

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

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

(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.

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

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

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.

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.

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

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.

CHAPTER THREE

ALCOHOLIC BEVERAGES

ARTICLE ONE

IN GENERAL

The Town of Sutton is authorized by West Virginia Code 8-12-5(20) to prevent the illegal sale of intoxicating liquors, drinks, mixtures, and preparations; and by 8-13-7 to tax any such activity within the Town.

3-101. Definitions to apply. Words and phrases defined in the applicable sections of the Nonintoxicating Beer Act and the Alcohol Beverage Control Act of the Code of West Virginia shall have the same meanings as therein defined wherever such words and phrases are used in this chapter.
(See West Virginia Code 60-1-5)

3-102. Tax imposed on purchase prices. Pursuant to the provisions of Section 8-13-7 of the Code of West Virginia, there is hereby imposed a tax of three percent on the purchase price of any and all intoxicating liquors sold within the town; provided, that such tax shall not apply to intoxicating liquors sold by or purchased from holders of private club licenses issued under the provisions of Article 7, Chapter 60 of the Code of West Virginia.

3-103. Intoxication in public places; illegal possession of alcoholic liquors. It shall be unlawful for any person within the Town of Sutton to:

- (a) Appear in public in an intoxicated condition;
- (b) Drink alcoholic liquor, including so-called nonintoxicating beer, in public;
- (c) Drink alcoholic liquor, including so-called nonintoxicating beer, in a motor vehicle on any street or alley or in a public garage;
- (d) Tender a drink of alcoholic liquor, including so-called nonintoxicating beer, to another person in public;
- (e) Possess alcoholic liquor in the amount in excess of one gallon in containers not bearing stamps or seals of the West Virginia Alcohol Beverage Control Commission, without first having obtained written authority from the commission therefor;

(f) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of Chapter 60 of the Code of West Virginia.

(g) Possess an open container containing an alcoholic beverage, wine, or nonintoxicating beer in a public place, unless such place has been licensed for consumption on the premises.

(Section amended 1989)

3-104. Penalties for violation of above sections. A violation of any of the preceding sections of this article shall be punishable by a fine of not more than fifty dollars, or confinement in jail not to exceed five days, or both, in the discretion of the court, for each separate offense.

3-105. Tendering alcoholic liquor to certain persons, penalties. It shall be unlawful for any person to buy for, or give to, any person under the age of twenty-one years, habitual drunkard, intoxicated, or under the influence of intoxicating liquor including so-called nonintoxicating beer, addicted to the use of narcotic drugs, or mentally incompetent, any alcoholic liquors, ale, beer, or drink of like nature, or to carry the same to such person from any place where the same may be served or sold, privately or to the public, and for any violation of this section the offender shall, upon conviction, be fined not less than ten nor more than five hundred dollars or be confined in jail not less than five days nor more than thirty days, or both such fine and imprisonment, in the discretion of the court.

ARTICLE TWO

"NONINTOXICATING" BEER

3-201. Acts prohibited without city license. No person with the city shall manufacture for sale, sell, or possess for sale, any "nonintoxicating" beer without a city license to do so as provided in this article: provided, that nothing contained in this chapter, and no license or payment under the provisions thereof, shall be taken to legalize any act which otherwise may be in violation of law, or exempt any person from any penalty prescribed for such violation.

(See West Virginia Code 8-13-4)

3-202. Annual license required; issuance; display and transferability of license. Every person licensed by the state pursuant to the provisions of the Nonintoxicating Beer Act of the Code of West Virginia, whether as a retailer, private club, wholesaler, or brewer of "nonintoxicating" beer and who does business as such within this city shall pay to the city an annual license tax as provided in this article. Upon the payment of each such annual license tax to the town the licensee shall be issued a city license corresponding to the state license, which shall be displayed at all times in a conspicuous place upon the premises thereby licensed. City licenses under this article shall not be transferable.

3-203. License tax imposed; license year; classes of dealers and amount of tax. (a) Retail dealers shall be divided into three classes, Class A, Class B, and Class C.

Class A licenses shall authorize the licensee to sell "nonintoxicating" beer at retail for consumption on or off the licensed premises. The license fee for such Class A license shall be set by proper order of council, not to exceed one hundred dollars.

Class B license shall authorize the licensee to sell "nonintoxicating" beer at retail for consumption off the licensed premises. The license fee for such Class B license shall be set by proper order of council, not to exceed fifteen dollars for each place of business. Such Class B license may be issued only to the proprietor or owner of a grocery store, and sales under this license to any person at any one time must be in less quantities than five gallons. For the purpose of this section the term "grocery store" means and includes any retail establishment commonly known as a grocery store or delicatessen,

where food or food products are sold for consumption off the premises.

Class C license shall be issued for social, fraternal or private clubs not operating for profit and having been in continuous operation for two years or more immediately preceding the date of application and shall authorize the licensee to sell "nonintoxicating" beer at retail for consumption only on the licensed premises where sold. The license fee for such Class C license shall be set by proper order of council, not to exceed one hundred dollars for each place of business.

(b) In the case of a wholesaler the license fee shall be set by proper order of council, not to exceed two hundred fifty dollars.

(c) In the case of a brewer with its principal place of business located in this town, the license fee shall be set by proper order of council, not to exceed five hundred dollars for each place of manufacture.

3-204. Application for and issuance of license; false swearing; display of corresponding state license. All licenses under the provisions of this article shall be issued by the Town Recorder upon a showing of proper entitlement thereto, upon written application therefor verified by the applicant under oath. Application forms shall be furnished by the town, designed to elicit all information necessary for the Recorder to determine the eligibility of the applicant for the license applied for; the amount of the license fee; the location within the town of the premises to be licensed and whether or not such premises and structures comply with all applicable provisions of state law, this code and other ordinances; and it shall be unlawful and shall constitute false swearing for any applicant to knowingly make any false statement in any application for license under this article. Before issuing any license hereunder, the Recorder may require the applicant to display his corresponding state license.

3-205. Unlawful acts of licensees; penalties. It shall be unlawful:

(a) for any licensee, his servants, agents, or employees, to sell, give, or dispense, or for any individual to drink or consume, in or on any licensed premises or in any rooms directly connected therewith, "nonintoxicating" beer where the hours do not conform with the hours for dispensing alcoholic liquors under the provisions of the Code of West Virginia;

(b) for any licensee, his servants, agents, or employees, to sell, furnish, or give any "nonintoxicating" beer to any person visibly or noticeably intoxicated, or to any insane person, or to any habitual drunkard, or to any person under the age of twenty-one years;

(c) for any brewer or distributor to transport or deliver "nonintoxicating" beer to any retail licensee on Sunday;

(d) for any licensee to permit in his premises any lewd, immoral, or improper entertainment, conduct, or practice;

(e) for any licensee to manufacture, import, sell, trade, barter, assess, or acquiesce in the sale, possession, or consumption of, any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith; provided that the prohibitions contained in this subsection with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a Class C license;

(f) for any Class A or Class B licensee to possess a federal license, tax receipt, or other permit entitling, authorizing, or allowing such licensee to sell liquor or alcoholic drinks;

(g) for any licensee to print, paint, or place upon the door, window, or in any other public place in or about the premises, the word "saloon" or similar words to be used in any advertisement by the licensee;

(h) for any retail licensee to permit loud, boisterous, or disorderly conduct of any kind upon his premises or to permit the use of loud musical instruments if either or any thereof may disturb the peace and quietude of the community wherein such business is located; provided that no licensee shall have in connection with his place of business any loudspeaker located on the outside of the licensed premises;

(i) for any person whose state license has been revoked, as provided in the applicable section of the Code of West Virginia, to obtain employment with any retailer with the period of one year from the date of such revocation, or for any retailer to employ knowingly any such person within such time;

(j) for any distributor to sell, possess for sale, transport, or distribute "nonintoxicating" beer except in the original container;

(k) for any licensee to permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;

(l) for any Class B retailer to permit the consumption of "nonintoxicating" beer upon his licensed premises;

(m) for any licensee, his servants, agents, or employees, or for any licensee by or through such servants, agents, or employees, to allow, suffer, or permit any person under the age of twenty-one years to loiter in or upon any licensed premises; except, however, that the provisions of this subsection shall not apply where such person under the age of twenty-one years is in, on, or upon such premises in the immediate company of his parent, or where and while such person under the age of twenty-one years is in, on, or upon such premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink, or soft drink therein lawfully prepared and served or sold for consumption on such premises.

Any person who violates any provision of this section, upon conviction, shall be punished for each offense by a fine of not less than twenty-five dollars nor more than five hundred dollars, or imprisoned for not more than thirty days, or by both such fine and imprisonment, in the discretion of the court.
(Section amended 2022)

3-206. Revocation of license. The Common Council shall revoke the license granted to any licensee under this article, subject to an appeal of any licensee to a court of competent jurisdiction as is provided for by section 3-207, whenever such licensee has his, her or its license revoked by the West Virginia Nonintoxicating Beer Commissioner pursuant to the provisions of Chapter 11, Article 16 of the West Virginia Code of 1931, as last amended.
(Section amended 1989)

3-207. Suspension of license. For the violation of any of the provisions of this article the council may suspend the city license of such offender for the residue of the term of said license, or for any portion of time thereof, or may in its discretion revoke such license; provided, however, such licensee shall be first given notice in writing stating therein the alleged grounds for suspension or revocation, to be served in person upon said licensee, fixing the time for such licensee to appear before the council to be heard on such charge, and which shall be served not less than ten days prior to the day of said hearing. Continuance may be granted upon motion of the offender as justice and the circumstances of the case would indicate. In the event of suspension or revocation, the licensee shall have the right to appeal such suspension or revocation to the Circuit

Court of Braxton County. During the pendency of any such appeal, the suspension or revocation order shall only be stayed upon a vote of two-thirds of the council members.
(Section amended 1989.)

ARTICLE THREE

PRIVATE CLUBS

3-301. License fee imposed amounts. All private clubs, as defined in Section 60-7-2 of the code of West Virginia, the premises of which are situated within the corporate limits of the Town of Sutton, shall pay to the city an annual license fee for a license issued under the provisions of Article 7, Chapter 60 of the Code of West Virginia, as follows:

(a) The annual license fee for a license issued to a fraternal or Veterans' organization or a nonprofit social club shall be fifteen dollars.

(b) The annual license fee for a license issued to a private club other than a private club of the type specified in subsection (a) of this section shall be five hundred dollars.

(c) The fee for any such license issued following the first day of January of any year and to expire on the thirtieth day of June of such year shall be one-half of the annual license fee prescribed by subsections (a) and (b) of this section.

3-302. Duty of local holders of state licenses; sales prohibited if city fee not paid. Each licensee holding a state license issued under the provisions of Article 7, Chapter 60 of the Code of West Virginia, for a private club the premises of which are situated within the corporate limits of the Town of Sutton, shall, upon first obtaining such license and at the time of each renewal thereof, report to the Town Recorder and display such state license to him and pay the city license fee which is imposed upon him by this article, and it shall be unlawful for any such licensee or any officer, member, or employee of any private club so licensed, the premises of which being situated within the city limits of this city, to sell intoxicating liquor upon such premises unless all fees due to the city, as provided in this chapter, have been paid.

All such fees shall be due on the first day of July of each year and shall be paid in the Town Recorder's office not later than the fifteenth day of July for the ensuing fiscal year, whereupon a license shall be issued by the Town Recorder, which shall be on such form or forms as prescribed by him.

3-303. City records of state licenses; receipts issued for fees; licensees to display receipts. The Town Recorder, upon display to him of a state private club license, shall make a record thereof and reserve such record in his office and, upon

payment to him of the city license fee as prescribed in this article, he shall issue to the licensee a receipt for such payment which shall indicate the amount paid, the type of private club and its address within the city, and the expiration date of the license for which such city license fee has been paid. It shall be the duty of each such licensee to maintain such city receipt on display in a conspicuous place on the premises of the private club to which it relates.

3-304. Automatic revocation of city license when state license revoked. In the event that any private club license issued by the State of West Virginia, or any agency thereof, is revoked, then in such event, any license issued under this article shall be likewise revoked and shall be null and void, without the necessity of further proceedings hereunder, and the Town Recorder shall note the fact in his records. Nothing within this section shall be construed so as to restrict the town council from voting to suspend or revoke a license issued by the town. In the event the council votes to suspend or revoke such license, the licensee shall have the right to appeal such revocation or suspension to the Circuit Court of Braxton County. In the event of such appeal, the period of such suspension or revocation shall not be stayed except upon a vote of two thirds of the members of the town council.

(Section amended 1989)

CHAPTER FOUR

LICENSES AND BUSINESS TAXES

ARTICLE ONE

GENERAL BUSINESS LICENSE

4-101. Definitions. For the purposes of this chapter, the term "person" shall include any group or combination acting as a unit, individual, committee, guardian, trustee, executor, administrator, partnership, copartnership, joint adventure, association, trust, firm or corporation, either domestic or foreign, which is controlled or held with others by majority stock ownership or ultimately controlled or directed by one management or association of ultimate management.

4-102. General business tax levied. No person shall, without a general business license certificate, engage in or prosecute, within the Town of Sutton, any business, profession, calling, vocation, activity, or trade without first obtaining a business license from the Town of Sutton. The general business license tax levied shall be established based upon the standards and guidelines established by the West Virginia State Tax Commissioner for each location a person holds himself out to engage in or transact business therefrom.
(Section amended 1989)

4-103. Conditions precedent to doing business. Each of the following conditions shall be fulfilled precedent to the transaction of any business activity for which a town business license is required:

(a) Payment in full of the proper tax or fee as required by the town;

(b) Display or evidence of possession of a business franchise certificate or other form of license from the State of West Virginia authorizing said person to do business within the state;

(c) Display or evidence of possession of a business franchise certificate or other form of license from Braxton County, if such be required by the Braxton County Commission, authorizing said person to do business within the county;

(d) Issuance of a town license certificate;

(e) Fulfillment of all terms and conditions of such grant of license.

4-104. Application for and issuance of license; payment of tax and fees; Recorder to maintain records. (a) Each applicant for a town license shall make application to the Town Recorder on a form to be provided by the town, and display of state and county certificates shall be made at the time of application.

(b) Upon the payment of the license tax or fee as required in this article, the Town Recorder shall issue the license applied for; provided, that the application is in proper form and that all requirements of state law, this code, and other ordinances and all conditions precedent to the issuance of such license appear to the Town Recorder to have been complied with.

(c) The Town Recorder shall maintain on file all applications for town licenses and a record of each license issued, which shall set forth the name and business address of the licensee, the date of issuance and the term for which issued, the type of license, and such additional information as may be pertinent to establish that all requirements of law and ordinances have been complied with.

4-105. False statements prohibited. It shall be unlawful for any person to knowingly make any false statement in any application for a city license, or in any tax return, report or other statement relating to any activity licensed by the town and which is required to be made to any city officer or agency.

4-106. Separate license required for each fixed place of business and each class of business. Except as may be provided otherwise in this code or other ordinance, any person who, at more than one fixed place of business within the town, engages in or prosecutes any business activity for which a town license is required shall obtain a separate license and pay the prescribed tax or fee therefore for each such fixed place of business and for each such business activity.

4-107. License year; expiration date; annual renewal; minimum tax; proration of tax upon beginning business. (a) A license year shall begin on the first day of July of each calendar year and shall expire with the expiration of the next ensuing thirtieth day of June, and licenses shall expire at midnight on the last day of June subsequent to the date of issuance and shall be renewable annually, except such as may be provided otherwise by this code or other ordinance.

(b) The license tax or fee for an initial license upon the commencement of business shall be in proportion to the annual tax or fee as the duration of the license is to the license year; provided, that no license for any length of time shall be issued for less than two dollars.

4-108. Display of license. Each person to whom a city license has been issued shall keep such license conspicuously posted upon or within the premises to which such license relates. Each licensee having no fixed place of business shall carry his license upon his person at all times while engaging in the licensed business or any transaction incidental thereto, and shall display such license upon request of any person with whom he is transacting business or any law enforcement officer.

4-109. License does not legalize unlawful acts -- generally. Nothing in this article, and no payment for or issuance of any town license under the provision hereof, shall be deemed to legalize any act which otherwise may be in violation of law, or to exempt any person from any penalty prescribed for such violation.

4-110. Prosecution for violations; recourse of town to seek injunctions. If any person engages in or prosecutes any business, profession, calling, or vocation contrary to any of the provisions of this code, whether without first obtaining a town license therefor or by continuing the same after the termination of the effective period of such license, he shall be subject to immediate prosecution in the municipal court and, in addition, any elected official of the town may, in the name of the town, seek such injunctive relief as may be appropriate in any court of competent jurisdiction.
(Section amended 1989)

4-111. Penalties; collection by proceedings in court. Except as may be expressly provided otherwise by this code or by the code of the State of West Virginia, any person violating any provisions under this article shall, upon conviction thereof, be liable for a fine of not less than twenty nor more than one hundred dollars in addition to the prescribed license tax or fee.

The Town Recorder may collect any license tax, fee, or penalty unpaid under the provisions of this article by appropriate proceedings in any court of competent jurisdiction.
(See West Virginia Code §8-13-15.)

4-112. Suspension and revocation of licenses, and public hearings upon appeal from revocation. The Town Recorder, upon reasonable notice to the licensee, may summarily revoke any license issued by him pursuant to the provisions of this code for any reason which would have been grounds for denial of such license when first issued; for violation of any term or condition of such license; for violation of any pertinent provision of state law, this code, or other ordinance; or for the perpetration or attempted perpetration of fraud, malpractice, or malfeasance by the licensee; without prejudice to prosecution of such licensee by the town. Any person having an interest in any license so revoked and who feels aggrieved thereby may request the Town Recorder to further investigate the grounds for revocation and to reconsider his action, and if the Town Recorder accedes to such request he may suspend or reinstate the license pending his final decision. If the Town Recorder refuses to accede to such request, or if, upon reconsideration, he affirms his revocation of the license, the party so aggrieved may appeal to the Common Council, appear in person or by council, and may have the attendance of witnesses, books and papers in his behalf, and may testify in person. The decision of the Common Council following such hearing shall be final, subject only to such judicial review as may be provided by law.

ARTICLE TWO

BUSINESS AND OCCUPATION TAXES

4-201. Authority to levy business and occupation or privilege tax. Whenever any business or occupation, upon which the State of West Virginia imposes an annual business and occupation or privilege tax under the provisions of the state code, is engaged in or carried on within the corporate limits of the town, the council shall have plenary power and authority, unless prohibited by general law, to impose a similar business and occupation or privilege tax thereon for the use of the town: provided, that in no case shall the rate of such town business and occupation or privilege tax on a particular activity exceed the rate imposed by the state, exclusive of surtaxes, and the ordinance imposing such tax shall conform with the provisions of said state code as to the waiver of penalties.

Any taxes levied pursuant to the authority of this section may be made operative as of the first day of the then current fiscal year and each year thereafter.
(See West Virginia Code §8-13-5)

4-202. Confidential nature of returns; limitation on divulging information. All returns and tax statements made by taxpayers to town officers shall be regarded as confidential and, except in compliance with judicial order or as may be required by the proper administration hereof, the Town Recorder, his agents and employees, and former Town Recorders, agents and employees, shall not divulge facts or information obtained in the administration of this code.

4-203. Tax imposed on public service or utility business. Upon, any person engaging or continuing within the town in any public service or utility business, except railroad, railroad car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship, and motor vehicle carriers, there is hereby levied and shall be collected taxes on account of the business engaged in equal to the gross income of the business multiplied by the respective rates as follows:

(1) water companies, four per cent, except as to income from municipally owned water plants;

(2) electric light and power companies, four per cent on sales and demand charges for domestic purposes and commercial lighting, and three per cent on sales and demand charges for all other purposes, except as to income from municipally owned