

plants producing or purchasing electricity and distributing the same;

(3) natural gas companies, three per cent on the gross income for this purpose to be determined by deducting from gross income from all sales to consumers the amount of the tax paid by the taxpayers under Section 2A, Chapter 13, Article 11 of the West Virginia State Code;

(4) and upon all other public service or utility business, two percent. The measure of this tax shall not include gross income derived from commerce between this state and other states of the United States or between this town and other localities. The measure of the tax under this section shall include only gross income received from the supplying of public services. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed by the appropriate section or sections of this article. (See West Virginia Code §8-13-5a)

4-204. Exemptions. There shall be an exemption in every case of fifty dollars annually in the amount of tax computed under the provisions of this article. A person exercising a privilege or occupation taxable hereunder for a fractional part of a tax year shall be entitled to an exemption of the sum bearing the proportion of fifty dollars that the period of time the privilege or occupation is exercised bears to a whole year. Only one exemption shall be allowed to any one person, whether he exercised one or more privileges or occupations taxed hereunder.

4-205. Computation of tax; remittance. The taxes levied hereunder shall be due and payable in quarterly installments on or before the expiration of one month from the end of the quarter in which they accrue. The taxpayer shall, within one month from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, sign the same, and mail it together with a remittance of the amount of tax to the Recorder of the Town of Sutton. In estimating the amount of tax due for each quarter the taxpayer may deduct one-fourth of the total exemption allowed for the year. When the total tax for which any person is liable under this article does not exceed the sum of one hundred dollars in any year, the taxpayer may pay the same quarterly as aforesaid or, with the consent in writing of the Town Recorder, annually at the end of the month next following the close of the tax year.

4-206. Return and remittance by taxpayer. On or before the expiration of one month after the end of the tax year each

taxpayer shall make a return for the entire tax year showing the gross proceeds of sales or gross income of business, trade, or calling, and compute the amount of tax chargeable against him in accordance with the provisions of this article and deduct the amount of quarterly payments as herein provided, if any, and transmit with his report a remittance of the residue of the tax chargeable against him to the office of the Town Recorder; such return shall be signed by the taxpayer, if made by an individual, or by the president, vice-president, secretary, or treasurer of a corporation, if made on behalf of a corporation. If made on behalf of a partnership, joint adventure, association, trust, or any other group or combination acting as a unit, any individual delegated by such firm, copartnership, joint adventure, association, trust, or any other group or combination acting as a unit shall sign the return on behalf of the taxpayer. The Town Recorder, for good cause shown may extend the time for making the annual return on the application of any taxpayer and grant such reasonable additional time within which to make the same as may, by him, be deemed advisable.

4-207. Erroneous computation. If the taxpayer shall make any error in computing the tax assessable against him, the town recorder shall correct such error or reassess the proper amount of taxes, and notify the taxpayer of his action by mailing to him promptly a copy of the corrected assessment, and any additional tax for which such taxpayer may be liable shall be paid within ten days after the receipt of such statement.

If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be immediately refunded to the taxpayer upon the requisition of the Town Recorder and shall be payable out of any funds available for the purpose. The taxpayer may, at his election, apply an overpayment credit to taxes subsequently accruing hereunder.

4-208. Failure to make return; assessment by Town Recorder when return believed deficient. If any person shall fail or refuse to make a return, either in whole or in part, or if the Town Recorder has reasonable ground to believe that any return made is so deficient as not to form the basis of a satisfactory assessment of the tax, he may proceed as he deems best to obtain information on which to base the assessment of the tax. The Town Recorder may, with the consent of the council, request of the state Tax Commissioner of West Virginia permission to inspect and make copies of the State Gross Sales Tax Returns filed in the Commissioner's Office by any taxpayer of the town

for the purpose of securing information for municipal tax purposes and it is further provided that the necessary funds to pay reasonable costs and expenses to obtain the information required shall be paid by the town. As soon as possible after procuring such information as the Town Recorder may be able to obtain as to any person failing or refusing to make a return, he shall proceed to assess the tax and shall notify the person assessed of the amount of the tax. The assessment of the tax by the Town Recorder shall be final as to any person who refused to make a return.

4-209. Jeopardy assessments. If the Town Recorder believes that the collection of any tax which he is required to administer will be jeopardized by delay, he shall there upon make an assessment of the tax, noting that fact upon the assessment. The amount assessed shall be immediately due and payable. Unless the taxpayer against whom a jeopardy assessment is made petitions for reassessment within twenty days after service of notice of the jeopardy assessment, such an assessment becomes final.

A petitioner for reassessment by a person against whom a jeopardy assessment has been made must be accompanied by such security as the Town Recorder may deem necessary to ensure compliance with this article.

4-210. Notice of assessment; petition for reassessment; hearing. The Town Recorder shall, where the taxpayer has not been previously so notified, give to the taxpayer written notice of any assessment made pursuant to this article. Unless taxpayer against whom a notice of assessment is directed shall, within thirty days after receipt thereof (except in the case of jeopardy assessments), either personally or by certified mail, file with the Town Recorder petition in writing, verified under oath by said taxpayer or his duly appointed agent, having knowledge of the facts, setting forth with definiteness and particularity the items of the assessments objected to, together with the reason for such objections, such assessment shall become and be deemed conclusive and the amount thereof shall be payable at the end of the thirty-day period. In every case where a petition for reassessment as above described is filed, the council shall assign a time and place for the hearing thereof and shall notify the petitioner of such hearing by written notice at least twenty days in advance thereof and such hearing shall be held within sixty days from the filing of the petition for reassessment unless continued by agreement or by the town council for good cause. The hearing shall be informal

and may be conducted by an examiner designated by the council. At such hearing evidence may be offered to support the assessment or to prove that it is incorrect. After such hearing the council shall, within a reasonable time, give notice in writing of the decision. Unless an appeal is taken within thirty days from service of this notice, the council's decision shall be final.

4-211. Appeal; correction of assessment; injunction. If any person, having made the return and paid the tax as provided by this article, feels aggrieved by the assessment so made upon him for any year by the Town Recorder, he may apply to the town council by petition, in writing, within thirty days after notice is mailed to him by the Town Recorder, for a hearing and correction of the amount of the tax so assessed upon him by the Town Recorder, in which petition shall be set forth the reasons why such hearing should be granted and the amount of such tax should be reduced. The town council shall promptly consider such petition, and may grant such hearing or deny it. If denied, the petitioner shall be forthwith notified thereof; if granted, the council shall notify the petitioner of the time and place fixed for such hearing. After such hearing, the council may make such order in the matter as may appear to it just and lawful, and shall furnish a copy of such order to the petitioner. Any person improperly charged with any tax required to be paid by him may recover the amount so paid, together with interest, in any proper action or suit against the town as may be authorized by law.

4-212. Tax year. The assessment of taxes herein made and the returns required therefor shall be for the year ending on the thirty-first day of December. If the taxpayer, in exercising a privilege or occupation taxed under this article, keeps the books reflecting the same on a basis other than the calendar year, he may, with the consent of the Town Recorder, make his annual returns and pay taxes for the year covering his accounting period, as shown by the method used to pay the like tax to the State of West Virginia.

4-213. Tax cumulative. The tax imposed by this article shall be in addition together licenses and taxes levied by this code and other ordinances as a condition precedent to engaging in any business, trade or calling. A person exercising a privilege taxable under this article, subject to the payment of all licenses and charges which are a condition precedent to exercising the privilege taxed, may exercise the privilege for

the current tax year upon the condition that he shall pay the tax accruing under this article.

4-214. Payment; penalty for nonpayment. Every remittance of taxes imposed by this article shall be made by bank draft, certified check, money order, or certificate of deposit to the Town Recorder, who shall issue his receipt therefor to the taxpayer and pay the money into the town treasury to be kept and accounted for as provided by law.

If any taxpayer fails to make the return required by this article, or makes his return but fails to remit in whole or in part the proper amount of tax, there shall be added to the amount of tax unpaid, from the date such tax should have been paid, a penalty in the amount of five percent of the tax for the first month or fraction thereof of delinquency and one percent of the tax for each succeeding month or fraction thereof of delinquency; provided, that if such failure is due to reasonable cause, the Town Recorder or the council may waive or remit in whole or in part these penalties.

If the failure to pay is due to fraud or intent to evade this article and the rules and regulations promulgated thereunder, there shall be added an additional penalty of twenty-five percent of the amount of the tax exclusive of penalties.

The penalties so added shall be collected at the same time and in the same manner and as a part of the tax.

4-215. Lien of tax due and unpaid. A tax due and unpaid under this article shall be a debt to the town. It shall be a personal obligation of the taxpayer and shall be a lien upon the property of the taxpayer; provided, that no such tax lien shall be enforceable against a purchaser (including lien creditor) for valuable consideration without notice, unless docketed in the office of the County Clerk of Braxton County.

4-216. Enforcement of collection. The town may use any means for the collection of the taxes imposed by this article as are provided by law for the enforcement and collection of similar taxes of the State of West Virginia.

4-217. Payment when person sells out or quits business; lien liability of successor. Any person exercising any privilege taxable under this article who shall sell out his business or stock of goods, or shall cease doing business, shall file the

return prescribed by Section 4-206 of this article and remit the entire tax that may be chargeable against him because of all business done, within thirty days after selling out his business or stock of goods, or ceasing to do such business.

The successor in business of any such person shall withhold so much of the purchase money as will satisfy the taxes and penalty which may be due until the former owner shall produce a receipt from the Town Recorder evidencing the payment of such taxes and penalty. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and the taxes and penalty shall remain unpaid after expiration of the thirty day period allowed for payment thereof, he shall be personally liable for the payment of all such taxes and penalty, and the same shall be recoverable by the Town Recorder as provided by Section 4-208 of this article.

4-218. Recording of tax liens. The Town Recorder, for the more effective collection of the tax, may file with the Clerk of the Braxton County Commission a certified copy of an assessment of taxes under this article for recordation. Upon payment of the taxes delinquent under this article for recordation. Upon payment of the taxes delinquent under this article, the lien of which shall have been recorded, the Town Recorder shall certify in duplicate the fact and amount of payment and the balance due, if any, and shall forward the certificates, one to the taxpayer and one to the Clerk of the Braxton County Commission. From the date that such certificate is admitted to record the land of the taxpayer in the town shall be free from any lien for taxes under this article accrued to the date that the certificate was issued, if the tax be paid in full.

4-219. Collection by action or suit; injunction. The town may collect any tax, interest penalty due and unpaid under the provisions of this article by action in debt, assumpsit, motion for judgment, or other appropriate proceedings in the county in which (a) the activity taxed was engaged in or (b) the taxpayer resides; or by suit to enforce the lien therefor in a county in which any property of the taxpayer may be found; or the tax due and unpaid under this article may be recovered by suit in any court of competent jurisdiction. If the failure of any taxpayer to comply with the provisions of this article shall have continued sixty days, the town may proceed to obtain an injunction restraining the taxpayer from doing business in said town until he fully complies with the provisions of this article.

4-220. Offenses; penalties. It shall be unlawful for any person to refuse to make any return required to be made by this article; or to make any false or fraudulent return or false statement in any return, with intent to defraud the town or to evade the payment of the tax, or any part thereof, imposed by this article; or for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this article; or for the president, vice president, secretary, or treasurer of any corporation to make or permit to be made for any corporation or association any false return or any false statement in any return required by this article, with the intent to evade the payment of any tax hereunder. And person violating any of the provisions of this section shall, on conviction thereof, be fined not more than one thousand dollars or imprisoned not exceeding thirty days, or punished by both such fine and imprisonment, at the discretion of the court. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement with the intention aforesaid shall be guilty of the offense of false swearing and, on conviction thereof, shall be punished in the manner provided by law. Any corporation for which a false return, or a return containing a false statement, as aforesaid, shall be made, shall be punished by a fine of not more than one thousand dollars.

4-221. Authority of council to revoke city licenses as additional penalty. In addition to the penalties provided in Section 4-220 of this article, the failure of any taxpayer to make any required return or to pay the tax imposed upon him by this article, either or both, within five days following the prescribed date for the filing of such return or the payment of such tax, shall constitute good cause for the Common Council to revoke or to refuse to renew, either or both, the town license of such taxpayer to engage in the business taxed under this article, as well as any other town business license held by him or it.

ARTICLE THREE

MISCELLANEOUS BUSINESSES AND ACTIVITIES

4-301. Amusement tax. The town shall have plenary power authority to levy and collect an admission or amusement tax upon any public amusement or entertainment conducted within the corporate limits thereof for private profit or gain. The tax shall be levied upon the purchaser and added to and collected by the seller with the price of admission, or other charge for the amusement or entertainment. The tax shall not exceed two percent of the admission price or charge, but a tax of at least one cent per admission shall be levied and collected in any case.

Any ordinance imposing such tax shall contain reasonable rules and regulations governing the collection thereof by the seller and the method of his payment and accounting therefor to the town.

(See West Virginia Code §8-13-6)

4-302-1. Hotel/Motel Occupancy Tax. A City Hotel/Motel Tax shall be imposed by order of the Common Council duly entered of record. Such Tax shall be imposed uniformly throughout the Town of Sutton: on Hotels and Motels located within the corporated limits of said municipality situated, in whole or in part, within the City.

4-302-2. The tax shall be imposed on the consumer and shall be collected by the Hotel/Motel operator as part of the consideration paid for the occupancy of a Hotel/Motel room, Provided, that the tax shall not be imposed on any consumer occupying a Hotel/Motel room for Thirty or more consecutive days.

4-302-3. The rate of tax imposed shall be Three (3) percent of the consideration paid for th use or occupancy of a Hotel/Motel room. Such consideration shall not include the amount of tax imposed on the transaction under Article Fifteen, Chapter Eleven of the W.Va. Code, or charges for meals, valet services, room service, telephone service or other charges or consideration not paid for use of occupancy of a Hotel/Motel room.

4-302-4. Consideration means the amount received in money, credits, property or other consideration for or in exchange for right to occupy a Hotel/Motel room.

4-302-5. Hotel means any facility, building or buildings, publicly or privately owned (including a facility located in a state, county or municipal park), in which the public may, for a consideration, obtain sleeping accommodations. The term shall include, but not be limited to, boarding houses, hotels, motels, inns, courts, lodges, cabins and tourist homes. The term "Hotel" shall include state, county parks offering accommodations as herein set forth. The term "Hotel" shall not be construed to mean any Hospital, Sanitarium, extended Care Facility, or Nursing Home.

4-302-6. "Hotel room" means any room or suite of rooms or other facility affording sleeping accommodations to the general public situated within a hotel.

4-302-7. "State park" means any state-owned facility which is part of this state's park and recreation system established or to be established.

4-302-8. The consumer shall pay to the Hotel operator the amount of tax herein imposed. This tax shall be collectible as such by the hotel operator who shall account for, and remit to the taxing authority, all taxes paid by consumers. The hotel operator shall separately state the tax authorized by this order on all bills, invoices, accounts, books of account and records relating to consideration paid for occupancy, or use of a hotel room. The taxing authority's claim shall be enforceable against the moneys so commingled excepting only claims of the state for money held by the hotel.

4-302-9. A hotel or hotel operator shall not represent to the public in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax not to be considered an element in the price to be collected from the consumer.

4-302-10. No profit shall accrue to any person as a result of the collection of this tax.

4-302-11. Payment of this tax shall be due and payable in monthly installments on or before the Fifteenth day of the calendar month next succeeding the month in which the tax occurred; Provided, that credit sales in which the tax authorized by this article is not collected by the hotel operator at the time such sales, such tax shall not be regarded as having occurred until the date on which it is either received

by the hotel operator or upon expiration of the Thirty day payment period, whichever shall occur first. The hotel operator shall, on or before the Fifteenth day of each month, prepare and deliver to the taxing authority a return for the preceding month, in the form prescribed by the taxing authority.

4-302-12. Each hotel operator shall keep complete and accurate records of taxable sales and of charges, together with a record of the tax collected thereon, and shall keep all invoices and other pertinent documents in such for as the taxing authority may require for a period of not less than Three years unless consented to in writing by the taxing authority.

4-302-13. The tax authority shall devise administrative procedures for assessment, collection and refund of the tax authorized by this order. The Recorder shall be the City's agent for administration and collection of the tax and shall have the power to distrain property and to initiate civil suits for collection of this tax. The City Recorder shall have the power and duty to issue tax returns and to receive tax returns for this tax.

4-302-14. Proceeds of this tax collected and remitted to the taxing authority pursuant to this order shall be deposited into the general revenue fund of the Town of Sutton and after appropriation thereof shall be expended only as provided hereafter or outlined by the West Virginia State Code Section 7-18-14.

ARTICLE FOUR

PUBLIC UTILITIES EXCISE TAX

4-401. Authority to levy tax. The council shall have plenary power and authority, as provided by the laws of the State of West Virginia, to levy and collect an excise tax on the privilege of purchasing, using, or consuming, within the corporate limits of the town, public utility services and tangible personal property from public utilities subject to the jurisdiction of the Public Service Commission of West Virginia. (See West Virginia Code §8-13-5a)

4-402. Definitions. The following words and phrases when used in this article shall for the purposes of this article have the following respective meanings:

(1) "Public utility service" means all services and tangible personal property purchased within this municipality from a seller, as hereinafter defined; namely, telephone service, electric service, gas service including bottled or liquid gas if the seller thereof is classified as a public utility subject to the jurisdiction of the Public Service Commission of West Virginia, water service, and sanitary sewer service, if purchased, used, or consumed within the corporate limits of this municipality or any other type of government be privately owned or owned by a municipality or any other type of government entity;

(2) "Purchaser" included every person who purchases, uses, or consumes a public utility service;

(3) "Seller" includes every person, whether a public service corporation, a municipality or other government entity, or a private corporation, classified as a public utility and subject to the jurisdiction of the Public Service commission of West Virginia, who sells, furnishes, or supplies a public utility service;

(4) "User" means the owner or tenant of private residential property or the owner or tenant of property used for commercial or industrial purposes, and every combination thereof, of every kind or description.

4-403. Imposition and levying of tax; rate of tax. There is hereby imposed and levied upon each and every purchaser of a public utility service an excise tax upon the privilege of purchasing, using, or consuming, within the corporate limits of this municipality, such public utility service. Such tax shall be in the amount of two percent of the charge (exclusive of any

federal or state tax thereon imposed upon the purchaser) made by the seller against the purchaser with respect to each public utility service. The tax imposed and levied by this article is in addition to all other taxes imposed and levied by this municipality.

In the event the amount of the charge for any single public utility service exceeds the sum of twenty thousand dollars in any given calendar month to any single purchaser, no tax shall be imposed for such additional purchase, use, or consumption in excess of said amount of twenty thousand dollars. In the event more than one public utility shall furnish the identical public utility service to the same purchaser, said purchaser shall be entitled to group the same as a single public utility service in calculating the amount of the charges in any calendar month for such public utility service.

4-404. Exemptions. The tax hereby imposed and levied shall not apply to the following transactions, which transactions are hereby exempted from such tax:

- (1) Purchases of public utility service for resale;
- (2) Purchases of public utility service by the United States of America, the State of West Virginia, and the political subdivisions, municipalities, boards, commissions, authorities, and public corporations thereof;
- (3) Purchases of tangible personal property such as appliances or the like, as distinguished from the public service supplied;
- (4) Charges for telephone services which are paid by the insertion of coins into coin-operated telephones, and specific charges or tolls for telephone calls to points outside the limits of this municipality;
- (5) Nonrecurring or one-time charges incidental to the furnishing of public utility service.

4-405. Collection and payment of taxes. Said tax shall in every case be collected by the seller and paid by the purchaser upon the amount of each periodic statement rendered such purchaser by the seller, and shall be paid by the purchaser to the seller at the time the purchase price or such charge shall become due and payable under the agreement between the purchaser and the seller. It shall be the duty of every seller in acting as the tax collecting medium or agency for this municipality to collect the said excise tax at the time of collecting the purchaser price charged for its public utility service. The taxes levied hereunder shall be due and payable to the town in quarterly installments on or before the expiration of one month

from the end of the quarter in which they accrue. The seller shall, within one month from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter on a form to be prescribed by the Town Recorder, sign the same, and mail the same together with a remittance of the amount of the tax to the Recorder of the Town of Sutton.

In estimating the amount of tax due for each quarter the seller may deduct one-fourth of the total exemption allowed for the year. When the total tax for which any person is liable under this article does not exceed the sum of one hundred dollars in any tax year, the seller may pay the same quarterly as aforesaid or with the consent in writing of the Recorder of the Town of Sutton, annually at the end of the month next following the close of the tax year.

4-406. Records, inspection thereof. Each and every seller shall keep and maintain complete records showing all purchases of public utility service within the corporate limits of this municipality which records shall show the charge made against each purchaser, the dates such public utility service was furnished, the date of payment therefor, and the amount of tax imposed hereunder, and such records shall be kept open for inspection by the duly authorized agents of this municipality at reasonable times, and the duly authorized agents of this municipality shall have the right, power and authority to make at the expense of the town such transcripts thereof during such times as they may desire.

4-407. Non-liability of utility for errors; duty of municipality; refunds; use of tax funds. There shall be no liability upon the seller for erroneously collecting the tax hereby impose and levied or for erroneously failing to bill for such tax as a result of a good faith mistake on the part of the seller. When any purchaser contends that such tax is not owed by such purchaser on the ground that the public utility service was not purchased, used, or consumed within the corporate limits of this municipality, the seller shall refer the question to the common council and such seller shall thereafter collect or refrain from collecting such tax from such purchaser for such public utility service as instructed in writing to do by the Town Recorder upon the decision of the council. Any and all claims for refunds of any such tax shall be presented to this municipality and not to the seller.

The council shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the

administration and enforcement of this article. Said tax funds so collected shall be used and expended solely for providing a maintaining the police and fire protection services of the Town of Sutton.

4-408. Enforcement provisions; penalties. Any amount of tax due and unpaid under the provisions of this article shall be a debt due this municipality. It shall be a personal obligation of the purchaser which shall be enforceable as provided in the applicable sections of the Code of the State of West Virginia, or in any other manner now or hereafter provided by law for compelling the payment of taxes due municipalities.

Any purchaser failing or refusing to pay the tax hereby imposed and levied and any seller or purchaser violating any of the provisions hereof or any lawful rule and regulation promulgated hereunder shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars for each such offense. The failure or refusal to pay the tax for public utility service purchased, used, or consumed during different periodic statement periods shall constitute a separate and distinct offense for each period.

CHAPTER FIVE

BUILDING AND BUILDING PERMITS; CLAIMS AND OFFENSES

ARTICLE ONE

IN GENERAL

5-101. Building into street. No house, store room, shop, stable, porch, veranda, fence, or any other building or structure, shall hereafter be erected upon or over, or extend into, upon, or over, any street, alley, sidewalk, or public grounds of said town; and any person who shall erect or construct, or cause to be erected or constructed, anything in violation of this section shall be fined not more than one hundred dollars and shall be subject to a further fine of fifty dollars for every twenty-four hours that such house, store room, shop, stable, porch, veranda, fence, or any other building or structure, shall remain after having been notified to remove the same; and the council shall have authority to take proper legal action to cause the same to be removed at the expense of the offender.

(See West Virginia Code §8-12-5(1))

5-102. Cellar entrances prohibited on street. It shall be unlawful hereafter to construct, or cause to be constructed, any dwelling house, store room, or building of any kind, in such manner as to require any portion of a public street or alley or sidewalk for any cellar door, cellar entrance, or steps. It shall be unlawful to construct or cause to be constructed, or attempt to construct, any such cellar door, cellar entrance, or steps to any such building hereafter erected. Any person who shall violate any provision of this section shall be fined, upon conviction, not more than one hundred dollars; and a further fine of ten dollars shall be imposed for every twenty-four hours that such cellar door, cellar entrance, or steps shall be permitted to remain after notice to remove or close up the same; and the council shall have authority to take proper legal action to cause the tearing down, removal, or filling up thereof.

5-103. Building permit required. It shall be unlawful for person to hereafter build or construct within the corporate of said town any dwelling house, stable, warehouse, or any annex, or any other structure, until such person shall present to the council at a regular meeting thereof an application in writing, setting forth the name of such person and a reasonably certain

description of the location, size, kind, general plan, and the materials generally to be used in the building or construction of the structure proposed to be built or constructed by such person. Council shall consider and act upon such request within a reasonable time and without undue delay, and if the council find any objection to such request or any portion thereof, it shall take appropriate action to cause the applicant to appear before the council at its next regular meeting for the purpose of discussing and, if possible, correcting any objectionable matter contained within said application. No such building or construction shall be made until the council shall have passed and entered upon its records an order setting forth the name of such person and a reasonably certain description of the location, size, kind, general plan, and the materials to be used in the building or construction of the building proposed, and providing such regulations and requirements in relation to the building and construction of the same as may appear to be necessary or proper in order to guard against danger or damage by fire, or to prevent injury or annoyance to the public or to protect the property of the citizens of the town, or to provide for the regular building of such buildings.
(See West Virginia Code §8-12-13, 8-12-14)

5-104. Unlawful to permit construction in violation of Section 5-103. It shall be unlawful for any person knowingly to permit any building, such as is mentioned in the preceding section, to be built or constructed in violation of the provisions of said section on any premises owned or controlled by such person.

5-105. Unlawful to fail to comply with permit. It shall be unlawful for any person hereafter building or constructing any such buildings as is mentioned in Section 5-103 of this article to refuse or fail to comply with the provisions of the order of the council passed pursuant to said section in relation to such building.

5-106. Authority to stop construction. In all cases where the provisions of this article are being violated, the Mayor of said town shall have power to stop the work of building or of construction until the matter can be brought before the council or until an order shall be passed by said council under the provisions of Section 5-103 of this article, granting permission for same.

5-107. Violations and penalties. Any person violating Section 5-103 or Section 5-104 or Section 5-105 of this article shall, upon conviction thereof, be fined not exceeding one hundred

dollars, and each day that such person shall perform any work, or cause the same to be performed by others, or knowingly permit such work to be done, or continue to fail or refuse to comply with said order, shall constitute a separate violation of the appropriate section or sections by such person.

5-108. Authority for zoning ordinances. The council shall have authority at any time to pass zoning ordinances regulating the construction of any type of building within the corporate limits of the town. They may, at their pleasure, grant a permit for building or constructing any wood frame building within any portion of the business section of the town providing that the same shall not constitute a fire hazard to nearby or adjacent property nor increase the fire insurance rate for any adjacent or nearby building.

5-109. House trailers. It shall be unlawful for any person to park, locate, or occupy any house trailer or portable building unless it complies with all plumbing, electrical, sanitary and building provisions applicable to stationary structures and the proposed location conforms to the provisions of this code.

5-110. Liability of violator for abatement of nuisances, etc. Any person violating any provision of this article shall, in addition to the imposition of any fine or imprisonment which may be adjudged by reason of such violation, be liable to the town for any costs or expenses incurred by reason of such violation or by reason of abatement of any nuisance or hazard thereby created or by reason of rectifying any condition on any premises found to be in violation of this article. Any liability so incurred shall be enforceable by the council by appropriate legal action against the violator.

CHAPTER SIX

PUBLIC STREETS, THOROUGHFARES, AND SEWERS

ARTICLE ONE

IN GENERAL

6-101. Obstructions on streets and thoroughfares; penalties. If any person shall dig into, or fence, or obstruct, or cause to be obstructed, any street, alley, sidewalk, crossing, gutter, drain or highway within said town without special permission of council, except in cases of emergencies by special permission of the Mayor, or by permission of the Street Commissioner for the purpose of making connection with a sewer as provided by Section 2-712 of this code, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars. Every day said obstruction shall be suffered to remain by said person creating the same, or by the parent or guardian of any such minor child after such parent or guardian shall have been notified thereof, shall constitute a separate offense and a further fine of not more than one hundred dollars may be imposed for each and every separate offense; provided, that any person loading or unloading any goods, wares, merchandise, provisions, produce or fuel shall have reasonable time to remove the unavoidable obstructions occasioned thereby. (See West Virginia Code §8-12-5(1), (2), (3))

6-102. Removal of obstructions by the town. The Street Commissioner is hereby authorized where any such obstructions exist to have the same removed, either by filling up, unfencing, or clearing away as the nature of the obstruction may require, and for this purpose may employ such aid as may be reasonable, at the expense of the town; and the person causing any of the obstructions by this code prohibited, or willfully permitting them to remain longer than a reasonable time when the same have been caused by any minor aforesaid, after notice of the same, shall be liable to pay the town such sum as it shall have paid, or become liable to pay, for the removal of such obstruction.

6-103. Cuts and excavations for utilities. Any person or incorporated company, having first obtained permission therefor from the council, or as otherwise provided by Section 6-101 of this article, may make cuts and excavations in any public street, alley, or road of the town, for the purpose of laying gas, water mains, or sewers, or for the purpose of repairing the

same; but such cuts and excavations shall be filled and repaired by said person or company and any street, gutter or sidewalk injured by such work and not repaired within a reasonable time shall be repaired by the town under the direction and supervision of the Street Commissioner, or such other person appointed therefor by the council, and the costs of filling such cuts and excavations and making such repairs shall be assessed against the person or corporation or company making such cuts, excavations, or repairs. Any person or incorporated company failing or neglecting to comply with any provision of this section shall be fined, upon conviction thereof, not more than one hundred dollars.

6-104. Putrid substances left in streets or streams, penalties. No person shall cast or leave exposed in any street, alley, lot, common, or on the bank of any stream, or into the river or any creek or drain, within the corporate limits of the town, the dead carcass of any animal or any putrid or unsound beef, pork, or fish, or any other putrid or unsound substance that may become prejudicial to the public health or comfort. For every such offense, the offender, upon conviction thereof, shall be fined not to exceed five hundred dollars.

6-105. Littering, penalties. If any person shall cast, place, deposit, dump or throw, or cause to be cast, placed, deposited, dumped or thrown, any earth, brick, stone, manure, filth, ashes, lime, mortar, shavings, junk, paper, rubbish, or any other thing offensive in nature, or which may dangerously affect the health or safety of the public, on any square, street, alley, or road, or shall permit the same to remain upon his own premises after having been notified by the Mayor, Chief of Police, or Street Commissioner to remove the same, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars, and such nuisance may be abated at the expense of the person creating the same.
(See West Virginia Code §20-7-26, Section amended 1989)

6-106. Vehicles blocking thoroughfares; penalties. If any person shall intentionally stop any horse, wagon, cart, dray, carriage, or any vehicle, motor driven or otherwise, on any street, road, alley, public ground, sidewalk or crosswalk within the town, or suffer the same to remain thereon when not in use, and shall thereby obstruct the free passage of pedestrians or any vehicular traffic, he shall be guilty of a misdemeanor and shall, upon conviction, pay a fine of not more than one hundred dollars for each offense, and each day such obstruction shall remain thereon shall constitute a separate offense.

6-107. Erecting posts on thoroughfares. If any person erect upon any of the streets, alleys, gutters, or sidewalks of said town a horse-rack, hitching post, sign or sign post, or anything of the kind for the purpose named or for any other purpose, without the consent of the council, he shall be fined not to exceed one hundred dollars.

6-108. Abandoned or junked motor vehicles, penalties. No person shall, within the corporate limits of the Town of Sutton, abandon any motor vehicle or place or deposit any junked motor vehicle or any major part thereof upon the right-of-way of any road, street, alley, or sidewalk, or upon any other public property, or upon any private property which he does not own, lease, rent, or otherwise control unless it be at a licensed salvage yard or at the business establishment of a demolisher. When and if the council has determined that such vehicle has been so abandoned and desires the same to be removed from the place where found, the council shall give notice in writing to the owner of such vehicle to remove the same from such place within ten days after and upon receipt of such notice, and upon failure to do so, council may order such vehicle removed at the expense of the owner thereof, and in addition thereto such owner shall be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one hundred dollars.

ARTICLE TWO

ROADS, STREETS, AND ALLEYS

6-201. Street names. The streets and alleys of the town shall be known by the names by which they are now designated on the plans and plats of the town, until the same shall be changed by ordinance.

(See West Virginia Code §8-12-5(4), (5), (6))

6-202. Water in the streets. No person shall be permitted to turn water or to knowingly allow water to flow directly into any street or alley of said town in such quantity or in such manner that it shall become a nuisance; on conviction of every such offense said person shall be fined not more than one hundred dollars and costs; and every day such nuisance is continued shall constitute a separate offense.

6-203. Merchandise in street. No person shall set or place any goods, wares, merchandise or other thing, by way of exposing the same for sale, in any street or alley or on the sidewalk of any such street or alley without special permission from the council, and in no case shall such goods or wares be placed so as to project more than thirty inches from the property line into the street. If any person shall violate the provisions of this section, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars.

6-204. Building materials set on street. It shall be lawful for any person in building or repairing any business or residential building to occupy as much space of any sidewalk, street, or alley adjacent to said building as is reasonably necessary, but in no case more than is authorized by the building or improvement permit, with the materials necessarily used in making such building or repairs or for the safety of the public, for such time as is specified in said permit. If any person so occupy said area for a longer time he shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than one hundred dollars for every day such occupancy shall continue; provided, however, that if the council shall deem it expedient it may grant a longer time for the use of the part of the sidewalk, street, or alley as aforesaid.

6-205. Loaded wagons to be secured. The owner of every cart, wagon, carriage, or vehicle, motor driven or otherwise, employed in carrying or removing any sand, dirt, gravel, loam, filth,

earth, manure, stone, brick, mortar, or coal or any other substance over any of the streets, roads, alleys of the town shall have and keep the same in such tight and secure condition that the material or thing being carried shall not be scattered or suffered to fall on any of the streets, roads, or alleys of the town. Any person violating the provisions of this section shall, upon conviction, be fined not more than one hundred dollars for every such offense.

6-206. Damage to street. If any person drive any vehicle, motor driven or otherwise, or drag logs, heavy timber, or any other thing upon or over any of the roads, streets, or alleys of the town which, because of the nature thereof, is likely to damage such roads, streets, or alleys, he shall be fined not more than one hundred dollars.

6-207. Street paving. Upon the petition, in writing, of the persons owning the greater amount of frontage of the lots abutting on both sides of any street or alley, between any two cross streets or between a cross street and an alley, the council, by a lawful majority thereof, may order such part of any street or alley to be paved or repaved between the sidewalks with concrete, brick, Belgian blocks, asphaltum, or any other suitable material, from one of such cross streets to the other, under such regulations as may be fixed by order duly passed by the council. In the event that a foreign railway or other foreign corporation is the owner of property abutting upon such street or alley, notice shall be given to such corporation in manner provided by the statutes of the State of West Virginia before the enactment of any order or resolution relating to such work or improvement or declaring the necessity or purpose thereof, which said notice shall set forth substantially the nature of the work to be proposed, the extent thereof, its location, and the manner of paying for the same, and no order or resolution shall be binding upon any such railway or other foreign corporation unless such notice shall have been so given. Two-thirds of the cost of such paving or repaving shall be assessed to the owners of the lots or fractional parts of lots abutting on the part of the street or alley so paved, and the remaining one-third of the cost of such paving or repaving shall be paid by the town. In making such assessments, the basis shall be said two-thirds cost of paving or repaving that part of the street or alley on which the property lies included between the adjoining cross streets or alleys; and the proportion of said basis to be assessed against the owner of each such lot or fractional part of a lot shall be the proportion which the frontage of such lot or part of a lot bears to the whole length

of paving or repaving such street or alley between such cross streets or alleys aforesaid.

6-208. Violations and penalties. Any person violating any of the provisions and sections of this article for which a penalty is not provided therein shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than one hundred dollars for each such offense.

6-209. Closure or abandonment or unused streets or alleys. The town council is hereby authorized to close, abandon or surrender to the adjacent property owners any real estate previously designated for use as a road, street or alley within the town and not then being used as such according to the terms of the ordinance passed by the council April 10, 1986, designed and intended to empower the council to perform the said function. (Section Added 1989)

ARTICLE THREE

SIDEWALKS, WALKWAYS, AND GUTTERS; VIOLATIONS AND PENALTIES

6-301. Property owner to keep sidewalk clean. It shall be the duty of the owner of any sidewalk or gutter in the town, or of the owner or occupant of the real property next adjacent thereto, to keep the same clean and free from obstruction; and upon receiving notice from the street Commissioner to do so, such owner or occupant shall, within twenty-four hours thereafter, remove any and every such obstruction mentioned in preceding sections of this code as may be found lying between the center of the street or alley and the front line of such real property; and if the owner of such real property shall not be a resident of the town, such notice may be given to the agent of such owner or the occupant of said real property.

If, upon receiving the said notice, such owner or occupier shall not, within twenty-four hours thereafter, remove or cause to be removed every such obstruction therein required, it shall be the duty of the council to take proper legal action to cause said property owner to remove such obstruction.
(See West Virginia Code §8-12-4(4), (5))

6-302. Enclosing sidewalk for building or repairs. It shall be lawful for any person employed in building or repairing any residential or business building to enclose the front part hereof, provided the enclosure does not project more than four feet on the foot way, or remain longer than the time specified on the building or improvement permit authorized by council. Any person offending against the provisions of this section shall be fined not more than one hundred dollars.

6-303. Measurements of sidewalk. The sidewalks on any street or alley shall be of such width as may be prescribed by the council. All curb stones used for securing pavements on the sidewalks shall be at least three feet long, at least five inches thick, and at least twenty inches deep, unless for good and sufficient reasons the council shall otherwise order at the time, and the said curb stones shall be so set as to show at least six inches above the ground on the side next to the street or alley; but in all cases where practicable, a properly constructed concrete curb may be used with the consent of council.

6-304. Materials to be used for sidewalk. The pavements of the sidewalks shall be of a uniform grade with the street or alley,

and shall rise from the curbstone or water table at an angle of one-quarter inch in every foot in width thereof. They shall be constructed of good hard brick, well fitted, or of concrete, and shall be of the full width of the sidewalk unless otherwise permitted by council.

6-305. Paving sidewalks, records to be kept. Whenever the council shall require the owner of any sidewalk, or the owner or occupier of any real property next adjacent thereto, to pave such sidewalk, the council shall cause an order to be entered in the minute book and a copy thereof served upon such owner or his agent or the occupant of such property, requiring him to pave the sidewalk in the manner prescribed by this code within twenty days after the service of such copy.

6-306. Assessment for paving. Whenever the owner of any sidewalk, or of the real property next adjacent thereto, shall fail or refuse to pave the same in front of said property in the manner and within the time required by the council, it shall be the duty of the Street Commissioner to cause the said sidewalk to be paved upon the most reasonable terms and to furnish and file with the Recorder of the town a correct account containing a statement of the expenses incurred. Thereupon it shall be the duty of the council to assess the amount of such expense upon the owner or occupant of such property, and require the same to be collected by the Chief of Police in the manner required by law for the collection of town taxes, or the same may be collected by a civil proceedings against the owner of such property.

6-307. Repair of sidewalks. Whenever in the opinion of the council the pavement of any sidewalk shall need any necessary repairs, the council shall give at least fifteen days notice to the owner of the real property next adjacent thereto or to his agent to make or cause to be made such repairs, and if the said owner or his agent shall not make the required repairs within the time limited in said notice, it shall be the duty of the council to take proper legal action to cause said property owner to make such repairs.

6-308. Cleaning of sidewalks. Whenever in the opinion of the council, or of the Mayor or Street Commissioner, the pavement of any sidewalk shall need cleaning, the said commissioner shall give to the owner or occupant of the real property next adjacent thereto at least twenty-four hours notice requiring such sidewalk to be cleaned; and if the owner or occupant of such property shall not clean such pavement within the time

prescribed in said notice, it shall be the duty of the council to take proper legal action to cause said owner to clean said sidewalk; provided that, if the condition of said sidewalk requiring cleaning shall constitute a hazard to the health or safety of the public, the Street Commissioner, on the instruction of the Mayor or council, shall take such immediate action as needed to remove said public hazard.

6-309. Construction of driveways. Any person desiring a driveway across the sidewalk into his premises shall first obtain a permit for such from the council; the application for permit, and the permit if granted, shall specify the location of said driveway in relation to the frontage of the lot where located, the manner and materials for construction of said driveway, and the time during which the sidewalk may be blocked for said construction. Such person shall cause that portion of said driveway which passes over or through the sidewalk to be paved with the same type of paving as the remainder of the sidewalk and shall further, when required by council, replace the curb stone that may be injured or destroyed by the use or construction of such driveway. If any person shall violate the provisions of this section, he shall, upon conviction, be fined not more than one hundred dollars for each violation.

6-310. Riding or driving on sidewalk. If any person shall ride upon any sidewalk of the town, or shall drive or back any vehicle or wagon upon any sidewalk when the same is liable to damage or injure said sidewalk, without having first fully covered with boards the part of such sidewalk over which he so rides, so drives, or so backs such wagon or vehicle, so as to fully protect the same, he shall be fined, upon conviction, not more than one hundred dollars.

6-311. Planting of trees. No person shall plant any tree at any distance closer than six feet from the nearest right-of-way line of any highway, street, or alley in the town. If any person shall violate the provisions of this section, he shall, upon conviction, be fined not more than one hundred dollars and council shall take such legal action as required to cause such trees to be removed.

6-312. Backing over sidewalks. If any person shall carelessly back any wagon or other vehicle against any sidewalk or curb, or carelessly drive such wagon or other vehicle against the same, so as to injure, break down, destroy or do any damage to the same, he shall be liable for the cost of repair of the same, and

in addition shall be fined not more than one hundred dollars for each separate offense.

6-313. Violations and penalties. Any person violating any of the provisions and sections of this article for which a penalty is not provided therein shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one hundred dollars for each offense.

ARTICLE FOUR

SEWERS

6-401. When sanitary sewage disposal facilities are required. Any building or structure wherein people live, are employed, or congregate must be equipped with such sanitary facilities for sewage disposal as are prescribed by this article.
(See West Virginia Code §8-12-5(6), (7), (8), (23), (32), (33))

6-402. Responsibility for installation and maintenance of facilities. The owner of any property required by this article to have sanitary facilities for sewage disposal shall be responsible for the proper installation of such facilities. The occupant or person having immediate use and control of such property shall be responsible for maintaining the facilities in a sanitary and usable condition unless by contractual arrangement between the parties the owner expressly agrees to retain such responsibility.

6-403. When a connection to the sanitary sewer is required. Any building or structure within the meaning of Section 6-401 and located on land which abuts upon a street or other public way containing a sanitary sewer must be equipped with sanitary sewage disposal facilities connected to such sanitary sewer.

6-404. When a septic tank is required. Other such buildings and structures within the fire limits but not located on land abutting on a street or other public way containing a sanitary sewer must be equipped with sanitary sewage disposal facilities connected to a septic tank approved by the county health officer.

6-405. Use of other than prescribed facilities prohibited. Where this article requires a particular type of sewage disposal facility the use of any other type, or disposal by any other means, is hereby expressly prohibited unless approved by the county health officer and not inconsistent with the laws of the State of West Virginia.

6-406. Stoppage of sewers. If any person shall willfully stop or obstruct the passage of water or sewage into or through any common sewer or storm drain, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars.

6-407. Sewer connections. Every person owning or occupying private property within the town or any other person who shall hereafter make connection for the purpose of drainage with any sewer in or upon any road, street, or alley of the town, or cause the same to be done, shall first apply to the council for a permit and pay the appropriate fee, if any, as determined by proper order of council. Said connection shall be made in the manner approved by, and under the supervision of, the Street Commissioner as authorized by and stated in such permit. If any person shall make or cause to be made such sewer connection except by complying with and in the manner provided by this section, he shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars for each offense, and each day that such connection is continued shall constitute a separate offense under this section.

6-408. Damage to public sewers, repairs. In the event of damage to any public sewer, or any other condition requiring repairs to be made, the owner or occupant of the real property immediately affected by said damage or repairs shall first notify the council so that inspection of the condition may be made. If said condition shall constitute an emergency, notification may be made to the Mayor or the chairman of the committee of roads, streets and alleys. No repairs or any other action shall be made upon the sewers without prior notification of the council or the appropriate town official. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than one hundred dollars.

6-409. Broken lines to be repaired, penalties. No person shall permit or suffer waste water or sewage to escape from a sewer line or septic tank on his premises, whether the same remains on his premises alone or flows onto the property or another or in or onto any public road, street, or alley. When the owner or occupant of such property discovers such situation or is made aware thereof by any citizen or officer of the town, he shall within seventy-two hours of such notification take proper action to correct said offensive condition. If said owner or occupant shall fail to initiate and continue the necessary corrective action, he shall be guilty of a misdemeanor and shall, upon conviction, be fined not less than ten nor more than fifty dollars for each offense; and, after the initial seventy-two hours following notification, each subsequent twenty-four hour period shall constitute a separate offense.

6-410. Violations and penalties. Any person violating any of the provisions and sections of this article for which a penalty is not provided therein shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars for each offense.

CHAPTER SEVEN

FIRE PROTECTION AND EMERGENCY VEHICLES

ARTICLE ONE

GENERAL PROVISIONS

7-101. Volunteer fire departments; recognition and authority. Inasmuch as there is currently existing in the Town of Sutton a volunteer fire department known as the Sutton Volunteer Fire Department which is duly incorporated and properly functioning, the Town of Sutton hereby recognizes that the said Sutton Volunteer Fire Department does provide competent and sufficient protection for persons and property against fire, natural disaster, and other emergency or hazardous conditions within the corporate limits of the town. Therefore, the town hereby confers upon the Chief Marshall, Assistant Marshall, and all other duly elected service officers of the Sutton Volunteer Fire Department all the powers, rights, and privileges as are necessary and customary to ensure that said protection is promptly and efficiently provided in all such instances. Said powers, rights, and privileges may also be conferred upon the duly elected service officers of any other properly organized and functioning volunteer fire department which is shown to provide such protection within the corporate limits, at the discretion of the council.

7-102. Responsibility of the town in the absence of a volunteer fire department. In the event that the existing volunteer fire department shall be dissolved or shall otherwise cease to function effectively for any reason, or if there be no volunteer fire department within the corporate limits of the town, it shall be the duty of the council to take any and all action necessary to provide such protection to the persons and property within the town. Said action may consist of financial aid or other assistance to the formation of a volunteer fire department, or the formation of a city fire department, or whatever other measures may be deemed feasible and proper, at the discretion of the council.

7-103. Duties of police officers in case of fire or other emergency. It shall be the duty of the police officer on duty at the time, and of any other police officer who may be in the vicinity of any fire or other emergency, to render such assistance as the Chief Marshall or other duly constituted fire

officer may require in directing traffic, arranging fire or emergency vehicles and equipment, helping to combat said fire or other emergency, and in preserving order and protecting persons and property.

7-104. Reporting of fire hazards. If at any time it shall come to the attention of the council that any building or other structure shall constitute a danger to the public safety by reason of fire hazard, it shall be the duty of the council to report the same to the State Fire Marshall promptly and without delay.

7-105. Repair and maintenance of fire hydrants. Upon the recommendation of the Sutton Volunteer Fire Department and the Committee on Police and Fire Protection, the council shall take under consideration the repair, improvement, replacement, or installation of fire plugs or hydrants as may be deemed necessary to provide effective fire protection within the town.

7-106. Failure of officers to perform required duties; penalties. If any of the afore-named officers shall fail to perform any duty required of him by this article, or shall violate any of its provisions, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars for each neglect or violation; provided, however, that this section shall not apply to members of the Sutton Volunteer Fire Department nor their officers as mentioned in Section 7-101 of this article.

7-107. Obstructing or hindering officers; penalties. If any person shall willfully obstruct or hinder the Chief Marshall, any member of the fire department, or any officer of the town assisting said fire department, in the performance of his duty at any fire or other emergency or in going to any such fire or other emergency, such person shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than one hundred dollars, or imprisonment, in the discretion of the court.

7-108. Obstructing fire hydrants; penalties. If any person shall obstruct any fire plug or hydrant, or prevent or delay access thereto by placing or leaving any boxes, goods, materials, or other obstructions on any street or alley within ten feet of such fire hydrant, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars for each instance.

7-109. Right-of-way of emergency vehicles; penalties. The driver of an authorized emergency vehicle, as defined in this code, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

The driver of an authorized emergency vehicle may: (1) Park or stand, irrespective of the provisions of Chapter Ten of this code; (2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation; (3) Exceed the speed limits so long as he does not endanger life or property; (4) Disregard regulations governing direction of movement of turning in specified directions.

The exemptions herein granted to an authorized emergency vehicle shall apply only when the driver of any said vehicle while in motion sounds audible signal by bell, siren, or exhaust whistle as may be reasonably necessary, and when the vehicle is equipped with at least one lighted flashing lamp as authorized by the laws of the State of West Virginia. The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

If any person fail or refuse to yield right-of-way to any such authorized emergency vehicle as provided in this section and Section 309 of Chapter 10 of this code, he shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than one hundred dollars for each such instance.

7-110. Gasoline trucks, penalties. No person shall operate or park any tank truck containing gasoline or other flammable liquid within the central business district or within any residential area at any time except for the purpose of and while actually engaged in the expeditious delivery of said gasoline or other liquid. Any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars; and payment of said fine shall not be held to prevent the enforced removal of such tank truck under the direction of a police or fire official.

7-111. False emergency alarms; penalties. It shall be unlawful for any person to intentionally make, turn in, or give a false alarm of fire, explosion or impending danger of explosion, or of need for police or ambulance assistance, or to aid or abet in the commission of such an act. Any person who violates the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than one hundred dollars for each such offense.

7-112. Damage or removal of equipment, penalties. It shall be unlawful for any person to damage, remove, or aid in impairment or removal from any building or vehicle containing the same, any part of the apparatus, machine, tools, or equipment kept for the purpose of extinguishing fires, whether the same be in the possession of or belonging to any volunteer fire department within the town, or in the possession of or belonging to the town, unless he be authorized so to do. Any person violating this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than five nor more than one hundred dollars and may in the discretion of the court be imprisoned not more than thirty days in addition to such fine.

CHAPTER EIGHT

HEALTH, SANITATION AND SAFETY

ARTICLE ONE

REFUSE

8-101. Definitions. For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section.

(a) "Refuse" shall mean and include garbage, rubbish, trash, and refuse as those terms are generally defined except that dead animals and fowls, body wastes, hot ashes, rocks, concrete, bricks, and similar materials are expressly excluded therefrom and shall not be stored therewith.

(b) "Approved Container" shall mean a metal or plastic container, which is portable, watertight, equipped with handles and a lid, and has a capacity of not less than ten gallons nor more than 96 gallons (if equipped with wheels), which when full, shall not have a total combined weight of contents and container of more than 75 pounds.

(c) "Garbage" shall mean all matter, solid liquid or mixed, which attends, is created or accumulates within the town from the preparation, cleaning, cooking, use, storage or sale of any matter designed or intended as food stuff for human consumption. Such term shall also include tin cans, bottles and other containers from which food or foodstuffs have been removed.

(d) "Premises" shall mean every residence household, apartment trailer court, motel, hospital, nursing home, hotel restaurant, café, market, wholesale or retail store or other establishment or place of business in the Town of Sutton in which garbage or trash accumulates.

(e) "Rubbish" shall means all normal wastes resulting from the use or occupancy of any premises such as ashes, brush, grass, leaves or other similar substances but does not include any building material or industrial waste.

(f) "Litter" shall means the disorderly accumulation of objects, especially discarded waste material or scraps.

(Section amended 2022)

8-102. Premises to be kept clean. All persons within corporate limits of the town are hereby required to keep their premises in a clean and sanitary condition, free from accumulations of refuse except when stored as provided in this article. Residents of the town should be free from the nuisances of unsightly deposits of garbage, trash and refuse and the noxious odors that accompany such. No person shall keep or dispose of garbage, refuse or rubbish within the town except as provided in this article.

(Section amended 2022)

8-103. Storage of garbage, refuse and rubbish prior to removal. No refuse shall be permitted to accumulate on said premises for any period of time longer than the interval between the regularly scheduled collections.

(a) Every occupant of premises from which garbage and rubbish are to be moved shall deposit all garbage and rubbish in such approved containers as shall prevent the same from being scattered or blown upon any other premises or public ways in the city to cause litter.

(b) No person shall deposit or store garbage or refuse unless such garbage or refuse has been prepared for collection, removal and disposal and complies with the definition of garbage, refuse or rubbish as set out in this article.

(c) Lids shall be kept on approved containers at all times.

(d) Approved containers are not to be stored in front yards of premises on a regular basis, where said containers can be viewed by the general public.

(e) Occupants shall place approved containers, garbage; refuse or rubbish on the curb or out for collection, at such times as shall be scheduled by the town or contracted service for the collection of refuse therefrom.

(f) All approved containers shall be returned to their appropriate storage place as soon as practicable after such containers have been emptied.

(Section amended 2022)