the ballot be found to contain more than the proper number of names for any office, such ballot shall not be counted as to such office. Any ballot, or part of ballot, from which it is impossible to determine the voter's choice of candidates, shall not be counted as to the candidate or candidates affected thereby.
(Section amended 2022)

1-124. Polls closed. As soon as possible after the polls are closed, the names entered on the poll books shall be counted by the Receiving Commissioners and Clerk and the number thereof set down in words at length and also in figures at the foot of the lists, which shall then be signed by the commissioners and clerk. The Receiving Board shall then become the Counting Board and begin counting, tabulating and summarizing the votes in the manner provided heretofore. A count of the number of ballots being kept, whenever the number of ballots counted shall be equal to the number of votes entered upon the poll books, the

excess, if any, remaining in the ballot boxes shall immediately be destroyed by fire or otherwise without unfolding or unrolling the same, or allowing anyone to examine or know the contents thereof. On completing the count and recording the same on tally sheets, the commissioners of election shall immediately make a memorandum of the total vote cast for each candidate, deliver a copy thereof to each member of such board, and post a copy thereof on the front door of the polling place, and transmit a copy thereof to the Recorder of the town who shall post the same in the Mayor's office for public inspection.
(Section amended 2022)

1-125. Certification of tabulation. As soon as the results are ascertained, the commissioners and clerks of election shall make out and sign two certificates thereof, in the following form or to the following effect: "We, the undersigned, who acted as commissioners and clerks of the election held at the Community Building in the municipal corporation of Sutton, and County of Braxton, on the day of _____ do certify that, having been first duly sworn, we have fairly and impartially held the said election according to law and the result thereof is as follows: For the office of Mayor, _____ received ____ votes, _____ received ____ votes," and so on throughout stating the name of every person voted for, for every office, and in the words at length, and also in figures, the number of votes he received for same; and concluding as follows: "Given under our hands this _____ day of _____." The said two certificates shall contain complete returns of the polls taken for every office to be filled. When the said certificates are signed, the ballots shall be enclosed by the commissioners in an envelope, which they shall seal up, and write their names in ink, across the place or places where it is sealed, and endorse in ink on the outside of said envelope as follows: "Ballots of the election in the municipal corporation of the Town of Sutton, County of Braxton, the _____ day of _____." The ballots, sealed in said envelope, shall be returned to the ballot box together with the tally sheets, poll books and certificates, and all shall be locked therein. The Receiving Poll Clerk shall take charge of and, within twelve hours after said completion, shall deliver said ballot box with its contents intact, and the ballot box keys, to the Recorder to be preserved by him and delivered to the Board of Canvassers as hereinafter provided.

1-126. Board of Canvassers. The Common Council of the Town of Sutton shall be ex-officio a Board of Canvassers and, as such, shall keep in the "minute book" a complete record of all its proceedings in ascertaining and declaring the result of every

election in said town. The said council shall convene as such Canvassing Board at the Mayor's office on the fifth day (Sunday excepted) after every election held for said town, and the Recorder shall lay the ballots, poll books, tally sheets and certificates before it. The council may, if deemed necessary, require the attendance of any of the commissioners, poll clerks or other persons present at the election, to appear and testify respecting the same, and make such other orders as shall seem proper, to procure correct returns and ascertain the true result of the said election in said town; but in such case all of the questions to the witnesses and all the answers thereto, and evidence, shall be taken down in full and spread upon the record, or a transcript thereof filed and made a part of the record. All orders made shall also be spread upon the record. The council may adjourn from time to time, but no longer than absolutely necessary, and when a majority of the council are not present, its meeting shall stand adjourned till the next day, and so on from day to day, till a quorum be present. The council, before proceeding to canvass the returns of the election, shall open the sealed package of ballots so laid before them, count the number of ballots therein and enter the same upon the record. The ballots shall then be again sealed up carefully in a new envelope and each member of the council present shall write his name across the place where said envelope is sealed. After canvassing the returns of the election, the council, shall, upon the demand of any candidate voted for at such election, open and examine the sealed package of ballots and recount the same; but in such case they shall seal the same again along with the envelope above named, and the Recorder and each member of the council shall write his name across the lace or places where it is sealed, and endorse in ink, on the outside: "Ballots of the election in the municipal corporation of the Town of Sutton, county of Braxton, the _____ day of _____."

(See West Virginia Code §8-5-17)

1-127. Preservation of ballots. When the council has made its certificate and declared the result, as hereinafter provided, it shall deposit the sealed package of ballots, poll books, tally sheets and certificates with the Recorder who shall carefully preserve the same for sixty days, and if there be no contest pending as to any such election, said ballots, poll books, tally sheets and certificates shall be destroyed by fire or otherwise, without opening the sealed package of ballots; if there be such contest pending, then they shall be so destroyed as soon as said contest is ended. If the result is not changed by such recount,

the cost and expense thereof shall be paid by the party at whose instance the same was made.

1-128. Certification of election results. When an election is held in said town for the offices of Mayor, Recorder and Councilmen, the Common Council or a quorum thereof, under the regulations prescribed in Section 1-126 of this Chapter, shall carefully and impartially ascertain the result of said election, and shall record the same in the "minute book" in the following form, or to the following effect: "The Common Council of the Town of Sutton, having carefully and impartially examined the returns laid before it of the election held in said town on the _____ day of _____, the members of said council in attendance at this meeting do hereby certify that in said town for the office of Mayor, _____ received _____ votes, etc.; for the office of Recorder, _____ received _____ votes, etc.; and it appearing from said returns that _____ received the highest number of votes cast for Mayor, that _____ received the highest number of votes cast for Recorder, and that _____, etc., received the highest number of votes cast for the five Councilmen, the said _____ is declared duly elected Mayor, the said _____ is declared duly elected Recorder, and the said _____ are declared duly elected Councilmen of said town for the term of two years, beginning on the first day of July, _____."

In the said certificate shall be set forth according to the truth the full name of every person voted for and, in words at length and in figures, the number of votes he received for any office, and when the same is entered of record the members of said council shall affix their signatures thereto on said record. A copy of said certificate shall also be delivered, by mail or by hand, to each newly elected officer.

1-129. Tie vote procedures. After the votes are canvassed the results certified, if two or more persons shall have received an equal number of votes for the same office in said election held in said town, if such number be the highest cast for such office, the Canvassing Board shall notify such candidates to appear before said board within seventy-two hours of said certification. At this time, in their presence, the Canvassing Board shall decide by lot which of them shall be returned elected, and shall make their return accordingly. All contested elections shall be heard and decided by the council.

1-130. Correction of returns. Though illegal votes be received or legal votes be rejected, the returns of the votes taken in

ORDINANCE 1-131

Councilmember Tos Czum introduced the following Ordinance and moved for its adoption, which motion was seconded by Councilmember

Steve Thomas The Ordinance being in the following words and figures:

"AN ORDINANCE TO AMEND SECTION 131 OF ARTICLE ONE, CHAPTER ONE, OF THE SUTTON MUNICIPAL CODE, PAYMENT OF ELECTION OFFICIALS."

WHEREAS, pursuant to the authority granted by W. Va. Code §§ 8-11-1, et seq., and the Ordinances of the Town of Sutton, the Common Council of the Town of Sutton desires to amended certain provisions of the Sutton Municipal Code. All provisions of the Sutton Municipal Code not specifically amended in the attached ordinance shall remain in full force and effect.

NOW, THEREFORE, THE TOWN OF SUTTON HEREBY ORDAINS that the Sutton Municipal Code shall be AMENDED as fully set forth in the attached ordinance.

This Ordinance shall be effective upon passage.

I, the undersigned Recorder of the Town of Sutton, State of West Virginia, do hereby certify that the foregoing amendment to an Ordinance was duly passed and adopted by the Common Council of the Town of Sutton, and that the proposed Ordinance was read by title at not less than two(2) meetings of the Town Council with at least one (1) week intervening between each meeting, and that the Ordinance is now in full force and effect.

4/27/2023
Passed First Reading

Passed Second Reading

Robyn Dolan, Recorder

Chapter 1 - ELECTIONS, ADMINISTRATION AND PERSONNEL POLICIES shall be amended as follows:

Article 1 - ELECTIONS, OFFICERS AND THEIR QUALIFICATIONS

...

1-131. Payment of election officials. Every commissioner and clerk of election appointed under the provisions of this article shall be paid the sum of not less than fifty dollars nor more than one hundred fifty dollars for each day he shall serve as such, as the council may determine. Such allowance, as well as all other expenses attending the election held in said town, shall be allowed by the council and paid out of the town treasury.

Maximum

such election shall not be set aside for that cause, but it may be shown, by proper evidence before the council, for whom such illegal votes or any of them were cast or for whom the legal votes which were rejected would have been given, and the returns shall be corrected only to the extent that it is so shown.

(See West Virginia Code §8-5-15)

1-131. Payment of election officials. Every commissioner and clerk of election appointed under the provisions of this article shall be paid the sum of not less than fifty dollars nor more than one hundred dollars for each day he shall serve as such, as the council may determine. Such allowance, as well as all other expenses attending the election held in said town, shall be allowed by the council and paid out of the town treasury.

(Section amended 2022)

ARTICLE TWO

COUNCIL MEETINGS, THEIR CONDUCT AND ORDER OF BUSINESS

1-201. Time and place of regular meetings. The Common Council of the Town of Sutton shall hold regular meetings on the second and fourth Thursdays of each month. Such meetings shall be held in the Mayor's office and shall convene at 6:00 o'clock p.m., Eastern Standard Time or Daylight Saving Time, whichever shall prevail in said town at the time, or may be held at any other suitable hour set at the discretion of the council.
(Section amended 2022)

1-202. Special meetings. Special meetings may also be held pursuant to the call of the Mayor or of three or more members of the council, but before any such special meeting shall be held the Mayor or members of the council calling the meeting shall issue notice directed to the police officer on duty in which shall be stated the time, place and purpose or purposes of the meeting, and said notice or a copy thereof shall be served upon each member of the council not absent from town at the time and return of how said notice was served shall be made to the Recorder at or before the time fixed for said meeting. Said notice, together with the return endorsed thereon, shall be entered in the "minute book", and no other business shall be transacted at said meeting except that which is specified in said notice. Unless said special meeting be called due to an immediate emergency, every effort shall be made to serve notice of a special meeting at least twenty-four hours before the time stated for the meeting to take place.

1-203. Open meetings. All meetings of the council shall be open to the public unless a majority of those council members present shall vote to go into executive session. Any citizen or taxpayer or officer of the town shall have the right to be heard upon any question coming before the council in which he may be an interested party, but before proceeding to discuss any question such person must first obtain the permission of the Mayor or presiding officer to speak, and he shall conform to the recognized rules of parliamentary law in all respects.

1-204. Attendance at meetings. It shall be the duty of members of the common Council to attend every regular meeting and every special meeting of the council; the appointed officers of the town shall attend any meeting when requested to do so by the Mayor or presiding officer of the council for the time being.

Whenever at the time appointed for the meetings of the council, either in regular or special meeting, a quorum shall not be present, it shall be lawful for any three members who may be in attendance to order the Chief or any police officer of the town to summons to appear forthwith and, if necessary, to arrest the absent members or any of them and cause them to appear forthwith at the place of meeting and there to remain until the meeting adjourns or leave of absence be given. An order for bringing in an absent member shall be issued and signed by the Mayor or, in his absence, by the recorder; or, in the absence of both, by the three members of the council making such an order. Such absent member on being so arrested, unless he shall furnish a reasonable excuse for said absence, shall be fined not to exceed twenty five dollars. No member shall leave a meeting without permission of the Mayor.

1-205. Suspension of meetings. The council may by majority of all its members suspend any one or more regular meetings, but in no case so as to prevent a regular meeting of said council at least once in every month.

1-206. Quorum. A majority of the members of the council shall be necessary to form a quorum for the transaction of business. (See West Virginia Code 8-9-1)

1-207. Presiding officer. The council shall be presided over at its meetings by the Mayor or, in his absence, by the Recorder; or, in absence of both Mayor and Recorder, by one of the councilmen selected by a majority of those present. The presiding officer shall preserve order and decorum in council, and conduct its meetings in accordance with the rules of parliamentary procedure whenever deemed necessary and so announced by the presiding officer or by upon a vote of the majority of the council members present. (See West Virginia Code 8-9-1. Section revised 1989.)

1-208. General rules of order. The rules of order and parliamentary procedure contained in Robert's Rules of Order, Revised shall govern the transaction of business by and before the Common Council at its meeting in all cases to which they are applicable and in which they are not inconsistent with provisions of the charter and this code. All questions of order shall be decided by the Mayor or presiding officer, subject to an appeal to the council; and an appeal from the decision of the presiding officer upon a question of order shall be allowed to be put only upon the demand of a member other than the member appealing. The question upon an appeal shall be put in the

following form: "Shall the decision of the chair be sustained?" Provided, that all actions and votes of the council shall be valid even though the provisions of this section requiring compliance with the rules of order be not complied with unless there has previously been an announcement or vote requiring such compliance as is provided for by Section 1-207.
(Section amended 1989)

1-209. Order of business. At each regular meeting of the Common Council the following regular order of business shall be observed unless dispensed with by a majority vote of the members present:

- (1) Call to order by the presiding officer
- (2) Roll call by the Recorder
- (3) Reading of the minutes of the previous meeting by the Recorder and approval or correction; minutes signed by the Mayor
- (4) Citizens' concerns
- (5) Communications from the Mayor
- (6) Old business
- (7) Standing committee reports and any necessary action therefrom
- (8) Special Committee reports and any necessary action therefrom
- (9) New business, including payment of bills or claims
- (10) Adjournment

(Section amended 2022)

1-210. Disorder. If any member transgresses the rules of the council, the mayor shall, or any member may, call him to order; in which case the member called to order shall immediately sit down and be silent, unless permitted by the council to explain, and the council if appealed to shall decide the matter.

1-211. Protests. Any member of the council shall have the liberty to protest against any order or resolution of the council which he may think injurious to the public or unfair to any citizen of the town, and have the reasons of his protest entered upon the "minute book", but such protest shall not exceed one hundred words in length.

1-212. Voting the question. All questions shall be put in the form "as many as are in favor of the motion, say aye! those opposed, say no!" and in doubtful cases, or where an affirmative vote of not less than four members of the Common Council is necessary to carry the proposition, the Mayor may direct, or any member may call for, a division of the question. No action or vote of the council shall be subject to attack for failure to

comply with this section unless there has previously been an announcement or vote similar to that provided for by Section 1-207.

(Section amended 1989)

1-213. Recording the vote. The ayes and the nays shall be taken and recorded upon any question before the council upon the demand of any member, but such call shall not preclude amendments before the main question is put. If any member demands, the record shall show the names of those voting yea and nay.

1-214. Tabled business. All business brought before the council by motion or resolution or any other way, and laid upon the table, shall be considered as finally disposed of, unless taken from the table by order of the council by majority vote of those present at one of the three next regular meetings following the meeting at which it was tabled.

1-215. Question on the floor. When a question is before the council, no motion shall be received unless to amend, postpone, or commit the main question, or to adjourn; and a motion to adjourn shall always be in order unless the council is engaged in voting. A motion to adjourn or lay on the table shall be decided without debate and an ordinance or resolution, after commitment and report thereon, may be recommitted at any time previous to its final passage.

1-216. Enacting ordinances. All general ordinances and standing rules, and amendments thereto, shall be in the style and adopted under the procedures specified in Article Three of this chapter.

ARTICLE THREE

CONSTRUCTION AND ADOPTION OF ORDINANCES

1-301. Construction of ordinances. The style of all general ordinances and standing rules, and amendments thereto, shall be: "Be it ordained by the Common Council of the Town of Sutton:". The object of an ordinance shall be briefly expressed in its title. The following rules shall be observed in the construction of ordinances, unless a different intent be apparent from the context:

(a) 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 several; and a word importing the masculine gender only may be applied to females as well as males.

(b) The words "the Mayor" include any person lawfully exercising his authority.

(c) The word "person" includes individuals, corporations, partnerships and associations, if not excluded by the context.

(d) The word "offense" includes every act or omission for which a fine, forfeiture or punishment is imposed by ordinance.

(e) Unless otherwise specifically provided, all fines and forfeitures imposed by or under any of the provisions of this code shall accrue to the town and be applied as directed by the council.

(f) The word "council" shall in all cases be taken to mean and refer to the Common Council of the Town of Sutton.

1-302. Presentation of proposed ordinances. A proposed ordinance shall in every case be presented in writing and read by title at not less than two council meetings, with at least one week intervening between said meetings, unless a member of the council demands that the ordinance be read in full at one or both meetings. If such demand is made, the ordinance shall be read in full as demanded.

(See West Virginia Code 8-11-4)

1-303. Adoption of ordinances. Said proposed ordinance, after being read as specified in the previous section, shall be referred to the appropriate standing committee of the council for investigation, unless passed at the same meeting at which proposed, under suspension of the rules. The committee to whom any proposed ordinance is referred shall submit its recommendations thereon to the council at the next regular

meeting thereafter. The said proposed ordinance, when so reported by the committee, shall be again read and, if adopted, shall take effect and be in force immediately on the approval of the minutes of the meeting of the council at which adopted, unless a later date be provided in the ordinance itself or unless for sufficient reason a later date be fixed by said council for the said ordinance to take effect. Immediately after such adoption the Town Ordinances shall be revised accordingly, as provided in Section 1-311 of this article.

1-304. Amended ordinances. A proposed ordinance shall not be materially amended at the same meeting at which it is finally adopted. No ordinance shall be amended by reference to its title or section number alone, but each general ordinance shall be adopted as amending, adding, or deleting a numbered section or sections of this code.

1-305. Publication requirements. Unless required by the council or by law, it shall not be necessary to publish any proposed ordinance prior to the adoption thereof or any enacted ordinance subsequent to the adoption thereof, with the following exception:

(a) If the principal object of a proposed ordinance is the raising of revenue for the town, a notice of the proposed adoption of said ordinance shall be published at least five days before the meeting at which said proposed ordinance is to be presented. Such notice is to be published as a Class I-0 legal advertisement in compliance with the provisions of the laws of the state of West Virginia in a newspaper whose area of publication shall be Braxton County, and said notice shall state the subject matter and general title or titles of such proposed ordinance, the date, time, and place of the proposed final vote on adoption, and the place or places within the town where such proposed ordinance may be inspected by the public. A reasonable number of copies of the proposed ordinance shall be kept at such place or places and be made available for public inspection. Said notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(See West Virginia Code 8-11-4)

1-306. Repeal of ordinances. The repeal of an ordinance, 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, provided that the proceedings thereafter had shall conform as far as practicable to the laws in force at the time such

proceedings take place, unless otherwise specially provided. When an ordinance which has repealed another is itself repealed, the former ordinance shall not be revived without express words for the purpose.

1-307. Computation of specified time limits. The time within which an act is to be done shall be computed by excluding the first day and including the last; or, if the last day be Sunday or a legal holiday, it shall also be excluded and the next business day shall be considered the last day.
(Section amended 1989)

1-308. Deputizing of required acts. When an ordinance requires an act to 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 be lawfully done by deputation.

1-309. Adoption of technical codes. The council may adopt by ordinance building codes, housing codes, plumbing codes, sanitary codes, electrical codes, fire prevention codes, or any other technical codes dealing with general public health, safety or welfare, or a combination of the same, or a comprehensive code of ordinances, in the manner prescribed in this section. Before any such ordinance shall be adopted, the code shall be either printed or typewritten and shall be presented in pamphlet form to the council at a regular meeting, and copies of such code shall be made available for public inspection. The ordinance adopting such code shall not set out said code in full, but shall merely identify the same. The vote on adoption of said ordinance shall be the same as on any other ordinance. After adoption of the ordinance, such code or codes shall be certified by the Mayor and shall be filed as a permanent record in the office of the Recorder, who shall not be required to transcribe and record the same in the ordinance book as other ordinances are transcribed and recorded. Consistent with the provisions of Section 1-305 of this article, it shall not be necessary that any such ordinance, either as proposed or after adoption, be published in any newspaper, and it shall not be necessary that the code itself be so published, but before final adoption of any such proposed ordinance, notice of the proposed adoption of such ordinance and code shall be given by publication as provided in Section 1-305(a) for ordinances the principal object of which is the raising of revenue for the town, which notice shall also state where, within the town, the code or codes will be available for public inspection. The council may, if it so desires, call for a public referendum on the adoption of any such code, consistent with other provisions

of this code and the laws of the State of West Virginia, and, if such be done and the majority of the public votes in said referendum shall be in the affirmative, the council shall by ordinance carry into effect the will of the voters.
(See West Virginia Code 8-11-4)

1-310. Adoption of emergency measures. The council may enact an ordinance without complying with the rules prescribed in this chapter only:

(a) in the case of a pressing public emergency making procedure in accordance with the provisions of this article dangerous to the public health, safety or morals, and by affirmative vote of two-thirds of the members elected to the council; or

(b) when otherwise provided by the Code of the State of West Virginia. The nature of any such emergency shall be set out in full in the ordinance.

(See West Virginia Code 8-11-4)

1-311. Ordinance book. Immediately upon adoption of the Town Ordinances they shall be reproduced in loose-leaf and electronic form and kept in a suitable binder. The Common Council by motion or resolution shall fix, and change from time to time as considered necessary, the prices to be charged for copies of the Town Ordinances and revisions thereto. After adoption of the Town Ordinances, each general ordinance shall be adopted as amending, adding, or deleting a numbered section or sections of said code; immediately thereafter those affected pages of the ordinance book shall be revised to reflect such amended, added or deleted material and shall be distributed to city officers and employees having copies of said code and to other persons who have requested and paid for current revisions. Notes shall be inserted at the end of amended or new sections, referring to the dates and numbers of ordinances making the amendments or adding the new sections, and such references shall be cumulative if a section is amended more than once in order that the current copy of the Town Ordinances will contain references to all ordinances since the adoption of the original Town Ordinances. One copy of the Town Ordinances as originally adopted and one copy of each amending ordinance thereafter adopted shall be mailed to the West Virginia Municipal League immediately upon final passage and adoption. The failure of any note to appear at the end of any section amended, revised, or deleted as is required hereby shall not void any such amendment, revision, or deletion.

(Section amended 2022)

ARTICLE FOUR

LEVY, COLLECTION, AND DISBURSEMENT OF TAXES

1-401. Meeting of council as levying body. The common council of the Town of Sutton shall hold a meeting or meetings between the seventh and twenty-eighth days of March for the transaction of business generally and particularly for the business herein required.

(See West Virginia Code 8-13-1)

1-402. Levy estimate by council; certification to tax commissioner an publication. The council shall, at the session provided for in the preceding section of this article, ascertain the fiscal condition of the corporation, and make an itemized statement setting forth:

(1) The amount due and the amount that will become due and collectible from every source during the current fiscal year except from the levy of taxes to be made for the year;

(2) The interest, sinking fund and amortization requirements for the fiscal year of bounded indebtedness, legally incurred upon a vote of the people as provided by law, prior to or subsequent to the adoption of the tax limitation as provided by law, prior to or subsequent to the adoption of the tax limitation amendment, owing by the municipality;

(3) Other contractual indebtedness, not bonded, legally incurred prior to or subsequent to the adoption of the tax limitation amendment, owing by the municipality;

(4) All other expenditures to be paid out of the receipts of the municipality for the current fiscal year with proper allowance for delinquent taxes, exonerations, and contingencies;

(5) The total amount necessary to be raised by the levy of taxes for the current fiscal year;

(6) The proposed rate of levy in cents on each one hundred dollars assessed valuation of each class of property; and

(7) The separate and aggregate assessed valuations of real, personal and public utility property in each class in the town.

The Town Recorder shall forward immediately a certified copy of the statement to the Tax Commissioner of the State of West Virginia, and shall publish the statement forthwith as a Class II-0 legal advertisement under the provisions of the laws of the State of West Virginia. The session shall then stand

adjourned until the third Tuesday in April, at which time it shall reconvene.

1-403. Reconvened session of council to hear objections; approval of levies by tax commissioner; first levy for bonded indebtedness and indebtedness not bonded, then for current expenses. The council shall, when it reconvenes on the third Tuesday in April, hear and consider any objections made orally or in writing by the town attorney, by the tax commissioner or his representative, or by any taxpayer of the town, to the estimate and proposed levy or to any item thereof. The council shall enter of record any objections so made and the reasons and grounds therefor. The failure of any officer or taxpayer to offer objections shall not preclude him from pursuing any legal remedy necessary to correct any levy made by the council under this code.

The council, after hearing objections, shall reconsider the proposed original estimate and proposed rates of levy, and if the objections are well taken, shall correct the estimate and levy. No such estimate and levy, however, shall be entered until the same shall have first been approved, in writing, by the tax commissioner. When the same shall have been approved by the tax commissioner, the Recorder shall then enter the estimate and levy, together with the order of the council approving them and the written approval of the tax commissioner thereof, in the minute book.

The council shall then levy as many cents per hundred dollars' assessed valuation on each class of property in the town as will produce the amounts, according to the last assessment, shown to be necessary by the statement in the following order:

First, for the bonded debt and for the contractual debt not bonded, if any, of the municipality incurred prior to or subsequent to the adoption of the Tax Limitation Amendment;

Second, for general current expenses.

The rates of levy for each purpose shall not exceed the amounts fixed by the laws of the State of West Virginia unless another rate is authorized by the tax commissioner in accordance with said laws. When less than the maximum levies are imposed, the levies on each class of property shall be in the same proportions as the maximums authorized.

1-404. Certification of the levy. Within three days after the council has laid the levies, the Town Recorder shall forward

certified copies of the order laying the levies to the tax commissioner, the state auditor, and the officer whose duty it is to extend the levies.

1-405. Order for election to increase levies; vote required; amount and continuation of additional levy; issuance of bonds.

The council may provide for an election to increase the levies, by entering on the minute book an order setting forth:

- (1) The purpose for which additional funds are needed;
- (2) The amount for each purpose;
- (3) The total amount;
- (4) The separate and aggregate assessed valuation of each class of taxable property within the corporation;
- (5) The proposed additional rate of levy in cents on each class of property;
- (6) The proposed number of years, not to exceed three, to which the additional levy shall applied; and
- (7) The fact that the council will or will not issue bonds, as provided by this section, upon approval of the proposed increased levy.

The council shall submit to the voters eligible to vote within the town, the question of the additional levy at either a general or special election. If at least sixty percent of the voters cast their ballots in favor of the additional levy, the council may impose the additional levy. This levy shall not exceed fifty percent of the rates authorized in Section 1-403 of this article. Levies authorized by this section shall not continue for more than three years without resubmission to the voters.

Upon approval of an increased levy as provided by this section, the council may immediately issue bonds in an amount not exceeding the amount of the increased levy plus the total interest thereon, but the term of such bonds shall not extend beyond the period of such increased levy.

1-406. Special levy elections; notices; election officers; conduct or election; supplies; canvass of returns; form of ballot. The council shall publish a notice, calling the election, as a Class II-0 legal advertisement in compliance with the revisions of the laws of the State of West Virginia, and the publication area for such publication shall be Braxton County. Such notice shall be so published within fourteen consecutive days next preceding the election. All the provisions of the law concerning general elections shall apply so far as they are practicable, except as follows: Where a special election is

held, the council, having due regard to the minimum expense involved, shall determine the number of election officials necessary to properly conduct said election, which number shall in no case be less than three commissioners and two clerks, and shall appoint the same and fix and pay their compensation, but otherwise the election officials shall be such as are appointed to serve with respect to the general election held at the same time. The council, however, shall provide the election supplies necessary for such election and shall canvass the returns thereof. A separate ballot shall be used at a levy election held in connection with any other election. The ballot shall be entitled:

"Special election to authorize additional levies for the year(s) _____ and for the purpose of _____ according to the order of the Common Council of the Town of Sutton entered on the _____ day of _____."

"The additional levy shall be on Class I property _____ cents; on Class II property _____ cents; on Class III property (if any) _____ cents; on Class IV property (if any) _____ cents."

1-407. Tax commissioner to furnish forms of statements and attorney general to furnish forms for elections. The levy estimate and levy order required by this article shall be made on forms provided for that purpose by the Tax Commissioner of the state of West Virginia, and the necessary forms for the holding of any election authorized by this chapter shall be those provided for that purpose by the Attorney General of the State of West Virginia. In every case, the forms to be provided as aforesaid shall be followed so far as they are consistent with the law.

1-408. Manner of expending funds. The council in expending funds derived from the levying of taxes shall expend the funds only for the purposes for which they were raised, unless otherwise authorized by the Tax Commissioner of the State of West Virginia.

The council shall not expend money or incur obligations:

- (1) In an unauthorized manner;
- (2) For an unauthorized purpose;
- (3) In excess of the amount allocated to the fund in the levy order; or
- (4) In excess of funds available for current expenses.

Any indebtedness created, contract made, or order or draft issued in violation of this section shall be void.

1-409. Purchasing in open market or competitive bids. The council may make a purchase of commodities and printing of four thousand dollars or less in amount in the open market, but a purchase of and contract for commodities and printing of over four thousand dollars shall be based on competitive bids, except in case of emergency.

In any instance where purchase is made by competitive bids, the council shall cause to be published in a weekly newspaper published in Braxton County in two consecutive issues a notice or offer to bid, the first of said two publications being not less than thirty days prior to the date specified in the notice for closing of acceptance of bids. Said notice or offer to bid shall state at least in substance the particular specifications of the commodities or printing to be purchased and, if designated by council, the delivery date required or any other particulars required in said purchase. All bids shall be sealed and delivered to the Recorder on or before the date specified by council, which date shall not be less than thirty days immediately subsequent to the first of said publications.

At the first regular council meeting following said thirty day period, all bids will be opened by council, all bidders having the right to be present. The bid shall be awarded to the lowest responsible bidder who shall meet the stated specifications of the commodities or printing to be purchased, and at this time, in the discretion of the council, a delivery date may be specified and the successful bidder may be required to post a performance bond containing such conditions and stipulations as specified by council and such penalty for default as council may see fit to impose. If the lowest responsible bidder cannot or will not meet the said performance specifications, the bid shall be awarded to the next lowest responsible bidder who shall meet the conditions specified.

At the time of opening the bids and prior to the acceptance of any bid, council may, in its discretion, postpone the awarding of such bid for a reasonable time, more particularly for but not limited to the purpose of enabling and assisting the bidder or bidders in investigating the availability of the commodity bid on, or when the same would be obtainable, and to give council time and opportunity to investigate the responsibility of such bidder or bidders. (See West Virginia Code 8-12-10; Section amended 2022)

1-410. Recovery of money unlawfully expended by council.

Whenever the council expends money or incurs obligations in violation of Section 1-408 of this article and by so doing be guilty of an act of misfeasance, suit may be instituted in a court of competent jurisdiction by a taxpayer of the town, the State Tax Commissioner, or any person prejudiced thereby, for recovery of the money expended or to cancel the obligation or both. All legal proceedings relative to Sections 1-408 through 1-412 of this article shall be consistent with the laws of the State of West Virginia.

1-411. Unlawful expenditure by individual official; proceedings for recovery of funds; penalties.

A person who, in his official capacity, willfully participates in the violation of Section 1-408 of this article shall be personally liable, jointly and severally, with others concurring therein, for the amount illegally expended. Such person may also be proceeded against for the recovery of the amount illegally expended. The town, any taxpayer thereof, the Prosecuting Attorney of Braxton County, the Attorney General of the State of West Virginia, or any person prejudiced thereby may bring the proceedings in a court of competent jurisdiction. All money recovered in such proceedings shall be paid into the treasury of the town and credited to the proper fund. If the plaintiff prevails, he shall recover against the defendant the costs of the proceedings, including a reasonable attorney's fee to be fixed by the trial court and included in the taxation of costs.

Such violator shall also, in addition to any and all civil liabilities, be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars, or confined in jail not more than one year, or both such fine and imprisonment, in the discretion of the court. Upon conviction he shall also forfeit his office.

1-412. Proceedings for removal of official from office. The state, a taxpayer of the town, or the tax commissioner, may institute and prosecute to final judgment any proceeding for the removal of a member of the council who has willfully or negligently violated any of the provisions of this article.

Upon the petition of the state, a taxpayer of the town, or the tax commissioner, the court, or in vacation the judge, shall set a time for hearing the petition. An attested copy of the petition and the charges contained therein shall be served upon the defendant at least twenty days prior to the date of hearing. No other pleading or notice of the proceedings shall be necessary.

1-413. Claims and demands for payment. All claims and demands against the town, other than those for which work is done or materials furnished under the direct supervision or control of an authorized officer of said town, when presented for allowance to the council, must be stated in the form of an itemized account and any person submitting such claim shall be deemed to have represented that each item of the claim or demand and the price charged therefor is just and correct, and that no part thereof has been paid. No claim against the town shall be allowed for any demand other than such as shall have been contracted under the authority of the council, or as otherwise provided by ordinance.

1-414. Payment of money from town treasury must be by order; forgery complaint. No money shall be paid out of the town treasury except upon an order duly signed by the municipal officers authorized to sign such order.

If any individual other than the individuals authorized so to do shall sign the name of any such municipal officer upon any warrant, order or check, he shall be guilty of forgery; and if any individual shall utter or attempt to employ as true such forged warrant, order or check, knowing the same to be forged, complaint shall be laid against him in the name of the town in any court of competent jurisdiction, subject to the laws of the State of West Virginia.

(See West Virginia Code 8-13-22)

1-415. Fiscal year. The fiscal year for the Town of Sutton shall begin on and include the first day of July in each calendar year.

1-416. Preparation, publication and disposition of financial statements. The Town Recorder, within one hundred and twenty days after the beginning of each fiscal year, shall prepare on a form to be prescribed by the state tax commissioner a sworn statement revealing:

(a) the receipts and expenditures of the town during the previous fiscal year arranged under descriptive headings,

(b) the name of each person who received money from any fund during the previous fiscal year, together with the amount received and the purpose for which paid, and

(c) all debts of the town, the purpose for which each debt was contracted, its due date, and to what date the interest thereon has been paid.

The Council may require the Recorder to make such financial statement at any time during the fiscal year, for which he shall be compensated as these ordinances provide.

The town shall transmit to any resident of the town requesting the same a copy of any such statement for the fiscal year designated. The town may, if the council so elects, also publish such statement as a Class I legal advertisement in compliance with the provisions of the laws of the State of West Virginia, and in such event the area of publication shall be Braxton County.

(See West Virginia Code 8-13-23)

1-417. Classification of town funds. The public funds of the town shall be classified under two separate and distinct heads, to be designated as the general fund and the sinking fund.

The general fund shall consist of all revenues derived from licenses, fines, dog taxes, taxes levied annually on real and personal property for general and current purposes, and any and every source, other than taxes imposed on real and personal property on account of the sinking fund. The general fund may be divided into various separate accounts or subdivisions as the council may from time to time see fit. The revenue so derived therefrom shall be applied to such purposes as the council may direct consistent with the laws of this state and the provisions of this code.

The sinking fund shall consist of all revenues derived from taxes required to be levied annually on real and personal property for the purposes of paying the interest on the bonded debt of said town, and the principal of said bonds within and not exceeding forty years from the date thereof. Such portion of said revenues as shall be required for the purpose shall be applied to the discharge of the interest coupons falling due on said bonds subsequent to the date of such annual levy and before the next succeeding annual levy therefor; and the balance thereof shall be set apart, and kept exclusively to pay the principal of said bonds as aforesaid, and shall be used for no other purpose whatsoever unless authorized by the West Virginia State Sinking Fund Commission, which is hereby authorized to act as the fiscal agent for the administration of the sinking fund. All income and revenue accruing for the purpose of the sinking fund shall be held and expended in accordance with the laws of the State of West Virginia.

(See West Virginia Code 8-13-20)

1-418. Special accounts may be authorized. The council shall have the power and authority to establish a special fund known as the Capital Reserve Fund. This fund shall consist of the unexpended balances of other funds which may be transferred to the Capital Reserve Fund at the end of the fiscal year with the approval of the state tax commissioner, and any other moneys authorized by law to be used for the purpose of this fund.

The Capital Reserve Fund shall be used from time to time for construction, reconstruction, purchasing or replenishing of, or addition to, municipal buildings, public works, equipment, machinery, motor vehicles, or other capital assets. Expenditures shall be made from the fund only in accordance with an appropriation made pursuant to the annual budget.

If the town accumulates such Capital Reserve Fund for more than two years, the proceeds of the fund shall be transmitted to the state sinking fund commission on or before the first day of September of each year. The proceeds of the fund may be withdrawn by the town upon reasonable notice in writing to the state sinking fund commission.

In addition to the Capital Reserve Fund, the council shall have the power and authority to establish in a special account for the deposit of funds received from and granted by the United States of America or the state of West Virginia. Such funds shall be appropriated and expended in accordance with the applicable laws and regulations promulgated by the governmental authority making such grants. The funds so received and held in such special account shall not be considered as revenue in determining the amount of real and personal property taxes to be levied for the regular fiscal budget of the town.

(See West Virginia Code 8-13-19, 8-13-19a)

ARTICLE FIVE

SOCIAL SECURITY, GROUP INSURANCE, AND WORKMEN'S COMPENSATION FOR OFFICERS AND EMPLOYEES

1-501. Policy and purpose as to coverage. It is hereby declared to be the policy and purpose of the Town of Sutton to provide for all eligible employees and officials of the municipality, whether employed in connection with a governmental or proprietary function, the benefits of the system of social Security, the system of public employees group life and medical insurance, or the approximate equivalent thereof, and the system of workers' compensation. In pursuance of said policy, and for that purpose, the town shall take such action as may be required by applicable state and federal laws or regulations.

(See West Virginia Code 8-12-8; Section amended 2022)

1-502. Necessary agreements to be executed. The Mayor is hereby authorized and directed to execute all the necessary agreements and amendments thereto with those persons, corporations, or entities as may be reasonably necessary to secure coverage of employees and officials as provided in the preceding section.

(See West Virginia Code 8-12-7)

1-503. Withholdings from salaries and wages. Withholdings from the salaries or wages of employees and officials for the purposes provided in the first section of this article are hereby authorized to be made in the amounts and at such times as may be required by applicable state or federal laws or regulations and shall be paid over to the state or federal agency designated by said laws or regulations.

1-504. Appropriations for employer's contributions. There shall be appropriated from available funds such amounts at such times as may be required by applicable state or federal laws or regulations or by order of the council for employer's contributions, and the same shall be paid over to the state or federal agency or private or corporate entity designated by said laws or regulations and the program being then subscribed to by the town.

1-505. Records and reports to be made. The municipality shall keep such records and make such reports as may be required by applicable state and federal laws or regulations.

ARTICLE SIX

VACATIONS, SICK LEAVE, AND PAID HOLIDAYS

1-601. Applicability of article. This article shall apply to all full-time (those working 40 hours per week) municipal officers and employees except those operating under the jurisdiction of a school, utility or other separate board or commission or those employed under temporary contract.

1-602. Vacation leave. All requests for vacation leave must be approved by the employee's department head. All officers and employees shall be given two (2) full weeks of vacation leave with pay for each full fiscal year of employment. If their period of employment on July 1 is less than twelve months, they are entitled to one day of vacation leave for each full month they have worked for the Town of Sutton prior to the time of taking vacation. No credit for the first month will be given if the employee starts between the 16th and 31st of the month. At no time shall a person's total credit for vacation leave exceed two (2) weeks. Upon the termination of employment, whether voluntary or otherwise, all vacation accumulated will be cancelled as of the date of exit and the employee shall not be entitled to any extra compensation or wages.

(See West Virginia Code 8-5-12; Section amended 2022)

1-603. Sick leave. All officers and employees shall be given a credit of one (1) working day of sick leave with pay for each full calendar month of employment. Sick leave shall be taken only when approved by the Mayor or by the department head and shall be approved, up to the number of days accrued, for all officers and employees whose absence from duty is due to illness, bodily injury, exposure to contagious disease, death in the immediate family of the officer or employee, illness in the immediate family of such a critical nature as to require the presence of the officer or employee, or illness due to pregnancy of the officer or employee. A pregnant employee may continue to work until the date of expected delivery if her doctor determines her physically able to perform her regular duties. A doctor's statement to this effect is to be presented to the department head or the Mayor. The Mayor may, in his discretion, require doctor's certificates or other satisfactory evidence that absences are properly chargeable as sick leave. The maximum credit for accrued sick leave under the provisions of this section shall be eighteen (18) working days, provided that when the employee is off due to illness lasting longer than the

accrued sick leave, such employee may petition council for additional sick leave beyond the days accumulated, presenting such evidence of illness as may be pertinent; and at discretion of council, said additional leave may be granted, with or without compensation, or at such compensation as council may from time to time determine. Upon the termination of employment, whether voluntary or otherwise, all sick leave accumulated will be cancelled as of the date the employee last works for the town and the employee shall not be entitled to any extra compensation or wages.

(Section amended 2022)

1-604. Civil leave. Regular compensation shall be granted without charges on either annual vacation leave or sick leave for employees who are required to perform jury duty.

1-605 Maternity leave. Sick leave may be charged for illness due to pregnancy; however, a pregnant employee may continue to work as stated in section 1-603 of this article. Annual leave may be applied to the period six weeks prior to or after expected delivery as the employee may desire, Further compensation shall not be granted except under conditions provided in section 1-603.

1-606. Leave of absence. Leave of absence must be approved by the Mayor with final approval by council.

(Section amended 2022)

1-607. Paid Holidays. Employees will receive the following legal holidays at full pay: New Year's Day, January 1; Memorial Day; West Virginia Day; Independence Day, July 4; Labor Day; Presidential Election Day (every four years); Thanksgiving Day; and Christmas Day, December 25; and such additional holidays as council, shall from time to time determine by proper order.

(Section amended 2022)

1-608. Compensatory time. Any employee who is required by the Mayor or department head to work overtime or on a holiday will be allowed compensatory time off, with the approval of the Mayor or department head. Such compensatory time off must be taken consistent with other provisions of this code, with the laws of the state of West Virginia, and as ordered by the council from time to time. No employee or officer of the town shall be permitted by his superior to work overtime except in an emergency without prior authorization from the mayor and no employee or officer shall be permitted to earn compensatory time without prior authorization by his superior.

(Section amended 1989)

1-609. Leave records. The Mayor shall cause to be kept, for each officer and employee, a record currently up to date at all times showing credits earned and leave taken for all vacation, sick leave, compensatory time, or any other type of credit or leave allowed under the provisions of this article.

ARTICLE SEVEN

MISCELLANEOUS RESTRICTIONS ON PERSONNEL

1-701. Business dealings. Except for the receipt of such compensation as may be lawfully provided for the performance of his municipal duties, it shall be unlawful for any town officer or employee to be privately interested in or to profit, directly or indirectly, from business dealings with the Town of Sutton. (See West Virginia Code 8-9-1)

1-702. Acceptance of gratuities. No municipal officer or employee shall accept any money or other consideration or favor from anyone other than the municipality for the performance of an act which he would be required or expected to perform in the regular course of his duties; nor shall any officer or employee accept, directly or indirectly, any gift, gratuity, or favor of any kind which might reasonably be interpreted as an attempt to influence his actions with respect to city business. (See West Virginia Code 61-SA-6)

1-703. Outside employment. No full time officer or employee of the Town of Sutton shall accept any outside employment without written authorization from the Mayor council. The Mayor or council shall not grant such authorization if the work is likely to interfere with the satisfactory performance of the officer's or employee's duties, or is incompatible with his municipal employment, or is likely to cast discredit upon or create embarrassment for the municipality.

1-704. Political activity. Municipal officers and employees may individually exercise their right to vote and privately express their political views as citizens. No municipal officer or employee shall solicit political campaign contributions or engage in or actively participate in any political campaign. These restrictions shall not apply to elective officials. (See West Virginia Code 8-14-19)

1-705. Use of municipal time, facilities, etc. No municipal officer or employee shall use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to himself of any other private person or group; provided, however, that this prohibition shall not apply where the council has authorized the use of such time, facilities, equipment, or supplies, and the municipality is paid at such rates as are normally charged

1-706. Use of position. No municipal officer or employee shall make or attempt to make private purchases, for cash or otherwise, in the name of the municipality, nor shall he otherwise use or attempt to use his position to secure unwarranted privileges or exemptions for himself or others.

1-707. Strikes and unions. No municipal officer or employee shall participate in any strike against the municipality nor shall he join, be a member of, or solicit any other municipal officer or employee to join any labor union which authorizes the use of strikes by government employees.

1-708. Violations. A violation of any section of this article shall be punishable by a fine of not more than fifty dollars for each separate violation and shall, if the council so determine, be grounds for immediate dismissal.

1-709. Removal of elected officials, appointed officers and employees. All elected officials, appointed officers, and employees of the town shall be subject to removal as provided for by section 2-107 and 2-108 of these ordinances.