

CHAPTER TWO

POWERS AND DUTIES OF COUNCIL AND ELECTED AND APPOINTED OFFICIALS

ARTICLE ONE

POWERS AND DUTIES OF COUNCIL; COMMITTEES; APPOINTMENT AND REMOVAL OF OFFICIALS FROM OFFICE

2-101. Municipal authorities. The municipal authorities of said town shall be the Mayor, Recorder, and five Councilmen, who together shall form a Common Council, and all the corporate owners of said corporation shall be exercised by said Common Council or under its authority, except where otherwise provided. The said Mayor, Recorder, and Councilmen, and their successors in office, shall be a body politic and corporate, by the name of the Town of Sutton, and shall have perpetual succession and a common seal; and by that name may sue and be sued, plead and be impleaded, purchase and hold real estate necessary to enable them the better to discharge their duties and needful for the good order, government and welfare of said town.
(See West Virginia Code 8-5-7, 8-12-1)

2-102. Power to ordain and penalize. To carry into effect all powers conferred upon said town by the laws of this state, the council shall have power to make and pass all needful orders, by-laws, ordinances, resolutions, rules and regulations not contrary to the constitution and laws of this state; however, no ordinance shall be passed or enacted by less than a majority vote of the entire council. The council shall also have power to prescribe, impose and enact reasonable fines, penalties and imprisonments in the jail or place of imprisonment in said town, for a violation thereof. Such fines, penalties and imprisonments shall be recovered and enforced under the judgment of the Mayor of said town or the person lawfully exercising such functions.

(See West Virginia Code 8-11-1; Section amended 2022)

2-103. Appointment of town officials. There may be appointed by the council, at its first regular meeting in the month of July, in each election year or as soon thereafter as may be practical, with the concurrence of a majority of said council, a Street Commissioner, City Attorney, Municipal Judge, Chief of Police, and such police officers as the council may deem necessary, which number may be increased or decreased from time to time as council may see fit. No incumbent or former

incumbent appointed to any office by the council shall be eligible for a second appointment to an office unless he shall have fully settled up the business of his former term or terms and shall have fully accounted to the satisfaction of the outgoing council for all money received by or chargeable to him by virtue of his said office at the time of said second appointment. The officers so appointed as aforesaid shall continue in office until their successors are appointed and qualified, unless sooner removed, which right of removal may be exercised by the council at its pleasure, or under its authority as hereinafter provided.

Council shall also have the power to employ such office staff or other employees as deemed necessary for the orderly and efficient performance of the business of the town, which number may be increased or decreased from time to time as council may see fit. Council may delegate to said employees such authority and responsibilities as deemed necessary for the performance of their duties, and for those employees whose duties include the receiving or taking charge of any funds, assets, or other property of the town, the council shall require bond as specified hereinafter for town officials.
(See West Virginia Code 8-5-11)

2-104. Council to fix compensation and duties. The council shall prescribe the powers and define the duties of all officers of the town whether elected or appointed, except insofar as the same are otherwise defined by law, and shall fix the compensation they shall receive for their services, which shall not be increased nor diminished for any elected officer during the term for which he shall have been elected.
(See West Virginia Code 8-5-12)

2-105. Officials to be sworn. Every person elected or appointed to an office in said town shall, within twenty days after his election or appointment, and before he shall enter upon the duties of his office, take and subscribe the oath of office prescribed for district officers; which may be done before any person authorized to administer oaths, or before the Mayor or Recorder of said town, which oath, together with the certificate of the officer administering the same, shall be filed with the Recorder of the town and included in the minute book. A true copy of said oath and certificate shall be filed with said officer's bond in the office of the Clerk of the Braxton County Commission, as provided hereinafter.

2-106. Officials and employees to be bonded. Council shall require and take from all officers authorized to carry weapons and all officials and employees whose duties include the receiving or taking charge of any funds, assets, or property belonging to the town, such bonds, obligations, or other writings as are necessary and proper to secure the faithful performance of their several duties. All bonds, obligations and other writings taken in pursuance of this provision shall be made payable to the Town of Sutton, with such sureties and in such penalties as shall be sufficient and proper, conditioned for the faithful discharge of their duties, and for the accounting and paying over, as required by law, of all moneys coming into their hands by virtue of their offices, and said bond shall be presented and approved by said council before such officer shall assume the duties of his office. All such bonds as provided for in this section shall be filed by the finance committee as stated in Chapter 2 Section 310 of this code, and a true copy thereof filed in the office of the Clerk of the Braxton County Commission and, if recordable, shall be recorded and indexed in the records therein.
(See West Virginia Code 8-12-5(46))

2-107. Impeachment of elected officials. The council shall have power and authority to remove from office any elected officer of said town for incompetency, immorality, misconduct, or neglect of duty, or any nonfeasance, misfeasance, or malfeasance in office, upon written charges under oath, setting forth in particularity the complaint, preferred by a member of the council or by any responsible citizen of the town, and upon a hearing of the charges preferred, at which he shall have the right to appear in person and assisted by counsel and defend himself. No such officer shall be removed until he shall have been served with notice in writing, specifying the charges and reasons for removal, together with a copy of the complaint, and notification of the time and place of said hearing; which notice and complaint shall be served upon said officer not less than fifteen nor more than thirty days prior to said hearing. The officer making service shall make return of service to the Recorder on a copy of said notice, stating the time, place and manner of service. If such person proceeded against demand, such proceedings and testimony of witnesses shall be recorded and transcribed, and a copy thereof delivered to such person on his request. In the event any officer or council member shall file charges against another elected official seeking such official's removal, the charging official shall not have a vote upon final consideration of the question by the council. In the

event charges are filed against the mayor of the town, the recorder shall preside over any hearing upon such charges. (See West Virginia Code 8-5-9, 8-5-11, Section amended 1989)

2-108. Removal of appointed officers. All officers or employees of the town appointed by the council may be removed from office at the pleasure of the council upon good cause being shown therefor, a majority of the members of the council concurring in such removal; and any officer appointed by the council may be suspended, for cause, by the Mayor at his pleasure. In the case of any suspension the Mayor shall report the same to the next regular meeting of the council, and after an investigation by the council said officer so suspended shall not be re-instated unless with concurrence of four members of the council. The salary of such officer shall cease at the time of suspension; provided, however, that if such suspended officer be re-instated the salary shall remain the same as though there had been no suspension. The officer or council member instituting such removal shall not vote upon consideration of the question by council. (See West Virginia Code 8-5-9, 8-5-11)

2-109. Holding more than one office. No member of the council may hold more than one elective office at any one time. No member of council may be appointed to any other town office unless he shall first vacate his position on the council.

2-110. Conflict of interest. No member of the council nor any other officer shall become interested directly or indirectly in the purchase of an claim against the town, or of any voucher or order on the treasury; nor shall any member of the council nor any other officer of the town sell to the town or purchase from the town, in other than public auction, anything of value. For every offense against the provisions of this section the person so offending shall be liable to a fine of not less than five or more than fifty dollars and/or removal from office by council or in manner provided by law or ordinance.

2-111. Debt authority. No officer or employee of the town or committee or member of the council of said town shall contract any debt or debts either for labor or materials in the name of the town and chargeable to the town unless authorized to do so by ordinance or by proper resolution of the council, which resolution shall distinctly state the person or committee authorized to contract such debt, for labor or materials or both, and authorizing the expenditure of a maximum amount therefor. In no case shall such expenditure exceed such maximum

amount. In case such officer or employee or committee contract such debt, unless authorized to do so, the town shall disclaim any liability therefor, and shall refuse payment thereof; provided that, in cases of extreme necessity where the interests of the town would be injured by delay, the Mayor may authorize such expenditure as to him may seem necessary, but in all such cases he shall report the same to the council at its next regular meeting.

(See West Virginia Code 8-12-2, 8-13-22)

2-112. Minute book. The council shall cause to be kept by the Recorder in a well bound book to be called the "minute book" an accurate record of all its proceedings, acts, orders and resolutions, in which shall also be recorded all contracts entered into in the name of the town, the bonds of all officers, and such other matters as the council may require. Such book shall be accurately indexed and open to the inspection of any resident of the town.

(See West Virginia Code 8-10-3)

2-113. Committees. All standing committees shall be appointed by the Mayor and all special committees shall be appointed by the presiding officer of the meeting at which authorized, unless otherwise ordered by the council. The standing committees of the council and their duties shall be as follows:

(1) Committee on Finance: It shall be the duty of this committee to pass on all bills and claims against said town, unless otherwise ordered by the council; to make out and submit to the council a budget of the probable receipts and expenditures of the town not later than the date of the council meeting required in Chapter 1 Section 401 of this code; to pass on all contracts to which the town is or may become a party; and to perform such other duties as may properly come before it.

(2) Committee on Roads, Streets and Alleys: It shall be the duty of this committee to pass on and recommend to the council all matters pertaining to the laying out, closing, naming, caring for, maintaining and improving of the streets and alleys of the town; to pass upon and recommend to the council all matters pertaining to the lighting of the streets, alleys, and public squares of said town; to pass upon and recommend to the council all matters pertaining to the repair, construction and extension of the public sewerage system of the town and all applications and permits for the same; and to perform such other duties as the council may from time to time direct.

(3) Committee on Public Health and Safety: It shall be the duty of this committee to pass on and recommend to the council all matters pertaining to the public health and safety

of said town and the inhabitants thereof and to the correction and elimination of hazardous conditions which may endanger said public health and safety. It shall also perform such other duties as the council may from time to time direct.

(4) Committee on Police and Fire Protection: It shall be the duty of this committee to pass on and recommend to the council all matters pertaining to the police, to the maintenance of order and the enforcement of the laws and ordinances in force in said town. It shall also be the duty of this committee to pass upon and recommend to the council all matters pertaining to the equipping and maintaining of the fire department, and to the location of the fire plugs or hydrants of said town, and to see that said plugs or hydrants are kept and maintained in good, perfect and serviceable condition; and shall also perform such other duties as the council may from time to time direct.

(5) Committee on Garbage Collection and Disposal: It shall be the duty of this committee to pass on and recommend to the council all matters pertaining to the collection and disposal of all garbage, trash, rubbish, and/or other refuse whether by the Sutton Garbage Department or any other authorized agent. Said committee shall see that collections are made on a regular basis in accordance with the manner specified by council and this code; that all equipment necessary for the maintenance and operation of the Sutton rubbish removal is kept and maintained in good and serviceable condition; and that the disposal of said refuse is accomplished as the council or law may require. It shall also perform such other duties as the council may from time to time direct.

(6) Committee on City Buildings: It shall be the duty of this committee to pass on and recommend to the council all matters pertaining to the Community Building and/or any other building or structure under the jurisdiction of the town. Said committee shall see that such buildings are maintained in a clean and orderly condition and kept in a state of good repair; shall (or in lieu thereof, the Mayor with the approval of the chairman of said committee) see that all meetings or other functions which take place in said buildings are properly scheduled and a record kept of the same; and shall also perform such other duties as the council may from time to time direct. (Section amended 2022. Formerly 2-213)

2-114. Committee members. Each of said standing committees shall consist of three members of the council, unless otherwise ordered at the time of appointment. The Recorder shall be ex-officio a member and chairman of the finance committee, and the first member appointed upon each of the other five committees shall be the chairman thereof. Any committee may be called to

meet by the chairmen or any two members. All formal reports of committees shall be in writing, signed by the members or a majority thereof, and if action by the council be required, they shall specify, in the form of a resolution or ordinance at the close of the report, such action in the premises as the committee may recommend as proper for the council to adopt.

2-115. Franchise agreements. No franchise shall hereafter be granted by the council of said town where the application for such franchise has not been filed with the Recorder of said town at least thirty days prior to the time when it is to be acted upon by the council, and where notice of such application, stating the object of such franchise, has not been given by publication thereof as a Class II legal advertisement, for which publication the publication area shall be Braxton County. No such franchise shall be granted within thirty days after the application has been filed, nor until an opportunity has been given any person interested in the granting or refusing of such franchise to be heard. No such franchise shall hereafter be granted by the council for a longer term than fifty years; provided that nothing in this section shall prevent the renewal of any such franchise for a term not to exceed fifty years, when the same shall have expired. No such franchise hereafter granted for any longer term than fifty years shall be of any force or validity. Notwithstanding the provisions of this section or any other provisions of general law or any charter, the failure or inability of any person to obtain from the council a franchise for the rendering of a public service shall in no way whatever affect the power and authority granted to, and the duties and obligations imposed upon, such person under the provisions of the West Virginia state Code or by the Public Service Commission.

2-116. Meeting place. The council shall, at the expense of the town, provide a room or building to be designated as the Mayor's Office, in which all meetings shall be held, unless for some good cause some other place be designated temporarily; and in said room or building the Mayor and Recorder shall keep all records and papers belonging to the town, unless otherwise provided by this code. All trials for violation of the ordinances shall be held in a place so designated by the council, unless for good cause in special cases a trial may be had at some other place in the town. The council shall also, at the expense of the council and officers of the town, and may have such printing done as may be deemed necessary or required for the benefit of the town.

ARTICLE TWO

POWERS AND DUTIES OF THE MAYOR

2-201. General executive authority. The Mayor shall be the chief executive officer of the town and shall take care that the public peace is preserved and that the orders, by-laws, ordinances acts and resolutions of the council are faithfully executed.

(See West Virginia Code 8-10-1)

2-202. Statement of town condition. It shall be the duty of the Mayor to submit to the Common Council at a meeting, on or before the second regular meeting of the council in June of each year, and at such other times as he may deem necessary, a communication in relation to the interests of the town generally, with such recommendations touching the management of its affairs for the current year, as to him may seem necessary and proper.

(See West Virginia Code 8-10-1)

2-203. General supervision of town officers. The Mayor, under the advice of the council, shall have general supervision of all town officers and shall see that they faithfully perform the duties of their respective offices; and he shall examine the grounds of all reasonable complaints made against any of them and cause all their violations of duty to be promptly punished or reported to the council.

2-204. Maintenance of order. It shall be the duty of the Mayor especially to see that the peace and good order of the town is preserved, that persons and properties therein are protected, and he shall cause the arrest and detention of all riotous and disorderly persons in the town, and if any offense be committed in his presence he may cause their arrest and detention without first having a warrant issued against them.

(See West Virginia Code 8-10-1)

2-205. Police authority. The Mayor shall have control of the police of the town, except as otherwise provided by law, and may, whenever he deems it necessary, appoint special police officers who shall take oath of office and give bond as required of police officers as hereinafter specified; provided, however, that if said special police officers shall not carry a gun or other deadly weapon, then they shall not be required to give bond after having taken the oath of office.

(See West Virginia Code 8-10-1)

2-206. Council meetings. The council shall be presided over at its meetings by the Mayor or, in his absence, by the Recorder or, in the absence of both Mayor and Recorder, by one of the councilmen selected by a majority of the council present. A majority of the council shall be necessary to form a quorum for the transactions of business. No member of the council shall vote upon any order, measure, resolution or proposition in which he may be interested other than as a citizen of such town. The Mayor and Recorder shall have votes as members of the council, and in case of a tie the presiding officer for the time being shall have the casting vote unless he has previously voted.
(See West Virginia Code 8-9-1, 8-9-2)

2-207. Special meetings. The Mayor shall have power to call special meetings of the council whenever such meetings shall by him be deemed necessary; and it shall be his duty to see that all members of the council have notice thereof as provided in Chapter 1 Section 202 of this code.

2-208. Seal of the town. The Mayor shall have charge of the seal of the town and shall affix the same without fee or reward to all contracts, deeds, and other writings to which the town is a party.

2-209. Mayor as conservator of the peace. The Mayor shall be ex-officio a conservator of the peace within the town and shall within the same have, possess and exercise all the powers and perform all the duties vested by law in a conservator of the peace with respect to the ordinances of the town, as provided by the statutes of the State of West Virginia. The Mayor shall also have forfeiture, penalty or imprisonment imposed upon any person, firm, or corporation by the Mayor, municipal judge, or council for any violation of the ordinances of the town or acts in relation thereto.

2-210. Declaration of civil emergency and or martial law. In the event of any emergency, whether national, state, or local, the Mayor as the chief law enforcement officer of the town shall have full power and authority, if the emergency within the town and/or to take all reasonable and necessary action to protect the lives, health, safety and property of the residents and citizens of said town, and, in addition to the employment of the city police, if necessary to call to his assistance members of the West Virginia Department of Public Safety, the Sheriff of Braxton County and his deputies, and/or members of the state and

county civil defense units and members of the fire department of the town. Having once been declared, said state of martial law or emergency shall continue until the Mayor, having determined that said emergency conditions have abated, shall declare the said martial law or state of emergency to be terminated and void.

2-211. Other duties. In addition to the duties of the Mayor herein enumerated, he shall perform such other reasonable services as may be required of him by law, by ordinance of the town, and/or by the council thereof.

2-212. Compensation. The Mayor shall receive for his services such compensation as the council may determine and prescribe by order, which compensation shall be neither increased nor diminished during his term of office.

ARTICLE THREE

POWERS AND DUTIES OF THE RECORDER

(Office of recorder required by West Virginia Code 8-5-7(a))

2-301. Minute book. It shall be the duty of the Recorder of the town to keep in the minute book a record of the proceedings of the council and to keep the same fully indexed and open to the inspection of any taxpayer of the town; in such minute book shall be kept an accurate record of every action taken by the council at any regular or special meeting thereof, upon any matter whatever. He shall have charge of and preserve all records of said town, other than those belonging to the Mayor's office, and shall so arrange all papers as to render them readily accessible. He shall also perform such duties in relation to municipal elections as required by law and ordinances of the town.

(See West Virginia Code 8-10-3)

2-302. Checks and vouchers. The recorder shall issue all checks and vouchers previously allowed by the council and duly recorded in the minute book; said checks and vouchers are to be signed by the Recorder and the Mayor. Before issuing such vouchers or check, the Recorder shall first ascertain whether the party to whom it is payable is indebted to the town for any fines, taxes, levies, special assessments, or any sum for any purpose. If the payee be so indebted, the Recorder shall deduct the amount so due the town and if any sum be then owing to such payee he shall then issue a voucher or check for the same. The Recorder shall then deliver the check or voucher to the payee together with a receipt signed by him for the amount so deducted. No money shall be paid out of the treasury by the Recorder to any person on any claim or demand whatsoever against the town until and after such claim or demand shall first have been presented to and allowed by the council.

If the Mayor or Recorder be absent and out of the jurisdiction of the town, or physically incapacitated, for as much as or more than fourteen consecutive days, then in that event said check or voucher may be signed by the remaining one of said two officers and by a member of the council so designated by a majority vote of the council, this provision to be limited to only those accounts necessary for the day to day transaction of town business.

2-303. Account books. It shall be the duty of the Recorder to keep regular books of account of the different funds provided for by the council, in which be entered, under proper heads and titles, all pecuniary transactions of said council. He shall debit each fund for the amount of revenue accruing thereto for each fiscal year, itemizing as far as practicable the sources of such revenue. He shall also credit each of said funds with all the expenditures therefrom, or other proper credits, itemizing the same as far as practicable, so as to show the amount expended by the town during that year from each of the funds provided for.

(See West Virginia Code 8-10-3)

2-304. Financial statement. It shall be the duty of the Recorder to prepare according to law the annual financial statement of the town, as provided in Chapter 1 Section 416 of this code, and before the close of his term of office to make out and present to the council a correct and complete statement of the financial condition of the town. Said last financial statement, when presented to and approved by the council, shall, by appropriate order, be recorded in the minute book. Upon approval of said financial statements, the council, by order, may allow unto the Recorder a reasonable fee.

2-305. Assistance to County Assessor. The Recorder shall render unto the Braxton County Assessor such assistance as may be necessary to effectuate a just and reasonable assessment of all property within the town.

2-306. Levy estimate. Upon receiving, from the official whose duty it is to make out the land books, the necessary information concerning the aggregate value of the property in the town, as provided by law, the Recorder shall convene a meeting of the finance committee to consider the levy estimate and prepare a recommended estimate to present to the council. The recorder shall present said estimate to the council, together with all information upon which the recommendation was based, at the meeting or meetings of the council required by Chapter 1 Section 401 of this code. When the council has prepared and approved the levy estimate, as provided for by this code and by state law, the Recorder shall forward immediately a certified copy of the estimate to the state tax commissioner and shall cause the same to be published forthwith according to law. After council has laid the levy, as provided by this code and by state law, the Recorder shall, within three days thereafter, forward certified copies of the order laying the levy to the state tax

commissioner, the state auditor, and the officer whose duty it is to extend the levy.

2-307. Ordinance book. The Recorder shall keep book, to be called the ordinance book, and shall make therein a correct record of all ordinances and standing rules passed by the council, in the manner specified in Chapter 1 Section 311 of this code. Immediately after each ordinance and standing rule he shall record the date of its passage.
(See West Virginia Code 8-10-3)

2-308. Publication and printing. It shall be the duty of the Recorder to publish, or cause to be published, any and all legal notices, legal advertisements, notices of ordinances proposed, and/or any other information required by law to be published by the town, under the provisions of this code or the code of the State of West Virginia. It shall also be the duty of the Recorder to superintend all printing to be done for the town under the direction of the council.

2-309. Licenses. The Recorder shall make out and prepare all certificates of license granted by the authority of the council and shall keep a record thereof as provided in Chapter Four of this code. He shall also make out and prepare all commissions and permits granted by authority of the council, and shall furnish without cost to the town all copies of transcripts, whenever deemed necessary by the city attorney, to be used in any suit or proceeding.

2-310. Bonds. It shall be the duty of the Recorder, whenever any bond shall be given by any officer or employee of the town or other person and accepted by the council, to make out at the time an entry in the minute book containing the proceedings of the council, showing the giving of such bond and by whom and its acceptance, giving the name of the principal, each of the sureties to it, and also showing by such entry, if the bond be that of an officer, that the officer assumes upon himself the oath of office and that his sureties, if the bond be a personal one, were examined touching their sufficiency. Upon acceptance and approval of official bond by council, the finance committee, excluding its chairman the Recorder, shall take immediate possession of such bonds for safekeeping and shall cause the original documents to be placed in a secure and safe depository and a true copy thereof shall be delivered to the Clerk of the Braxton County Commission to be recorded and filed as provided in Chapter 2 Section 106 of this code. Any expense incurred

pursuant to the provisions of this section shall be allowed and payable by council.

2-311. Vote. The Recorder shall at all times have a vote as a member of council.

(See West Virginia Code 8-9-2)

2-312. Acting Mayor. The Recorder shall, in the absence from the town, sickness, or inability of the mayor, or during any vacancy in the office of mayor, perform all duties of the Mayor and be invested with all his powers. In addition to the duties of the Recorder herein enumerated, he shall perform such other reasonable services as may be required of him by law and by the ordinances of the town and by the council thereof.

(See West Virginia Code 8-10-3)

2-313. Treasurer. The Recorder shall be ex-officio treasurer of the town, and shall continue in office until his successor is elected and qualified.

2-314. Oath and bond. Before entering upon the duties of his office, the Recorder shall take the oath prescribed by law of district officers, and also, before receiving into his hands any funds belonging to the town, he shall enter into bond with one or more sureties, to be approved by the council, in a penal sum to be fixed by the council but in no case less than the sum of money which shall during his term of office be in his hands at any one time, which penalty may be increased and additional sureties required from time to time as the said sum of money may increase, and which bond shall be payable to the Town of Sutton and shall be conditioned as prescribed by law; nor shall he be released from liability thereon until said Recorder has faithfully accounted for and paid over unto his successor all funds which came into his hands as such officer and treasurer, and for which he is held to account, as provided by law, and has made a final settlement of his accounts and the same has been accepted by council.

2-315. Deposit of funds. It shall be the duty of the Recorder to collect and deposit to the credit of the town, in some bank to be designated by the council, all the money, sums, or accounts due and owing to the town, with which he shall be charged as of the date it is paid into his hands. Upon the expiration of his office he shall immediately account for and pay over to his successor, as soon as his successor shall have qualified and given bond, the money then in his hands and belonging to the town, and for which he is held to account as

recorder. In the event of any fees or expenses to which he is entitled, he shall present his claim in an itemized statement to the council which shall be allowed by the council by proper order, and shall then be drawn from said bank on a check or voucher properly issued by said Recorder payable to his own order and signed by himself and the Mayor.

2-316. Failure to account. The Recorder shall, if he fails to collect, account for and pay over all or any of the money with which he is chargeable, according to the conditions of his bond and the orders and ordinances of the council, be liable, together with his sureties on said bond; and said Recorder and his sureties, or either or any of them, or his or their personal representatives, may be proceeded against in the name of the Town of Sutton in the Circuit Court of Braxton County, by action or motion, or, if the amount demanded does not exceed three thousand dollars, before a magistrate of Braxton County. (See West Virginia Code 8-12-5(46), Section amended 1989)

2-317. Safekeeping of funds. It shall be the duty of the Recorder to keep all moneys which shall come into his hands belonging to the town in proper, safe, and responsible depositories, as designated, and to pay out the same on order of the council and as provided by law. He shall keep a correct account of all his receipts and disbursements, showing the amount of each, and the names of persons, partnerships, or corporations by and to whom paid, and on what accounts.

2-318. Receipts. It shall be the duty of the Recorder, or of any town employee who shall receive any such funds, to issue duplicate receipts for the money paid to him belonging to the corporation on all fines, assessments and levies and on debts of every kind due the town. One of said duplicate receipts, if said money be paid to him on account of a fine, shall be filed with the Mayor, and if paid to him on account of any other matter, shall be kept or filed in the Recorder's office.

2-319. Compensation. The Recorder shall receive for his services as recorder and as treasurer such compensation as the council may determine and prescribe by order for each office, which compensation shall be neither increased nor diminished during his term of office. (See West Virginia Code 8-5-12)

ARTICLE FOUR

POWERS AND DUTIES OF POLICE OFFICERS AND CHIEF OF POLICE

2-401. Appointment. The council shall, at its first regular meeting in July of each election year, or as soon thereafter as practicable, appoint an officer to be called the Chief of Police, and such officer shall be the chief officer of the police department of said town, and shall continue in office during the pleasure of the council and until his successor is appointed and qualified; unless he be earlier removed as provided for by these ordinances, in which case the mayor may appoint a temporary replacement, upon which appointment the council shall vote at its next regularly scheduled meeting. The police department of the town shall consist of the Chief of Police and such additional regular policemen as the council may deem it necessary to appoint, and such special policemen as may be appointed by the Mayor or the council. The police shall always be under the control of the Mayor and shall be subject to his instructions. Any police officer or the chief of police may be removed by the council for good cause, and may, for cause, be suspended by the Mayor subject to the provisions of other ordinances of the town.

(See West Virginia Code 8-5-11, 8-14-3, Section amended 1989)

2-402. Oath and Bond. Before entering upon the duties of such office, the chief or any police officer shall take the oath prescribed by law for district officers and shall enter into bond with one or more sureties, to be approved by the council, in a penal sum to be fixed by the Common Council but in no case less than three thousand five hundred dollars, which bond shall be payable to the Town of Sutton and shall be conditioned as prescribed by law.

(See West Virginia Code 8-5-8)

2-403. Authority. The chief and any member of the police department of the town shall have all of the powers, authority, rights and privileges with the corporate limits of the town with regard to the arrest of persons, the collection of claims, and the execution and return of any search warrant, warrant of arrest, or other process, which can legally be exercised or discharged by a deputy sheriff of a county. In order to arrest for the violation of town ordinances and as to all matters arising within the corporate limits and coming within the scope of his official duties, the powers of the chief or any policeman shall extend anywhere within Braxton County. For an offense

committed within the town in his presence, any such officer may arrest the offender without a warrant and take him before the municipal judge or a magistrate of the county in the event of a violation of state law to be dealt with according to law, and for such offense the chief or any such policeman shall have the same authority of fresh pursuit and arrest beyond the corporate limits of the town as has a sheriff. He and his sureties shall be liable to all the fines, penalties and forfeitures which a deputy sheriff is liable to, for any failure or dereliction in such office, to be recovered in the same manner and in the same courts in which such fines, penalties and forfeitures are recovered against a deputy sheriff. It shall be the duty of the Mayor and police officers of the town to aid in the enforcement of the criminal laws of the state within the town, and to arrest or cause the arrest of any offender and take him before a magistrate to be dealt with according to the law. Failure on the part of any such official or officer to discharge any duty imposed by the provisions of this section shall be deemed official misconduct for which he may be removed from office. Any such official or officer shall have the same authority to execute a warrant issued by a magistrate, and the same authority to arrest without a warrant for offenses committed in his presence, as a deputy sheriff. It shall also be the duty of the chief of police or his designated officer to attend all trials of the municipal court when so requested by the municipal judge, preserve order at such trials, and execute warrants or other process, including summons and subpoena. Any warrants or process issued by the mayor or municipal judge may be executed by him at any place within Braxton County.

(See West Virginia Code 8-14-3, Section amended 1989)

2-404. Command of the department. The whole police force of the town shall obey the orders of the chief of police in pursuance of the authority conferred upon him by law and the ordinances of this town. The chief of police shall have immediate command of the police department and be subject to the direction of the mayor, subject to the laws and ordinances of the town, and shall have general charge of the peace and good order of the town and see to the observance thereof; he shall enforce the ordinances of the town and the acts of the legislature relating to it, and in an emergency he may direct the whole police force, or any part thereof, to any place in the town he may deem proper. He shall from time to time report to the Mayor or council such suggestions for the improvement of the police department as he may deem advisable.

2-405. Peace and good order. The whole police force of said town shall at all times interfere to prevent the commission of any offense within said town and shall preserve the good order and peace thereof, and shall secure its inhabitants from personal violence and their property from loss or injury. They shall earnestly endeavor, when any offense is committed in the town, to detect and arrest the offender; and shall enforce all ordinances prescribing any fine or punishment; and also any acts of the legislature relating to offenses in the town or to the police thereof. Any officer applied to in the case of an emergency, whether in the day or night and whether it be during his official hours of duty or not, shall provide all possible assistance that said emergency may require. Police officers when on duty shall be diligent and constant in preserving the peace and good order of the town, and in preventing any violation of its ordinances. They shall not allow any persons to assemble on the streets or anywhere else in the town in such manner as to obstruct the free passage of pedestrians or automotive or other means of travel; and when any fire breaks out in the town they shall promptly raise an alarm and shall promptly attend such fire, rendering such assistance as necessary and as required by the ordinances of the town, and shall maintain order at the fire.

(See West Virginia Code 8-14-3, Section amended 1989)

2-406. Arrest of offenders. It shall be the duty of each police officer to report to the Mayor every offense known or believed by him to have been committed against the ordinances of the town; and whenever he knows by sight or from reliable information that an ordinance of the town is about to be or is being violated, to promptly exert his authority to prevent such violation, and to arrest the person or persons committing any offense and bring such person or persons before the municipal judge or county magistrate for trial; and to this end he may call to his assistance any by-stander, who shall assist in making such arrest; and in case of refusal, such by-stander so refusing may be punished as prescribed by ordinance of the town. No police officer shall abuse any prisoner he may have in his charge, nor use force unless it be necessary to do so in self-defense, or to prevent escape, or to convey such prisoner to prison.

(Section amended 1989)

2-407. Written reports required. Every police officer shall make a written report of every crime or other violation of town ordinances which is reported to him or otherwise comes to his attention, including there all facts and particulars relating

thereto, the name or names of persons suspected or arrested by him, and all such particulars in each case as may be important in the investigation and/or trial.

2-408. Uniform and badge. Every police officer, when on duty, shall wear such uniform and badge, and carry such equipment, as the council shall authorize and provide, unless expressly directed by the chief for a special assignment.

2-409. Officers shall be temperate. The chief and every policeman appointed for regular duty shall devote his whole time and attention to the business of the town in maintained order and quiet therein, and shall be prepared to act whenever his services are required. No police officer while on duty, shall loiter in any place wherein intoxicating liquor and/or so-called non-intoxicating beer is sold, or enter any house of ill fame or similar house, or gambling place, except in the immediate discharge of his duty; and shall not drink any intoxicating liquor or so-called non-intoxicating beer of any kind while on duty, or be of intemperate habits, or get intoxicated at any time during his continuance in office, and any such violation of duty shall render it obligatory upon the Mayor to immediately suspend such officer, and the council to remove from office such officer guilty thereof, and such violation shall be sufficient cause therefor.

2-410. Political activity officers. Police officers shall not engage in political or religious argument while on duty, nor shall they engage in any political activity concerning the election of officers and members of the council of the town, State, or federal government or take any part in any controversy or agitation by word or deed that would tend to lessen their usefulness in preserving good order in the community. Neither the chief nor any policeman appointed for regular duty shall be a delegate or representative to any political or partisan convention or connected with any primary or other election or perform any political or partisan service, except to vote.
(See West Virginia Code 8-14-19, Section amended 1989)

2-411. Conduct of officers. There shall not be permitted in the Mayor's office, or in any room or building used by the town, any loafing, card-playing, political (unless during the course of a meeting of council), or religious argument, profane or vulgar language, or quarreling. The members of the police force must at all times be respectful to superiors, equals and citizens, and courteous to subordinates. Any member of the police force using profane, abusive or ungentlemanly language to

any citizen or other person, or refusing or neglecting to obey the orders of his superior officer, shall be liable to suspension and dismissal.

(Section amended 1989)

2-412. Gratuities or rewards. No police officer shall accept from any person, while such person is in his custody or after such person shall have been discharged, any gratuity or reward; nor shall any police officer receive from any person without the permission of the council any reward for the arrest of any offender or recovery of any goods or money.

(See West Virginia Code 61-5A-6)

2-413. Leave of absence. If the chief desires leave of absence from duty, he must obtain such leave from the Mayor; and if any policeman desires such leave of absence, he must obtain the same from both chief and Mayor; but neither the chief nor any policeman appointed for regular duty shall leave the town during his duty hours without the permission of the Mayor, except in the performance of his official duties.

(See West Virginia Code 8-5-11, 8-5-12)

2-414. Public property. Police officers shall carefully protect from waste or a use all public property whenever opportunity to exercise such protection occurs.

2-415. Confiscated or abandoned property. Whenever personal property shall come into the hands of the police which shall not be returned with three days to the owner or owners thereof, it shall be delivered over to the chief who shall return it to the owners thereof if such owners be known; or if the owners be unknown, he shall within no earlier than thirty days and no greater than one hundred eighty days from the receipt thereof sell said property at public auction to the highest bidder for cash, having first published a notice of such proposed sale by posting the same on the exterior entrance door of the building in which the police office is located, describing the property to be sold and giving the day and time of the proposed sale, which notice shall be so published not less than two weeks prior to the time of sale. The proceeds of any such sale shall be paid by the chief of police into the general fund of the county, after the costs of such sale are first paid out of the proceeds thereof. Provided that any property seized as evidence in a criminal investigation by any member of the police department shall not be subject to the terms hereof until such time as such investigation and any prosecution in connection therewith has been completed or such property is otherwise disposed of

pursuant to law. The owner of any property sold hereunder shall have no claim against the chief of police or town for damages or loss of any property sold pursuant to this section.

(Section amended 1989)

2-416. Attendance at meetings. When so required by council, it shall be the duty of the chief to attend any meeting of the council and execute the orders of the council and Mayor.

(Section amended 1989)

2-417. Dog list. When so required by the council, the chief shall cause to make a list of all dogs in the municipality and of the names of the owners thereof, the original of which list shall be returned to the council and a copy thereof delivered to the assessor of Braxton County not less than thirty days nor more than sixty days prior to the date said assessor or his deputy assesses the individual and property in said municipality.

2-418. Inspection of property. When so required by council, it shall be the duty of the chief to inspect the premises in and about any dwelling, business house, shop, or other building or any vacant lot in the town, whenever there is reason to believe the same to be unsanitary, offensive, or dangerous due to hazards of fire or hazards of health or possible injury, and to report his findings to the Mayor or council at its next meeting.

(See West Virginia Code 8-12-15)

2-419. Other duties of the chief. It shall be the duty of the chief to act as jailer of said town when necessary. The chief of police is authorized to house prisoners in such jail or jails as may be at the time approved by the appropriate state agency for the housing of prisoners. In addition to the other duties enumerated within this article, he shall perform such other reasonable services as may be required of him by law and by the ordinances of the town or by the council.

(Section amended 1989)

2-420. Arrest powers of town officials. The Mayor, Chief of Police, Recorder, members of the council, municipal judge, and every police officer of the town are hereby empowered to arrest on view any person found violating or offending against any ordinance of the town.

(See West Virginia Code 8-14-3)

2-421. Officers required to report offenses. It shall be the duty of the chief and every police officer, upon receiving

56

reliable information that an offense against any ordinance of the town has been committed, to promptly make complaint of such alleged offense to the municipal judge who, if he believes there be probable cause based upon such information that such alleged offense has been committed, shall forthwith issue a warrant for the arrest of the alleged offender; and if such officer shall fail to so discharge his duty in this regard he shall forfeit and pay to the town the sum of twenty-five dollars and in addition thereto shall be disciplined by the council as otherwise provided in this code, including, but not limited to discharge from the police force.

(See West Virginia Code 8-14-3, Section amended 1989)

2-422. Neglect of duty; penalties. For every failure or neglect to perform any duty require of him by any ordinance of the town or order of the council, the police officer so failing or refusing to perform such duty shall, upon conviction thereof, be fined not less than one nor more than twenty dollars, and such failure or neglect of duty may be considered cause for suspension or dismissal.

(See West Virginia Code 8-14-3)

2-423. Compensation. The chief and/or all police officers shall receive for their services such salary or other compensation as the council may from time to time establish and order.

(See West Virginia Code 8-5-12)

2-424. Eligibility for council. If the chief or any policeman shall become a member of the town council, his office or position on the police force shall thereby become vacated. No member of the council shall be eligible for the office of chief or police officer, or any other office requiring police duties.

2-425. Vacancy in office. If the office of chief should at any time become vacant by death, resignation, or otherwise, or is vacant by the failure of any person to qualify and give bond promptly, the Mayor may appoint a chief temporarily to hold said office until a regularly appointed chief is inducted into said office. Such appointee of the Mayor shall take the oath and give bond as prescribed by law, and shall have the same powers and perform the same duties as an appointee of the council.

2-426. Police headquarters. Council shall provide a suitable office or offices to be known as police headquarters in said town, which shall be in the charge of the chief of police but

subject to the control of the Mayor, unless otherwise provided by the council.

ARTICLE FIVE

MUNICIPAL COURT AND JUDGE

2-501. Municipal court. There is hereby established a court which shall be called the municipal or city court. The municipal judge of the Town of Sutton shall preside over said court. The mayor shall preside over the said court in the absence or unavailability of the municipal judge. The Town of Sutton, or other complaining party in any proceeding in the municipal court may appear either with or without council. The same rules of evidence as apply in magistrate courts shall apply in the municipal court.

(See West Virginia Code 8-10-2, Section amended 1989)

2-502. Appointment of municipal judge; compensation. The council shall, at the first regular meeting thereof in July of each election year, or as soon thereafter as practicable, appoint a qualified person to the office of municipal judge. As compensation for his services, said judge shall be paid a fixed salary to be determined from time to time by proper order of council. No member of council or any police officer shall be eligible for said office.

2-503. Powers and authority of municipal judge. When not otherwise provided by charter provision or general law, the municipal judge shall have jurisdiction to hear and determine any and all alleged violations of the town ordinances and to preside over the trial of, and sentence persons convicted therefor. Upon complaint he shall have authority to issue a search warrant, arrest warrant, subpoena, or criminal summons in connection with the violation of a municipal ordinance. Any search warrant, warrant of arrest, or other process issued by him may be directed to the chief of police or any member of the police department of the town, and the same may be executed at any place within Braxton County for offenses committed within the corporate limits of the town. The expense of maintaining any individual committed to a jail or other place of imprisonment by him shall, or the cost of serving any subpoena or other process be paid by the town and taxed as part of the costs of the proceeding. He shall also, from time to time, recommend to the council such measures as he may deem needful for the welfare of the municipality. In addition, the municipal judge shall have the same judicial power and authority as a magistrate, unless such power or authority be otherwise restricted.

(See West Virginia Code 8-10-2 and 8-10-1; Section amended 2022)

2-504. Maintenance of docket. The municipal judge shall keep, or cause to be kept, a complete docket of all matters coming before him in his judicial capacity. The docket shall include for each defendant such information as his name, warrant and/or summons numbers, alleged offense, disposition, fines and costs imposed and whether collected, whether committed to jail, and all other information that may be relevant, and shall be open to the inspection of the public at reasonable hours of the day.

2-505. Issuance of arrest warrants. In addition to the municipal judge, the Mayor and the Town Recorder shall have the authority as herein set forth to issue warrants for all offenses committed against this code and its amendments hereinafter adopted. Any provision of these ordinances making reference to the municipal judge shall be interpreted to include the mayor and recorder when such officers are performing duties of the municipal judge. Upon information under oath of some credible person, reduced to writing and signed by the party complaining, constituting probable cause to believe that an offense has been committed by any person against any ordinance of the town, the said official shall issue a warrant in the name of the Town of Sutton, setting forth the nature of the charge and sufficient description thereof to allow the person charged to be informed of the charge against him or her, and directed to the chief or any policeman of the town, commanding him to forthwith apprehend and bring before the judge the party accused, to answer the said charge.

(See West Virginia Code 8-10-2, 8-10-1, Section amended 1989)

2-506. Issuance of summonses. When a complaint of an alleged ordinance violation is made to the municipal judge or such other official as specified in Section 2-505 of this article, the judge may in his discretion, in lieu of issuing an arrest warrant, issue a summons, ordering the alleged offender to personally appear before the city court at a time specified therein to answer to the charges against him. The summons shall contain a brief description of the offense charged sufficient to inform the person charged of the allegations against him and of the ordinance provision violated, but need not set out verbatim the provisions of the ordinance alleged to have been violated. Upon failure of any person to appear before the city court as commanded in a summons lawfully served on him, a warrant may be issued for his arrest, returnable as the court may direct.

60

2-507. Issuance of subpoenas. The city judge, or those officials as specified in Section 2-505 of this article, may subpoena as witnesses all persons whose testimony he believes will be relevant and material to matters coming before his court, and which are requested by either party and may proceed against them as if for contempt if they fail or refuse to attend or testify. Any witness served with such a subpoena, other than the complaining party shall be entitled to a ten dollar appearance fee, plus mileage traveled within Braxton County in response thereto, both of which costs shall be assessed as part of the costs of the proceeding.

(Section amended 1989)

2-508. Trial and disposition of cases. Every person charged with violating a municipal ordinance shall be entitled to an immediate trial and disposition of his case, provided the city court is in session or the city judge is reasonably available. However, the provisions of this section shall not apply when the alleged offender, by reason of drunkenness or other incapacity, is not in a proper condition or is not able to appear before the court. When the accused has been apprehended and brought before him, the judge may immediately proceed to try the case; but he may grant continuances from time to time if the circumstances of the case require it. If a continuance be granted at the instance of the accused, the judge, if he sees fit, may require him to enter into a recognizance, with surety deemed sufficient, conditioned for his appearance at the time and place appointed for trial, to answer for the offense of which he is charged, and if such recognizance be not given, may commit him to jail until the time appointed for trial, but such confinement shall not exceed five days. The accused, if such continuance be not at his instance, shall be discharged from custody on his own recognizance, or without a recognizance, or upon the posting of such surety as the judge shall deem proper. The Judge may render judgment on any recognizance taken by him pursuant to this section. The trial of every person accused of any offense shall be held as speedily as possible by the judge without a jury unless the person charged requests a jury trial, in which event such jury trial shall be within ten days of a request for jury trial should the person charged be in jail awaiting trial, and within twenty days in the event the person charged is not held in jail awaiting trial; and after hearing all the evidence as to the alleged offense, the judge shall render judgment accordingly. If the judgment be against the accused, it shall be for the costs of the proceeding, in addition to any fine and term of jail imposed; and when the accused is sentenced to a term of jail, whether a fine be also imposed or not, the jail

fees shall be included in the costs. The term "imprisonment" shall be interpreted wherever it may appear throughout the ordinances of the Town of Sutton to apply to a sentence to the Central Regional Jail and Correctional Facility of West Virginia, or such other jail as is being at the time concerned used by the Sheriff of Braxton County for the purpose of housing prisoners.

The council is hereby directed to designate some person as clerk of the municipal court. Such clerk shall be responsible to assist the municipal judge and such duties shall include the selection of jury panels in the same fashion as such panels are chosen by the magistrate clerk.
(Section amended 2022)

2-509. Appearance bonds authorized. When the municipal judge is not available or when an alleged offender requests and has reasonable grounds for a delay in the trial of his case, he may, in lieu of remaining in jail pending disposition of his case, be allowed to post an appearance bond with the city judge or, in the absence of the judge, with the police officer on duty at the time, provided such alleged offender is not under the influence of some drug or have a blood alcohol content of .05 percent, by weight or otherwise in need of protective custody. The arresting officer or officer on duty at the time may in his discretion take a cash bond, or may release the alleged offender on his own recognizance, or into the custody of some responsible person, to appear before the municipal Judge at the time fixed by such officer, the amount of such bond or recognizance to be in a reasonable sum as such officer may determine.
(Section amended 1989)

2-510. Imposition and remission of fines and costs. All fines and costs shall be imposed and recorded or caused to be recorded by the municipal judge on the court docket in open court. After any fine and costs have been so imposed and recorded, the judge shall have no power to remit or release the same or any part thereof except when necessary to correct an error.

2-511. Appeals. Every person sentenced under the ordinances of the Town of Sutton by the municipal court judge to serve a sentence in jail or to the payment of a fine shall be allowed an appeal de novo to the Circuit Court of Braxton County, upon entering into an appeal bond as conditioned hereinafter. Any such appeal must be perfected within ten days from and after the date upon which the sentence is imposed, Sundays and legal holidays excepted. If such appeal be taken, the municipal court

62

judge shall forthwith deliver, or cause to be delivered, the appeal bond and other papers in the case to the Clerk of the Circuit Court, and such court shall proceed to try the case as upon indictment or presentment, and render such judgment, without remanding the case, as the law and the evidence may require. If the judgment be against the accused, it shall include the costs incurred in the proceedings before the municipal court judge as well as in the said court.

2-512. Bond amounts, conditions and forms. An appearance bond in any case before the City court shall be in such amount as the city judge or other authorized officer shall prescribe and shall be conditioned that the defendant shall appear for trial before the city court at the stated time and place. An appeal bond in any case shall be with surety deemed sufficient in a penalty double the amount of fine and costs imposed by the municipal court and shall be conditioned that if the circuit Court shall find against the appellant the fine and all costs of the trial and appeal shall be promptly paid by the defendant and/or his sureties. An appearance or appeal bond in any case may be made in the form of a cash deposit or by any corporate surety company authorized to do business in West Virginia or by two private persons who individually own real property located within Braxton County. No other type of bond shall be acceptable.

2-513. Cost of proceedings upon insufficient cause for complaint. Whenever any persecution shall be instituted before the judge for any violation of the ordinances of the town for the recovery of fine, penalty, or forfeiture imposed by the ordinances thereof, the name of the person, except he be an officer of the town, at whose instance such prosecution was instituted shall be designated on the record of the case, and if the person charged shall not upon final hearing be convicted, and the judge shall be of the opinion that no sufficient or probable cause existed for the institution of such proceedings, then the judgment for the costs shall be rendered against the person at whose instance such prosecution was instituted.

2-514. Bond required from certain complainants. Where the person or persons (except an officer of the town) applying to the judge or other authorized official for a warrant in the name of the town against one or more individuals, for any violation of the ordinances of this town against one or more individuals, for any violation of the ordinances of this town or for any offense against the same, shall be insolvent or not an inhabitant of the state or shall be about to remove from the state, or where good cause shall exist, it shall be lawful for

ORDINANCE _____

Councilmember Jonathan Crum introduced the following Ordinance and moved for its adoption, which motion was seconded by Councilmember Catherine Houze. The Ordinance being in the following words and figures:

AN ORDINANCE TO AMEND SECTION 515 OF ARTICLE FIVE, CHAPTER TWO, OF THE SUTTON MUNICIPAL CODE, "EXECUTION FOR FINES; VOLUNTARY LABOR IN LIEU OF FINE."

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 amend 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.

7/13/2023
Passed First Reading

7/27/2023
Passed Second Reading

Robyn Dolan
Robyn Dolan, Recorder

such official to refuse to issue such warrant until good security be given to pay such costs, fine, penalty, or forfeiture to which the person or persons so applying for such warrant shall be liable, if upon final hearing it shall appear that no sufficient or probable cause existed for the institution of such prosecution or that the same was instituted from mere malice.

2-515. Execution for fines; voluntary labor in lieu of fine.

On any judgment for a fine, forfeiture or pecuniary penalty and costs imposed by the judge, he shall have no power to issue execution. Whenever any person shall be convicted for any violation of the ordinances of the town and a fine imposed for such violation, he may voluntarily consent to perform labor upon the streets and alleys of the town, or in and upon the buildings, grounds, bridges and public works of the town, or to do any other work required to be done for the benefit of the town, under the direction of a police officer of the town, and the judge shall allow to him a reasonable sum commensurate with the services rendered, to be credited to the payment of the fine or indebtedness owing. While such person is so being worked for the town, the officer, if necessary, shall provide for him necessary food and lodging if he be not confined in the jail during the period while he is so employed, and which shall be paid from the treasury of the town. The consent of the prisoner to perform such work shall be in writing, properly signed and duly acknowledged before the Mayor, chief, or any official authorized by law to take acknowledgments.

2-516. Contempt proceedings. The judge shall have the same power to punish for contempt as is conferred by law upon a magistrate. An order of arrest may be issued by the judge on which the person so guilty may be taken and brought before him, or such person may be taken in custody by any officer or other person present on the oral order of the judge and held to answer for contempt. But no person shall be fined or imprisoned upon such charge without being given an opportunity to be heard in defense of or explanation of his conduct, and upon such hearing the judge may discharge such person or adjudge him guilty of contempt, and punish him by fine or imprisonment, or both. The conviction, specifying the particular circumstances of the offense and judgment thereon, must be entered by the judge in his docket. A warrant of commitment for the term of imprisonment adjudged may be issued by the judge, commanding an officer to take the offender to jail of the county or town to be imprisoned there. The judgment shall include, in addition to the fine, all costs in the case including costs of arresting and

keeping in prison the offender. The fine under this section shall not exceed ten dollars or the imprisonment five days.

2-517. Entrance of property. For the purpose of executing any warrant of arrest or other execution or order of the judge or council, or of preventing the commission of any offense, or arresting a person in the act of committing an offense or a fugitive from justice, or for the purpose of abating any nuisance, it shall be lawful for the Mayor or chief or other officer to enter any building, house, outbuilding, garden, lot, or place of amusement of said town, in manner provided by law.

2-518. Witness fees. Neither the chief nor any police officer nor any complainant shall be allowed to claim or receive any fee for attendance and testifying as a witness in any case arising under the penal ordinances of the town.

2-519. Disposition and report of fines and costs. All funds coming into the hands of the city judge in the form of fines, costs and forfeitures shall be recorded by him and paid over to the municipality. At the end of each month he shall submit to the council a report accounting for the collection or non-collection of all fines and costs imposed by his court during the current month and to date for the current fiscal year.

2-520. Disturbance of proceedings. It shall be unlawful for any person to create any disturbance of any trial before the city court by making loud or unusual noises; by using indecorous, profane, or blasphemous language; or by any distracting conduct whatsoever.

2-521. Court hours. Court shall be held by the judge at any hour of the day between the hours of 9:00 o'clock a.m. and 4:00 o'clock p.m. or at night between the hours of 7:00 o'clock p.m. and 10:00 o'clock p.m., at such hour as may be fixed by the judge. It shall be held in the judge's office, unless for good reasons a trial may be had at some other place in the town designated by the judge.

2-522. Violations. A violation of any section of this chapter shall be punishable by a fine of not more than fifty dollars for each separate violation, unless otherwise specified.

65

ARTICLE SIX

POWERS AND DUTIES OF THE CITY ATTORNEY

2-601. Appointment. The council may at the first regular meeting thereof in July in each election year, or as soon thereafter as practical, appoint an officer who shall be called the city attorney, who shall be a practicing attorney-at-law of Braxton County, with office therein, and who shall continue in office at the pleasure of the council until his successor is appointed and qualified, unless he be earlier removed upon vote of council.

(See West Virginia Code 8-10-1)

2-602. Disqualification or vacancy in office. In the event there be no city attorney for any reason whatsoever, or in the event the town does have a city attorney but he be disqualified to represent the town in any legal matter or would refuse to do so or be incapacitated and unable to represent the town, or the town in its discretion would decide that it would be improper or undesirable to have the city attorney to represent the town, the council may employ another attorney-at-law licensed to practice in the State of West Virginia, be he a resident of Braxton County or otherwise, to represent the town, and may by agreement with such attorney fix his fees in any reasonable amount.

2-603. Duties. It shall be the duty of the city attorney to give legal opinions, when required by the council, and to give legal advice when required by the officers of the town in relation to their respective duties; to draft all ordinances, contracts, and other legal papers required by the council; and to examine and pass upon the legality of all official or other bonds, proposed ordinances, ordinances, or standing rules, when requested by council, and, when approved, to endorse his approval thereon. When he learns of the bringing of any suit against the town, he shall report the fact to the council at its first meeting thereafter. Also, when required by the council, he shall act as prosecuting officer on behalf of the town in any criminal prosecution undertaken by the town.

2-604. Litigation. It shall be his duty to control and manage for the town all litigation of which it is a party, and to defend all suits brought against the town, and to perform such other services as the council may require, and he shall attend such meetings of the council as it may require him to attend.

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2-605. Compensation. The city attorney, or such other attorney(s) as may be employed by the council, shall receive for his services such compensation as the council may from time to time prescribe by proper order.

ARTICLE SEVEN

POWERS AND DUTIES OF THE STREET COMMISSIONER

2-701. Appointment. The council shall, at the first regular meeting thereof in July of each election year, or as soon thereafter as practical, appoint an officer to be called the commissioner of streets, Roads, and Alleys, who shall continue in office at the pleasure of the council and until his successor is appointed and qualified. Said officer may, at the discretion of the council, be the Chief of Police of the municipality. (See West Virginia Code 8-12-5(1), (4))

2-702. Bond. Before entering upon the duties of such office, the said commissioner shall enter into bond with one or more sureties to be approved by the council, in a penal sum to be fixed by the council but in no case less than five hundred dollars, which bond shall be payable to the Town of Sutton and shall be conditioned as it prescribed by law for district officers; provided that if such commissioner is also the chief of police and has given bond as provided by law, then shall not be necessary for him to give any further bond. (See West Virginia Code 8-12-5(46)).

2-703. General supervision of roads. The commissioner shall exercise a general care and supervision over the roads, streets and alleys, and public grounds of the town. It shall be his duty to enforce the several ordinances and orders of the council in relation to said roads, streets and alleys, and public grounds, and to superintend the making of any improvements or repairs thereto or any grading or paving under the orders of the council, whenever required to do so by the council, and to report from time to time as to the progress and completion of the work. He shall from time to time report to the council all matters and things in relation to said streets, alleys and public grounds which, in his judgment, he may deem useful and advantageous to the town or necessary to the public convenience. He shall further report to the council all plans, estimates and information within his power in relation to any proposed improvement, when required to do so by the council. (See West Virginia Code 8-12-5(4))

2-704. Overseer of work on roads. The commissioner shall oversee all work being done on the roads, streets and alleys of the town; and all laborers and equipment employed thereon shall

68

be under his direction and supervision, unless otherwise ordered by council.

2-705. Contract of debt for streets. It shall be the duty of the commissioner, and he is hereby empowered, to remove or cause to be removed obstructions to the free passage through and over the roads, streets and alleys of said town and the pavements thereof, and to keep the same in good repair as far as he is able to do so with the labor and materials at his disposal, but he shall not contract any debt either for labor, implements or material without first getting permission of the council if the amount required be more than two hundred dollars, and if the amount be less than that sum, without first getting permission of the Mayor or the committee on roads, streets and alleys or the chairman of said committee, with the exception that if the amount be less than fifty dollars said debt shall be at the discretion of the commissioner.

2-706. Removal of obstruction from property. It shall be the duty of the commissioner when directed by the Mayor or council, upon the failure or refusal of the person whose duty it is to do so, to remove from property in said town any accumulation of garbage or any kind of filth offensive in character or injurious to the health, or stagnant water, or boxes and other rubbish dangerous on account of liability to take fire. He shall also, when directed by said Mayor or council, remove any obstruction to the roads, streets or alleys, sidewalks, pavements, crossings, drains, or gutters within the town by filling up, unfencing, or otherwise clearing away said obstruction, as the nature of the case may require. For the purposes aforesaid, the commissioner may employ such aid as may be reasonable, at the expense of the town; and upon the completion of the work shall immediately report to the council the cost thereof. Said cost shall be assessed by the council to the owner or occupant of the property, or the person causing the obstruction, as the case may be, and the same shall be collected by the chief of police in the same manner provided by law for the collection of other taxes and assessments, or the same may be collected from such person by suit in the name of the town.

2-707. Payment of hired labor. No time check or other evidence of debt against the town shall hereafter be issued by the commissioner to any employee on account of labor performed for the town. When so required by council, it shall be the duty of said commissioner to make out and present to the council, at each regular meeting thereof, a written report of the work in progress and under his control, the number and names of the

laborers employed by him, and such other matters as he may deem necessary, or as the council may from time to time require. Said report shall show the number of days labor performed by each employee or team, the rate per day, and the total amount due each at the date of such report. The council shall thereupon examine said report, and if the same be approved, or when the same shall have been corrected if erroneous, shall allow to each person entitled the amount due such person; and a draft signed by the Mayor and Recorder shall be delivered to such person.

2-708. Purchase of equipment. Whenever the commissioner shall purchase implements or materials for the use of the town, by order of the council or Mayor or by direction of the committee on roads, streets and alleys or the chairman thereof or at his own discretion, he shall obtain from the person or company furnishing such implements or materials an itemized statement thereof and shall deliver to the council or the Recorder such statement along with any report required of him by Section 2-707 of this article, to be filed and preserved by the Recorder.

2-709.

(Section deleted at time unknown. No record found 2022)

2-710. Inventory of Property. In the month of June next preceding the expiration of their term of office, the Mayor and the commissioner shall make an exact and detailed inventory of all implements, tools, and other public property belonging to the town. Said inventory shall be signed by the Mayor and the commissioner and executed in triplicate; one copy thereof shall be retained by the Mayor, one copy thereof shall be retained by the commissioner, and one copy thereof shall be delivered to the Recorder. The commissioner shall deliver his copy to his successor in office together with the property inventoried therein, and his successor in office shall execute a duplicate receipt to the commissioner for said property. The original receipt shall be retained by the commissioner and the copy thereof shall be delivered to the Recorder. Said inventory and said receipt shall be presented by the Recorder to the council at its first meeting after he so received the same, and the council, upon examination thereof and if the receipt of the property corresponds with the inventory, shall by order have the same recorded in the minute book, and the order shall credit the outgoing commissioner with the property listed therein and shall charge his successor therewith. Upon receipt of said property and upon entering on the discharge of his duties, the commissioner then in office shall report periodically to the

council during his term of office, giving updated inventories of said property belonging to the town and accounting for any and all shortages and other discrepancies therein. A final inventory shall be made upon his termination in office according to the procedure stated heretofore. If the receipt delivered by his successor in office does not correspond with the inventory and if the Mayor and commissioner fail to account to their successors in office for the property covered in the inventory, or if said commissioner fails to account to the satisfaction of the council for any shortages or discrepancies in any periodic inventory, the Mayor and commissioner and the sureties on their official bonds shall be jointly and severally liable for the deficit and the council shall immediately institute suit for the collection thereof, unless council in its judgment believes either or both officials should be exonerated from liability for any or all charges thereof.

2-711. Construction materials on roadway. The commissioner shall, on application, assign to any person erecting a new building or repairing an old one a reasonable portion of any street or alley clear of the footway and water courses in front of any lot on which said building is being erected or such repairs are being made, to deposit implements and materials necessarily used in making such buildings and repairs, for three months (unless such building be sooner completed), and shall, if requested, give a permit therefor, but the implements and materials so deposited shall not be allowed to obstruct the pavements from the free passage of pedestrians or motor vehicles or other ordinary use thereof, nor the gutter from the flow of water.

2-712. Supervision of sewers. The commissioner shall have supervision of the sewers in or upon the roads, streets, alleys and public grounds of the town, and shall make report to the chairman of the street committee at such times as he shall deem necessary as to any alterations, repairs, or additions thereto, which he shall consider advisable. The owners or occupiers of private property within the corporate limits of the town may have connection made with such sewers for the purpose of drainage, on first getting permission from the commissioner and under the provisions specified in Chapter 6 Article 4 of this code; provided that the commissioner shall give no permission to make any connection which shall necessitate the digging into or taking up of any pavement between curbs. The work of making such connection and refilling the excavation occasioned shall be done in a manner satisfactory to said commission, and if not so done, said commission shall repair any defect or damage at the

expense of the owner or occupant. The commissioner may at all times, when deemed necessary by him, enter upon the private lots in said town for the purpose of inspecting private sewers to see that the same are kept in proper condition and repair.
(See West Virginia Code 8-12-5(32))

2-713. Public toilets. The commissioner shall oversee any public toilets built by the town, or other similar convenience which may hereafter be maintained by the town for the use of the public, and shall see that the same are kept clean and free from vulgar prints, pictures or impressions. He may arrest and bring before the municipal judge any person found violating the ordinance relating to the injury to or the pollution of the same; and in order to carry out this provision he may employ some reliable person at reasonable wages to be paid by the town to perform the labor necessary to keep said building clean, but shall himself see that the work is properly and carefully done.

2-714. Vacancy in office. Should a vacancy occur in the office of street commissioner, and at any time prior to his appointment and qualification, all of the duties of such office shall devolve upon the Mayor, and he shall be vested with and exercise all the authority and power conferred upon the commissioner by the ordinances of the town, and during such time he shall serve as commissioner without additional compensation for such services unless otherwise ordered by council.

2-715. Penalty for neglect of duty. For every failure or neglect to perform any duty required of him by any ordinance of the town or order of the council, the commissioner shall be fined upon conviction thereof not less than one nor more than twenty dollars.

2-716. Compensation. The street commissioner shall receive for his services and labor such salary or other compensation as the council may from time to time establish and order.